

UPC SECTION	SECTION 1-101.
SUBJECT	Short Title
UPC Statute (with Maine amendments shown)	This Act shall be known and may be cited as the <u>Maine Uniform</u> Probate Code
Difference between MPC and UPC	MPC omits the words "Maine Uniform"
Recommendation	Adopt UPC with changes shown
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	SECTION 1-102.
SUBJECT	PURPOSES; RULE OF CONSTRUCTION
UPC Statute (with Maine amendments shown)	<p>(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.</p> <p>(b) The underlying purposes and policies of this Code are:</p> <ol style="list-style-type: none"> (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons; (2) to discover and make effective the intent of a decedent in the distribution of his property; (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; (4) to facilitate use and enforcement of certain trusts; (5) to make uniform the law among the various jurisdictions.
18-A M.R.S.A.	<p>§ 1-102. Purposes; rule of construction</p> <p>(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.</p> <p>(b) The underlying purposes and policies of this Code are:</p> <ol style="list-style-type: none"> (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons; (2) to discover and make effective the intent of a decedent in the distribution of his property; (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; (4) to facilitate use and enforcement of certain trusts; (5) to make uniform the law among the various jurisdictions.
Difference between MPC and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 1-103
SUBJECT	SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE
UPC Statute (with Maine amendments shown)	Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.
18-A M.R.S.A.	§ 1-103. Supplementary general principles of law applicable Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.
Difference between MPC and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 1-104
SUBJECT	SEVERABILITY
UPC Statute (with Maine amendments shown)	If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
18-A M.R.S.A.	§1-104. Severability If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
Difference between MPC and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 1-105.
SUBJECT	CONSTRUCTION AGAINST IMPLIED REPEAL
UPC Statute (with Maine amendments shown)	This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.
18-A M.R.S.A.	§ 1-105. Construction against implied repeal This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.
Difference between MPC and UPC	None.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 1-106.
SUBJECT	EFFECT OF FRAUD AND EVASION
UPC Statute (with Maine amendments shown)	Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 <u>6</u> years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.
18-A M.R.S.A.	§ 1-106. Effect of fraud and evasion Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 6 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.
Difference between MPC and UPC	UPC requires actions to be filed within 5 years; MPC has a limitation of 6 years.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 1-107.
SUBJECT	EVIDENCE AS TO DEATH OR STATUS
UPC Statute (with Maine amendments shown)	<p>In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply: In proceedings under this Code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code or by rules promulgated under section 1-304. In addition, notwithstanding Title 22, section 2707, the following rules relating to determination of death and status are applicable:</p> <p>(1) Death occurs when an individual is determined to be dead under the Uniform Determination of Death Act, <u>Title 22, section 2811. (1978/1980)</u> [has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards].</p> <p>(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.</p> <p>(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.</p> <p>(4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.</p> <p>(5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which he [or she] <u>the individual</u> has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His [or her] Death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.</p> <p>(6) In the absence of evidence disputing the time of death stated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.</p>
18-A M.R.S.A.	<p>§ 1-107. Evidence as to death or status.</p> <p>In proceedings under this Code the rules of evidence in courts of</p>

	<p>general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code or by rules promulgated under section 1-304. In addition, notwithstanding Title 22, section 2707, the following rules relating to determination of death and status are applicable:</p> <p>(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;</p> <p>(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;</p> <p>(3) a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.</p>
Difference between MPC and UPC	<p>MPC defers to the rule-making powers of the Supreme Judicial Court as set forth in MPC 1-304.</p> <p>(1) MPC refers to Title 22, section 2707 (erroneous, Uniform Determination of Death Act is now codified at Title 22, section 2811) in the introductory language.</p> <p>(2) MPC sub-(1) is the same as UPC sub-(2)</p> <p>(3) MPC (2) same as UPC (3)</p> <p>(4) MPC has no equivalent to UPC (4)</p> <p>(5) MPC (3) same as UPC (5)</p> <p>(6) MPC has no equivalent to UPC (6)</p>
Recommendation	Adopt the UPC with changes shown.
Maine Probate Code Proposed Comments	Subsections (4) and (6) are new, with no previous counterparts in the MPC.

UPC SECTION	SECTION 1-108.
SUBJECT	ACTS BY HOLDER OF GENERAL POWER.
UPC Statute (with Maine amendments shown)	For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.
18-A M.R.S.A.	§ 1-108. Acts by holder of general power For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.
Difference between MPC and UPC	None.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Proposed Comments code	This section removes the reference to registration of a trust, due to the enactment of the Maine Uniform Trust Code and repeal of the former MPC provisions regarding trust registration.

UPC SECTION	1-109
SUBJECT	COST OF LIVING ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS
UPC Statute (with Maine amendments shown)	<p>(a) In this section:</p> <p>(1) “CPI” means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U): U.S. City Average — All items, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chosen by [insert appropriate state agency]; and</p> <p>(2) “Reference base index” means the CPI for calendar year [insert year immediately preceding the year in which this section takes effect].</p> <p>(b) The dollar amounts stated in Sections 2-102, 2-102A, 2-202(b), 2-402, 2-403 <u>and</u> 2-405, and 3-1201 apply to the estate of a decedent who died in or after 2015, but for the estate of a decedent who died after 2014, these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but for the purpose of Section 2-405, the periodic installment amount is the lump-sum amount divided by 12. If the CPI for 2014 is changed by the Bureau of Labor Statistics, the reference base index must be revised using the rebasing factor reported by the Bureau of Labor Statistics, or other comparable data if a rebasing factor is not reported.</p> <p>[(c) Before February 1, [insert year after the year in which this section takes effect], and before February 1 of each succeeding year, the [insert appropriate state agency] shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in [insert year after the year in which this section takes effect], of each dollar amount as increased or decreased under this section.]</p>
18-A M.R.S.A.	None.
Difference between MPC and UPC	N/A
Recommendation of Probate Code Review Committee	<p>Adopt UPC (as section 1-113 to preserve existing numbering); insert appropriate state agency and dates in brackets.</p> <p>See UPC Legislative note below, and harmonize with changes recommended to sections referenced there.</p>

Maine Probate Code Proposed Comment	Section 1-109 was added to make it unnecessary in the future for the Legislature to continue to amend the UPC periodically to adjust certain dollar amounts for inflation. This section provides for an automatic adjustment of each of the above dollar amounts annually.
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UPC SECTION	NONE (current MPC section 1-109)
SUBJECT	MARRIED WOMEN'S STATUS
UPC Statute (with Maine amendments shown)	None.
18-A M.R.S.A.	<p>§ 1-109. Married women's status</p> <p>The marriage of a woman shall have no effect on her legal capacity, nor on the rights, privileges, authority, duties or obligations of the married woman or of her husband under this Code, except as expressly provided by statute.</p>
Difference between MPC and UPC	UPC has no section regarding the status of married women.
Recommendation	Repeal current MPC 1-109, mark section 1-109 "Reserved"
Maine Probate Code Proposed Comments	Former section 1-109 was deleted for consistency with the UPC.

UPC SECTION	NONE (current MPC section 1-110)
SUBJECT	TRANSFER FOR VALUE
UPC Statute (with Maine amendments shown)	<p><u>§ 1-110 Transfer for value</u></p> <p><u>Any recorded instrument described in this Code on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that such transfer was made for value.</u></p>
18-A M.R.S.A.	<p>§ 1-110 Transfer for value</p> <p>Any recorded instrument described in this Code on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that such transfer was made for value.</p>
Difference between MPC and UPC	UPC has no section regarding transfer for value.
Recommendation	Retain MPC 1-110 to avoid creating potential issues for title examiners in determining when the grantee of a deed is a purchaser for value (i.e., determining whether any bona fide purchaser or purchaser for value protections apply).
Maine Probate Code Proposed Comments	Section 1-110 is retained from prior Maine law as a non-uniform provision.

UPC SECTION	NONE (current MPC section 1-111)
SUBJECT	POWERS OF FIDUCIARIES RELATING TO COMPLIANCE WITH ENVIRONMENTAL LAWS
UPC Statute (with Maine amendments shown)	<p><u>§1-111. Powers of fiduciaries relating to compliance with environmental laws</u></p> <p><u>(a). From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:</u></p> <p><u>(1). To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;</u></p> <p><u>(2). To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;</u></p> <p><u>(3). To refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance that could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate, except nothing in this paragraph applies to property in the trust or estate at its inception;</u></p> <p><u>(4). To settle or compromise at any time any claims against the trust or estate that may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;</u></p> <p><u>(5). To disclaim any power granted by any document, statute or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or</u></p> <p><u>(6). To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between the fiduciary's fiduciary capacity and the fiduciary's individual capacity because of potential claims or liabilities that may be asserted against the fiduciary on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.</u></p> <p><u>(b). For purposes of this section, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to</u></p>

	<p><u>protection of the environment or human health. For purposes of this section, "hazardous substances" has the meaning set forth in Title 38, section 1362, subsection 1.</u></p> <p><u>(c). The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.</u></p> <p><u>(d). This section applies to all estates and trusts in existence on and created after July 1, 1994.</u></p> <p><u>(e). The exercise by a fiduciary of any of the powers granted in this section does not constitute a transaction that is affected by a substantial conflict of interest on the part of the fiduciary.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 1-111. Powers of Fiduciaries relating to compliance with environmental laws</p> <p>(a). From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:</p> <p>(1). To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;</p> <p>(2). To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;</p> <p>(3). To refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance that could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate, except nothing in this paragraph applies to property in the trust or estate at its inception;</p>

	<p>(4). To settle or compromise at any time any claims against the trust or estate that may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;</p> <p>(5). To disclaim any power granted by any document, statute or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or</p> <p>(6). To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between the fiduciary's fiduciary capacity and the fiduciary's individual capacity because of potential claims or liabilities that may be asserted against the fiduciary on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.</p> <p>(b). For purposes of this section, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" has the meaning set forth in Title 38, section 1362, subsection 1.</p> <p>(c). The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.</p> <p>(d). This section applies to all estates and trusts in existence on and created after July 1, 1994.</p> <p>(e). The exercise by a fiduciary of any of the powers granted in this section does not constitute a transaction that is affected by a substantial conflict of interest on the part of the fiduciary.</p>
Difference between MPC and UPC	The UPC has no counterpart to MPC section 1-111.
Recommendation	Retain Maine Law.
Maine Probate Code Proposed Comments	The UPC has no provision concerning powers of fiduciaries relating to compliance with environmental laws.

UPC SECTION	NONE (current MPC section 1-112)
SUBJECT	GUARDIAN AD LITEM
UPC Statute (with Maine amendments shown)	<p><u>§1-112. Guardian ad litem</u></p> <p><u>(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.</u></p> <p><u>(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.</u></p> <p><u>(c). If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.</u></p> <p><u>(d). The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.</u></p> <p><u>(e). If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.</u></p> <p><u>(f). A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.</u></p> <p><u>(g). A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.</u></p>
18-A M.R.S.A.	<p>§ 1-112. Guardian ad litem</p> <p>(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.</p> <p>(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.</p>

	<p>(c). If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.</p> <p>(d). The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.</p> <p>(e). If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.</p> <p>(f). A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.</p> <p>(g). A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.</p>
Difference between MPC and UPC	The UPC has no counterpart to MPC section 1-112.
Recommendation	Retain Maine Law.
Maine Probate Code Proposed Comments	The UPC has no provision concerning guardians ad litem.

UPC SECTION	1-201
SUBJECT	GENERAL DEFINITIONS.
<p>UPC Statute (with Maine amendments shown)</p>	<p>Subject to additional definitions contained in the subsequent Articles that are applicable to specific Articles or parts, or sections and unless the context otherwise requires, in this Code:</p> <p>(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act <u>the Uniform Health Care Decisions Act</u>.</p> <p>(2) “Application” means a written request to the Registrar <u>Register</u> for an order of informal probate or appointment under Part 3 of Article III.</p> <p>(3) “Beneficiary,” as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation,” refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing instrument,” includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.</p> <p>(4) “Beneficiary designation” refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.</p> <p>(5) “Child” includes an individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.</p> <p>(6) “Claims,” in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator,</p>

including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" is as defined in Section 5-102.

(8) "Court" means ~~the [..... Court] or branch in this state having jurisdiction in matters relating to the affairs of decedents,~~ any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.

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

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

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

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

(12-A). "Domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

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

(14) "Exempt property" means that property of a decedent's estate which is described in Section 2-403

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

(16) "Foreign personal representative" means a personal

representative appointed by another jurisdiction.

(17) "Formal proceedings" means proceedings within the exclusive jurisdiction of the court conducted before a judge with notice to interested persons.

(18) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(19) "Guardian" is as defined in Section 5-102.

(20) "Heirs," except as controlled by Section 2-711 means persons, including the surviving spouse ~~and the state~~, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) "Incapacitated person" means an individual described in Section 5-102.

(22) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a ~~registrar~~ register for probate of a will or appointment of a personal representative.

(23) "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. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. In any proceeding or hearing under Article 5 affecting a trust estate or estate, when the ward or protected person has received benefits from the Veterans Administration within 3 years, the administrator of Veterans Affairs of the United States is an "interested person." 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.

(24) "Issue" of an individual means descendant.

(25) "Joint tenants with the right of survivorship" ~~and "community property with the right of survivorship"~~ includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

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

(27) "Letters" includes letters of authority, letters

	<p>testamentary, letters of guardianship, letters of administration, and letters of conservatorship.</p> <p>(28) "Minor" has the meaning described in Section 5-102.</p> <p>(29) "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.</p> <p>(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.</p> <p>(31) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.</p> <p>(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.</p> <p>(33) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.</p> <p>(34) "Person" means an individual, or an organization.</p> <p>(35) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.</p> <p>(36) "Petition" means a written request to the court for an order after notice.</p> <p>(37) "Proceeding" includes <u>any civil action in any court of competent jurisdiction</u> an action at law and suit in equity.</p> <p>(38) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.</p> <p>(39) "Protected person" is as defined in Section 5-102.</p> <p>(40) "Protective proceeding" is as defined in Section 5-101.</p> <p>(41) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p>(42) "Registrar" refers to "Register means" the official of the court elected or appointed as provided in section 1-501, or any other person performing the functions of register as provided in Article I, Part 5. designated to perform the functions of Registrar as provided in.</p>
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(42-A). "Registered domestic partners" means domestic partners who are registered in accordance with Title 22, section 2710.

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

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

(45) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(46) "Special administrator" means a personal representative as described by Sections 3-614 through 3-618.

(46-A) "Spouse" means one who is lawfully married and includes registered domestic partners and individuals who are in a legal union that was validly formed in any State or jurisdiction that provides substantially the same rights, benefits, and responsibilities as a marriage.

(47) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

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

(49) "Successors" means persons, other than creditors, who are entitled to property of a decedent under his or her the decedent's will or this Code.

(50) "Supervised administration" refers to the proceedings described in Article III, Part 5.

(51) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under Section 2-104 or 2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

	<p>(52) “Testacy proceeding” means a proceeding to establish a will or determine intestacy.</p> <p>(53) “Testator” includes an individual of either sex <u>who has executed a will</u>.</p> <p>(54) “Trust” includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to <u>the Maine Uniform Transfers to Minors Act</u>, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.</p> <p>(55) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.</p> <p>(56) “Ward” means an individual described in Section 5-102. (57) “Will” includes <u>a</u> codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.</p>
<p>18-A M.R.S.A.</p>	<p>§1-201. General definitions</p> <p>Subject to additional definitions contained in the subsequent Articles which are applicable to specific Articles or parts, and unless the context otherwise requires, in this Code:</p> <p>(1). "Application" means a written request to the registrar for an order of informal probate or appointment under Part 3 of Article III.</p> <p>(2). "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.</p> <p>(3). "Child" includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.</p>

	<p>(4). "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.</p> <p>(5). "Court" means any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.</p> <p>(6). "Conservator" means a person who is appointed by a Court to manage the estate of a protected person.</p> <p>(7). "Devise", when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.</p> <p>(8). "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.</p> <p>(9). "Disability" means cause for a protective order as described by section 5-401.</p> <p>(10). "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.</p> <p>(10-A). "Domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.</p> <p>(11). "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.</p> <p>(12). "Exempt property" means that property of a decedent's estate which is described in section 2-402.</p> <p>(13). "Fiduciary" includes personal representative, guardian, conservator and trustee.</p> <p>(14). "Foreign personal representative" means a personal</p>
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	<p>representative of another jurisdiction.</p> <p>(15). "Formal proceedings" means those within the exclusive jurisdiction of the court conducted before a judge with notice to interested persons.</p> <p>(16). "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.</p> <p>(17). "Heirs" means those persons, including the surviving spouse or surviving registered domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.</p> <p>(18). "Incapacitated person" is as defined in section 5-101.</p> <p>(19). "Informal proceedings" mean those conducted without notice to interested persons by an officer of the Court acting as a registrar for probate of a will or appointment of a personal representative.</p> <p>(20). "Interested person" includes heirs, devisees, children, spouses, domestic partners, 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 that may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. In any proceeding or hearing under Article 5 affecting a trust estate or estate, when the ward or protected person has received benefits from the Veterans Administration within 3 years, the administrator of Veterans Affairs of the United States is an "interested person." 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.</p> <p>(21). "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.</p> <p>(21-A). "Judge" means the judge of any one of the several courts of probate as defined in paragraph (5).</p> <p>(22). "Lease" includes an oil, gas, or other mineral lease.</p> <p>(23). "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.</p> <p>(24). "Minor" means a person who is under 18 years of age.</p> <p>(25). "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.</p> <p>(26). "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.</p>
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	<p>(26-A). "Oath" means an oath or affirmation.</p> <p>(27). "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal entity.</p> <p>(28). "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.</p> <p>(29). "Person" means an individual, a corporation, an organization, or other legal entity.</p> <p>(30). "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.</p> <p>(31). "Petition" means a written request to the court for an order after notice.</p> <p>(32). "Proceeding" includes any civil action in any court of competent jurisdiction.</p> <p>(33). "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.</p> <p>(34). "Protected person" is as defined in section 5-101.</p> <p>(35). "Protective proceeding" is as defined in section 5-101.</p> <p>(36). "Register" means the official of the court elected or appointed as provided in section 1-501, or any other person performing the functions of register as provided in section 1-307.</p> <p>(36-A). "Registered domestic partners" means domestic partners who are registered in accordance with Title 22, section 2710.</p> <p>(37). "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. It shall not include an account as defined in section 6-101, paragraph (1).</p> <p>(38). "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.</p>
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	<p>(39). "Special administrator" means a personal representative as described by sections 3-614 through 3-618.</p> <p>(40). "State" includes any state or the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.</p> <p>(41). "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.</p> <p>(42). "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.</p> <p>(43). "Supervised administration" refers to the proceedings described in Article III, Part 5.</p> <p>(44). "Testacy proceeding" means a proceeding to establish a will or determine intestacy.</p> <p>(45). "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to Title 33, sections 1001 to 1010, or other special custodial arrangements, business trusts provided for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.</p> <p>(46). "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.</p> <p>(47). "Ward" is as defined in section 5-101.</p> <p>(48). "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.</p>
Difference between MPC and UPC	Subsections appearing in the "UPC Statute (with Maine amendments shown)" with the "-A" suffix do not appear in the UPC, but are carried over from the MPC.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section adds several definitions from the former MPC which do not appear in the UPC.

UPC SECTION	1-301
SUBJECT	TERRITORIAL APPLICATION
UPC Statute (with Maine amendments shown)	<p>Except as otherwise provided in this [code], this [code] applies to:</p> <ul style="list-style-type: none"> (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, (4) survivorship and related accounts in this state, and (5) trusts subject to administration in this state.
18-A M.R.S.A.	<p>§1-301. Territorial application</p> <p>Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State.</p>
Difference between MPC and UPC	None
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

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UPC SECTION	1-302
SUBJECT	SUBJECT MATTER JURISDICTION
UPC Statute (with Maine amendments shown)	<p>(a) To the full extent permitted by the constitution <u>Maine statutes</u>, the court has jurisdiction over all subject matter relating to</p> <ul style="list-style-type: none"> (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts. <p>(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.</p> <p>(c) The court has jurisdiction over protective proceedings and guardianship proceedings.</p> <p>(d) If both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.</p>
18-A M.R.S.A.	<p>§ 1-302. Subject matter jurisdiction</p> <p>(a) To the full extent provided in sections 3-105, 5-102 and 5-402, the court has jurisdiction over all subject matter relating to</p> <ul style="list-style-type: none"> (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts. <p>(b) The Court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.</p>
Difference between MPC and UPC	<p>(a) UPC reference to the constitution; MPC specific references to jurisdictional sections of Articles regarding probate of estates, guardianships and conservatorships.</p> <p>UPC subsections (c) and (d) appear to cover the same jurisdiction as MPC does with references to MPC sections 3-105, 5-102 and 5-402.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	1-303
SUBJECT	VENUE, MULTIPLE PROCEEDINGS, TRANSFER
UPC Statute (with Maine amendments shown)	<p>(a) Where a proceeding under this [code] could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.</p> <p>(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.</p> <p>(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.</p>
18-A M.R.S.A.	<p>§ 1-303 Venue; multiple proceedings; transfer</p> <p>(a) Where a proceeding under this Code could be maintained in more than one place in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.</p> <p>(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.</p> <p>(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.</p>
Difference between MPC and UPC	none
Recommendation Maine Probate Code Proposed Comments	Adopt UPC

UPC SECTION	1-304
SUBJECT	PRACTICE IN COURT
UPC Statute (with Maine amendments shown)	Unless specifically provided to the contrary in this [code] or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this [code]. (a) The Supreme Judicial Court shall have the power to prescribe by general rules the forms, practice and procedure, including rules of evidence, to be followed in all proceedings under this Code and all appeals therefrom; provided that the rules shall be consistent with the provisions of this Code and shall not abridge, enlarge or modify any substantive right. (b) After the effective date of the rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect, except that in the event of conflict with a provision of this Code, the Code provision shall prevail.
18-A M.R.S.A.	<p>§1-304. Rule-making procedure</p> <p>(a) The Supreme Judicial Court shall have the power to prescribe by general rules the forms, practice and procedure, including rules of evidence, to be followed in all proceedings under this Code and all appeals therefrom; provided that the rules shall be consistent with the provisions of this Code and shall not abridge, enlarge or modify any substantive right.</p> <p>(b) These rules shall be promulgated to take effect on the effective date of this Code. After their promulgation, the Supreme Judicial Court may repeal, amend, modify or add to them from time to time with or without a waiting period. After the effective date of the rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect, except that in the event of conflict with a provision of this Code, the Code provision shall prevail.</p>
Difference between MPC and UPC	UPC is generic; MPC makes specific reference to the Supreme Judicial Court. The first part of MPC subsection (b) seems to be directed at the initial rulemaking by the SJC after the MPC was originally enacted and is now superfluous.
Recommendation	Retain Maine law but delete the first two sentences of subsection (b)
Maine Probate Code Proposed Comments	

UPC SECTION	1-305.
SUBJECT	RECORDS AND CERTIFIED COPIES
UPC Statute (with Maine amendments shown)	The [Clerk of Court] shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this [code], including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the Registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment. The register shall maintain records and files and provide copies of documents as provided in sections 1-501 through 1-511 and such further records and copies as the Supreme Judicial Court may by rule provide. The register shall be subject to the supervision and authority of the judge of the court in which such register serves.
18-A M.R.S.A.	1-305. Records and certified copies; judicial supervision The register shall maintain records and files and provide copies of documents as provided in sections 1-501 through 1-511 and such further records and copies as the Supreme Judicial Court may by rule provide. The register shall be subject to the supervision and authority of the judge of the court in which such register serves.
Difference between MPC and UPC	MPC deals with the procedure applicable to the Register of Probate, a constitutional office, in Part 5, which has no analogue in the UPC.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-306
SUBJECT	JURY TRIAL NO JURY TRIAL; REMOVAL.
UPC Statute (with Maine amendments shown)	<p>(a) If duly demanded, a party is entitled to trial by jury in [a formal testacy proceeding and] any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.</p> <p>(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.</p> <p>(a). The court shall sit without a jury.</p> <p>(b). Upon timely demand by any party any proceeding not within the exclusive jurisdiction of the court may be removed for trial to the Superior Court under such procedures as the Supreme Judicial Court may by rule provide.</p>
18-A M.R.S.A.	<p>§1-306. No jury trial; removal</p> <p>(a). The court shall sit without a jury.</p> <p>(b). Upon timely demand by any party any proceeding not within the exclusive jurisdiction of the court may be removed for trial to the Superior Court under such procedures as the Supreme Judicial Court may by rule provide.</p>
Difference between MPC and UPC	UPC procedure contemplates that state law may allow a jury trial for certain issues in formal probate. MPC is specific to Maine law.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-307
SUBJECT	REGISTER REGISTER; POWERS
UPC Statute (with Maine amendments shown)	<p>The acts and orders which this [code] specifies as performable by the Registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.</p> <p><u>The register has the power to probate wills and appoint personal representatives as provided in sections 3-302 and 3-307 and to perform other duties as set out in this Title generally. The acts and orders that this Code specifies as performable by the register may also be performed by a judge of the court or by a deputy register appointed under the provisions of section 1-506.</u></p>
18-A M.R.S.A.	<p>§1-307. Register; powers</p> <p>The register has the power to probate wills and appoint personal representatives as provided in sections 3-302 and 3-307 and to perform other duties as set out in this Title generally. The acts and orders that this Code specifies as performable by the register may also be performed by a judge of the court or by a deputy register appointed under the provisions of section 1-506.</p>
Difference between MPC and UPC	UPC is generic; MPC is specific to Maine law.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-308
SUBJECT	APPEALS.
UPC Statute (with Maine amendments shown)	<p>Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the rules applicable to the appeals to the [Supreme Court] in equity cases from the [court of general jurisdiction], except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.</p> <p><u>Appeals from all final judgments, orders and decrees of the court shall lie to the Supreme Judicial Court, sitting as the law court, as in other civil actions.</u></p>
18-A M.R.S.A	<p>§1-308. Appeals</p> <p>Appeals from all final judgments, orders and decrees of the court shall lie to the Supreme Judicial Court, sitting as the law court, as in other civil actions.</p>
Difference between MPC and UPC	UPC is generic; MPC is specific to Maine law.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-309
SUBJECT	JUDGES
UPC Statute (with Maine amendments shown)	A judge of the court must have the same qualifications as a judge of the [court of general jurisdiction]. A judge of the court shall be chosen and serve as provided in Title 4, sections 301 to 311.
18-A M.R.S.A.	§1-309. Judges A judge of the court shall be chosen and serve as provided in Title 4, sections 301 to 311.
Difference between MPC and UPC	UPC is generic; MPC is specific to Maine law
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-310
SUBJECT	OATH OR AFFIRMATION ON FILED DOCUMENTS
UPC Statute (with Maine amendments shown)	Except as otherwise specifically provided in this Code or by rule, every document filed with the court under this Code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.
18-A M.R.S.A.	§1-310. Oath or affirmation on filed documents Except as otherwise specifically provided in this Code or by rule, every document filed with the court under this Code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.
Difference between MPC and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	1-401
SUBJECT	NOTICE; METHOD OF TIME AND GIVING
UPC Statute (with Maine amendments shown)	<p>(a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:</p> <p>—— (1) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;</p> <p>—— (2) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or</p> <p>—— (3) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing.</p> <p>(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.</p> <p>(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.</p> <p><u>Whenever notice of any proceeding or any hearing is required under this Code, it shall be given to any interested person in such manner as the Supreme Judicial Court shall by rule provide. Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice.</u></p>
18-A M.R.S.A.	<p>§1-401. Notice</p> <p>Whenever notice of any proceeding or any hearing is required under this Code, it shall be given to any interested person in such manner as the Supreme Judicial Court shall by rule provide. Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice.</p>
Difference between MPC and UPC	UPC is generic; MPC is specific and defers to Maine Rules of Court promulgated by the Maine Supreme Judicial Court.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-402
SUBJECT	NOTICE; WAIVER
UPC Statute (with Maine amendments shown)	A person, including a guardian ad litem, conservator or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding in such manner as the Supreme Judicial Court shall by rule provide. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.
18-A M.R.S.A.	§1-402. Notice; waiver A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice in such manner as the Supreme Judicial Court shall by rule provide.
Difference between MPC and UPC	The MPC defers to the Supreme Judicial Court on the manner of waiver of notice. The UPC provides that a person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	1-403
SUBJECT	PLEADINGS; WHEN PARTIES BOUND BY OTHERS: NOTICE
<p>UPC Statute (with Maine amendments shown)</p>	<p>In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following rules apply:</p> <p>(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in another appropriate manner.</p> <p>(2) A person is bound by an order binding another in the following cases:</p> <p style="padding-left: 40px;">(A) An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.</p> <p style="padding-left: 40px;">(B) To the extent there is no conflict of interest between them or among persons represented:</p> <p style="padding-left: 80px;">(i) an order binding a conservator binds the person whose estate the conservator controls;</p> <p style="padding-left: 80px;">(ii) an order binding a guardian binds the ward if no conservator of the ward's estate has been appointed;</p> <p style="padding-left: 80px;">(iii) an order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a former fiduciary, and in proceedings involving creditors or other third parties;</p> <p style="padding-left: 80px;">(iv) an order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and</p> <p style="padding-left: 80px;">(v) an order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.</p> <p style="padding-left: 40px;">(C) Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.</p> <p>(3) If no conservator or guardian has been appointed, a parent may represent a minor child.</p> <p>(4) Notice is required as follows:</p> <p style="padding-left: 40px;">(A) The notice prescribed by Section 1-401 must be given to every interested person or to one who can bind an interested person as described in paragraph (2)(A) or (B). Notice may be given both to a person and to another who may bind the person.</p>

	<p>(B) Notice is given to unborn or unascertained persons who are not represented under paragraph (2)(A) or (B) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.</p> <p>(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.</p>
<p>18-A M.R.S.A.</p>	<p>§1-403 Pleadings; when parties bound by others: notice</p> <p>In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:</p> <p>(1). Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.</p> <p>(2). Persons are bound by orders binding others in the following cases:</p> <p>(i). Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.</p> <p>(ii). To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.</p> <p>(iii). An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.</p>

	<p>(3). Notice is required as follows:</p> <p>(i). Notice as prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind him.</p> <p>(ii). Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.</p> <p>(4). At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record or the proceeding.</p>
Difference between MPC and UPC	No substantive difference.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

UPC Section	None
SUBJECT	Part 5. REGISTERS OF PROBATE
UPC Statute (with Maine Amendments shown)	<p><u><i>§1-501. Election; bond; vacancies; salaries; copies</i></u> <u>Registers of probate are elected or appointed as provided in the Constitution of Maine. Their election is effected and determined as is provided respecting county commissioners by Title 30-A, chapter 1, subchapter II, and they enter upon the discharge of their duties on the first day of January following their election; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give bond to the treasurer of their county with sufficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. Every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of that register's county, to be presented to them at their next meeting for approval. After the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county within 10 days after its approval, to be filed in the treasurer's office. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a register of probate who was nominated by primary election before the general election, the register of probate appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register of probate whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made.</u></p> <p><u>Registers of probate in the several counties are entitled to receive annual salaries as set forth in Title 30-A, section 2. The salaries of the registers of probate must be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which is considered a fee for the use of the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be</u></p>

	<p><u>recorded in the registry of deeds are considered official fees for the use of the county.</u></p> <p><u>This section may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.</u></p> <p><u>§1-502. Condition of bond</u></p> <p><u>The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer by the 15th day of every month following the month in which they were collected, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than 6 months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.</u></p> <p><u>§1-503. Duties; records; binding of papers</u></p> <p><u>Registers of probate have the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case.</u></p> <p><u>Any register may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register</u></p> <p><u>or other person authorized by law to attest those records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required.</u></p> <p><u>A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his</u></p>
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	<p><u>signature.</u></p> <p><u>§1-504. Certification of wills, appointments of personal representatives and elective share petitions involving real estate</u> <u>Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, the register shall make out and certify to the register of deeds in the county where any affected real estate is situated (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification shall include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the certification shall also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, the register of probate shall certify such formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. The register of deeds receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate.</u></p> <p><u>§1-505. Notice to beneficiaries; furnishing of copies</u> <u>Registers of probate shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a will must, upon application to the register of probate, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.</u></p> <p><u>§1-506. Deputy register of probate</u> <u>Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the</u></p>
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signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners.

In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. He shall be sworn and, if the judge requires it, give bond as in the case of the register.

§1-507. Inspection of register's conduct of office

Every judge of probate shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall bring civil action. The money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge and the surplus, if any, shall inure to the county. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action.

§1-508. Register incapable or neglects duties

When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid by the treasurer in proportion to the time that he has served and the amount shall be deducted from the register's salary.

§1-509. Records in case of vacancy

When there is a vacancy in the office of register and the records are incomplete, they may be completed and certified by the person appointed to act as register or by the register's successor.

§1-510. Register or Probate Court employee; prohibited activities

1. Prohibited activities. A register may not:

A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter;

B. Be administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in

	<p><u>Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or</u></p> <p><u>C. Commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register, in violation of this section.</u></p> <p><u>2. Assistance in drafting. Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of the Probate Court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee.</u></p> <p><u>3. Penalties. The following penalties apply to violations of this section.</u></p> <p><u>A. A register who violates subsection 1 commits a Class E crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.</u></p> <p><u>B. A register or employee of the Probate Court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by indictment for the benefit of the county.</u></p> <p><u>§1-511. Fees for approved blanks and forms</u> <u>For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set by the register and approved by the county commissioners, so as not to incur a loss to the county for such services. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county.</u></p>
<p>18-A M.R.S.A</p>	<p>§1-501. Election; bond; vacancies; salaries; copies</p> <p>Registers of probate are elected or appointed as provided in the Constitution of Maine. Their election is effected and determined as is provided respecting county commissioners by Title 30-A, chapter 1, subchapter II, and they enter upon the discharge of their duties on the first day of January following their election; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give bond to the treasurer of their county with sufficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. Every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of that</p>

	<p>register's county, to be presented to them at their next meeting for approval. After the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county within 10 days after its approval, to be filed in the treasurer's office. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a register of probate who was nominated by primary election before the general election, the register of probate appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register of probate whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made.</p> <p>Registers of probate in the several counties are entitled to receive annual salaries as set forth in Title 30-A, section 2.</p> <p>The salaries of the registers of probate must be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which is considered a fee for the use of the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds are considered official fees for the use of the county. §1-502. Condition of bond The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer by the 15th day of every month following the month in which they were collected, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than 6 months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.</p> <p>§1-503. Duties; records; binding of papers Registers of probate have the care and custody of all files, papers</p>
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	<p>and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. Any register may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required.</p> <p>A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his signature.</p> <p>§1-504. Certification of wills, appointments of personal representatives and elective share petitions involving real estate Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, the register shall make out and certify to the register of deeds in the county where any affected real estate is situated (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification shall include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the</p>
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	<p>certification shall also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, the register of probate shall certify such formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. The register of deeds receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate.</p> <p>§1-505. Notice to beneficiaries; furnishing of copies Registers of probate shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a will must, upon application to the register of probate, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.</p> <p>§1-506. Deputy register of probate Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners.</p> <p>In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. He shall be sworn and, if the judge requires it, give bond as in the case of the register.</p> <p>§1-507. Inspection of register's conduct of office Every judge of probate shall constantly inspect the conduct of the register with respect to his records and the duties of his office,</p>
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	<p>and give information in writing of any breach of his bond to the treasurer of his county, who shall bring civil action. The money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge and the surplus, if any, shall inure to the county. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action.</p> <p>§1-508. Register incapable or neglects duties When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid by the treasurer in proportion to the time that he has served and the amount shall be deducted from the register's salary.</p> <p>§1-509. Records in case of vacancy When there is a vacancy in the office of register and the records are incomplete, they may be completed and certified by the person appointed to act as register or by the register's successor.</p> <p>§1-510. Register or Probate Court employee; prohibited activities</p> <ol style="list-style-type: none"> 1. Prohibited activities. A register may not: <ol style="list-style-type: none"> A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter; B. Be administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or C. Commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register, in violation of this section. 2. Assistance in drafting. Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of the Probate Court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee. 3. Penalties. The following penalties apply to violations of this section. <ol style="list-style-type: none"> A. A register who violates subsection 1 commits a Class E
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	<p>crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.</p> <p>B. A register or employee of the Probate Court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by indictment for the benefit of the county.</p> <p>§1-511. Fees for approved blanks and forms For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set by the register and approved by the county commissioners, so as not to incur a loss to the county for such services. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county.</p> <p>§1-502. Condition of bond The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer by the 15th day of every month following the month in which they were collected, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than 6 months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture.</p> <p>§1-503. Duties; records; binding of papers Registers of probate have the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. Any register may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records. The registers of probate</p>
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	<p>may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required.</p> <p>A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his signature.</p> <p>§1-504. Certification of wills, appointments of personal representatives and elective share petitions involving real estate Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, the register shall make out and certify to the register of deeds in the county where any affected real estate is situated (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification shall include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the certification shall also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, the register of probate shall certify such formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. The register of deeds receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate.</p> <p>§1-505. Notice to beneficiaries; furnishing of copies Registers of probate shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a</p>
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	<p>will must, upon application to the register of probate, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.</p> <p>§1-506. Deputy register of probate Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners.</p> <p>In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. He shall be sworn and, if the judge requires it, give bond as in the case of the register.</p> <p>§1-507. Inspection of register's conduct of office Every judge of probate shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall bring civil action. The money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge and the surplus, if any, shall inure to the county. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action.</p> <p>§1-508. Register incapable or neglects duties When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid by the treasurer in proportion to the time that he has served and the amount shall be deducted from the register's salary.</p> <p>§1-509. Records in case of vacancy When there is a vacancy in the office of register and the records are incomplete, they may be completed and certified by the</p>
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	<p>person appointed to act as register or by the register's successor.</p> <p>§1-510. Register or Probate Court employee; prohibited activities</p> <p>1. Prohibited activities. A register may not:</p> <p>A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter;</p> <p>B. Be administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or</p> <p>C. Commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register, in violation of this section.</p> <p>2. Assistance in drafting. Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of the Probate Court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee.</p> <p>3. Penalties. The following penalties apply to violations of this section.</p> <p>A. A register who violates subsection 1 commits a Class E crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.</p> <p>B. A register or employee of the Probate Court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by indictment for the benefit of the county.</p> <p>§1-511. Fees for approved blanks and forms</p> <p>For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set by the register and approved by the county commissioners, so as not to incur a loss to the county for such services. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county.</p> <p>This section may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge. This section may not be construed to change or</p>
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	repeal any provisions of law requiring the furnishing of certain copies without charge.
Difference between MPC and UPC	UPC Article 1 has no Part 5
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	None.

UPC SECTION	None
SUBJECT	Part 6. COSTS AND FEES
<p>UPC Statute (with Maine amendments shown)</p>	<p><u>MPC ARTICLE 1, PART 6. COSTS AND FEES</u></p> <p><u>§1-601. Costs in contested cases in probate court</u> <u>In contested cases in the original or appellate court of probate, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires. In those cases where a will is being contested on the grounds of undue influence or mental capacity, attorney's fees and costs shall not be allowed to the party contesting the will if he is unsuccessful.</u></p> <p><u>§1-602. Filing and certification fees</u> <u>The register of probate must receive the following fees for filing or certifying documents:</u></p> <p><u>(1). For making and certifying to the register of deeds copies of devises of real estate, abstracts of petitions for appointment of a personal representative or for an elective share and any other document for which certification is required, \$15, plus the fee for recording as provided by Title 33, section 751, except as otherwise expressly provided by law. The fee must be paid by the personal representative, petitioner or other person filing the document to be certified when the copy of the devise, abstract, petition for elective share or other document for which certification is required is requested. The register of probate shall deliver the certified document to the register of deeds together with the fee for recording as provided by Title 33, section 751;</u></p> <p><u>(2). For receiving and entering each petition or application for all estates, testate and intestate, including foreign estates, and the filing of a notice by a domiciliary foreign personal representative, except for the filing of a successor personal representative, when the value of the estate is:</u></p> <p><u>(i). (Deleted)</u></p> <p><u>(i-a). For filing a will for no probate, no charge;</u></p> <p><u>(ii). For filing a will to be probated and without an appointment, \$15;</u></p> <p><u>(iii). \$10,000 and under, \$20;</u></p> <p><u>(iv). \$10,001 to \$20,000, \$40;</u></p> <p><u>(v). \$20,001 to \$30,000, \$60;</u></p> <p><u>(vi). \$30,001 to \$40,000, \$75;</u></p> <p><u>(vii). \$40,001 to \$50,000, \$95;</u></p> <p><u>(viii). \$50,001 to \$75,000, \$125;</u></p> <p><u>(ix). \$75,001 to \$100,000, \$190;</u></p> <p><u>(x). \$100,001 to \$150,000, \$250;</u></p> <p><u>(xi). \$150,001 to \$200,000, \$325;</u></p> <p><u>(xii). \$200,001 to \$250,000, \$375;</u></p>

	<p><u>(xiii). \$250,001 to \$300,000, \$450;</u> <u>(xiv). \$300,001 to \$400,000, \$500;</u> <u>(xv). \$400,001 to \$500,000, \$575;</u> <u>(xvi). \$500,001 to \$750,000, \$625;</u> <u>(xvii). \$750,001 to \$1,000,000, \$700;</u> <u>(xviii). \$1,000,001 to \$1,500,000, \$750;</u> <u>(xix). \$1,500,001 to \$2,000,000, \$875; or</u> <u>(xx). More than \$2,000,000, \$950, and continuing in steps of \$100 for every increase in value of \$500,000 or part thereof above \$2,500,000;</u></p> <p><u>(3). For making copies from the records of the court, \$1 for each page;</u></p> <p><u>(4). For each certificate, under seal of the court, of the appointment and qualification of a personal representative, guardian, conservator or trustee, \$5, and for each double certificate, \$10;</u></p> <p><u>(5). For filing a petition for appointment as guardian, \$50;</u></p> <p><u>(6). For filing application for involuntary hospitalization, \$10;</u></p> <p><u>(7). For filing a joined petition for guardian and conservator, \$75;</u></p> <p><u>(8). For filing any other formal proceeding, \$25;</u></p> <p><u>(9). For filing a petition for appointment of conservator, \$50;</u></p> <p><u>(10). For all other subsequent informal appointments, \$25; and</u></p> <p><u>(11). For filing a petition for elective share, \$120.</u></p> <p><u>§1-603. Registers to account monthly for fees</u> <u>Registers of probate shall account for each calendar month under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount for each calendar month to the treasurers of their respective counties not later than the 15th day of the following month.</u></p> <p><u>§1-604. Expenses of partition</u> <u>When a partition of real estate is made by order of a judge of probate, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real estate, having in his hands sufficient assets for the purpose, he may pay such expenses and allow the same in his account. In case of neglect or refusal of any person liable to pay such expenses, the judge may issue a warrant of distress against such delinquent for the amount due from him and costs of process.</u></p> <p><u>§1-605. Compensation of reporters</u> <u>Reporters appointed under Title 4, sections 751 to 756, shall, if a transcript is requested by the court or a party, file the original transcript with the court and receive the same compensation as</u></p>
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	<p><u>provided by law for temporary court reporters, and travel at the rate of 10¢ a mile.</u></p> <p><u>Transcript rates shall be in accordance with Title 4, section 651, for transcript furnished for the files of the court and shall be paid by the county in which the court or examination is held, after the reporter's bill has been allowed by the judge of the court in which the services were rendered. In probate matters, the personal representative, conservator or guardian shall, in each case out of the estate in his hands, pay to the register for the county the amount of the reporter's fees, giving such fees the same priority as provided in section 3-815 for other costs and expenses of administration, or as otherwise provided for in the case of insolvent estates, provided that the court can order payment by the county in case the estate assets are not sufficient.</u></p> <p><u>§1-606. Reporters to furnish copies</u></p> <p><u>Reporters shall furnish correct typewritten copies of the oral testimony taken at any hearing or examination, to any person calling for the same, upon payment of transcript rates prescribed in Title 4, section 651.</u></p> <p><u>§1-607. Surcharge for restoration, storage and preservation of records</u></p> <p><u>(1). In addition to any other fees required by law, a register of probate shall collect a surcharge of \$10 per petition, application or complaint, except for name changes, filed in the Probate Court.</u></p> <p><u>(2). The surcharge imposed in subsection (1) must be transferred to the county treasurer, who shall deposit it in a separate, nonlapsing account within 30 days of receipt. Money in the account is not available for use as general revenue of the county. Interest earned on the account must be credited to the account.</u></p> <p><u>(3). The money in the account established in subsection (2) must be used for the restoration, storage and preservation of the records filed in the office of the register of probate and in Probate Court. No withdrawals from this account may be made without the express written request or approval of the register of probate.</u></p> <p><u>(4). The judge of probate may waive the surcharge in subsection (1) if the judge believes that it will prove a hardship for the individual filing the petition, application or complaint.</u></p> <p><u>§1-608. Fees not established in statute</u></p> <p><u>Unless otherwise specifically stated in statute or in the Rules of Probate Procedure as published by the Supreme Judicial Court, the Probate Court shall charge the same fee as charged by the District Court or the Superior Court for similar procedures.</u></p>
Difference between MPC and UPC	UPC Article 1 has no Part 6
Recommendation	Retain Maine law.

Maine	Probate	Code	
Proposed Comments			

UPC SECTION	NONE
SUBJECT	PART 8. PROBATE AND TRUST LAW ADVISORY COMMISSION
UPC Statute (with Maine amendments shown)	<p><u>PROBATE AND TRUST LAW ADVISORY COMMISSION</u></p> <p><u>§1-801. Commission established</u> <u>The Probate and Trust Law Advisory Commission, established in Title 5, section 12004-I, subsection 73-B and referred to in this Part as "the commission," is created for the purpose of conducting a continuing study of the probate and trust laws of the State.</u></p> <p><u>1. Membership. The commission is composed of 10 members who have experience in practicing probate and trust law or are knowledgeable about probate and trust law. The membership of the commission must include:</u></p> <p><u>A. Two Probate Court Judges, appointed by the Chief Justice of the Supreme Judicial Court;</u></p> <p><u>B. One Superior Court Justice, appointed by the Chief Justice of the Supreme Judicial Court;</u></p> <p><u>C. Five members of the trusts and estates law section of the Maine State Bar Association, appointed by the Chief Justice of the Supreme Judicial Court;</u></p> <p><u>D. One member representing the interests of older people, appointed by the Governor; and</u></p> <p><u>E. The Attorney General, or the Attorney General's designee.</u></p> <p><u>2. Terms. A member is appointed for a term of 3 years and may be reappointed.</u></p> <p><u>3. Vacancies. In the event of the death or resignation of a member, the appointing authority under subsection 1 shall appoint a qualified person for the remainder of the term.</u></p> <p><u>§1-802. Consultants; experts</u> <u>Whenever it considers appropriate, the commission shall seek the advice of consultants or experts, including representatives of the legislative and executive branches, in fields related to the commission's duties.</u></p> <p><u>§1-803. Duties</u></p> <p><u>1. Examine, evaluate and recommend. The commission shall:</u></p> <p><u>A. Examine this Title and Title 18-B and draft amendments that the commission considers advisable;</u></p> <p><u>B. Evaluate the operation of this Title and Title 18-B and recommend amendments based on the evaluation;</u></p> <p><u>C. Examine current laws pertaining to probate and trust laws and recommend changes based on the examination; and</u></p> <p><u>D. Examine any other aspects of the State's probate and trust laws, including substantive, procedural and administrative matters, that the commission considers relevant.</u></p> <p><u>2. Propose changes. The commission may propose to the Legislature, at the start of each session, changes in the probate</u></p>

	<p><u>and trust laws and in related provisions that the commission considers appropriate.</u></p> <p><u>§1-804. Organization</u></p> <p><u>The Chief Justice of the Supreme Judicial Court shall notify all members of the commission of the time and place of the first meeting of the commission. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and its affairs. The commission shall maintain financial records as required by the State Auditor.</u></p> <p><u>§1-805. Federal funds</u></p> <p><u>The commission may accept federal funds on behalf of the State.</u></p>
Difference between MPC and UPC	UPC Article 1 has no part 8.
Recommendation	Retain Maine law
Maine Probate Code Proposed Comment	

UPC SECTION	NONE
SUBJECT	PART 7. CHANGE OF NAME
UPC Statute (with Maine amendments shown)	<p><u>PART 7. CHANGE OF NAME</u> <u>§1-701. Petition to change name</u> (a). <u>If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides. If the person is a minor, the person's legal custodian may petition in the person's behalf.</u> (b). <u>The judge, after due notice, may change the name of the person. To protect the person's safety, the judge may limit the notice required if the person shows by a preponderance of the evidence that:</u> (1). <u>The person is a victim of abuse; and</u> (2). <u>The person is currently in reasonable fear of the person's safety.</u> (c). <u>The judge shall make and preserve a record of the name change. If the judge limited the notice required under subsection (b), the judge may seal the records of the name change.</u> (d). <u>The fee for filing the name change petition is \$40.</u> (e). <u>The judge may require the person seeking a name change to undergo one or more of the following background checks: a criminal history record check; a motor vehicle record check; or a credit check. The judge may require the person to pay the cost of each background check required.</u> (f). <u>The judge may not change the name of the person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.</u></p>
Difference between MPC and UPC	UPC Article 1 has no part 7.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	2-101
SUBJECT	INTESTATE ESTATE
UPC Statute (with Maine amendments shown)	<p>(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Code, except as modified by the decedent's will.</p> <p>(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his (or her) intestate share.</p>
18-A M.R.S.A.	<p>§2-101. Intestate Estate Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code.</p>
Difference between MPC and UPC	<p>UPC Subparagraph (a) is substantially the same as existing MPC Section 2-101.</p> <p>Subparagraph (b) is new and makes clear that a decedent may by will exclude or limit the right of an individual or class to succeed to property passing by intestate succession.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	Subparagraph (b) is new and makes clear that a decedent may by will exclude or limit the right of an individual or class to succeed to property passing by intestate succession.

UPC SECTION	2-102
SUBJECT	SHARE OF SPOUSE
UPC Statute (with Maine amendments shown)	<p>The intestate share of a decedent's surviving spouse is:</p> <p>(1) the entire intestate estate if:</p> <p>(A) no descendant or parent of the decedent survives the decedent; or</p> <p>(B) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;</p> <p>(2) the first \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;</p> <p>(3) the first \$225<u>\$100</u>,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;</p> <p><u>(4) If there are surviving issue one or more of whom are not issue of the surviving spouse, 1/2 of the intestate estate.</u></p>
18-A M.R.S.A.	<p>§2-102. Share of Spouse or Registered Domestic Partner</p> <p>The intestate share of the surviving spouse or surviving registered domestic partner is:</p> <p>(1). If there is no surviving issue or parent of the decedent, the entire intestate estate;</p> <p>(2). If there is no surviving issue but the decedent is survived by a parent or parents, the first \$50,000, plus 1/2 of the balance of the intestate estate;</p> <p>(3). If there are surviving issue all of whom are issue of the surviving spouse or surviving registered domestic partner also, the first \$50,000, plus 1/2 of the balance of the intestate estate; or</p> <p>(4). If there are surviving issue one or more of whom are not issue of the surviving spouse or surviving registered domestic partner, 1/2 of the intestate estate.</p>
Difference between MPC and UPC	See attached
Recommendation	<ul style="list-style-type: none"> • Adopt UPC (1) (including (A) and (B)). • Adopt UPC (2). • Adopt UPC modified (3) using \$100,000 as amount. • Reject (4). Retain current MPC (4), giving spouse only 1/2 if decedent has child who is not also child of surviving spouse.
Maine Probate Code Proposed Comments	This section changes the amounts payable to a surviving spouse.

Difference Between MPC and UPC
Summary of Intestate Share

	MPC	UPC
Spouse but no child or parent	<ul style="list-style-type: none"> • Spouse gets all 	<ul style="list-style-type: none"> • Spouse gets all
Spouse with shared children only	<ul style="list-style-type: none"> • Spouse gets \$50,000 plus ½ • Children get ½ 	<ul style="list-style-type: none"> • Spouse gets all
Spouse with no children, living parent	<ul style="list-style-type: none"> • Spouse gets \$50,000 plus ½ • Parents share remaining ½ 	<ul style="list-style-type: none"> • Spouse gets \$300,000 plus ¾ • Parents share remaining ¼
Spouse. Child of decedent who is not spouse's	<ul style="list-style-type: none"> • Spouse gets ½ • Decedent's children share ½ 	<ul style="list-style-type: none"> • Spouse gets \$150,000 plus ½ • Decedent's children share remaining ½
Spouse. One or more shared children and one or more child of spouse who is not decedent's	<ul style="list-style-type: none"> • Spouse gets \$50,000 plus ½ • Decedent's children share ½ 	<ul style="list-style-type: none"> • Spouse gets \$225,000 plus ½ • Decedent's children share remaining ½
No spouse, living parent, living children	<ul style="list-style-type: none"> • Children share all 	<ul style="list-style-type: none"> • Children share all
No spouse, no parent, just children	<ul style="list-style-type: none"> • Children share all 	<ul style="list-style-type: none"> • Children share all
No spouse, no child, just parent	<ul style="list-style-type: none"> • Parents share all 	<ul style="list-style-type: none"> • Parents share all

UPC SECTION	2-103
SUBJECT	SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:</p> <p>(1) to the decedent's descendants by representation <u>per capita at each generation</u>;</p> <p>(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;</p> <p>(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation <u>per capita at each generation</u>;</p> <p>(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:</p> <p style="padding-left: 40px;">(A) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation <u>per capita at each generation</u>; and</p> <p style="padding-left: 40px;">(B) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation;</p> <p>(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph (4).</p> <p><u>(6) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the issue of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner, but if there is no surviving great-grandparent or issue of a great-</u></p>
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	<p><u>grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.</u></p> <p>(b) If there is no taker under subsection (a), but the decedent has:</p> <p>(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants <u>by representation per capita at each generation;</u> or</p> <p>(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants <u>by representation per capita at each generation.</u></p>
<p>18-A M.R.S.A.</p>	<p>§2-103. Share of heirs other than surviving spouse or surviving registered domestic partner</p> <p>The part of the intestate estate not passing to the surviving spouse or surviving registered domestic partner under section 2-102, or the entire estate if there is no surviving spouse or surviving registered domestic partner, passes as follows:</p> <p>(1). To the issue of the decedent; to be distributed per capita at each generation as defined in section 2-106;</p> <p>(2). If there is no surviving issue, to the decedent's parent or parents equally;</p> <p>(3). If there is no surviving issue or parent, to the issue of the parents or either of them to be distributed per capita at each generation as defined in section 2-106;</p> <p>(4). If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving grandparent or issue of grandparents on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; or</p> <p>(5). If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the issue of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving great-grandparent or issue of a great-</p>

	grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.
Difference between MPC and UPC	The Maine Probate Code extends intestate succession to surviving issue of grandparents and surviving issue of great-grandparents but does not include any form of intestate inheritance for descendants of a deceased spouse or of deceased spouses. Upon the failure of descendants (issue) of the decedent, parents and grandparents, the UPC provides intestate inheritance for descendants of a deceased spouse or deceased spouses.
Recommendation	Adopt UPC with changes shown, revise term from “by representation” to “per capita at each generation” to reflect adoption of UPC Section 2-106.
Maine Probate Code Proposed Comments	This section was modified to add descendants of a spouse as takers of last resort before an estate escheats to the state.

UPC SECTION	2-104
SUBJECT	REQUIREMENT OF SURVIVAL BY 120 HOURS; INDIVIDUAL IN GESTATION
UPC Statute (with Maine amendments shown)	<p>(a) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (b), the following rules apply:</p> <p>(1) An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.</p> <p>(2) An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.</p> <p>(b) [Section Inapplicable If Estate Would Pass to State.] This section does not apply if its application would cause the estate to pass to the state under Section 2-105.</p>
18-A M.R.S.A.	<p>§2-104. Requirement that heir survive decedent for 120 hours</p> <p>Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking or intestate estate by the State under section 2-105.</p>
Difference between MPC and UPC	This section is rewritten. The general substance remains the same as existing law. The principal substantive change is in new UPC Section 2-104(a)(2) which explicitly includes unborn individuals in gestation. Such individuals are deemed to be living as of the decedent's death if they live for 120 hours. The issue of afterborn heirs was previously addressed in MPC Section 2-108.
Recommendation	Adopt UPC

Maine Probate Code Proposed Comments	Section 2-104(a)(2) explicitly includes unborn individuals in gestation. Such individuals are deemed to be living as of the decedent's death if they live for 120 hours. The issue of afterborn heirs was previously addressed in former MPC Section 2-108.
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UPC SECTION	2-105
SUBJECT	NO TAKER.
UPC Statute (with Maine amendments shown)	If there is no taker under the provisions of this [article], the intestate estate passes to the State.
18-A M.R.S.A.	§ 2-105. No taker If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-1.
Difference between MPC and UPC	Existing Maine law contains a special provision for the disposition of an amount payable pursuant to a court order for a crime of which the decedent was a victim which is to be distributed to the Elder Victim's Restitution fund.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-106
SUBJECT	REPRESENTATION—(PER CAPITA AT EACH GENERATION)

UPC Statute (with Maine amendments shown)	<p>Section 2-106. Representation – Per Capita at Each Generation.</p> <p>(a) [Definitions.] In this section:</p> <p>(1) "Deceased descendant," "deceased parent," or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under Section 2-104.</p> <p>(2) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under Section 2-104.</p> <p>(b) [Decedent's Descendants.] If, under Section 2-103(1), a decedent's intestate estate or a part thereof passes "by representation" "<u>per capita at each generation</u>" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.</p> <p>(c) [Descendants of Parents or Grandparents.] If, under Section 2-103(3) or (4), a decedent's intestate estate or a part thereof passes "by representation" "<u>per capita at each generation</u>" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.</p>
	18-A M.R.S.A.

	<p>If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survived the decedent. Each surviving heir in the nearest of degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC and the MPC reach the same result in all cases but the UPC uses three paragraphs where the MPC uses one paragraph.</p> <p>In paragraph one (2-106(a)), the UPC defines the terms “Deceased descendant” and “Surviving descendant,” whereas the MPC uses the terms “surviving heirs” and “deceased person” without providing definitions. The purpose of the definitions seems to be to specifically bring in the “120-hour survival” requirement from 2-104.</p> <p>In paragraph two (2-106(b)), the UPC specifies how the decedent’s descendants take “by right of representation.”</p> <p>In paragraph three (2-106(c)), the UPC provides a separate description of how the parents’ or grandparents’ descendants take “by right of representation.”</p> <p>The MPC describes “per capita at each generation” for all applications in two sentences.</p> <p>The MPC uses the term “heirs” whereas the UPC uses “descendants.”</p> <p>The MPC uses the phrase “nearest degree of kinship” whereas the UPC uses the phrase “the generation nearest to.”</p> <p>The purpose of separate paragraphs (paragraphs (b) and (c)) for “decedent’s descendants” and “parents’ or grandparents’ descendants” seems to clarify to which individual the measuring relationship is nearest. The MPC seeks “the nearest degree of kinship which contains any surviving heirs . . .” without specifying nearest to whom. The UPC restates the formula separately for (b) “the generation nearest to the decedent which contains one or more surviving descendants . . .” and for (c) “the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants . . .” The only apparent reason for the two paragraphs seems to be to clarify exactly whose descendants come from which starting point. [Note the switch from “which contains” to “that contains” and the lack of the word “to” in (c) after the word “nearest.” These are examples of imprecision in a statute which seems to seek precision.]</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The language does not constitute a substantive change to Maine law.</p>

UPC SECTION	2-107
SUBJECT	KINDRED OF HALF BLOOD
UPC Statute (with Maine amendments shown)	Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.
18-A M.R.S.A.	§ 2-107. Kindred of half blood Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.
Difference between MPC and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	2-108
SUBJECT	(Reserved)
UPC Statute (with Maine amendments shown)	
Difference between MPC and UPC	The content of Section 2-108 has been moved to Section 2-104. See comments to Section 2-104.
Recommendation	
Maine Probate Code Proposed Comments	

UPC SECTION	2-109
SUBJECT	ADVANCEMENTS
UPC Statute (with Maine amendments shown)	<p>(a) If an individual dies intestate as to all or a portion of his [or her] estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement of (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.</p> <p>(b) For purposes of subsection (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.</p> <p>(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.</p>
18-A M.R.S.A.	<p>§ 2-110. Advancements</p> <p>If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If a contemporaneous writing by the decedent establishes the value of the property advanced, that value shall apply. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.</p>
Difference between MPC and UPC	<p>Former UPC Section 2-109 dealing with the definition of "child" has now been moved to Sub-part 2, Section 2-115 et seq.</p> <p>New Section 2-109 dealing with Advancements is formerly Section 2-110.</p> <p>Existing MPC 2-110 is essentially the same as UPC 2-109</p> <p>This section is reworded but does not appear intended to have any substantive effect.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

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UPC SECTION	2-110
SUBJECT	DEBTS TO DECEDENT
UPC Statute (with Maine amendments shown)	A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.
18-A M.R.S.A.	§ 2-111 Debts to decedent A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.
Difference between MPC and UPC	Former UPC Section 2-110 has been renumbered as 2-109. New Section 2-110 is former Section 2-111. Existing MPC 2-111 is essentially the same as UPC 2-110.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-111
SUBJECT	ALIENAGE.
UPC Statute (with Maine amendments shown)	No individual is disqualified to take as an heir because the individual or an individual through whom he [or she] claims is or has been an alien.
18-A M.R.S.A.	§ 2-112 Alienage No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.
Difference between MPC and UPC	Former UPC Section 2-111 has been renumbered as Section 2-110. New Section 2-111 is former UPC Section 2-112. UPC 2-111 is essentially the same as MPC 2-112.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. ←

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UPC SECTION	2-112
SUBJECT	DOWER AND CURTESY ABOLISHED
UPC Statute (with Maine amendments shown)	The estates of dower and curtesy are abolished.
18-A M.R.S.A.	<p>§ 2-113 Dower and curtesy abolished</p> <p>The estates of dower and curtesy are abolished.</p>
Difference between MPC and UPC	UPC 2-112 is the same as MPC 2-113; only numbering differs
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-113
SUBJECT	INDIVIDUALS RELATED TO DECEDENT THROUGH TWO LINES
UPC Statute (with Maine amendments shown)	An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share. <u>In cases where such an heir would take equal shares, he shall be entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provision of this section.</u>
18-A M.R.S.A.	§ 2-114 Person related to decedent through 2 lines A person who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share. In cases where such an heir would take equal shares, he shall be entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provision of this section.
Difference between MPC and UPC	UPC 2-113 is essentially the same as first sentence of MPC 2-114. MPC adds two additional sentences which clarify apportionment.
Recommendation	Adopt UPC with the changes shown..
Maine Probate Code Proposed Comments	The last two sentences in the section were previously adopted under the MPC and are retained for clarity. The language does not constitute a substantive change to Maine law.

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UPC SECTION	2-114
SUBJECT	PARENT BARRED FROM INHERITING
UPC Statute (with Maine amendments shown)	<p>(a) A parent is barred from inheriting from or through a child of the parent if:</p> <p>(1) The parent’s parental rights were terminated and the parent-child relationship was not judicially reestablished; or</p> <p>(2) The child died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.</p> <p>(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	This is a new section, clarifying that a parent whose parental rights have been terminated is not eligible to inherit. A parent also may not inherit if a child dies prior to age 18 and there is clear and convincing evidence that parental rights could have been terminated on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

Subpart 2. Parent-Child Relationship

UPC SECTION	SECTION 2-115.
SUBJECT	DEFINITIONS.
UPC Statute (with Maine amendments shown)	<p>(1) “Adoptee” means an individual who is adopted.</p> <p>(2) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse.</p> <p>(3) “Divorce” includes an annulment, dissolution, and declaration of invalidity of a marriage.</p> <p>(4) “Functioned as a parent of the child” means behaving toward a child in a manner consistent with being the child’s parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual’s child, materially participating in the child’s upbringing, and residing with the child in the same household as a regular member of that household.</p> <p>(5) “Genetic father” means the man whose sperm fertilized the egg of a child’s genetic mother. If the father-child relationship is established under the presumption of paternity under [insert applicable state law], the term means only the man for whom that relationship is established.</p> <p>(6) “Genetic mother” means the woman whose egg was fertilized by the sperm of a child’s genetic father.</p> <p>(7) “Genetic parent” means a child’s genetic father or genetic mother.</p> <p>(8) “Incapacity” means the inability of an individual to function as a parent of a child because of the individual’s physical or mental condition.</p> <p>(9) “Relative” means a grandparent or a descendant of a grandparent.</p>
18-A MRSA	None
Difference between MPC and UPC	There is no corresponding section in Maine law.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This subpart will treat children conceived through ARTs the same as children conceived through sexual intercourse. This subpart is not intended to change the parent-child relationship governed by Title 19.

UPC SECTION	SECTION 2-116.
SUBJECT	EFFECT OF PARENT-CHILD RELATIONSHIP
UPC Statute (with Maine amendments shown)	<p>Except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this subpart <u>or under [the Maine Parentage Act]</u>, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.</p>
18-A M.R.S.A.	<p>§2-109. Meaning of child and related terms</p> <p>If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:</p> <p>(1). An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;</p> <p>(2). In cases not covered by paragraph (1), a person born out of wedlock is a child of the mother; that person is also a child of the father if:</p> <p>(i). The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or</p> <p>(ii). The father adopts the child into his family; or</p> <p>(iii). The father acknowledges in writing before a notary public that he is the father of the child, or the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.</p> <p>(3). A divorce or judicial separation does not bar the issue of the marriage from inheriting.</p>

Difference between MPC and UPC	UPC section 2-116 is an expansion of MPC section 2-109, providing additional examples of the establishment of a parent child relationship in the context of assisted reproductive technologies.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section will treat children conceived through ARTs the same as children conceived through sexual intercourse. This section is not intended to change the parent-child relationship governed by Title 19. [This section includes a reference to the Maine Parentage Act as a non-uniform provision, which will result in an expanded opportunity for establishing a parent-child relationship.] [NOTE: THE BRACKETED LANGUAGE SHOULD BE INCLUDED IN THE PROPOSED MAINE COMMENT ONLY IF MAINE ENACTS THE MAINE PARENTAGE ACT]

UPC SECTION	SECTION 2-117.
SUBJECT	NO DISTINCTION BASED ON MARITAL STATUS.
UPC Statute (with Maine amendments shown)	Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.
18-A M.R.S.A.	<p>§2-109. Meaning of child and related terms</p> <p>If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:</p> <p>(1). An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;</p> <p>(2). In cases not covered by paragraph (1), a person born out of wedlock is a child of the mother; that person is also a child of the father if:</p> <p>(i). The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or</p> <p>(ii). The father adopts the child into his family; or</p> <p>(iii). The father acknowledges in writing before a notary public that he is the father of the child, or the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.</p> <p>(3). A divorce or judicial separation does not bar the issue of the marriage from inheriting.</p>
Difference between MPC and UPC	This is an expansion of Maine law to cover situations beyond adoption and children born out of wedlock.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is not intended to change the parent-child relationship governed by Title 19

UPC SECTION	SECTION 2-118
SUBJECT	ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS.
UPC Statute (with Maine amendments shown)	<p>(a) A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.</p> <p>(b) For purposes of subsection (a):</p> <p style="padding-left: 40px;">(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and</p> <p style="padding-left: 40px;">(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.</p> <p>(c) If, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2).</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	There is no corresponding section in Maine law.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 2-119.
SUBJECT	ADOPTEE AND ADOPTEE'S GENETIC PARENTS.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.</p> <p>(b) A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:</p> <p style="padding-left: 40px;">(1) the genetic parent whose spouse adopted the individual; and</p> <p style="padding-left: 40px;">(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.</p> <p>(c) A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.</p> <p>(d) A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.</p> <p>(e) If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child's parent or parents under Section 2-120 or 2-121 are treated as the child's genetic parent or parents for the purpose of this section.</p> <p><u>(f) Regardless of whether a parent-child relationship is established or not, an adoptee shall inherit from his or her genetic parents if so provided in the adoption decree.</u></p>
<p>18-A M.R.S.A</p>	<p>§2-109. Meaning of child and related terms</p> <p>If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:</p> <p>(1). An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;</p> <p>(2). In cases not covered by paragraph (1), a person born out of wedlock is a child of the mother; that person is also a child of the father if:</p>

	<p>(i). The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or</p> <p>(ii). The father adopts the child into his family; or</p> <p>(iii). The father acknowledges in writing before a notary public that he is the father of the child, or the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child. [1987, c.</p> <p style="padding-left: 40px;">(3). A divorce or judicial separation does not bar the issue of the marriage from inheriting.</p>
Difference between MPC and UPC	<p>UPC Section 2-11(c) and (d) provides circumstances under which an adoptee may still inherit from a genetic parent.</p> <p>MPC Section 2-109(1) provides that an adoptee may inherit from a genetic parent only if the adoption decree so provides.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 2-120.
SUBJECT	CHILD CONCEIVED BY ASSISTED REPRODUCTION OTHER THAN CHILD BORN TO GESTATIONAL CARRIER <u>OR CHILD BORN TO SURROGATE.</u>
UPC Statute (with Maine amendments shown)	<p>(a) In this section:</p> <p>(1) “Birth mother” means a woman, other than a gestational carrier <u>or a Surrogate</u> under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child’s genetic mother.</p> <p>(2) “Child of assisted reproduction” means a child conceived by means of assisted reproduction by a woman other than a gestational carrier <u>or Surrogate</u> under Section 2-121.</p> <p>(3) “Third-party donor” means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:</p> <p>(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;</p> <p>(B) the birth mother of a child of assisted reproduction; or</p> <p>(C) an individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.</p> <p>(b) A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.</p> <p>(c) A parent-child relationship exists between a child of assisted reproduction and the child’s birth mother.</p> <p>(d) Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child’s birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.</p> <p>(e) A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.</p> <p>(f) Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:</p>

	<p>(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or</p> <p>(2) in the absence of a signed record under paragraph (1):</p> <p>(A) functioned as a parent of the child no later than two years after the child's birth;</p> <p>(B) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or</p> <p>(C) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.</p> <p><u>(f-1) A parent-child relationship is conclusively established by a court order designating the parent or parents of a child of assisted reproduction.</u></p> <p>(g) For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached [18] years of age.</p> <p>(h) For the purpose of subsection (f)(2), the following rules apply:</p> <p>(1) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B).</p> <p>(2) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).</p> <p>(i) If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.</p> <p>(j) If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (f)</p> <p>(k) If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:</p> <p>(1) in utero not later than 36 months after the individual's death; or</p>
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	(2) born not later than 45 months after the individual's death.
18-A MRSA	No Maine equivalent.
Difference between MPC and UPC	There is no corresponding section in Maine law.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 2-121.
SUBJECT	CHILD BORN TO GESTATIONAL CARRIER.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) In this section:</p> <p>(1) “Gestational agreement” means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).</p> <p>(2) “Gestational carrier” means a woman who is not an intended parent who gives birth to a child under a gestational agreement <u>(a) who has no genetic connection to the child and (b) who is not an intended parent.</u> The term is not limited to a woman who is the child’s genetic mother.</p> <p>(3) “Gestational child” means a child born to a gestational carrier under a gestational agreement.</p> <p>(4) “Intended parent” means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.</p> <p><u>(5) “Surrogate” means a woman who gives birth to a child under a Gestational Agreement (a) who has a genetic connection to the child and (b) who is not an intended parent.</u></p> <p>(b) A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.</p> <p>(c) A parent-child relationship between a gestational child and the child’s gestational carrier does not exist unless the gestational carrier is <u>designated as a parent of the child in a court order described in subsection (b).</u></p> <p><u>(c-1) A parent-child relationship between a Gestational child and the child’s Surrogate does not exist unless the surrogate is</u></p> <p>(1) designated as a parent of the child in a court order described in subsection (b); or</p> <p>(2) the child’s genetic mother and a parent-child relationship does not exist under this section with an individual other than the <u>Surrogategestational carrier.</u></p> <p>(d) In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:</p> <p>(1) functioned as a parent of the child no later than two years after the child’s birth; or</p> <p>(2) died while the gestational carrier <u>or surrogate</u> was pregnant if:</p> <p>(A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child’s birth;</p> <p>(B) there were two intended parents, the other</p>

	<p>intended parent also died while the gestational carrier <u>or surrogate</u> was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or</p> <p>(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.</p> <p>(e) In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:</p> <p>(1) a record signed by the individual which considering all the facts and circumstances evidences the individual's intent; or</p> <p>(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.</p> <p>(f) Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:</p> <p>(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;</p> <p>(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and</p> <p>(3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.</p> <p>(g) The presumption under subsection (f) does not apply if there is:</p> <p>(1) a court order under subsection (b); or</p> <p>(2) a signed record that satisfies subsection (e)(1).</p> <p>(h) If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:</p> <p>(1) in utero not later than 36 months after the individual's death; or</p> <p>(2) born not later than 45 months after the individual's death.</p> <p>(i) This section does not affect law of this state other than this [code] regarding the enforceability or validity of a gestational agreement.</p>
18-A MRSA	None
Difference between MPC and UPC	There is no corresponding section in Maine law.

Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	SECTION 2-122. <u>RESERVED</u>
SUBJECT	EQUITABLE ADOPTION.
UPC Statute (with Maine amendments shown)	This [subpart] does not affect the doctrine of equitable adoption.
18-A MRSA	No Maine equivalent.
Difference between MPC and UPC	There is no corresponding section in Maine law.
Recommendation	Do not adopt the UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt UPC section 2-122

UPC SECTION	2-201
SUBJECT	DEFINITIONS. In this [part]:
UPC Statute (with Maine amendments shown)	<p>(1) As used in sections other than Section 2-205, “decedent’s nonprobate transfers to others” means the amounts that are included in the augmented estate under Section 2-205.</p> <p>(2) “Fractional interest in property held in joint tenancy with the right of survivorship,” whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.</p> <p>(3) “Marriage,” as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent’s surviving spouse.</p> <p>(4) “Nonadverse party” means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he [or she] possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.</p> <p>(5) “Power” or “power of appointment” includes a power to designate the beneficiary of a beneficiary designation.</p> <p>(6) “Presently exercisable general power of appointment” means a power of appointment under which, at the time in question, the decedent, whether or not he [or she] then had the capacity to exercise the power, held a power to create a present or future interest in himself [or herself], his [or her] creditors, his [or her] estate, or creditors of his [or her] estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.</p> <p>(7) “Property” includes values subject to a beneficiary designation.</p> <p>(8) “Right to income” includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.</p> <p>(9) “Transfer,” as it relates to a transfer by or of the decedent, includes:</p> <ul style="list-style-type: none"> (A) an exercise or release of a presently exercisable general power of appointment held by the decedent, (B) a lapse at death of a presently exercisable general power of appointment held by the decedent, and (C) an exercise, release, or lapse of a general power of appointment that the decedent created in himself [or herself] and of a power described in Section 2-205(2)(B) that the decedent

	conferred on a nonadverse party.
18-A M.R.S.A.	None.
Difference between MPC and UPC	
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-202
SUBJECT	ELECTIVE SHARE.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) [Elective-Share Amount.] The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this [part], to take an elective share amount equal to 50 percent of the value of the marital property portion of the augmented estate.</p> <p>(b) [Supplemental Elective Share Amount.] If the sum of the amounts described in Sections 2-207, 2-209(a)(1), and that part of the elective share amount payable from the decedent's net probate estate and nonprobate transfers to others under Section 2-209(c) and (d) is less than [\$75,000], the surviving spouse is entitled to a supplemental elective share amount equal to [\$75,000], minus the sum of the amounts described in those sections. The supplemental elective share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in Section 2-209(c) and (d).</p> <p>(c) [Effect of Election on Statutory Benefits.] If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective share and supplemental share amounts.</p> <p>(d) [Non-Domiciliary.] The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.</p>
<p>18-A M.R.S.A.</p>	<p>§2-201. Right to elective share</p> <p>(a). If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of 1/3 of the augmented estate under the limitations and conditions hereinafter stated.</p> <p>(b). If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death; provided that no claim under this subsection shall be made to real property located in this State which was conveyed for value by the decedent during his lifetime.</p> <p style="text-align: center;">* * *</p> <p>§2-206. Effect of election on benefits provided by statute</p> <p>A surviving spouse is entitled to homestead allowance, exempt property, and family allowance, whether or not he elects to take an elective share.</p>

<p>Difference between MPC and UPC</p>	<p>The MPC sets the amount of the elective share at 1/3 of the augmented estate. Subsection (a) of UPC 2-202 sets the elective share at 50% of the “marital-property portion” of the augmented estate described in UPC 2-203. By adding the marital-property portion as a variable in determining the amount of the elective share, the UPC implements a partnership theory of marriage by gradually increasing the amount of the elective share based on the length of the marriage.</p> <p>If the sum of other factors described in the UPC is less than \$75,000, subsection (b) of UPC 2-202 entitles the surviving spouse to a \$75,000 supplemental elective-share amount to the extent the surviving spouse’s assets and other entitlements are below the sum of those other factors. Current Maine law does not provide a minimum elective share.</p> <p>Subsection (c) incorporates Section 2-206 of the MPC and provides that a surviving spouse’s rights to the homestead allowance, exempt property and family allowance are in addition to and are not charged against the surviving spouse’s elective share (and the supplemental elective share amount).</p> <p>Subsection (d) is consistent with MPC 2-201(b) and provides that the right of a surviving spouse of a decedent who was not domiciled in Maine is governed by the law of the decedent’s domicile. However, current Maine law prohibits a claim from being made with respect to Maine real property to the extent it was conveyed for value by the decedent during his/her lifetime. Although subsection (d) does not include this provision, this does not appear to be a substantive change given that property transferred by the decedent for value would be excluded from the augmented estate pursuant to UPC 2-208(a): “The value of any property is excluded from the decedent’s nonprobate transfers to others: (1) to the extent the decedent received adequate and full consideration in money or money’s worth for a transfer of the property . . .”</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The UPC redefines the elective share and introduces the additional supplemental elective-share amount. The additional supplemental elective-share amount in UPC 2-202(b) is not adopted.</p>

UPC SECTION	2-203
SUBJECT	COMPOSITION OF THE AUGMENTED ESTATE; MARITAL-PROPERTY PORTION.

UPC Statute (with Maine amendments shown)	<p>(a) Subject to Section 2-208, the value of the augmented estate, to the extent provided in Sections 2-204, 2-205, 2-206, and 2-207, consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:</p> <ol style="list-style-type: none"> (1) the decedent’s net probate estate; (2) the decedent’s nonprobate transfers to others; (3) the decedent’s nonprobate transfers to the surviving spouse; and (4) the surviving spouse’s property and nonprobate transfers to others. <p>(b) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (a) multiplied by the following percentage:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">If the decedent and the spouse were married to each other:</th> <th style="text-align: right;">The percentage is:</th> </tr> </thead> <tbody> <tr><td>Less than 1 year</td><td></td></tr> <tr><td>1 year but less than 2 years</td><td></td></tr> <tr><td>2 years but less than 3 years</td><td></td></tr> <tr><td>3 years but less than 4 years</td><td></td></tr> <tr><td>4 years but less than 5 years</td><td></td></tr> <tr><td>5 years but less than 6 years</td><td></td></tr> <tr><td>6 years but less than 7 years</td><td></td></tr> <tr><td>7 years but less than 8 years</td><td></td></tr> <tr><td>8 years but less than 9 years</td><td></td></tr> <tr><td>9 years but less than 10 years</td><td></td></tr> <tr><td>10 years but less than 11 years</td><td></td></tr> <tr><td>11 years but less than 12 years</td><td></td></tr> <tr><td>12 years but less than 13 years</td><td></td></tr> <tr><td>13 years but less than 14 years</td><td></td></tr> <tr><td>14 years but less than 15 years</td><td></td></tr> <tr><td>15 years or more</td><td>10</td></tr> </tbody> </table> <p style="color: magenta; text-decoration: underline;">— [Alternative Subsection (b) for States Preferring a Deferred-Marital-Property System]</p> <p style="color: magenta; text-decoration: underline;">(b) The value of the marital property portion of the augmented estate equals the value of that portion of the augmented estate that would be marital property at the decedent’s death under [the Model Marital Property Act] [copy in definition from Model Marital Property Act, including the</p>	If the decedent and the spouse were married to each other:	The percentage is:	Less than 1 year		1 year but less than 2 years		2 years but less than 3 years		3 years but less than 4 years		4 years but less than 5 years		5 years but less than 6 years		6 years but less than 7 years		7 years but less than 8 years		8 years but less than 9 years		9 years but less than 10 years		10 years but less than 11 years		11 years but less than 12 years		12 years but less than 13 years		13 years but less than 14 years		14 years but less than 15 years		15 years or more	10
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~~presumption that all property is marital property} [copy in other definition chosen by the enacting state].~~

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§ 2-202. Augmented estate

The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned

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or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.

<p>Difference between MPC and UPC</p>	<p>MPC 2-202 defines the augmented estate in one section. UPC Section 2-203(a) defines the augmented estate by referencing four categories of assets defined in the four subsequent Sections of the UPC. In the UPC, the augmented estate equals the sum of: the decedent’s net probate estate (UPC 2-204); the decedent’s nonprobate transfers to others (UPC 2-205); the decedent’s nonprobate transfers to the surviving spouse (UPC 2-206); and the surviving spouse’s property and nonprobate transfers to others (UPC 2-207). Substantive differences between the MPC and the UPC in defining the elements that make up the augmented estate are discussed below in the context of the UPC 2-204 through 2-207.</p> <p>UPC 2-203(b) then applies a factor in calculating the augmented estate which is currently absent in the MPC. This is the “marital property portion” of the augmented estate, and it is based on a partnership theory of marriage and is intended to prevent the inequitable results that can occur under Maine’s current elective share statute. UPC 2-203(b) increases the amount of the elective share based on the length of the marriage. The “marital property portion” of the augmented estate begins at 3% for couples married for less than 1 year prior to the first death and gradually increases to 100% for couples married for 15 years or longer.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown (without the alternative subsection (b) as Maine has not adopted the Model Marital Property Act).</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The UPC defines the values to be considered in calculating the augmented estate with more clarity and specificity than the MPC. The UPC applies a partnership theory of marriage in calculating this marital property portion of the augmented estate which prevents inequitable results by taking in account the length of the marriage.</p>

UPC SECTION	2-204
SUBJECT	DECEDENT'S NET PROBATE ESTATE.

UPC Statute (with Maine amendments shown)	The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.
18-A M.R.S.A.	<p>§ 2-202. Augmented estate</p> <p>The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:</p> <p>(I) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:</p> <p>(i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;</p> <p>(ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;</p> <p>(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;</p> <p>(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.</p> <p>Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.</p>

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the

	<p>decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.</p> <p>(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.</p>
Difference between MPC and UPC	<p>UPC 2-204 provides that one component of the augmented estate is the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowance, exempt property and enforceable claims.</p> <p>This is essentially the same provision as the first paragraph of current MPC 2-202. MPC 2-202 refers only to the decedent's "estate" as opposed to the decedent' "probate estate." But this does not appear to be a substantive difference.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-205
SUBJECT	DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

<p>UPC Statute (with Maine amendments shown)</p>	<p>The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under Section 2-204, of any of the following types, in the amount provided respectively for each type of transfer:</p> <p>(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property <u>is</u> included under this category <u>only if it</u> consists of <u>any of the following types</u>:</p> <p>(A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.</p> <p>(B) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.</p> <p>(C) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.</p> <p>(D) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.</p> <p>(2) Property transferred in any of the following forms by the decedent during marriage:</p> <p>(A) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The</p>
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	<p>amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.</p> <p>(B) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.</p> <p>(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:</p> <p>(A) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1) (A), (B), or (C), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (1)(A), "termination" occurs when the power terminated by exercise or release, but not otherwise.</p> <p>(B) Any transfer of or relating to an insurance</p>
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	<p>policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(D) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.</p> <p>(C) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the two years exceeded <u>50 percent of +\$12,000</u> the amount excludable from taxable gifts under 26 U.S.C. Section 2503(b) for its successor on the date next preceding the date of the decedent's death.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-202. Augmented estate</p> <p>The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:</p> <p>(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:</p> <p>(i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;</p> <p>(ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;</p> <p>(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;</p> <p>(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate</p>

	<p>transfers to any one donee in either of the years exceed \$3,000.</p> <p>Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.</p> <p>(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:</p> <p>(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in</p>
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	<p>community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.</p> <p>(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.</p> <p>(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.</p> <p>(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.</p>
<p>Difference between MPC and UPC</p>	<p>UPC § 2-205 would replace current MPC § 2-202(1). Both sections add to the augmented estate transfers to or for the benefit of any person other than the surviving spouse. However, there are several substantive changes that would be made by UPC § 2-205. Current § 2-202(1) applies only to transfers made by the decedent during the marriage. In contrast, UPC § 2-205 would focus on the substantive rights a decedent has with respect to property. That is to say, whether a particular asset is to be included in the augmented estate is determined not by whether it was transferred by the decedent during marriage but rather by determining whether the decedent could have become the owner of the asset through the exercise of his substantive rights with respect to the asset.</p> <p>In contrast to MPC § 2-202(1), some assets will be included in the augmented estate even though the decedent's substantive rights with respect to the assets were created by someone other than the decedent, and even though the rights were created prior to the marriage. This aspect of UPC § 2-205 would represent a</p>

	<p>significant substantive change to current Maine law.</p> <p>UPC § 2-205(1) applies to assets “owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent’s death.” Only assets that meet one of the specific definitions set forth in subparagraphs A through D of § 2-205(1) are included in this category. If an asset meets one of these definitions, it is included in the augmented estate regardless of who created the decedent’s rights with respect to the asset, and regardless of whether the decedent’s rights were created prior to the marriage. This would represent a substantive change to current Maine law.</p> <p>Subparagraph A applies to “[p]roperty over which the decedent alone, immediately before death, held a presently exercisable general power of appointment.” This term is defined in UPC § 2-201(6), as a power “under which, at the time in question, the decedent, whether or not he then had the capacity to exercise the power, held a power to create a present or future interest in himself, his creditors, his estate, or creditors of his estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.” This is essentially an abridged version of the definition of a general power of appointment set forth in 26 USC § 2041. This arguably would represent a substantive change from MPC § 2-202(1)(ii) which applies only to any assets to the extent the decedent retained at the time of his death a power . . . to revoke or to consume, invade or dispose of the principal <u>for his own benefit</u>.”</p> <p>Subparagraph B applies to “the decedent’s fractional interests in property held by the decedent in joint tenancy with the right of survivorship.” This would essentially replace MPC § 2-202(1)(iii), although (as explained above) that Section applies only to property that was transferred by the decedent during the marriage.</p> <p>Subparagraph C applies to “the decedent’s ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship.” This appears to represent a broadening of MPC § 2-202(1)(iii) which applies only to any “transfer whereby property is held at the time of a decedent’s death by the decedent and another with right of survivorship.” Registering an account as TOD or POD would not constitute a “transfer” in that it does not create any immediately enforceable rights in the TOD or POD payee. It would seem that insofar as TOD and POD accounts are concerned, subparagraph C would apply only to the extent the decedent is the “original payee” with respect to the account. See 18-A M.R.S. § 6-103(b).</p> <p>UPC § 2-205(1) applies only to “[p]roperty owned or owned in substance by the decedent immediately before death . . .” If a</p>
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	<p>decedent is merely a TOD or POD payee on an account, he does not have any ownership interest in that account until the original payee dies. Therefore, if a decedent who is merely a TOD or POD beneficiary dies before the original payee, it would seem that no portion of the account would be included in the augmented estate.</p> <p>Subparagraph D applies to “proceeds of life insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds.” This represents a significant substantive change to current Maine law. MPC § 2-202(1) specifically excludes life insurance from the augmented estate: “Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.”</p> <p>Unlike UPC § 2-205(1), UPC § 2-205(2) applies only to property transferred “by the decedent during marriage.” In this regard, UPC § 2-205(2) would replace MPC § 2-202(1). Similar to UPC § 2-205(1), only assets that meet one of the specific definitions set forth in subparagraphs A or B of UPC § 2-205(2) are included in this category.</p> <p>Subparagraph A applies to “[a]ny irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent’s right terminated at or continued beyond the decedent’s death.” This subparagraph would replace MPC § 2-202(1)(i), which applies to “[a]ny transfer under which the decedent retained at the time of his death the possession or enjoyment of, or the right to income from, the property.” Unlike this provision, which would apply to both irrevocable and revocable transfers, the new subparagraph A would apply only to irrevocable transfers. However, revocable transfers would be included in the augmented estate under the new statute pursuant to UPC § 2-205(1)(A).</p> <p>Subsection B applies to “[a]ny transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent’s estate, or creditors of the decedent’s estate.” This section represents a broadening of MPC § 2-202(1)(ii), which applies only to a power exercisable by the decedent “either alone or in conjunction with any other person” for the decedent’s own benefit. Subsection B would broaden this to cover powers exercisable by a nonadverse party, and also powers that are exercisable in favor of not only the</p>
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	<p>decedent, but also “the decedent’s estate, or creditors of the decedent’s estate.” Again, this is an abridged version of the definition of a general power of appointment set forth in 26 USC § 2041, which arguably broadens the application of the current statute.</p> <p>UPC § 2-205(3) would replace MPC § 2-202(1)(iv), which applies to transfers made by the decedent within two years of death to the extent those transfers exceeded \$3,000 per donee. Like UPC § 2-205(2), UPC § 2-205(3) only applies to transfers made during marriage (and within the two year period preceding the decedent’s death). However, like UPC § 2-205(1), UPC § 2-205(3) applies to property even if the decedent’s substantive rights with respect to the property were created by someone other than the decedent. Specifically, Section § 2-205(3) applies to “[p]roperty that passed during marriage and during the two-year period next preceding the decedent’s death as a result of a transfer by the decedent” provided that the transfer falls under at least one of the three specific definitions set forth in subsection A through C. The term “transfer” is defined in § 2-201(9) as (A) an exercise or release of a presently exercisable general power of appointment held by the decedent, (B) a lapse at death of a presently exercisable general power of appointment held by the decedent, and (C) an exercise, release, or lapse of a general power of appointment that the decedent created in himself [or herself] and of a power described in § 2-205(2)(B) that the decedent conferred on a nonadverse party.” Because “transfer” is not defined in the present statute – let alone defined this broadly, this represents a considerable broadening of the transfers that are included in the augmented estate under current law.</p> <p>Subparagraph A applies to the “termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(A), (B), or (C), or under paragraph 2, if the right, interest, or power had not terminated until the decedent’s death.</p> <p>Subparagraph B applies to “[a]ny transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph 1(D).” This represents a substantive change to Maine law given that life insurance payable to a beneficiary other than the surviving spouse is not included in the augmented estate under the current statute.</p> <p>Subparagraph C applies to “[a]ny transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the surviving decedent’s surviving spouse” to the extent the aggregate value of the transfers to any one donee exceed \$12,000 in either of the two years [or the</p>
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	<p>annual gift tax exclusion amount pursuant to 26 U.S.C. § 2503(b) on the day immediately preceding the decedent’s date of death.] This section corresponds to current § 2-202(1)(iv). However, subsection C would increase the amount excludable from the augmented estate from the excess over \$3,000 per donee per year to the excess over \$12,000 [or the then-current § 2503(b) annual gift tax exclusion amount].</p> <p>UPC § 2-205 also provides considerably more detail than current Maine law with regard to how and when the decedent’s nonprobate transfers to others are to be valued for purposes of inclusion in the augmented estate.</p>
<p>Recommendation</p>	<p>Adopt the UPC § 2-205 with two minor revisions.</p> <p>The proposed revision to paragraph (1) is intended to clarify that unless property or an interest in property is described in subparagraphs A through D, it is not included in the augmented estate pursuant to paragraph 1.</p> <p>The proposed revision to paragraph (3)(C) reflects the concern that in many instances involving smaller estates, this exception could be used to substantially reduce the value of the augmented estate. It was determined that 50 percent of the 2503(b) annual exclusion amount was a reasonable compromise to balance the decedent’s ability to engage in transfers in contemplation of death that are intended to reduce the value of the decedent’s taxable estate while preventing this exclusion from allowing a decedent to disinherit the surviving spouse.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>UPC § 2-205 changes Maine law in several respects. Paragraph 1 includes in the augmented estate any property of which the decedent could have become the owner through the exercise of certain specific rights, regardless of who created those rights. Under prior Maine law, such property would be included in the augmented estate only if the decedent’s rights were retained in connection with a transfer of the property made by the decedent during the marriage. Paragraph 1 also closes a perceived loophole in the elective share statute by including in the augmented estate proceeds of insurance on the life of the decedent that are payable to someone other than the surviving spouse. It also clarifies that Individual Retirement Accounts and qualified retirement assets payable to persons other than the surviving spouse are included in the gross estate.</p> <p>Paragraph 2 expands the assets that would be included in the augmented estate under prior law by including powers that are exercisable by a “nonadverse party.” Prior law had included only</p>

	<p>powers exercisable by the decedent “either alone or in conjunction with any other person . . .”</p> <p>Paragraph 3, subparagraph C increases the amount that is excluded from the augmented estate to the excess over 50 percent of the amount excludable from taxable gifts pursuant to 26 U.S.C. § 2503(b). The exclusion amount had been \$3,000 under prior law.</p>
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UPC SECTION	2-206
SUBJECT	DECEDENT'S NONPROBATE TRANSFERS TO THE SURVIVING SPOUSE.

<p>UPC Statute (with Maine amendments shown)</p>	<p>Excluding property passing to the surviving spouse under the federal Social Security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:</p> <ul style="list-style-type: none"> (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant, (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner, and (3) all other property that would have been included in the augmented estate under Section 2-205(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.
<p>18-A M.R.S.A.</p>	<p>§ 2-202.. Augmented estate</p> <p>The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:</p> <ul style="list-style-type: none"> (1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types: <ul style="list-style-type: none"> (i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property; (ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in

	<p>conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;</p> <p>(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;</p> <p>(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.</p> <p>Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.</p> <p>(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:</p> <p>(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value</p>
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	<p>of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.</p> <p>(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.</p> <p>(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.</p> <p>(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.</p>
<p>Difference between MPC and UPC</p>	<p>UPC § 2-206 would replace MPC § 2-202(2). In scope, UPC § 2-206 is narrower than MPC § 2-202(2). The former applies only to nonprobate transfers from the decedent to his/her surviving spouse which consist of property that passes outside of probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death. MPC § 2-202(2) applies to property owned by the surviving spouse that was derived from the decedent (i.e., either at death or during lifetime) and property derived from the decedent that the surviving spouse has given</p>

	<p>away during the marriage to a donee other than the decedent. Although UPC § 2-206 is more narrow than MPC § 2-202(2), the assets that would be included in the augmented estate under UPC § 2-206 and § 2-207 are much broader than MPC § 2-202(2). Like MPC § 2-202(2), UPC § 2-206 would exclude any income or assets passing to a surviving spouse under the federal Social Security system from the augmented estate. Life insurance proceeds and similar payments passing to the surviving spouse would be included in the augmented estate under UPC § 2-206, which is consistent with current Maine law.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	2-207
SUBJECT	SURVIVING SPOUSE'S PROPERTY AND NONPROBATE TRANSFERS TO OTHERS.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) [Included Property.] Except to the extent included in the augmented estate under Section 2-204 or 2-206, the value of the augmented estate includes the value of:</p> <p>(1) property that was owned by the decedent's surviving spouse at the decedent's death, including</p> <p>(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship,</p> <p>(B) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, and</p> <p>(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal Social Security system; and</p> <p>(2) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (a)(1)(A) or (B), had the spouse been the decedent.</p> <p>(b) [Time of Valuation.] Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (a)(1)(A) and (B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of subsection (a)(2), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under Section 2-205(1)(D) are not valued as if he [or she] were deceased.</p> <p>(c) [Reduction for Enforceable Claims.] The value of property included under this section is reduced by enforceable claims against the surviving spouse.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-202. Augmented estate</p> <p>The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:</p> <p>(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full</p>

consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the

	<p>decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.</p> <p>(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.</p> <p>(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.</p> <p>(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.</p>
<p>Difference between MPC and UPC</p>	<p>UPC § 2-207 includes in the augmented estate any property owned by the surviving spouse at the decedent's death, as well as any property that would have been included in the augmented estate as the surviving spouse's nonprobate transfers to others (applying the rules of § UPC 2-205) had the spouse been the decedent. This is a significant substantive change to MPC § 2-202(2) which adds to the augmented estate the value of property owned by the</p>

	<p>surviving spouse, but only to the extent the property had been derived from the decedent.</p> <p>This change reflects a different rationale of the elective share statute than exists under current Maine law.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	<p>UPC § 2-207 modifies Maine law by including in the augmented estate all of the surviving spouse's property, regardless of whether it was derived from the decedent. Prior Maine law only included property owned by the surviving spouse at the decedent's death that was derived from the decedent. Prior Maine law also included property transferred by the surviving spouse during marriage that would have been included in the augmented estate had the surviving predeceased the decedent. UPC § 2-207 modifies this by including in the augmented estate any property that would have constituted the surviving spouse's nonprobate transfers to others applying the expanded rules under UPC§ 2-205 had the surviving spouse been the decedent.</p>

UPC SECTION	2-208
SUBJECT	EXCLUSIONS, VALUATION, AND OVERLAPPING APPLICATION.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) [Exclusions.] The value of any property is excluded from the decedent's nonprobate transfers to others:</p> <p>(1) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or</p> <p>(2) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse.</p> <p>(b) [Valuation.] The value of property:</p> <p>(1) Included in the augmented estate under Section 2-205, 2-206, or 2-207 is reduced in each category by enforceable claims against the included property; and</p> <p>(2) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system-</p> <p>(c) [Overlapping Application; No Double Inclusion.] In case of overlapping application to the same property of the paragraphs or subparagraphs of Section 2-205, 2-206, or 2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-202. Augmented estate</p> <p>The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:</p> <p>(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:</p> <p>(i) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;</p>

	<p>(ii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;</p> <p>(iii) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;</p> <p>(iv) Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.</p> <p>Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.</p> <p>(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:</p> <p>(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of</p>
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	<p>the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.</p> <p>(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.</p> <p>(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.</p> <p>(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.</p>
<p>Difference between MPC and UPC</p>	<p>UPC 2-208 excludes from the augmented estate property that is transferred by the decedent for "adequate and full consideration in money or money's worth" and property transferred with the written joinder or consent of the surviving spouse before or after the transfer.</p> <p>Neither of these exceptions would represent a substantive change to MPC 2-202(1). However, UPC 2-208 clarifies that a surviving spouse may consent to a transfer by the decedent either before or after its occurrence.</p> <p>UPC 2-208(b)(1) provides that the value of property included in the augmented estate pursuant to UPC 2-205, 2-206 or 2-207 is reduced by any enforceable claims the property. Presently, Maine law does not address this issue.</p> <p>UPC 2-208(b)(2) provides that present and future interests of</p>

	<p>income streams (excluding Social Security) that are otherwise included in the augmented estate are to be valued based on their commuted values (i.e., present values). This is not a substantive change to Maine law.</p> <p>UPC 2-208(c) provides that property included in the augmented estate under more than one provision of UPC 2-205, 2-206 or 2-207 is to be included under only of those provisions. However, the property is to be included under the provision that results in the largest value being included in the augmented estate. Presently, Maine law does not address this latter issue.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	<p>Although the UPC provides that the value of property includes the commuted value of present or future interests and amounts payable under trusts and various contractual arrangements, it provides no guidance in terms of valuing beneficial interest in fully discretionary trusts for which commuted values are not readily determinable. In adopting UPC 2-208(b), the MPC is modified to establish a rebuttable presumption that the value of a beneficial interest in a fully discretionary trust is 50 percent of the value of the trust assets. This provision is similar to the presumption under MPC 2-207(a) with respect to the value of an electing spouse's beneficial interest in a life estate or trust.</p>

UPC SECTION	2-209
SUBJECT	SOURCES FROM WHICH ELECTIVE SHARE PAYABLE.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) [Elective-Share Amount Only.] In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:</p> <p>(1) amounts included in the augmented estate under Section 2-204 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under Section 2-206; and</p> <p>(2) the marital-property portion of amounts included in the augmented estate under Section 2-207.</p> <p>(b) [Marital Property Portion.] The marital-property portion under subsection (a)(2) is computed by multiplying the value of the amounts included in the augmented estate under Section 2-207 by the percentage of the augmented estate set forth in the schedule in Section 2-203(b) appropriate to the length of time the spouse and the decedent were married to each other.</p> <p>(c) [Unsatisfied Balance of Elective-Share Amount; Supplemental Elective Share Amount.] If, after the application of subsection (a), the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under Section 2-205(1), (2), and (3)(B) are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.</p> <p>(d) [Unsatisfied Balance of Elective-Share and Supplemental Elective Share Amounts.] If, after the application of subsections (a) and (c), the elective-share or supplemental elective share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-</p>

	<p>share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.</p> <p>(e) [Unsatisfied Balance Treated as General Pecuniary Devise.] The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (c) or (d) is treated as a general pecuniary devise for purposes of Section 3-904.</p>
<p>18-A M.R.S.A.</p>	<p>§2-207. Charging spouse with gifts received; liability of others for balance of elective share</p> <p>(a). In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth 1/2 of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.</p> <p>(b). Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.</p> <p style="text-align: center;">* * *</p>
<p>Difference between MPC and UPC</p>	<p>The UPC eliminates the provision that the spouse is charged with amounts that would have passed to the spouse but were renounced. In <u>Estate of Fisher</u>, 545 A.2d 1266 (Me. 1988), the Law Court wrote that “[t]he purpose of section 2-207 is [to protect] a decedent's plan as far as it provides values for the surviving spouse. The spouse is not compelled to accept the benefits devised by the decedent, but if these benefits are rejected, the values involved are charged to the electing spouse as if the devises were accepted. 18-A M.R.S.A. § 2-207, Uniform Probate Code Comment.” The Court continued, “Unless the surviving spouse renounces the provisions of the will, her choice of the elective share would not affect her share under the will or by intestate succession. Property passing to her by the will would be charged against her elective share. ... If she renounces benefits under the will, the property she would otherwise have received would be treated as if she had predeceased testator and the value of the benefits rejected would be charged against the elective share.” <u>Id.</u> Citing Maine Probate Law Revision Commission,</p>

	<p>Report of the Commission's Study and Recommendations Concerning Maine Probate Law 85 (1978)</p> <p>UPC 2-209 eliminates the portion of the subsection that contains the rebuttable presumption that the spouse's beneficial interest in any life estate or in any trust is valued at one-half (½) of the value of the property subject to the life estate or trust estate.</p> <p>UPC 2-209(b) is added to provide for the valuation of the "marital portion" of the surviving spouse's property and nonprobate transfers to others in accordance with 2-203(b).</p> <p>UPC 2-209(c) and (d) replace the MPC subsection (b) that required the balance of the elective share to be equitably apportioned among the other recipients of the augmented estate in proportion to their interest therein. As noted in the comments, there was concern that "equitably" apportioned could be interpreted by courts as allowing for an apportionment that was not in proportion to the value of the recipient's interest in the decedent's net probate estate and the decedent's nonprobate transfers to others.</p> <p>UPC 2-209(c) requires the satisfaction of both any unsatisfied elective share amount (and supplemental elective-share amount) come from the net probate estate and the decedent's nonprobate transfers to others set forth in section 2-205(1), (2), and (3)(B) in proportion to the value of the recipient's interest therein. In the MPC, the phrase "therein" refers to the remaining property of the augmented estate that did not pass to the spouse or was disclaimed by the spouse. In the UPC the phrase "therein" refers to the decedent's net probate estate and the decedent's nonprobate transfers to others set forth in section 2-205(1), (2), and (3)(B).</p> <p>UPC 2-209(d) provides that the unsatisfied elective share amount (and supplemental elective-share amount) remaining after application of subsections (a) and (c) come from the decedent's remaining nonprobate transfers to others in proportion to the value of the recipient's interest therein (recipient's proportion share in the decedent's nonprobate transfers to others).</p> <p>Subsection (e) is added to require the unsatisfied balance of the elective share (or supplemental elective-share) is treated as a general pecuniary devise and therefore bears an interest rate from one (1) year after the appointment of a personal representative. The MPC references the rate of 5% "unless a contrary intent is indicated in the will or is implicit in light of the unproductive or underproductive nature or decline in value, during the administration of the estate, of the portion of the estate out of which such devise is payable." The UPC references "the legal rate . . . unless a contrary intent is indicated by the will."</p>
Recommendation	Adopt the UPC with changes shown (delete references to the supplemental elective-share amount consistent with adoption of UPC 2-202 without including consideration of that factor.)

Maine Probate Code Proposed Comments	None.
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UPC SECTION	2-210
SUBJECT	PERSONAL LIABILITY OF RECIPIENTS.
UPC Statute (with Maine amendments shown)	<p>(a) Only original recipients of the decedent’s nonprobate transfers to others, and the donees of the recipients of the decedent’s nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse’s elective-share or supplemental elective share amount. A person liable to make contribution may choose to give up the proportional part of the decedent’s nonprobate transfers to him for her or to pay the value of the amount for which he for she is liable.</p> <p>(b) If any section or part of any section of this [part] is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent’s nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in Section 2-209, to the person who would have been entitled to it were that section or part of that section not preempted.</p>
18-A M.R.S.A.	<p>§2-207. Charging spouse with gifts received; liability of others for balance of elective share</p> <p style="text-align: center;">* * *</p> <p>(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.</p>
Difference between MPC and UPC	<p>UPC 210(a) is substantially the same as MPC 2-207(c). The UPC provision reflects the concept of “proportional” contribution whereas the MPC refers to an “equitably apportioned” contribution. “Unlike donees of original transferees who are liable for contribution only to the extent that they possess the property or its proceeds, original transferees remain liable for their contribution to the elective share regardless of their possession of the property or its proceeds.” <u>Estate of Galluzzo</u>, 615 A.2d 236 (Me. 1992), citing Mitchell, Maine Probate Manual at 2-293 (1988).</p> <p>UPC 2-210(b) reflects ERISA’s concern that federal law govern the administration of pensions or employee benefit plans, while still preserving the proportional contribution structure required in situations involving applicable nonprobate transfers to others. See</p>

	also, ERISA comment to UPC 2-804.
Recommendation	Adopt the UPC with the changes shown (delete references to the supplemental elective-share amount consistent with the adoption of UPC 2-202 without including consideration of that factor.)
Maine Probate Code Proposed Comments	

UPC SECTION	2-211
SUBJECT	PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT.

UPC Statute (with Maine amendments shown)	<p>(a) Except as provided in subsection (b), the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney <u>the election must be made</u> must make the election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. Notice <u>The surviving spouse must give notice</u> of the time and place set for hearing <u>must be given</u> to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.</p> <p>(b) Within nine months after the decedent's death, the surviving spouse may a petition the court for an extension of time for making an election <u>may be filed by the surviving spouse or the surviving spouse's conservator or agent under the authority of a power of attorney</u>. If, within nine months after the decedent's death, the spouse gives notice <u>is given</u> of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective share amounts, if the spouse makes an election <u>is made</u> by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.</p> <p>(c) The surviving spouse may withdraw his [or her]<u>A</u> demand for an elective share <u>may be withdrawn</u> at any time before entry of a final determination by the court.</p> <p>(d) After notice and hearing, the court shall determine the elective-share and supplemental elective share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under Sections 2-209 and 2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or</p>
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	<p>has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he [or she] would have been under Sections 2-209 and 2-210 had relief been secured against all persons subject to contribution.</p> <p>(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-205. Proceeding for elective share; time limit</p> <p>(a). The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of death, or within 6 months after the probate of the decedent's will, whichever limitation last expires. However, that nonprobate transfers, described in section 2-202, paragraph (1), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than 9 months after death.</p> <p>The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.</p> <p>(b). The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.</p> <p>(c). The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.</p> <p>(d). After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding</p>

	<p>may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.</p> <p>(e). The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.</p>
<p>Difference between MPC and UPC</p>	<p>UPC 2-211 modifies the current Maine probate section in two substantive ways. First, because Section 2-212 allows the elective share to be exercised by a conservator, guardian, or agent under a power of attorney, the procedures for electing the share under 2-211 now do not specify that the “surviving spouse” must make the election. Rather, the new statute passively states that “the election must be made” without specifying who must make the election. Second, the new UPC section provides an exception to the existing rule that non-probate transfers by the decedent, pursuant to Section 2-205, may not be included in the augmented estate if the petition for the elective share is filed later than nine months from the decedent’s death. Under Section 2-211(b), if , prior to nine months from the decedent’s death, the surviving spouse has given notice to all persons who have an interest in the decedent’s non-probate transfers and the surviving spouse has petitioned the court for an extension of time in which to file his/her petition for the elective share, and the court grants the extension, and the surviving spouse files her petition for the elective share within the extended time granted for his/her petition, then the non-probate transfers will be included in the augmented estate. The current section of the probate code allows the spouse to file a petition to extend the time to elect, but does not provide a procedure for the inclusion of the non-probate transfers in the augmented estate if the petition is filed timely, but after nine months from the date of the decedent’s death. Accordingly, under the current code, a surviving spouse that successfully petitions the court to extend the time to file a petition for elective share will, nonetheless, not be able to include non-probate transfers in the augmented estate.</p> <p>The only other changes are technical, merely updating the language in the statute to reflect other changes made in various parts of the elective share statutes.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	

UPC SECTION	2-212
SUBJECT	RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE; INCAPACITATED SURVIVING SPOUSE.

UPC Statute (with Maine amendments shown)	<p>(a) [Surviving Spouse Must Be Living at Time of Election.] The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under Section 2-211(a). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.</p> <p>(b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving spouse who is an incapacitated person, that portion of the elective share and supplemental elective share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under Section 2-209(c) and (d) must be placed in a custodial trust for the benefit of the surviving spouse under the provisions of the [Enacting state] Uniform Custodial Trust Act, except as modified below. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. For purposes of the custodial trust established by this subsection, (i) the electing guardian, conservator, or agent is the custodial trustee, (ii) the surviving spouse is the beneficiary, and (iii) the custodial trust is deemed to have been created by the decedent spouse by written transfer that takes effect at the decedent spouse's death and that directs the custodial trustee to administer the custodial trust as for an incapacitated beneficiary.</p> <p>(c) [Custodial Trust.] For the purposes of subsection (b), the [Enacting state] Uniform Custodial Trust Act must be applied as if Section 6(b) thereof were repealed and Sections 2(e), 9(b), and 17(a) were amended to read as follows:</p> <p style="padding-left: 40px;">———— (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary regains capacity, the beneficiary then acquires the power to terminate the custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.</p> <p style="padding-left: 40px;">———— (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit</p>
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~~of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order but with regard to other support, income, and property of the beneficiary [exclusive of] [and] benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the beneficiary must qualify on the basis of need.~~

~~————(3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended custodial trust property, in the following order: (i) under the residuary clause, if any, of the will of the beneficiary's predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the beneficiary; or (ii) to that predeceased spouse's heirs under Section 2-711 of [this state's] Uniform Probate Code.~~

~~[STATES THAT HAVE NOT ADOPTED THE UNIFORM CUSTODIAL TRUST ACT SHOULD ADOPT THE FOLLOWING ALTERNATIVE SUBSECTION (b) AND NOT ADOPT SUBSECTION (b) or (a) ABOVE]~~

~~(b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective share and supplemental elective share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under Section 2-209(c) and (d) and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:~~

~~————(1) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse [exclusive of] [and] benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need.~~

	<p style="text-align: center;">—— (2) During the surviving spouse’s incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.</p> <p style="text-align: center;">—— (3) Upon the surviving spouse’s death, the trustee shall transfer the unexpended trust property in the following order: (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or (ii) to the predeceased spouse’s heirs under Section 2-711.</p>
<p>18-A M.R.S.A.</p>	<p>2-203. Right of election personal to surviving spouse</p> <p>The right of election of the surviving spouse may be exercised only during the lifetime of the surviving spouse by:</p> <p>(a). The surviving spouse; or</p> <p>(b). If the surviving spouse is a protected person, by order of the court in which protective proceedings for the surviving spouse are pending, after a finding that exercise is necessary to provide adequate support for the surviving spouse during the probable life expectancy of the surviving spouse. In a proceeding under this subsection, the surviving spouse's present or future eligibility for public assistance does not diminish the need for support.</p>
<p>Difference between MPC and UPC</p>	<p>UPC 2-212 differs from UPC 2-203, in three significant respects: (1) it allows a guardian, conservator, or agent under a power of attorney to elect for an incapacitated spouse, instead of the court; (2) it eliminates the requirement that the court find that the share was “necessary for the surviving spouse’s adequate support for her life expectancy”; (3) it requires that the unsatisfied portion of the surviving spouse’s elective share be put in trust. UPC 2-212 also clarifies that the surviving spouse must be living when the petition for the elective share is filed. Each of these differences is discussed in detail below.</p> <p>(1) Election by Guardian, Conservator, or Agent Under a Power of Attorney</p> <p>Currently, if a surviving spouse is incapacitated, his or her</p>

	<p>election may only be made by the court presiding over the protected person’s affairs. If an incapacitated spouse is not under guardianship or conservatorship, a petition for limited conservatorship must first be filed in order for a court to then have standing to decide the issue of the elective share. In some cases, the administration of the decedent’s estate is in one jurisdiction but the surviving spouse is in another jurisdiction, leading to an excessive amount of judicial proceedings in order for the court to decide the elective share issue on behalf of the incapacitated spouse.</p> <p>It is helpful to note that prior to Maine’s adoption of the Uniform Probate Code in 1979, guardians, conservators, and agents under a power of attorney could exercise the share on behalf of the spouse. The 1978 Maine Probate Law Revision Commission was concerned that if these agents could exercise the elective share of the spouse, they might make an election based on their own financial interest in the surviving spouse’s estate. Therefore, the inherent judicial inefficiency of having the court decide the necessity of the elective share in the case of an incapacitated spouse was more desirable than the disruption of the testator’s estate plan due to the potential greed of a guardian, conservator, or agent under a power of attorney who may elect on behalf of the surviving spouse only because the agent is also an heir of the surviving spouse’s estate.</p> <p>(2)The Elective Share for an Incapacitated Spouse is Not Based on Need</p> <p>Another significant departure in UPC 2-212 from Maine’s current elective share statute is the elimination of the needs-based test in order for an incapacitated spouse to receive his or her elective share. Currently, every elective share case on behalf of an incapacitated spouse must be adjudicated in order for the court to determine whether the exercise of the elective share is necessary for the spouse’s adequate support. Not only is interpretation of the needs-based test still unresolved in Maine, (there are two different approaches in the UPC states that follow the needs-based test), there are constitutional concerns raised regarding the disparity of treatment between a healthy surviving spouse who is entitled to his or her share upon petition and an incapacitated spouse who has to survive a court’s scrutiny about whether the share is necessary. Originally, this needs-based test was seen as a critical component of the original elective share framework to guard against the unraveling of the testator’s estate plan for the mere benefit of the incapacitated spouse’s heirs. Only if the</p>
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	<p>incapacitated spouse needed the share, could she obtain the share.</p> <p>(3) Incapacitated Spouse Must Receive Share in Trust</p> <p>The UPC contemplates that the unsatisfied portion of the incapacitated spouse’s elective share be placed in a trust for the benefit of the surviving spouse. (The amount of the spouse’s elective share that is comprised of assets already owned by the surviving spouse may continue to be held outright by the surviving spouse.) The UPC proposes two types of trusts on behalf of a surviving, one for states that have adopted the Uniform Custodial Trust Act and one for states, like Maine, which have not adopted the Act. If the incapacitated spouse regains capacity, then he or she may terminate the trust and obtain the remaining trust property free from trust; otherwise, the trust may only be terminated upon the surviving spouse’s death. At the incapacitated spouse’s death, the remaining income and principal is distributed first under the residuary clause of the Will of the predeceased spouse against whom the share was taken, and second, to the predeceased spouse’s heirs.</p> <p>Under the terms of the trust for states which have not adopted the Uniform Custodial Trust Act, a court must appoint a trustee of the elective share trust. The distribution standard for the elective share trust does not follow the ascertainable standard under the UTC, but rather states that distributions “be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse’s support.” Two options are then provided regarding public benefits. One option allows the trustee to consider the public benefits that the surviving spouse is receiving when making distributions, and the other requires the trustee not to consider the public benefits. Maine’s elective share statute was recently amended to make it clear that the court must not consider public benefits when determining whether an incapacitated spouse needs the share.</p>
<p>Recommendation</p>	<p>1. Adopt UTC 2-212’s requirement that the surviving spouse be living when the petition for the share is filed. This is consistent with how the Cumberland County Probate Court has interpreted the current elective share statute. Also adopt UTC 2-212 to the extent that the petition can be pursued by conservators and agents and a power of attorney. Guardians do not have authority to manage significant assets under Maine law and therefore should not be included as a potential petitioner.</p>

	<p>2. Do not adopt Section 2-212 with respect to the disparate treatment of incapacitated spouses. Rather, adopt only subsection (a) of Section 2-212.</p> <p>Under the current UPC, a surviving spouse who is terminally ill but has capacity can absolutely elect his or her elective share without any inquiry as to necessity and without forcing his/her share into a trust. Clearly, a terminal spouse will not benefit from the share, yet a surviving spouse with mental capacity has the absolute power to elect in order to benefit his or her heirs. The spouse whose disability is the loss of intellectual capacity or memory is not allowed to make a decision that could potentially only benefit the surviving spouse's heirs.</p> <p>If Maine redefines the elective share to relate the amount of the share to the length of the marriage, it is possible that the code has likely reduced the real inequity of the elective share which was that a new spouse could receive one third of the estate that was not at all part of the marital property. It is therefore recommended that the disparate treatment between incapacitated spouses and spouses with capacity be eliminated.</p> <p>3. If, however, the position is taken that Maine has already decided to treat incapacitated spouses differently and we want to continue this disparate treatment, then the Legislature must decide whether to keep the needs based standard or create a trust for every incapacitated spouse where the elective share is managed by a trustee and amounts not used for the spouse revert to the testator's heirs after the surviving spouse's death.</p> <p>For the following reasons, it is determined that that the elective share trust is unworkable.</p> <p>a) Distribution standards – The distribution standard matters for many public benefits. If a surviving spouse is on SSI, section 8 housing, MaineCare, food stamps, or other needs-based program, the distribution standard affects whether the trust will be counted as a resource. As the trust distribution standard is written in the UPC, the elective share trust would likely be treated as a support trust which would eliminate the surviving spouse's SSI, MaineCare, and housing and food benefits. Some elderly people do not receive Medicare, and MaineCare is their only health insurance. To create a trust that would be more harmful than beneficial to a surviving spouse who</p>
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	<p>relies upon public benefits seems to defy the logic behind the elective share.</p> <p>The alternative would be to change the distribution standard in the elective share trust so that the trust would not be a countable resource. This would include changing “support” to “health, support, and maintenance” and would include other language that would make it clear that the trustee had the sole discretion to make income and principal distributions. Future changes in public benefits laws still make the elective share trust option risky, if, for example, the laws changed in the future required different trust terms than the elective share trusts contained.</p> <p>b) Trust burdens – If an elective share trust is created, then the appointed trustee must file trust tax returns and prepare annual accountings. If income is not distributed in any one year, then the income earned in the elective share trust will be taxed at the highest tax rate – 35 %. If there is no person willing to take on the duties of a trustee, an independent trustee will need to be appointed. All of these “trust burdens” add expense that will go on for the entire life of the spouse.</p> <p>According to the Legal Information Institute website operated by Cornell University Law School, 18 states have adopted some form of the Uniform Probate Code. Of these 18 states, seven have adopted the elective share trust set forth in Section 2-212, as follows: Hawaii, Alaska, Colorado, Montana, North Dakota, Utah, and West Virginia.</p> <p>The following six states continue to have the needs-based standard for incapacitated spouses: Idaho, Florida, Minnesota, Michigan, Nebraska, and Maine.</p> <p>South Dakota and South Carolina adopted the new Uniform Probate Code but chose not to have any different standard between incapacitated spouses and spouses with capacity.</p> <p>The remaining UPC states (Arizona, New Mexico, and Massachusetts) may have adopted portions of the UPC but did not adopt the elective share provisions. Arizona and New Mexico are community property states and deal with the elective share issue differently. Massachusetts adopted the UPC, but did not adopt Section 2 with regard to the elective share.</p>
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	<p>Of the non-UPC states, two states with an elective share statute did not differentiate between spouses with capacity and spouses without capacity: Kansas and New Hampshire.</p> <p>Four non-UPC states have a 2-203 needs based test: Pennsylvania, New York, Alabama, and Delaware.</p> <p>It is recommended that Maine become the third UPC state and potentially the fifth state in the country to have an elective share statute that does not discriminate on the basis of the mental capacity of the surviving spouse. It is recommended that only subsection (a) of UPC 2-212 be adopted.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section is revised in three significant respects. First, it makes it clear that the right of election may be exercised only by or on behalf of a living surviving spouse. Second, the election can be pursued on behalf of the surviving spouse by the spouse's conservator or agent. In any case, the surviving spouse must be alive when the election is made and cannot be pursued on behalf of a decedent. Third, it treats incapacitated spouses the same as spouses with capacity. Previously, if spouse was incapacitated, the court exercised the share on behalf of the incapacitated spouse only after a judicial proceeding to determine the necessity of the share for the incapacitated spouse's life expectancy. A spouse with capacity was able to elect regardless of need.</p> <p>Treating incapacitated spouses the same as spouses with capacity is a deviation from the Uniform Probate Code (1990) which provides that the incapacitated spouse's share is to be distributed to a custodial trust for the surviving spouse's life, the remainder beneficiaries of which are the predeceased spouse's residuary devisees or heirs.</p> <p>Eliminating the disparate treatment between incapacitated spouses and spouses with capacity is consistent with the revised elective share law which attempts to more closely align the amounts that a spouse receives upon divorce to that which the spouse receives upon death. Under this partnership theory of marriage, which forms the basis of much of the revisions to elective share law, an incapacitated spouse in a divorce proceeding does not receive less of an equitable distribution solely due to the incapacity. This section therefore applies the partnership theory of marriage equitably to all surviving spouses.</p>

UPC SECTION	2-213
SUBJECT	WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.</p> <p>(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:</p> <p>(1) he for she did not execute the waiver voluntarily; or</p> <p>(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he for she:</p> <p>(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;</p> <p>(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and</p> <p>(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.</p> <p>(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.</p> <p>(d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him for her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.</p>
<p>18-A M.R.S.A.</p>	<p>§2-204. Waiver of right to elect and of other rights</p> <p>The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance,</p>

	<p>exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.</p>
<p>Difference between MPC and UPC</p>	<p>On the limited question of the differences between MPC 2-204 and the UPC 2-213, the two sentences of the MPC 2-204 are almost identical to subsections (a) and (d) of the UPC 2-213. (Note 1: The first sentence of the MPC 2-204 adds the phrase “after fair disclosure” to the ability of the surviving spouse to waive the right of election and the rights to the homestead allowance, exempt property and family allowance. In the UPC the disclosure requirement is spelled out in subsection (b). Note 2: Subsection (d) of UPC 2-213 references “him [or her]” while the MPC uses only the male pronoun.)</p> <p>Subsection (b) of the UPC’s 2-213 establishes that a surviving spouse’s waiver (either premarital or during marriage) will not be enforced if the surviving spouse proves that the waiver was involuntary or unconscionable. The three elements to prove to establish that a waiver was unconscionable are outlined in 2-213(b)(2). These elements are adopted from the Uniform Premarital Agreement Act (UPAA).</p> <p>Subsection (c) of the UPC’s 2-213 states that the issue of unconscionability of a waiver “is for decision by the court as a matter of law.”</p> <p>Subcommittee 3 considered a Memorandum dated September 11, 2008, authored by Sheldon F. Kurtz which provides the text of the UPAA which Maine adopted in 1995 (19-A M.R.S.A. §601, et. Seq) and the text of the Model Marital Property Agreement (MMPA). The UPAA itself addresses only premarital agreements, The MMPA addresses both premarital agreements and agreements made during the marriage. Kurtz proposes an alternate to UPC 2-213 which would distinguish between waivers made before the marriage and waivers made during the marriage and require the surviving spouse to prove more to defeat a waiver made before marriage. Since Maine has adopted the UPAA and not the MMPA, the alternate UPC 2-213 is not proposed.</p>
<p>Recommendation</p>	<p>Adopt UPC.</p>
<p>Maine Probate Code Proposed Comments</p>	

UPC SECTION	2-214
SUBJECT	PROTECTION OF PAYORS AND OTHER THIRD PARTIES.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Although under Section 2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice that a petition for the elective share has been filed.</p> <p>(b) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under Section 2-211(d), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under Section 2-211(a) or, if filed, the demand for an elective share is withdrawn under Section 2-211(c), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.</p> <p>(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and</p>

	subject to conditions consistent with this [part].
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	<p>There are no provisions in the MPC comparable to UPC 2-214. UPC 2-214 provides protection to a payor who, without written notice of an intention to file a petition for the elective share or that a petition for elective share has been filed, makes payment or transfers an item of property or other benefit in accordance with a governing instrument. UPC 2-214 imposes liability on the payor who takes such action after receipt of such written notice. The surviving spouse or spouse's representative must provide notice to a payor of the intention to file a petition or that a petition for elective share has been filed either by mail, certified or registered, return receipt requested, or in the same manner as a summons in a civil action.</p> <p>Upon notice, the payor may pay or transfer any such property to the court having jurisdiction of the probate proceedings. The court is then to hold the funds or item or property until a determination has been made under section 2-211(d) and thereafter order disbursement.</p> <p>Subsection (c) permits a beneficiary designated in the instrument to petition for delivery of any such property to the beneficiary, subject to the conditions of this part. Presumably, this is intended to prevent the mere warehousing of funds or property with the probate court, for a period during which the property would realize no rate of return.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-301
SUBJECT	ENTITLEMENT OF SPOUSE; PREMARITAL WILL.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) If a testator’s surviving spouse married the testator after the testator executed his for her will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he for she would have received if the testator had died intestate as to that portion of the testator’s estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under Sections 2-603 or 2-604 to such a child or to a descendant of such a child, unless:</p> <p>(1) it appears from the will or other evidence that the will was made in contemplation of the testator’s marriage to the surviving spouse;</p> <p>(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or</p> <p>(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator’s statements or is reasonably inferred from the amount of the transfer or other evidence.</p> <p>(b) In satisfying the share provided by this section, devises made by the will to the testator’s surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under Sections 2-603 or 2-604 to a descendant of such a child, abate as provided in Section 3-902.</p>
<p>18-A M.R.S.A.</p>	<p>§2-301. Omitted spouse</p> <p>(a). If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.</p> <p>(b). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.</p>
<p>Difference between MPC and UPC</p>	<p>Under MPC 2-301, the omitted spouse is entitled to the intestate share, subject to exceptions for showing that the omission was intentional. Under UPC 2-301, the spouse is entitled to the intestate share only as to the portion of the estate not devised to the testator’s children from prior relationship (or their descendants), also subject to exceptions related to the testator’s intent, which have been revised to be more</p>

	<p>specific.</p> <p>The proposed UPC clarifies that the spouse does not have to have been completely omitted from the premarital will, but any specific devise will count towards the spouse's ultimate share. It also provides that any such devise is applied before other devises abate.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change in Maine law.

UPC SECTION	2-302
SUBJECT	OMITTED CHILDREN.

UPC Statute (with Maine amendments shown)	<p>(a) Except as provided in subsection (b), if a testator fails to provide in his [or her] will for any of his +or her- children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:</p> <p>(1) If the testator had no child living when he +or she- executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.</p> <p>(2) If the testator had one or more children living when he [or she] executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:</p> <p>(A) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.</p> <p>(B) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (A), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.</p> <p>(C) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.</p> <p>(D) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.</p> <p>(b) Neither subsection (a)(1) nor subsection (a)(2) applies if:</p> <p>(1) it appears from the will that the omission was intentional; or</p> <p>(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the</p>
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	<p>transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.</p> <p>(c) If at the time of execution of the will the testator fails to provide in his [or her] will for a living child solely because he [or she] believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.</p> <p>(d) In satisfying a share provided by subsection (a)(1), devises made by the will abate under Section 3-902.</p>
<p>18-A M.R.S.A.</p>	<p>§2-302. Pretermitted children</p> <p>(a). If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:</p> <ol style="list-style-type: none"> (1). It appears from the will that the omission was intentional; (2). When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or (3). The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence. <p>(b). If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.</p> <p>(c). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.</p>
<p>Difference between MPC and UPC</p>	<p>(1) If testator had no children when he or she signed the will: Under MPC 2-302, the omitted afterborn child receives an intestate share. Under UPC 2-302, the omitted child also receives the intestate share unless the will devises substantially everything to the omitted child's other parent.</p> <p>(2) If testator already had children when he signed the will: Under MPC 2-302, the omitted afterborn child receives the intestate share unless the will devises substantially everything to the omitted child's other parent. Under UPC 2-302, the omitted child receives a pro rata share of the total amount (if any) that the will provides for the other children. If the will has no provision for the other children, the omitted child also receives nothing.</p> <p>Additional provisions require the share of omitted child to be "of the same character" as the other children's shares and require that in abating the shares of other children the court preserve the "character of the testamentary plan."</p>

Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-401
SUBJECT	APPLICABLE LAW
UPC Statute (with Maine amendments shown)	This part applies to the estate of the decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.
18-A M.R.S.A.	None
Difference between MPC and UPC	This is a change of format, not of substance. The current MPC, in each of the relevant sections in part 4, refers to a "decedent who was domiciled in this state." There is not a separate section specifying that this part, in its entirety, applies to a decedent who dies domiciled in this state.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-402
SUBJECT	HOMESTEAD ALLOWANCE
UPC Statute (with Maine amendments shown)	A decedent's surviving spouse is entitled to a homestead allowance of †\$22,500† . If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to †\$22,500† divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.
18-A M.R.S.A.	§2-401 Homestead Allowance. A surviving spouse of a decedent who was domiciled in the State is entitled to a homestead allowance of \$10,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$10,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The homestead allowance established by this section is the sole exemption available for a decedent's homestead.
Difference between MPC and UPC	The substantive provisions of UPC section 2-402 and MPC section 2-401 are virtually identical with the exception of the increase in the amount of the homestead allowance from \$10,000 to \$22,500.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	This section increases the homestead allowance to \$22,500 from the previous \$10,000. The homestead allowance is subject to cost of living adjustments as provided in section 1-109.

UPC SECTION	2-403
SUBJECT	EXEMPT PROPERTY
<p>UPC Statute (with Maine amendments shown)</p>	<p>In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. <u>However, the decedent, by will, may exclude one or more adult children from the receipt of exempt property.</u> If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make out a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.</p>
<p>18-A M.R.S.A.</p>	<p>§2-402 Exempt property. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this State is entitled from the estate to value not exceeding \$7000 in excess of any security interests in the estate in property exempt under title 14, chapter 507, subchapter II, Article 7, on the date of death of the decedent. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$7000, or if there is not \$7000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$7000 value. Rights to exempt property and assets needed to make out a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property must abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.</p>
<p>Difference between MPC and UPC</p>	<p>The substantive provisions of UPC section 2-403 and MPC section 2-402 are similar with two exceptions: (1) the increase in the amount of the exempt property amount from \$7,000 to \$15,000, and (2) a specific listing of the types of property that are available to satisfy the exempt property entitlement, in lieu of referencing Title 14 §§ 4421 et seq.</p>

Recommendation	Adopt UPC <u>but permit the decedent to exclude adult children from the receipt of exempt property.</u>
Maine Probate Code Proposed Comment	This section increases exempt property to \$15,000 from the previous \$7,000. Exempt property is subject to cost of living adjustments as provided in section 1-109. The section now provides a specific listing of the types of property available to satisfy the exempt property entitlement, in lieu of referencing Title 14, section 4421 et seq. <u>The section has been modified to permit the decedent, by will, to exclude one or more adult children from the receipt of exempt property.</u>

UPC SECTION	2-404
SUBJECT	FAMILY ALLOWANCE

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his [or her] guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.</p> <p>(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.</p>
<p>18-A M.R.S.A.</p>	<p>2-403. Family allowance. In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this State, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.</p> <p>The family allowance is not chargeable against any benefit or share</p>

	passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowance not yet paid.
Difference between MPC and UPC	There are no substantive differences between the UPC and the existing MPC.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-405
SUBJECT	Source, Determination, and Documentation.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a)—If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$27,000 or periodic installments not exceeding \$2,250 per month for one year, and may disperse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined. (b) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under section 2-212 (b).</p>
<p>18-A M.R.S.A.</p>	<p>§2-404. Source, determination and documentation</p> <p>If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make the selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$12,000 or periodic installments not exceeding \$1000 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the</p>

	<p>homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.</p>
<p>Difference between MPC and UPC</p>	<p>The substantive provisions of UPC section 2-405(a) and MPC section 2-404 are virtually identical with the exception of the increase in the amount of the lump sum allowance from \$12,000 to \$27,000 and an increase in the monthly allowance from \$1,000 to \$2,250.</p> <p>The provisions of paragraph (b) of the UPC, which permit the personal representative to add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to a custodial trust established under section 2-212(b) for the benefit of an incapacitated surviving spouse, do not exist in the MPC.</p>
<p>Recommendation</p>	<p>To adopt only paragraph (a) of UPC section 2-405. It is recommended that Maine not make a distinction between spouses with capacity and those without capacity for purposes of the exercise of elective share rights, and that Maine not adopt the paragraph (b) of section 2-212, which creates a custodial trust for an incapacitated spouse. Consistent with the recommendation that Maine not adopt paragraph (b) of section 2-212, it is recommended that Maine not adopt paragraph (b) of section 2-405.</p>
<p>Maine Probate Code Proposed Comment</p>	<p>Maine's adoption of section 2-405 represents a deviation from the UPC by eliminating the discretion of the personal representative to add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to a custodial trust established under section 2-212(b). Maine has chosen not to treat an incapacitated surviving spouse different from a surviving spouse with capacity for purposes of the elective share and therefore has not adopted section 2-212(b) of the UPC. See Maine Comment to section 2-212. This same concept is applied in this section 2-405 to amounts payable under the homestead allowance, exempt property and family allowance, with no distinction made between a surviving incapacitated spouse and a surviving spouse with capacity.</p> <p>This section increases the family allowance to a lump sum not exceeding \$27,000 from the previous \$12,000, and increases periodic installments to an amount not exceeding \$2,250 per month from the previous \$1,000. The family allowance is subject to cost of living adjustments as provided in section 1-109.</p>

UPC SECTION	2-501
SUBJECT	WHO MAY MAKE A WILL
UPC Statute (with Maine amendments shown)	SECTION 2-501. WHO MAY MAKE A WILL. An individual of sound mind, who is 18 or more years of age or a legally emancipated minor, who is of sound mind may make a will.
18-A M.R.S.A.	§2-501. Who may make a will Any person 18 or more years of age who is of sound mind may make a will.
Difference between MPC and UPC	The MPC uses the word “person.” The UPC uses the word “individual” in keeping with UPC’s new definitional structure.
Recommendation	To adopt the UPC with a change to permit a legally emancipated minor to make a will.
Maine Probate Code Proposed Comment	This section has been modified to make it clear that a legally emancipated minor under the age of 18 may make a will.

UPC SECTION	2-502
SUBJECT	EXECUTION; WITNESSED OR NOTARIZED WILLS; HOLOGRAPHIC WILLS

<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-502. EXECUTION; WITNESSED OR NOTARIZED WILLS; HOLOGRAPHIC WILLS.</p> <p>(a) [Witnessed or Notarized Wills.] Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:</p> <ol style="list-style-type: none"> (1) in writing; (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (3) either: <ul style="list-style-type: none"> _____ (A) signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgement of the will; or _____ (B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements. <p>(b) [Holographic Wills.] A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.</p> <p>(c) [Extrinsic Evidence.] Intent that a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.</p>
<p>18-A M.R.S.A.</p>	<p>§2-502. Execution Except as provided for holographic wills, writings within section 2-513, and wills within section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least 2 persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.</p> <p>§2-503. Holographic will A will which does not comply with section 2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.</p>
<p>Difference between MPC and UPC</p>	<p>MPC section 2-502 is comparable to UPC 2-502(a) but with a few of notable exceptions. UPC 2-502(a) includes a reference to the newly added UPC section 2-503 (Harmless Error), which is not part of the current MPC and</p>

	<p>that the Subcommittee does not recommend be adopted.</p> <p>The UPC adds the concept of “conscious” presence in the event the testator’s name is signed by some other individual; the MPC only requires that the other individual sign in the testator’s presence. Conscious presence is clarified in the Comments to the UPC. Under the “conscious presence” test, a signing is sufficient if it was done within the range of the testator’s senses such as hearing; the signing need not have occurred within the testator’s line of sight.</p> <p>The UPC adds an alternative in 2-502(a)(3)(B) to validate a will that is notarized, without the requirements for witnesses.</p> <p>UPC 2-502(b), recognizing the validity of holographic wills, is similar to MPC 2-503.</p> <p>The MPC has no section comparable to UPC 2-502(c) (extrinsic evidence).</p>
Recommendation	<p>To adopt the UPC with the exception of deleting reference to the Harmless Error section of the UPC (2-503), which section is not recommended for adoption. The changes are consistent with an overall objective of honoring a testator’s intent and easing the burden on execution requirements.</p>
Maine Probate Code Proposed Comment	<p>This section does not adopt the UPC’s alternative method of will execution of acknowledgement by a notary in lieu of execution by two witnesses. The section adopts the “conscious presence” test of the UPC. Under the “conscious presence” test, a signing is sufficient if it was done within the range of the testator’s senses such as hearing; the signing need not have occurred within the testator’s line of sight.</p> <p>The Maine Supreme Judicial Court held in <u>In Re Estate of Gonzalez</u> 855 A.2d 1146 2004 ME 109 (Me. 2004) that a pre-printed form filled in with the testator’s handwriting can qualify as a holographic will.</p> <p>The section departs from the UPC by not referencing the harmless error standard of the UPC, which standard is not adopted in Maine.</p>

UPC SECTION	2-503
SUBJECT	HARMLESS ERROR

UPC Statute (with Maine amendments shown)	<p>SECTION 2-503. RESERVEDHARMLESS ERROR. Although a document or writing added upon a document was not executed in compliance with Section 2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:</p> <p>(1) the decedent's will,</p> <p>(2) a partial or complete revocation of the will,</p> <p>(3) an addition to or an alteration of the will, or</p> <p>(4) a partial or complete revival of his [or her] formerly revoked will or of a formerly revoked portion of the will.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	This is a new section of the UPC, with no comparable MPC section.
Recommendation	<p>It is recommended that Maine not adopt section 2-503. Adoption of section 2-503 would erode all formal requirements for execution and modification of a will and promote litigation over the terms of a decedent's will.</p> <p>The current MPC section 2-503 will be deleted by the adoption of UPC section 2-502(b). MPC section 503 should therefore be "reserved" in the new format and renumbering.</p>
Maine Probate Code Proposed Comment	Maine has chosen not to adopt UPC §2-503.

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UPC SECTION	2-504
SUBJECT	SELF-PROVED WILL

UPC Statute (with Maine amendments shown)	<p>SECTION 2-504. SELF-PROVED WILL.</p> <p>(a) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:</p> <p style="padding-left: 40px;">I, _____, the testator, sign my name to this instrument this ____ day of _____, _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am [18] years of age or older or am a legally emancipated minor, of sound mind, and under no constraint or undue influence.</p> <p style="padding-left: 40px;">_____ Testator</p> <p style="padding-left: 40px;">We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as (his)(her) will and that (he)(she) signs it willingly (or willingly directed another to sign for (hims)(her)); and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is [18] years of age or older or is a legally emancipated minor, of sound mind, and under no constraint or undue influence.</p> <p style="padding-left: 40px;">_____ Witness</p> <p style="padding-left: 40px;">_____ Witness</p> <p style="padding-left: 40px;">State of _____</p> <p style="padding-left: 40px;">County of _____</p> <p style="padding-left: 40px;">Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witness, this _____ day of _____.</p>
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(Seal)

(Signed)

(Official capacity of officer)

~~(b) A will that is executed with attesting witnesses may be made self proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:~~

~~The State of _____~~

~~County of _____~~

~~We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that (he)(she) had signed willingly (or willingly directed another to sign for (him)(her)), that (he)(she) executed it as (his)(her) free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of (his)(her) knowledge the testator was at that time [18] years of age or older or was a legally emancipated minor, of sound mind, and under no constraint or undue influence.~~

~~_____~~
Testator

~~_____~~
Witness

~~_____~~
Witness

~~Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____~~

_____, and _____, witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of officer)

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate in substantially the following form:

I, _____, the testator, on this _____ day of _____, 20... being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older or am a legally emancipated minor, of sound mind, and under no constraint or undue influence.

_ Testator

We, _____ the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his)(her) last will and that (he)(she) signed it willingly (or willingly directed another to sign for (him)(her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

_ Witness

_ Witness

The State of _____
County of _____
Subscribed, sworn to and acknowledged before me by _____ the testator and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

	<p>(Signed)</p> <p>_____</p> <p>_____ _ (Official capacity of officer)</p> <p><u>(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, attached or annexed to the will in substantially the following form:</u></p> <p><u>The State of</u></p> <p><u>County of</u></p> <p><u>We,, and, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as (his)(her) last will and that (he)(she) had signed willingly (or willingly directed another to sign for (him)(her)), as (his)(her) free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of (his)(her) knowledge the testator was at that time eighteen years of age or older or was a legally emancipated minor, of sound mind and under no constraint or undue influence.</u></p> <p>_____</p> <p>_____ _ Testator</p> <p>_____</p> <p>_____ _ Witness</p> <p>_____</p> <p>_____ _ Witness</p> <p><u>Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by, and, witnesses, this day of</u></p> <p>(Signed)</p> <p>_____ _ (Official capacity of officer)</p> <p>(c) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-504. Self-proved will</p> <p>(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs</p>

and evidenced by the officer's certificate in substantially the following form:

I,, the testator, on this day of, 19.., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....

Testator

We,, the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....

Witness

.....

Witness

The State of

County of

Subscribed, sworn to and acknowledged before me by, the testator and subscribed and sworn to before me by, and, witnesses, this day of

(Seal) (Signed)

.....

(Official capacity of officer)

(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, attached or annexed to the will in substantially the following form:

The State of

County of

We,,, and, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his

	<p>last will and that he had signed willingly (or willingly directed another to sign for him), as his free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.</p> <p>..... Testator</p> <p>..... Witness</p> <p>..... Witness</p> <p>Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to (Signed) before me by, and witnesses, this day of(Seal)</p> <p style="text-align: right;">(Official capacity of officer)</p>
<p>Difference between MPC and UPC</p>	<p>In light of the UPC’s addition of the option of notarized, rather than witnessed, wills, the self-proving provision of the UPC applies only to witnessed wills. The self-proving provisions of the MPC apply to “any will” because the MPC doesn’t contemplate the possibility of anything other a witnessed will.</p> <p>The MPC does not contain UPC paragraph (c), which is intended to avoid ambiguity as to whether a will is properly signed and self-proved. Paragraph (c) makes it clear that it is not necessary for a testator, who is simultaneously self-proving his/her will, to sign the will twice - - once on the will itself, and again on the self-proving provisions.</p>
<p>Recommendation</p>	<p>To adopt only paragraph (c) of the UPC and to retain the existing Maine statute with three changes: adding reference to a legally emancipated minor, adding male/female gender options where appropriate to update the single male pronoun in the current Maine Probate Code, and deleting references to a notary seal as unnecessary.</p>
<p>Maine Probate Code Proposed Comment</p>	<p>The section modifies the previous Maine statute in three respects: it adds references where appropriate to a legally emancipated minor, adds male/female gender options where appropriate to update the single male pronoun, and deletes references to a notary seal as unnecessary.</p>

	<p>The section adopts a new paragraph (c) from the UPC to make clear that it is not necessary for a testator, who is simultaneously self-proving his/her will, to sign the will twice - - once on the will itself, and again on the self-proving provisions. A single signature by the testator, on the self-proving provisions, is sufficient.</p>
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UPC SECTION	2-505
SUBJECT	WHO MAY WITNESS A WILL
UPC Statute (with Maine amendments shown)	<p>SECTION 2-505. WHO MAY WITNESS.</p> <p>(a) An individual generally competent to be a witness may act as a witness to a will.</p> <p>(b) The signing of a will by an interested witness does not invalidate the will or any provision of it.</p>
18-A M.R.S.A.	<p>§2-505. Who may witness</p> <p>(a). Any person generally competent to be a witness may act as a witness to a will.</p> <p>(b). A will is not invalid because the will is signed by an interested witness.</p>
Difference between MPC and UPC	The MPC uses the word “person.” The UPC uses the word “individual” in keeping with UPC’s new definitional structure.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-506
SUBJECT	CHOICE OF LAW AS TO EXECUTION
UPC Statute (with Maine amendments shown)	<p>SECTION 2-506. CHOICE OF LAW AS TO EXECUTION.</p> <p>A written will is valid if executed in compliance with Section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national <u>or if executed in compliance with 10 United States Code, Section 1044d.</u></p>
18-A M.R.S.A.	<p>§2-506. Choice of law as to execution</p> <p>A written will is valid if executed in compliance with section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d.</p>
Difference between MPC and UPC	The MPC contains the added provision “or if executed in compliance with 10 United States Code, Section 1044d” (this is in reference to a Military Will).
Recommendation	Retain the MPC, but delete the reference to section 2-503 consistent with the inclusion of the holographic will provisions in the new section 2-502(b) and the recommendation not to adopt the UPC’s harmless error provision.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law. The omission of a reference to section 2-503 is a result of Maine’s former holographic will provision being moved to section 2-502(b).

UPC SECTION	2-507
SUBJECT	REVOCATION BY WRITING OR BY ACT

<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-507. REVOCATION BY WRITING OR BY ACT.</p> <p>(a) A will or any part thereof is revoked:</p> <p>(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or</p> <p>(2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator’s conscious presence and by the testator’s direction. For purposes of this paragraph, “revocatory act on the will” includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a “revocatory act on the will,” whether or not the burn, tear, or cancellation touched any of the words on the will.</p> <p>(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.</p> <p>(c) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator’s estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator’s death.</p> <p>(d) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator’s estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator’s death to the extent they are not inconsistent.</p>
<p>18-A M.R.S.A.</p>	<p>§2-507. Revocation by writing or by act</p> <p>A will or any part thereof is revoked</p> <p>(1). By a subsequent will which revokes the prior will or part expressly or by inconsistency; or</p> <p>(2). By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.</p>
<p>Difference between MPC and UPC</p>	<p>Paragraph (a)(2) is rewritten to focus on the testator’s intent to perform a revocatory act on the will. It also adds the “conscious presence” test if the revocatory act is performed by another individual at the testator’s direction, and allows partial revocation.</p>

	Paragraphs (b), (c) and (d) deal with subsequent wills and their effect on previous wills if the subsequent will does not expressly revoke the previous will, creating a series of presumptions as to whether the subsequent will serves to revoke the previous will in whole or in part.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The section expands the category of acts that constitute revocation to include any act performed by the testator with the intent and for the purpose of revoking the will in whole or in part.

UPC SECTION	2-508
SUBJECT	REVOCATION BY CHANGE OF CIRCUMSTANCES
UPC Statute (with Maine amendments shown)	<p>SECTION 2-508. REVOCATION BY CHANGE OF CIRCUMSTANCES.</p> <p>Except as provided in Sections 2-803, <u>2-803A</u> and 2-804, a change of circumstances does not revoke a will or any part of it.</p>
18-A M.R.S.A.	<p>§2-508. Revocation by divorce; no revocation by other changes of circumstances</p> <p>If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802, subsection (b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.</p>
Difference between MPC and UPC	<p>UPC sections 2-803 and 2-804 referenced in this section address Effect of Homicide, and Revocation by Divorce. MPC section 2-803 is similar to UPC section 2-803 in its treatment of homicide. The MPC section 2-804, however, addresses actions for wrongful death. The UPC section 2-804 (Revocation by Divorce) finds its counterpart language in MPC section 2-508. The UPC therefore requires some renumbering of Maine's current format.</p> <p>In addition, MPC section 2-806 (Effect of Criminal Conviction) has no UPC counterpart but is a section that should be retained as part of Maine's Probate Code.</p>
Recommendation	<p>Adopt the UPC and its recommended renumbering format, but keep MPC section 2-806 (Effect of Criminal Conviction), but renumber it as 2-803A. Current MPC section 2-804 (Actions for Wrongful Death) should be renumbered as 2-807.</p>
Maine Probate Code Proposed Comments	<p>The exceptions referenced in the section are 2-803 (Effect of Homicide); 2-803A (Effect of Criminal Conviction), formerly 2-</p>

	806); and 2-804 (Revocation by Divorce), formerly 2-508.
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UPC SECTION	2-509
SUBJECT	Revival of Revoked Will
UPC Statute (with Maine amendments shown)	<p>SECTION 2-509. REVIVAL OF REVOKED WILL.</p> <p>(a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under Section 2-507(a)(2), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.</p> <p>(b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under Section 2-507(a)(2), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.</p> <p>(c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.</p>
18-A M.R.S.A.	<p>§2-509. Revival of revoked will</p> <p>(a). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the 2nd will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.</p> <p>(b). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a 3rd will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the 3rd will that the testator intended the first will to take effect.</p>
Difference between MPC and UPC	The UPC separates the acts of whole or partial revocation into separate paragraphs and creates an easier format for discerning when a previously revoked will is revived or remains revoked. The revisions appear intended to clarify the existing statute and do not substantively change Maine law.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-510
SUBJECT	INCORPORATION BY REFERENCE
UPC Statute (with Maine amendments shown)	<p>SECTION 2-510. INCORPORATION BY REFERENCE.</p> <p>A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.</p>
18-A M.R.S.A.	<p>§2-510. Incorporation by reference</p> <p>Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.</p>
Difference between MPC and UPC	The UPC and MPC are identical with one small exception: the MPC refers to “any” writing; the UPC refers to “a” writing.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-511
SUBJECT	TESTAMENTARY ADDITIONS TO TRUSTS

<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-511. UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT (1991).</p> <p>(a) A will may validly devise property to the trustee of a trust established or to be established (i) during the testator’s lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator’s death by the testator’s devise to the trustee, if the trust is identified in the testator’s will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator’s will or in another individual’s will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator’s death.</p> <p>(b) Unless the testator’s will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator’s death.</p> <p>(c) Unless the testator’s will provides otherwise, a revocation or termination of the trust before the testator’s death causes the devise to lapse.</p>
<p>18-A M.R.S.A.</p>	<p>§2-511. Testamentary additions to trusts</p> <p>A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and</p>

	(2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.
Difference between MPC and UPC	The revisions are intended to clarify the existing language and do not substantively change Maine law.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-512
SUBJECT	EVENTS OF INDEPENDENT SIGNIFICANCE
UPC Statute (with Maine amendments shown)	<p>SECTION 2-512. EVENTS OF INDEPENDENT SIGNIFICANCE.</p> <p>A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.</p>
18-A M.R.S.A.	<p>§2-512. Events of independent significance</p> <p>A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.</p>
Difference between MPC and UPC	The MPC uses the word "person." The UPC uses the word "individual" in keeping with UPC's new definitional structure.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-513
SUBJECT	SEPARATE WRITING IDENTIFYING DEVISE OF CERTAIN TYPES OF TANGIBLE PERSONAL PROPERTY

<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-513. SEPARATE WRITING IDENTIFYING DEVISE OF CERTAIN TYPES OF TANGIBLE PERSONAL PROPERTY.</p> <p>Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be in the handwriting of the testator or signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.</p>
<p>18-A M.R.S.A.</p>	<p>§2-513. Separate writing identifying bequest of tangible property</p> <p>Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC allows any tangible personal property to be included in the list, other than money. The existing MPC, which is based on the pre-1990 version of the UPC, precludes the disposition of "evidences of indebtedness, documents of title, and securities, and property used in a trade or business." As explained in the Comments to the UPC, the pre-1990 limitations are deleted in the revised version, partly to remove a source of confusion in the pre-1990 version, which arose because evidences of indebtedness, documents of title, and securities are not items of tangible personal property to</p>

	<p>begin with, and partly to permit the disposition of a broader range of items of tangible personal property.</p> <p>The UPC requires that the “list” be signed, even if the list is in the testator’s handwriting. The Comments to the UPC explain the requirement of the testator’s signature on a handwritten list to prevent a mere handwritten draft from becoming effective without sufficient indication that the testator intended it to be effective. The signature requirement is designed to prevent mere drafts from becoming effective against the testator’s wishes. The Comment to the UPC notes that an unsigned list in the testator’s handwriting might still be offered as an effective list under the harmless error provisions of section 2-503, however the subcommittee has not recommended the adoption of 2-503.</p> <p>In balance, it is recommended that the statute retain the provision of Maine law, which is based on the pre-1990 version of the UPC, that gives effect to an unsigned list in the testator’s handwriting.</p>
Recommendation	Adopt the UPC but retain the Maine provision that recognizes the validity of an unsigned list that is in the testator’s handwriting.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law. Maine deviates from the UPC by not requiring the testator’s signature if the separate writing is in the testator’s handwriting.

UPC SECTION	2-514
SUBJECT	CONTRACTS CONCERNING SUCCESSION
UPC Statute (with Maine amendments shown)	<p>SECTION 2-514. CONTRACTS CONCERNING SUCCESSION.</p> <p>A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this [article], may be established only by (1) provisions of a will stating material provisions of the contract, (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.</p>
18-A M.R.S.A.	<p style="text-align: center;">PART 7</p> <p style="text-align: center;">CONTRACTUAL ARRANGEMENTS RELATING TO DEATH</p> <p>§2-701. Contracts concerning succession</p> <p>A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.</p>
Difference between MPC and UPC	No difference in language. The only change is in the location and numbering of the section and the internal numbering format.
Recommendation	Adopt the UPC with the changes shown. This constitutes a renumbering of MPC section 2-701 to 2-514. This will necessitate renumbering MPC 2-514 (Statutory Wills) to 2-518.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. The same provision previously existed as MPC section 2-701.

UPC SECTION	2-515
SUBJECT	DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME

UPC Statute (with Maine amendments shown)	<p>SECTION 2-515. DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME.</p> <p>A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request; or the court may deliver the will to the appropriate court.</p> <p><u>DISPOSITION OF WILL DEPOSITED WITH COURT</u></p> <p><u>A will deposited for safekeeping with the court in the office of the register of probate before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a will for safekeeping after September 19, 1997.</u></p>
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18-A M.R.S.A.	<p style="text-align: center;">PART 9</p> <p style="text-align: center;">CUSTODY AND DEPOSIT OF WILLS</p> <p>§2-901. Disposition of will deposited with court</p> <p>A will deposited for safekeeping with the court in the office of the register of probate before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a</p>
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	will for safekeeping after September 19, 1997.
Difference between MPC and UPC	UPC 2-515 is most closely related to MPC 2-901, which prohibits the probate court from accepting wills after September 19, 1997.
Recommendation	<p>Do not adopt UPC 2-515. Given the transition in the Maine probate courts toward e-filing, and the prohibition against the court being allowed to accept wills for safekeeping since 1997, there is no compelling reason to revert to the pre-1997 policy of permitting filing wills with the court for lifetime safekeeping.</p> <p>Retain the current MPC provisions of section 2-901 but relocate and renumber the section as 2-515.</p>
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. The same provision previously existed as MPC section 2-901.

UPC SECTION	2-516
SUBJECT	DUTY OF CUSTODIAN OF WILLS; LIABILITY
UPC Statute (with Maine amendments shown)	<p>SECTION 2-516. DUTY OF CUSTODIAN OF WILL; LIABILITY.</p> <p>After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. A person who wilfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.</p> <p><u>After the death of a testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court for filing and recording until probate is sought. Any person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. Any person who willfully fails to deliver a will, or who willfully defaces or destroys any will of a deceased person, is liable to any person aggrieved for the damages, which may be sustained by such failure to deliver, or by such defacement or destruction. Any person who willfully refuses or fails to deliver a will, or who so defaces or destroys it, after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.</u></p>
18-A M.R.S.A.	<p>§2-902. Duty of custodian of will; liability</p> <p>After the death of a testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court for filing and recording until probate is sought. Any person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. Any person who willfully fails to deliver a will, or who willfully defaces or destroys any will of a deceased person, is liable to any person aggrieved for the damages, which may be sustained by such failure to deliver, or by such defacement or destruction. Any person who willfully refuses or fails to deliver a will, or who so defaces or destroys it, after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.</p>
Difference between MPC and UPC	The MPC contains provisions absolving a person from liability for failure to learn of the death and for failure to deliver the will as a result of the failure to learn of the death, and contains provisions

	imposing penalties for willful defacement or destruction of a will.
Recommendation	Retain the current MPC provisions of section 2-902 but relocate and renumber the section to 2-516.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. The same provision previously existed as MPC section 2-902.

UPC SECTION	2-517
SUBJECT	PENALTY CLAUSE FOR CONTEST
UPC Statute (with Maine amendments shown)	<p>SECTION 2-517. PENALTY CLAUSE FOR CONTEST.</p> <p>A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.</p>
18-A M.R.S.A.	<p>§3-905. Penalty clause for contest</p> <p>A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.</p>
Difference between MPC and UPC	The MPC refers to “any” interested person. The UPC uses “an”
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. The same provision previously existed as MPC section 3-905.

UPC SECTION	None
SUBJECT	2-518 STATUTORY WILLS

<p>UPC Statute (with Maine amendments shown)</p>	<p>None.</p> <p>It is recommended that the Maine statutory will provision, modified as shown below, be adopted, and renumbered from section 2-514 to 2-518.</p>
<p>18-A M.R.S.A. (with amendments shown)</p>	<p>§2-514. Statutory wills</p> <p>(a). Any person may execute a will on the following form and the will shall be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.</p> <p style="text-align: center;">Maine Statutory Will</p> <p>NOTICE TO THE PERSON WHO SIGNS THIS WILL:</p> <p>1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.</p> <p>2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.</p> <p>3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.</p> <p>4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.</p> <p>5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.</p> <p>6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.</p> <p>7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.</p>

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

.....
.....
(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
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_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)
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_____	_____	_____
_____	_____	_____
_____	_____	_____

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS: I make the following cash gift(s) to the named

charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A", "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B", or after each individual distribution in clause "C". If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

Property Disposition Clauses. (select one).

_____ A. I leave all my remaining property to my spouse, if living. If not living, then in equal shares to my children and the descendants of any deceased child.

(signature)

_____ B. I leave the following stated amount to my spouse _____ and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

(signature)

_____ C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____

2.5 UNDISTRIBUTED PROPERTY. If I have any property which, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

_____ (this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST

GUARDIAN _____

_____ (signature)

SECOND

GUARDIAN _____

_____ (signature)

THIRD

GUARDIAN _____

_____ (signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph, 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST

CONSERVATOR _____

_____ (signature)

SECOND

CONSERVATOR _____

_____ (signature)

THIRD

CONSERVATOR _____

_____ (signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL REPRESENTATIVE _____

(signature)

SECOND PERSONAL REPRESENTATIVE _____

(signature)

THIRD PERSONAL REPRESENTATIVE _____

(signature)

I sign my name to this Maine Statutory Will on _____ (date)

at _____ in the State of _____ (city)

Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature _____

Printed name _____

Address _____

Signature _____

Printed name _____

Address _____

[Completing the following section and having all signatures acknowledged by a notary public or other individual authorized to take acknowledgements is optional but if completed will simplify the submission of your will to the probate court after your death.]

I, _____, the testator, on this _____ day of _____, 20____, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older or am a legally emancipated minor, of sound mind, and under no constraint or undue influence.

_ Testator

We, _____ the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as (his)(her) last will and that (he)(she) signed it willingly (or willingly directed another to sign for (him)(her)), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older or is a legally emancipated minor, of sound mind and under no constraint or undue influence.

_ Witness

_ Witness

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____ the testator and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____

(Signed) _____

_ (Official capacity of officer)

(b). Forms for executing a statutory will shall be provided at all Probate Courts for a cost equivalent to the reasonable cost of printing and storing the forms. [The statutory will form shall also be made available via the Internet by the Probate Courts for free printing by](#)

	<p>anyone choosing to use the form. A statutory will shall be deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will shall not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature shall only invalidate the part not signed, except as specifically provided in paragraph 2.4.</p>
Difference between MPC and UPC	<p>There is no statutory will provision in the UPC. The statutory will was added to the MPC in 1983.</p>
Recommendation	<p>The UPC has no statutory will provision.</p> <p>Revise the existing Maine statutory will form to add an optional self-proving provision, and direct that the statutory will form be made available on-line.</p> <p>The statutory wills section is currently section 2-514. The new section 2-514, under the UPC as recommended for adoption in Maine, is Contracts Concerning Succession. It is therefore recommended that the statutory wills section to renumbered as section 2-518.</p>
Maine Probate Code Proposed Comments	<p>The statutory will form is revised to add an optional self-proving provision. The statutory will provision previously existed as MPC section 2-514.</p>

UPC SECTION	2-601
SUBJECT	SCOPE
UPC Statute (with Maine amendments shown)	In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.
18-A M.R.S.A.	§2-603. Rules of construction and intention The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.
Difference between MPC and UPC	The revision permits the admission of evidence extrinsic to the will as well as the content of the will itself for the purpose of rebutting the rules of construction and establishing the testator's intent. Under the current MPC, only the content of the will itself is admissible to rebut the rules of construction.
Recommendation	To adopt the UPC despite concerns that permitting extrinsic evidence, outside the four corners of the will itself, to rebut the statutory rules of construction, may prompt increased opportunities for litigation over testamentary dispositions.
Maine Probate Code Proposed Comment	The new language of Section 2-601 reflects the broad theme of the new UPC to discern the intent of the testator and a willingness to look outside the four corners of the will itself to determine an intent that would rebut the statutory rules of construction.

UPC SECTION	2-602
SUBJECT	WILL MAY PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY
UPC Statute (with Maine amendments shown)	A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.
18-A M.R.S.A.	<p>§2-604. Construction that will passes all property; after-acquired property</p> <p>A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will. A devise of property conveys all the estate of a devisor unless it appears by his will that he intended to convey a lesser estate.</p>
Difference between MPC and UPC	The revision clarifies that property acquired by the decedent's estate passes pursuant to the terms of the will's residuary clause.
Recommendation	To adopt the UPC and include a Maine Comment clarifying that dropping the second sentence of the existing MPC section 2-604 is not intended by create any inference that Maine is changing a long-standing presumption that a devise passes the testator's full interest in the property. The second sentence of the existing MPC section 2-604 seems to be unnecessary.
Maine Probate Code Proposed Comment	The removal of the second sentence ("A devise of property conveys all the estate of a devisor unless it appears by his will that he intended to convey a lesser estate.") from MPC section 2-604 is not intended to create an inference that Maine is changing a long-standing presumption that a devise passes the testator's full interest in the property.

UPC SECTION	2-603
SUBJECT	ANTILAPSE; DECEASED DEVISEE; CLASS GIFTS

UPC Statute (with Maine amendments shown)	<p>(a) Definitions. In this section:</p> <p>(1) “Alternative devise” means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.</p> <p>(2) “Class member” includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he [or she] survived the testator.</p> <p>(3) “Descendant of a grandparent”, as used in subsection (b), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the (i) rules of construction applicable to a class gift created in the testator’s will if the devise or exercise of the power is in the form of a class gift or (ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.</p> <p>(4) “Descendants”, as used in the phrase “surviving descendants” of a deceased devisee or class member in subsections (b)(1) and (2), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator’s will.</p> <p>(5) “Devise” includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.</p> <p>(6) “Devisee” includes (i) a class member if the devise is in the form of a class gift, (ii) an individual or class member who was deceased at the time the testator executed his [or her] will as well as an individual or class member who was then living but who failed to survive the testator, and (iii) an appointee under a power of appointment exercised by the testator’s will.</p> <p>(7) “Stepchild” means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator or donor.</p> <p>(8) “Surviving”, in the phrase “surviving devisees” or “surviving descendants”, means devisees or descendants who neither predeceased the testator nor are deemed to have predeceased the testator under Section 2-702.</p>
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(9) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(b) ~~{Substitute Gift.}~~ If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(1) Except as provided in paragraph (4), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take per capita at each generation by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(2) Except as provided in paragraph (4), if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he [or she] would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(3) For the purposes of Section 2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are ~~not~~, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(4) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative devise if:

(A) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(B) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(5) Unless the language creating a power of appointment expressly excludes the substitution of the descendants

	<p>of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.</p> <p>(c) {More Than One Substitute Gift; Which One Takes.}If, under subsection (b), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:</p> <p>(1) Except as provided in paragraph (2), the devised property passes under the primary substitute gift.</p> <p>(2) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.</p> <p>(3) In this subsection:</p> <p>(A) “Primary devise” means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.</p> <p>(B) “Primary substitute gift” means the substitute gift created with respect to the primary devise.</p> <p>(C) “Younger-generation devise” means a devise that (i) is to a descendant of a devisee of the primary devise, (ii) is an alternative devise with respect to the primary devise, (iii) is a devise for which a substitute gift is created, and (iv) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.</p> <p>(D) “Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation devise.</p>
<p>18-A M.R.S.A.</p>	<p>§2-605. Anti-lapse; deceased devisee; class gifts</p> <p>If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee, and if they are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by per capita at each generation as provided in section 2-106. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.</p>
<p>Difference between MPC and UPC</p>	<p>The revision is a comprehensive antilapse statute that resolves a variety of interpretive questions that have arisen under standard antilapse statutes, including the language of Maine’s existing</p>

	<p>antilapse statute, which was part of the pre-1990 UPC. The UPC anti-lapse protection extends to the testator’s own stepchildren. This is new. Under current Maine law, antilapse protection does not apply to a devise to the testator’s stepchildren.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>To adopt the UPC with two changes:</p> <ol style="list-style-type: none"> 1. In various sections, including 2-603, the UPC refers to a distribution pattern of “by representation.” Under the UPC’s new section 2-709 “by representation” is synonymous with “per capita at each generation”, which is inconsistent with the custom and practice of using “by representation” as synonymous with ‘per stirpes.’ “Per capita at each generation” has been the default distribution pattern under the MPC since its adoption in 1979. To avoid unintended distributions of property under documents that use the phrase “by representation”, when the drafting intent was for a “per stirpes” distribution pattern, in all places where the UPC uses the phrase “by representation”, the phrase should be changed to “per capita at each generation.” UPC section 2-709 should be changed to define “by representation” to be synonymous with “per stirpes” rather than synonymous with “per capita at each generation”. Therefore, in paragraphs (b)(1) and (b)(2) of section 2-603 the references to “by representation” are changed to “per capita at each generation”. 2. Paragraph (b)(3) of the UPC creates a rebuttable presumption that using words of survivorship, such as in a devise to an individual “if he survives me,” or in a devise to “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. The presumption is being reversed in the MPC so that words of survivorship will be presumed to be evidence of the testator’s intent to not have the anti-lapse provisions apply.
<p>Maine Probate Code Proposed Comment</p>	<p>The phrase “by representation” in the UPC has been changed to “per capita at each generation” in the MPC. The phrase “by representation” is synonymous with “per stirpes”. See section 2-709. Maine has long considered inheritance by right of representation to be synonymous with inheritance per stirpes. <i>Fiduciary Trust Co. v. Hope Wheeler Brown</i>, 131 A.2d 191 (Me. 1957).</p> <p>Maine has reversed the presumption of paragraph (b)(3) of the UPC, which created a rebuttable presumption that using words of survivorship, such as a devise to an individual “if he survives me,”</p>

	<p>or in a devise to “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. Under the MPC words of survivorship will create a rebuttable presumption of the testator’s intent to not have the anti-lapse provisions apply. For example, in a devise to “my surviving children,” if the testator had three children, X, Y and Z, and child X predeceased the testator leaving GC1 and GC2, the devise will be distributed in equal shares to Y and Z, with no distribution to GC1 and GC2.</p>
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UPC SECTION	2-604
SUBJECT	FAILURE OF TESTAMENTARY PROVISION
UPC Statute (with Maine amendments shown)	<p>(a) Except as provided in Section 2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.</p> <p>(b) Except as provided in Section 2-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.</p>
18-A M.R.S.A.	<p>§2-606. Failure of testamentary provision</p> <p>(a). Except as provided in section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.</p> <p>(b). Except as provided in section 2-605 if the residue is devised to 2 or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.</p>
Difference between MPC and UPC	There is no substantive change between the existing MPC and the provisions of the new UPC. Any differences are purely in syntax.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-605
SUBJECT	Increase in Securities; accessions
UPC Statute (with Maine amendments shown)	<p>(a) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:</p> <p>(1) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;</p> <p>(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or</p> <p>(3) securities of the same organization acquired as a result of a plan of reinvestment.</p> <p>(b) Distributions in cash before death with respect to a described security are not part of the devise.</p>
18-A M.R.S.A.	<p>§2-607. Change in securities; accessions; nonademption</p> <p>(a). If the will provides for a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:</p> <p>(1). As much of the devised securities as is a part of the estate at the time of the testator's death;</p> <p>(2). Any additional or other securities of the same entity owned by the testator that arise from the specifically devised securities by reason of action initiated by the entity excluding any acquired by exercise of purchase options;</p> <p>(3). Securities of another entity owned by the testator that are received in exchange for the specifically devised securities as a result of a merger, consolidation or reorganization or other similar action initiated by the entity; and</p> <p>(4). Any additional securities of the entity owned by the testator that arise from the specifically devised securities as a result of a plan of reinvestment if it is a regulated investment company.</p> <p>(b). Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.</p>
Difference between MPC and UPC	There is no substantive change between the existing MPC and the provisions of the new UPC other than the UPC's removal of the reference to a regulated investment company for reinvestment plans. The changes are primarily intended to clarify the effect of stock splits.
Recommendation	Adopt UPC.

Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.
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UPC SECTION	2-606
SUBJECT	NONADEMPTION OF SPECIFIC DEVICES; UNPAID PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE; SALE BY CONSERVATOR OR AGENT

UPC Statute (with Maine amendments shown)	<p>(a) A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and to:</p> <p>(1) any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property;</p> <p>(2) any amount of a condemnation award for the taking of the property unpaid at death;</p> <p>(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;</p> <p>(4) any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;</p> <p>(5) any real property or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real property or tangible personal property; and</p> <p>(6) if not covered by paragraphs (1) through (5), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.</p> <p>(b) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or a condemnation award, insurance proceeds, or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.</p> <p>(c) The right of a specific devisee under subsection (b) is reduced by any right the devisee has under subsection (a).</p> <p>(d) For the purposes of the references in subsection (b) to a conservator, subsection (b) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication for at least one year.</p> <p>(e) For the purposes of the references in subsection (b) to an agent acting within the authority of a durable power of attorney for</p>
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	<p>an incapacitated principal, (i) “incapacitated principal” means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.</p>
18-A M.R.S.A.	<p>§2-608. Nonademption of specific devises in certain cases; unpaid proceeds of sale, condemnation or insurance; sale by conservator</p> <p>(a). A specific devisee had the right to the remaining specifically devised property and:</p> <ol style="list-style-type: none"> (1). Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property; (2). Any amount of a condemnation award for the taking of the property unpaid at death; (3). Any proceeds unpaid at death on fire or casualty insurance on the property; and (4). Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation. <p>(b). If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).</p>
Difference between MPC and UPC	<p>The primary change from the MPC is the UPC’s addition of subparagraphs (a)(5) and (a)(6) to adopt the “intent” theory of ademption in certain circumstances.</p> <p>Two other substantive changes exist: (i) the addition of reference to an agent acting under a power of attorney under subparagraph (b) (where the MPC and previous version of the UPC merely referenced the acts of a conservator); and (ii) the addition of reference to a mortgage of the property (where the MPC and previous version of the UPC merely referenced a sale of the property) as triggering the devisee’s right to a general pecuniary devise.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	Subparagraphs (a)5 and (a)(6) reflect an adoption of the “intent” theory of ademption in certain circumstances.

UPC SECTION	2-607
SUBJECT	NONEXONERATION

UPC Statute (with Maine amendments shown)	A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.
18-A M.R.S.A.	§2-609. Nonexoneration A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.
Difference between MPC and UPC	None. The sections are identical.
Recommendation	No change required. The UPC is identical to the existing MPC. The section is moved from 2-609 to 2-607.
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law. The same provision previously existed as section 2-609. See section 3-814 empowering the personal representative to pay an encumbrance under some circumstances. The last sentence of that section makes it clear that payment of the encumbrance does not increase the right of the specific devisee. The present section governs the substantive rights of the devisee. The common law rule of exoneration of the specific devise is abolished by this section, and the contrary rule is adopted.

UPC SECTION	2-608
SUBJECT	EXERCISE OF POWER OF APPOINTMENT
UPC Statute (with Maine amendments shown)	In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if (i) the power is a general power exercisable in favor of the powerholder's estate and the creating instrument does not contain an effective gift if the power is not exercised or (ii) the testator's will manifests an intention to include the property subject to the power.
18-A M.R.S.A.	§2-610. Exercise of power of appointment A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.
Difference between MPC and UPC	The UPC makes one notable change to the MPC (that was patterned on the original UPC). If the document creating the power of appointment does not require a specific reference to the power in order for it to be exercised, the general rule remains unchanged in stating that a general residuary clause is not effective to exercise the power unless the testator's will manifests an intention to have the residuary clause include the property subject to the power. The UPC adds one circumstance where a residuary clause will be presumed to include the property subject to the power of appointment - - if "the power is a general power and the creating instrument does not contain a gift if the power is not exercised." The reasoning for the change is detailed in the Uniform Comment: "In well planned estates, a general power of appointment will be accompanied by a gift in default. . . . In poorly planned estates, on the other hand, there may be no gift-in-default clause. In the absence of a gift-in-default clause, it seems better to let the property pass under the donee's will than force it to return to the donor's estate, for the reason that the donor died before the donee died and it seems better to avoid forcing a reopening of the donor's estate."
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	If the document creating a power of appointment does not require a specific reference to the power in order for it to be exercised, the general rule remains unchanged in stating that a general residuary clause is not effective to exercise the power unless the testator's will manifests an intention to have the residuary clause include the property subject to the power. This section adds one circumstance where a residuary clause will be presumed to include the property subject to the power of appointment - - if "the power is a general

	power and the creating instrument does not contain a gift if the power is not exercised.”
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UPC SECTION	2-609
SUBJECT	ADEMPION BY SATISFACTION
UPC Statute (with Maine amendments shown)	<p>(a) Property a testator gave in his for her lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.</p> <p>(b) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.</p> <p>(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.</p>
18-A M.R.S.A.	<p>§2-612. Ademption by satisfaction Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.</p>
Difference between MPC and UPC	<p>The new section 2-609 differs from the existing MPC section 2-612 by deleting the requirement that the gift in satisfaction of a devise be made to the devisee. The purpose is to allow the testator to satisfy a devise to A by making a gift to B.</p> <p>The new section also specifies what wasn't stated under MPC section 2-612 - that if a devisee to whom a gift in satisfaction is made predeceases the testator, and his or her descendants take under Section 2-603 or 2-604, and the devise to the ancestor is reduced by reason of this section, the devise is similarly reduced as to the devisee's descendants.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comment	None

UPC SECTION	2-701
SUBJECT	SCOPE
UPC Statute (with Maine amendments shown)	In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.
18-A M.R.S.A.	§2-603. Rules of construction and intention The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.
Difference between MPC and UPC	The rules of construction in this part apply to governing instruments of any type – not just wills.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The rules of construction in this part apply to governing instruments of any type – not just wills.

UPC SECTION	2-702
SUBJECT	REQUIREMENT OF SURVIVAL BY 120 HOURS.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) [Requirement of Survival by 120 Hours Under Probate Code.] For the purposes of this [code], except as provided in subsection (d), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.</p> <p>(b) [Requirement of Survival by 120 Hours under Governing Instrument.] Except as provided in subsection (d), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event, by 120 hours is deemed to have predeceased the event.</p> <p>(c) [Co-owners With Right of Survivorship; Requirement of Survival by 120 Hours.] Except as provided in subsection (d), if (i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours and (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. For the purposes of this subsection, “co-owners with right of survivorship” includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.</p> <p>(d) [Exceptions.] Survival by 120 hours is not required if:</p> <ol style="list-style-type: none"> (1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case; (2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival of the event or the specified period must be established by clear and convincing evidence; (3) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under Section 2-901(a)(1), (b)(1), or (c)(1) or to become invalid under Section 2-901(a)(2), (b)(2), or (c)(2); but survival must be established by clear and
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convincing evidence; or

(4) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(e) ~~{Protection of Payors and Other Third Parties.}~~

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(2) Written notice of a claimed lack of entitlement under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(f) ~~{Protection of Bona Fide Purchasers; Personal Liability of Recipient.}~~

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or

	<p>benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.</p> <p>(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.</p>
<p>18-A M.R.S.A.</p>	<p>§2-104. Requirement that heir survive decedent for 120 hours Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the State under section 2-105.</p> <p>AND</p> <p>§2-601. Requirement that devisee survive testator by 120 hours A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.</p> <p>AND</p> <p>§2-805. Simultaneous death (a). This section may be cited as the "Uniform Simultaneous Death Act." (b). When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person must be disposed of as if that person were the survivor, except as provided otherwise in this part. (c). Where a testamentary disposition of property depends upon</p>

	<p>the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor.</p> <p>(d). Where there is no sufficient evidence that 2 joint tenants died otherwise than simultaneously, the property so held shall be distributed 1/2 as if one had survived and 1/2 as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.</p> <p>(e). Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived.</p> <p>(f). This section shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date.</p> <p>(g). This section shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said section.</p> <p>(h). This section shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them.</p>
Difference between MPC and UPC	<p>This section imposes the 120-hour requirement of survival with regard to wills as well as any other governing instrument that relates to an individual surviving an event (including the death of another individual). This provision effectively swallows section 2-601, expands its application, and refines the outcome under the statute by incorporating exceptions. The section would supersede the Uniform Simultaneous Death Act found in Section 2-805. Assuming this expanded Section 2-702 and Section 2-104 are both adopted, Section 2-805 (the Uniform Simultaneous Death Act) of the existing Maine Probate Code should be repealed.</p>
Recommendation	<p>Adopt the UPC with the changes shown and repeal Maine Probate Code section 2-805 (the Uniform Simultaneous Death Act).</p>
Maine Probate Code Proposed Comments	<p>This section includes what was formerly the Uniform Simultaneous Death Act in section 2-805.</p>

UPC SECTION	2-703
SUBJECT	CHOICE OF LAW AS TO MEANING AND EFFECT OF GOVERNING INSTRUMENT
UPC Statute (with Maine amendments shown)	The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4, or any other public policy of this state otherwise applicable to the disposition.
18-A M.R.S.A.	§2-602. Choice of law as to meaning and effect of wills The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition.
Difference between MPC and UPC	The scope of this section is expanded to cover all governing instruments, not just wills.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	None

UPC SECTION	2-704
SUBJECT	POWER OF APPOINTMENT; COMPLIANCE WITH SPECIFIC REFERENCE REQUIREMENT
UPC Statute (with Maine amendments shown)	<p>A powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power is sufficient if:</p> <ul style="list-style-type: none"> (1) the powerholder knows of and intends to exercise the power; and (2) the powerholder's manner of attempted exercise does not impair a material purpose of the donor in imposing the requirement.
18-A M.R.S.A.	None
Difference between MPC and UPC	No version of Section 2-704 currently appears in the MPC.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the Maine Probate Code.

UPC SECTION	2-705
SUBJECT	CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION; EXCEPTIONS

UPC Statute (with Maine amendments shown)	<p>(a) {Definitions.} In this section:</p> <p>(1) “Adoptee” has the meaning set forth in Section 2-115.</p> <p>(2) “Child of assisted reproduction” has the meaning set forth in Section 2-120.</p> <p>(3) “Distribution date” means the date when an immediate or postponed class gift takes effect in possession or enjoyment.</p> <p>(4) “Functioned as a parent of the adoptee” has the meaning set forth in Section 2-115, substituting “adoptee” for “child” in that definition.</p> <p>(5) “Functioned as a parent of the child” has the meaning set forth in Section 2-115.</p> <p>(6) “Genetic parent” has the meaning set forth in Section 2-115.</p> <p>(7) “Gestational child” has the meaning set forth in Section 2-121.</p> <p>(8) “Relative” has the meaning set forth in Section 2-115.</p> <p>(b) {Terms of Relationship.} A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under Section 2-701, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.</p> <p>(c) {Relatives by Marriage.} Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage, unless:</p> <p>(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or</p> <p>(2) the language or circumstances otherwise establish that relatives by marriage were intended to be included.</p> <p>(d) {Half Blood Relatives.} Terms of relationship in a</p>
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	<p>governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.</p> <p>(e) {Transferor Not Genetic Parent.}In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of that genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached [18] years of age.</p> <p>(f) {Transferor Not Adoptive Parent.}In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:</p> <ol style="list-style-type: none"> (1) the adoption took place before the adoptee reached [18] years of age; (2) the adoptive parent was the adoptee’s stepparent or foster parent; or (3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age. <p>(g) {Class Closing Rules.}The following rules apply for purposes of the class-closing rules:</p> <ol style="list-style-type: none"> (1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth. (2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent’s death, the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent’s death or born not later than 45 months after the deceased parent’s death. (3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.
<p>18-A M.R.S.A.</p>	<p>§2-611. Construction of generic terms in wills and trust instruments</p> <p>Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in wills and in trust instruments in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or is so recognized by the testator or settlor of the trust.</p> <p>A devise to the issue of a person must be distributed per capita at each generation.</p>

<p>Difference between MPC and UPC</p>	<p>Relying largely on the Restatement (Third) of Property: Wills and Other Donative Transfers, section 2-705 establishes a comprehensive reformulation of rules of construction for class gifts that identify the recipient by reference to a relationship to someone. The section defines treatment for class-gift purposes of an adoptee, a nonmarital child, a child of assisted reproduction, a gestational child, and a relative by marriage – and further defines in what circumstances the class will be deemed to have closed for those individuals.</p> <p>While not necessarily contradictory of existing Maine law, this section constitutes a substantial refinement of the law in this area and is largely dependent upon adoption of the Parent-Child Relationship provisions found in Article II, Part 1, Subpart 2 of the UPC. The current MPC does not contain any counterpart to UPC Sections 2-115 through 2-122. This section should only be adopted in conjunction with the adoption of the provisions of Subpart 2 of the UPC. If sections 2-115 through 2-122 of the UPC are not adopted, then this section 2-705 should not be adopted in isolation.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section establishes a comprehensive reformulation of rules of construction for class gifts that identify the recipient by reference to a relationship to another individual.</p>

UPC SECTION	2-706
SUBJECT	LIFE INSURANCE; RETIREMENT PLAN; ACCOUNT WITH POD DESIGNATION; TRANSFER-ON-DEATH REGISTRATION; DECEASED BENEFICIARY.

UPC Statute (with Maine amendments shown)	<p>(a) [Definitions.] In this section:</p> <p>(1) “Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.</p> <p>(2) “Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes (i) a class member if the beneficiary designation is in the form of a class gift and (ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.</p> <p>(3) “Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.</p> <p>(4) “Class member” includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he [or she] survived the decedent.</p> <p>(5) “Descendant of a grandparent”, as used in subsection (b), means an individual who qualifies as a descendant of a grandparent of the decedent under the (i) rules of construction applicable to a class gift created in the decedent’s beneficiary designation if the beneficiary designation is in the form of a class gift or (ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.</p> <p>(6) “Descendants”, as used in the phrase “surviving descendants” of a deceased beneficiary or class member in subsections (b)(1) and (2), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.</p> <p>(7) “Stepchild” means a child of the decedent’s surviving, deceased, or former spouse, and not of the decedent.</p> <p>(8) “Surviving”, in the phrase “surviving beneficiaries” or “surviving descendants”, means beneficiaries or descendants who neither predeceased the decedent nor are deemed</p>
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to have predeceased the decedent under Section 2-702.

(b) ~~Substitute Gift.~~ If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

(1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per capita at each generation~~by representation~~ the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he [or she] would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation~~by representation~~ the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(3) For the purposes of Section 2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me," or in a beneficiary designation to "my surviving children," are ~~not~~, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary designation if:

(A) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(B) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(c) ~~[More Than One Substitute Gift; Which One Takes.]~~ If, under subsection (b), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the property passes under the primary substitute gift.

(2) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this subsection:

(A) “Primary beneficiary designation” means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(B) “Primary substitute gift” means the substitute gift created with respect to the primary beneficiary designation.

(C) “Younger-generation beneficiary designation” means a beneficiary designation that (i) is to a descendant of a beneficiary of the primary beneficiary designation, (ii) is an alternative beneficiary designation with respect to the primary beneficiary designation, (iii) is a beneficiary designation for which a substitute gift is created, and (iv) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(D) “Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation beneficiary designation.

(d) ~~[Protection of Payors.]~~

(1) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(2) The written notice of the claim must be mailed to the payor’s main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the

	<p>court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.</p> <p>(e) {Protection of Bona Fide Purchasers; Personal Liability of Recipient.}</p> <p>(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.</p> <p>(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.</p>
<p>18-A M.R.S.A.</p>	<p>§2-605. Anti-lapse; deceased devisee; class gifts If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee, and if they are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by per capita at each generation as provided in section 2-106. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.</p>
<p>Difference between MPC and UPC</p>	<p>This section parallels section 2-603 and extends that comprehensive revision of the antilapse statute into the area of "beneficiary</p>

	<p>designations” as defined in UPC section 1-201. These include any governing instrument that names a beneficiary of: an insurance or annuity policy; an account with a POD designation; a security registered in beneficiary form (TOD); a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.</p> <p>A review of the section 2-603 Uniform Comment is essential to a complete understanding of section 2-706 and the two provisions differ in their structure only in the addition to the latter of the provisions relating to payor protection and personal liability of recipients. As such, the two provisions should be reviewed, adopted, and/or modified in tandem.</p> <p>Like section 2-603, section 2-706 includes stepchildren and extends antilapse protection to them.</p> <p>Finally, it is worth noting that the Uniform Comment to section 2-804 contains a discussion of the reasons why section 2-706 should not be preempted by federal law with respect to retirement plans covered by ERISA.</p>
<p>Recommendation</p>	<p>To adopt the UPC with the changes shown.</p> <ol style="list-style-type: none"> 1. In various sections, including section 2-706, the UPC refers to a distribution pattern of “by representation.” Under the new Section 2-709 “by representation” is synonymous with “per capita at each generation” which is inconsistent with the custom and practice of using “by representation” as synonymous with “per stirpes.” “Per capita at each generation” has been the default distribution pattern under the MPC since the UPC was adopted in 1979. To avoid unintended distributions of property under documents that use the phrase “by representation,” when the intent was for a “per stirpes” distribution pattern, it is recommended that in all places where the UPC uses the phrase “by representation,” the phrase be changed to “per capita at each generation.” UPC section 2-709 should be changed to define “by representation” to be synonymous with “per stirpes” rather than synonymous with “per capita at each generation.” Therefore, in paragraphs (b)(1) and (b)(2) of section 2-706 the references to “by representation” are changed to “per capita at each generation”. 2. Paragraph (b)(3) of the UPC creates a rebuttable presumption that using words of survivorship, such as in a beneficiary designation to an individual “if he survives me,”

	<p>or in a beneficiary designation to “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. The recommendation reverses the presumption so that words of survivorship in Maine will be presumed to be evidence of the testator’s intent to not have the anti-lapse provisions apply.</p> <p>In addition to the definition of “Beneficiary” used in paragraph (a)(2) of this section 2-706, it is also recommended that the definition of “Beneficiary” in UPC section 1-201(3) replace the current definition of “Beneficiary” in MPC section 1-201(2).</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section parallels section 2-603 and extends that comprehensive revision of the antilapse statute into the area of “beneficiary designations” as defined in UPC section 1-201.</p> <p>The phrase “by representation” in the UPC has been changed to “per capita at each generation” in the MPC. The phrase “by representation” is synonymous with “per stirpes”. See section 2-709. Maine has long considered inheritance by right of representation to be synonymous with inheritance per stirpes. <i>Fiduciary Trust Co. v. Hope Wheeler Brown</i>, 131 A.2d 191 (Me. 1957).</p> <p>Maine has reversed the presumption of paragraph (b)(3) of the UPC, which created a rebuttable presumption that using words of survivorship, such as a beneficiary designation to an individual “if he survives me,” or in a beneficiary designation to “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. Under the MPC words of survivorship will create a rebuttable presumption of the testator’s intent to not have the anti-lapse provisions apply. For example, in a devise to “my surviving children,” if the testator had three children, X, Y and Z, and child X predeceased the testator leaving GC1 and GC2, the devise will be distributed in equal shares to Y and Z, with no distribution to GC1 and GC2.</p>

UPC SECTION	2-707
SUBJECT	SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS UNDER TERMS OF TRUST; SUBSTITUTE TAKERS.

UPC Statute (with Maine amendments shown)	<p>(a) {Definitions.} In this section:</p> <p>(1) “Alternative future interest” means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.</p> <p>(2) “Beneficiary” means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.</p> <p>(3) “Class member” includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had he [or she] survived the distribution date.</p> <p>(4) “Descendants”, in the phrase “surviving descendants” of a deceased beneficiary or class member in subsections (b)(1) and (2), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.</p> <p>(5) “Distribution date,” with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.</p> <p>(6) “Future interest” includes an alternative future interest and a future interest in the form of a class gift.</p> <p>(7) “Future interest under the terms of a trust” means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.</p> <p>(8) “Surviving”, in the phrase “surviving beneficiaries” or “surviving descendants”, means beneficiaries or descendants who neither predeceased the distribution date nor are deemed to have predeceased the distribution date under Section 2-702.</p> <p>(b) {Survivorship Required; Substitute Gift.} A future interest under the terms of a trust is contingent on the beneficiary’s</p>
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surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) Except as provided in paragraph (4), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per capita at each generation~~by representation~~ the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(2) Except as provided in paragraph (4), if the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he [or she] would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation~~by representation~~ the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(3) For the purposes of Section 2-701, words of survivorship attached to a future interest are ~~not~~, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(4) If the governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative future interest if:

(A) the alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(B) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or

enjoyment.

(c) ~~[More Than One Substitute Gift; Which One Takes.]~~ If, under subsection (b), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the property passes under the primary substitute gift.

(2) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this subsection:

(A) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(B) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(C) "Younger-generation future interest" means a future interest that (i) is to a descendant of a beneficiary of the primary future interest, (ii) is an alternative future interest with respect to the primary future interest, (iii) is a future interest for which a substitute gift is created, and (iv) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(D) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(d) ~~[If No Other Takers, Property Passes Under Residuary Clause or to Transferor's Heirs.]~~ Except as provided in subsection (e), if, after the application of subsections (b) and (c), there is no surviving taker, the property passes in the following order:

(1) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(2) if no taker is produced by the application of paragraph (1), the property passes to the transferor's heirs under Section 2-711.

(e) ~~[If No Other Takers and If Future Interest Created by Exercise of Power of Appointment.]~~ If, after the application of subsections (b) and (c), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(1) the property passes under the donor's gift-in-

	<p>default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and</p> <p>(2) if no taker is produced by the application of paragraph (1), the property passes as provided in subsection (d). For purposes of subsection (d), “transferor” means the donor if the power was a nongeneral power and means the donee if the power was a general power.</p>
18-A M.R.S.A.	<p>§2-605. Anti-lapse; deceased devisee; class gifts</p> <p>If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee, and if they are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by per capita at each generation as provided in section 2-106. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.</p>
Difference between MPC and UPC	<p>This section parallels Section 2-603 and extends that comprehensive revision of the antilapse statute into the area of future interests with a goal of preventing disinheritance of a descending line that has one or more members living on the distribution date and preventing a share from passing down a descending line that has died out by the distribution date.</p> <p>The section applies only to future interests under the terms of a trust.</p> <p>A review of the section 2-603 Uniform Comment is essential to a complete understanding of section 2-707 and the two provisions are similar in their structure. As such, the two provisions should be reviewed, adopted, and/or modified in tandem.</p>
Recommendation	<p>To adopt the UPC with the changes shown:</p> <ol style="list-style-type: none"> 1. In various sections, including Section 2-707, the UPC refers to a distribution pattern of “by representation.” Under the new section 2-709 “by representation” is synonymous with “per capita at each generation” which is inconsistent with the custom and practice of using “by representation” as synonymous with ‘per stirpes.’ “Per capita at each generation” has been the default distribution pattern under the MPC since the UPC was adopted in 1979. To avoid unintended distributions of property under documents that use the phrase “by representation,” when the intent was for a “per stirpes” distribution pattern, it is recommended that in all places where the UPC uses the phrase “by

	<p>representation,” the phrase be changed to “per capita at each generation.” UPC section 2-709 should be changed to define “by representation” to be synonymous with “per stirpes” rather than synonymous with “per capita at each generation.” Therefore, in paragraphs (b)(1) and (b)(2) of section 2-707 the references to “by representation” are changed to “per capita at each generation”.</p> <p>3. Paragraph (b)(3) of the UPC creates a rebuttable presumption that using words of survivorship, such as in a beneficiary designation to an individual “if he survives me,” or in a beneficiary designation to “my surviving children,” are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. The recommendation reverses the presumption so that words of survivorship in Maine will be presumed to be evidence of the testator’s intent to not have the anti-lapse provisions apply.</p> <p>In addition to the definition of “Beneficiary” used in paragraph (a)(2) of this section 2-707, it is also recommended that the definition of “Beneficiary” in UPC section 1-201(3) replace the current definition of “Beneficiary” in MPC section 1-201(2).</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section parallels section 2-603 and extends that comprehensive revision of the antilapse statute into the area of future interests under the terms of a trust.</p> <p>The phrase “by representation” in the UPC has been changed to “per capita at each generation” in the MPC. The phrase “by representation” is synonymous with “per stirpes”. See section 2-709.</p> <p>Maine has reversed the presumption of paragraph (b)(3) of the UPC, which created a rebuttable presumption that using words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the anti-lapse provisions. Under the MPC, words of survivorship will create a rebuttable presumption of the testator’s intent to not have the anti-lapse provisions apply.</p>

UPC SECTION	2-708
SUBJECT	CLASS GIFTS TO “DESCENDANTS,” “ISSUE,” OR “HEIRS OF THE BODY”; FORM OF DISTRIBUTION IF NONE SPECIFIED

UPC Statute (with Maine amendments shown)	If a class gift in favor of “descendants,” “issue,” or “heirs of the body” does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.
18-A M.R.S.A.	None
Difference between MPC and UPC	Section 2-708 is a new and has no counterpart in the MPC.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC.

UPC SECTION	2-709
SUBJECT	REPRESENTATION; PER CAPITA AT EACH GENERATION; PER STIRPES

UPC Statute (with Maine amendments shown)	<p>SECTION 2-709. REPRESENTATION; PER CAPITA AT EACH GENERATION; PER STIRPES; REPRESENTATION</p> <p>(a) {Definitions.}In this section:</p> <p>(1) “Deceased child” or “deceased descendant” means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under Section 2-702.</p> <p>(2) “Distribution date,” with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.</p> <p>(3) “Surviving ancestor,” “surviving child,” or “surviving descendant” means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under Section 2-702.</p> <p>(b) {Representation; Per Capita at Each Generation.}If an applicable statute or a governing instrument calls for property to be distributed “by representation” or “per capita at each generation,” the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.</p> <p>(c) {Per Stirpes; Representation.}If a governing instrument calls for property to be distributed “per stirpes;” or “<u>by representation.</u>” the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.</p> <p>(d) {Deceased Descendant With No Surviving Descendant Disregarded.}For the purposes of subsections (b) and (c), an individual who is deceased and left no surviving descendant is</p>
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	disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.
18-A M.R.S.A.	<p>§2-106. Per capita at each generation</p> <p>If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survived the decedent. Each surviving heir in the nearest of degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent.</p>
Difference between MPC and UPC	UPC section 2-709 defines “by representation” to be synonymous with “per capita at each generation.” By custom and usage however, the phrase “by representation” has traditionally and historically been synonymous with the phrase “per stirpes.”
Recommendation	To avoid unintended distributions of property under documents that use the phrase “by representation,” when the intent was for a “per stirpes” distribution pattern, it is recommended that in all places where the UPC uses the phrase “by representation,” the phrase be changed to “per capita at each generation.” UPC section 2-709 is changed to define “by representation” to be synonymous with “per stirpes” rather than synonymous with “per capita at each generation.”
Maine Probate Code Proposed Comments	The phrase “by representation” in Maine is synonymous with “per stirpes.”

UPC SECTION	2-710
SUBJECT	WORTHIER-TITLE DOCTRINE ABOLISHED
UPC Statute (with Maine amendments shown)	The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.
18-A M.R.S.A.	None
Difference between MPC and UPC	UPC section 2-710 is new and has no counterpart in the MPC. The provision abolishes the doctrine of worthier title which arguably still exists in Maine and holds that a grantor cannot create a remainder in his own heirs if the heirs would have taken the same estate by descent. See <u>Randall v. Marble</u> , 69 Me. 310, 313 (1879) (stating that "[a] limitation over to one's heirs is of no effect, for the reason that the estate would descend to the heirs in the case of forfeiture whether there was a limitation or not").
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The doctrine of worthier title, as articulated in <u>Randall v. Marble</u> , 69 Me. 310, 313 (1879), is abolished.

UPC SECTION	2-711
SUBJECT	INTERESTS IN “HEIRS” AND LIKE
UPC Statute (with Maine amendments shown)	If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual’s “heirs,” “heirs at law,” “next of kin,” “relatives,” or “family,” or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual’s intestate estate under the intestate succession law of the designated individual’s domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual’s surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.
18-A M.R.S.A.	None
Difference between MPC and UPC	Section 2-711 is a new statute and appears to have no counterpart in the MPC. A surviving spouse who is remarried at the time a disposition is to take effect is no longer an heir of her former spouse. To avoid conflict with MPC section 1-201(17)’s definition of “Heirs,” MPC section 1-201(17) should be replaced with the UPC’s definition of “Heirs” as provided in the UPC section 1-201(20).
Recommendation	Adopt UPC. In addition, modify MPC Section 1-201(17) to read as it does in UPC section 1-201(20).
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC.

UPC SECTION	2-801
SUBJECT	RESERVED

UPC Statute (with Maine amendments shown)	§ 2-801. Reserved.
18-A M.R.S.A.	<p>Section 2-801 Renunciation of Property Interests</p> <p>(a) A person, or a person with legal authority to represent an incapacitated or protected person or the estate of a deceased person, to whom an interest in or with respect to property or an interest therein or a power of appointment over such property devolves by whatever means may renounce it in whole or in part by delivering a written renunciation under this section. The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision of similar restriction.</p> <p>(b) A renunciation under this section must be an irrevocable and unqualified refusal by a person to accept an interest in property, and must comply with the following requirements:</p> <ol style="list-style-type: none"> (1) If the property, interest or power has devolved to the person renouncing under a testamentary instrument or by the laws of intestacy, the renunciation must be received by the personal representative, or other fiduciary, of the decedent or deceased donee of a power of appointment, or by the holder of the legal title to the property to which the interest relates, (i) in the case of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of the power, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. A copy of the renunciation may be filed in the Registry of Probate of the court in which proceedings for the administration of the deceased owner or deceased donee of the power have been commenced, or if no administration has been commenced, in the court where such proceedings could be commenced. (2) If the property, interest or power has devolved to the person renouncing under a nontestamentary instrument or contract, the renunciation must be received by the transferor, his legal representative, or the holder of the legal title to the property to which the interest relates (i) in the case of a present interest, not later than 9 months after the effective date of the nontestamentary instrument

or contract, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. If the person entitled to renounce does not have actual knowledge of the existence of his interest, the time limits for receipt of the renunciation shall be extended to not later than 9 months after he has knowledge of the existence of his interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest.

(c) A surviving joint tenant may renounce as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may renounce the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

(d) If real property or an interest therein or a power thereover is renounced, a copy of the renunciation may be recorded in the Registry of Deeds of the county in which the property is located, and the recording or lack of recording shall have the same effect for purposes of the recording act as the recording or lack of recording of other instruments under Title 33, section 201.

(e) A renunciation under this section shall describe the property, interest or power renounced, declare the renunciation and extent thereof, be signed by the person renouncing, and if within the provisions of subsection (b), paragraph (2), declare the date the person renouncing first had actual knowledge of the existence of his interest whenever that date is material under subsection (b), paragraph (2).

(f) The devolution of any property or interest renounced under this section is governed by the following provisions of this subsection:

(1) If the property or interest devolved to the person renouncing under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the person renouncing had predeceased the decedent or, if the person renouncing was

designated to take under a power of appointment exercised by a testamentary instrument, it devolves as if the person renouncing had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced, takes effect as if the person renouncing had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A renunciation relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be.

(2). If the property or interest devolved to the person renouncing under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the person renouncing had died before the effective date of the instrument or contract. Any future interest that takes effect in possession or enjoyment at or after the termination of the renounced estate or interest, takes effect as if the person renouncing had died before the event determining the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A renunciation relates back for all purposes to the effective date of the instrument or the date of the determinative event, as the case may be.

(3). The renunciation or the written waiver of the right to disclaim is binding upon the person renouncing or waiving and upon all persons claiming through or under him.

(g). The right to renounce property or an interest therein or a power of appointment is barred by (1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to renounce, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the renunciation is effected.

(h). This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein or a power of appointment under any other statute.

(i). An interest in property that exists on the effective date of this section as to which the time for renouncing has not expired under this section, may be renounced by compliance with this section.

	(j). Any renunciation which is effective as a "qualified disclaimer" under section 2518(b) of the Internal Revenue Code is effective as a renunciation under this section, notwithstanding any provisions of this section to the contrary.
Difference between MPC and UPC	
Recommendation	Adopt UPC reservation of statute, as Current 18A M.R.S.A. 2-801 will be covered under Proposed 2-1105 et. seq.
Maine Probate Code Proposed Comments	

UPC SECTION	2-802
SUBJECT	EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.</p> <p>(b) For purposes of Parts 1, 2, 3 and 4 of this article, and of Section 3-203, a surviving spouse does not include:</p> <p>(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;</p> <p>(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or</p> <p>(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.</p>
<p>18-A M.R.S.A.</p>	<p>§ 2-802. Effect of divorce, annulment and decree of separation</p> <p>(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.</p> <p>(b) For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:</p> <p>(1) A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;</p> <p>(2) A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd person; or</p>

	(3) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.
Difference between MPC and UPC	The MPC is substantially the same as the UPC. The UPC updates certain language (i.e. “person” is changed to “individual”, “husband” is changed to “man”). In Subsection b2 the word “invalid” has been added in the UPC to modify and clarify the reference to the decree of divorce or annulment.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-803
SUBJECT	EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE, AND BENEFICIARY DESIGNATIONS.

UPC Statute (with Maine amendments shown)	<p>(a) Definitions. In this section:</p> <p>(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.</p> <p>(2) "Governing instrument" means a governing instrument executed by the decedent.</p> <p>(3) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer and whether or not the decedent then had capacity to exercise the power.</p> <p>(b) Forfeiture of Statutory Benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his or her intestate share.</p> <p>(c) Revocation of Benefits Under Governing Instruments. The felonious and intentional killing of the decedent:</p> <p>(1) revokes any revocable (i) disposition or appointment of property made by the decedent to the killer in a governing instrument, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and</p> <p>(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship for as community property with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.</p> <p>(d) Effect of Severance. A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and</p>
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location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(e) Effect of Revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(f) Wrongful Acquisition of Property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from his [or her] wrong.

(g) Felonious and Intentional Killing; How Determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(h) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of a claimed forfeiture or revocation under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed

	<p>or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.</p> <p>(i) Protection of Bona Fide Purchasers; Personal Liability of Recipient.</p> <p>(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.</p> <p>(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.</p>
<p>18-A M.R.S.A.</p>	<p>§2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations</p> <p>(a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.</p> <p>(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the</p>

	<p>decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of coownership with survivorship incidents.</p> <p>(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.</p> <p>(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.</p> <p>(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing a Court may determine by clear and convincing evidence whether the killing was felonious and intentional for purposes of this section.</p> <p>(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC makes substantial revisions to the corresponding section of the MPC. The UPC adds definitions like “governing instrument” (to include wills, trusts, forms of beneficiary designations, etc.); treats the killer as if he disclaimed, as opposed to pre-deceasing the deceased; includes revocation of appointments under powers of appointment; includes revocation of appointments as fiduciaries, such as personal representatives, trustees, agents, etc.; converts joint tenancy into tenancy in common. Under the UPC, when all rights to appeal conviction have been exhausted, the status as killer is conclusively established. The UPC includes a procedure for third parties to make payments under beneficiaries’ designations (and requires written notice of claim to payor, allows payor to make any payments owed to a court with jurisdiction).</p>
<p>Recommendation</p>	<p>Adopt UPC.</p>

Maine Probate Code Proposed Comments	
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UPC SECTION	NONE (MAINE PROPOSED 18A M.R.S.A. § 2-803A)
SUBJECT	EFFECT OF CRIMINAL CONVICTION ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, BENEFICIARY DESIGNATIONS AND OTHER PROPERTY ACQUISITION WHEN RESTITUTION IS OWED TO THE DECEDENT
UPC Statute (with Maine amendments shown)	<p><u>Effect of criminal conviction on intestate succession, wills, joint assets, beneficiary designations and other property acquisition when restitution is owed to the decedent</u></p> <p><u>A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime:]</u></p> <p><u>(a). Any benefits under the decedent's will or under this Article;</u></p> <p><u>(b). Any property owned jointly with the decedent;</u></p> <p><u>(c). Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and</u></p> <p><u>(d). Any benefit from any acquisition of property in which the decedent had an interest.</u></p>
18-A M.R.S.A.	<p>§2-806. Effect of criminal conviction on intestate succession, wills, joint assets, beneficiary designations and other property acquisition when restitution is owed to the decedent</p> <p>A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime:]</p> <p>(a). Any benefits under the decedent's will or under this Article;</p> <p>(b). Any property owned jointly with the decedent;</p> <p>(c). Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and</p> <p>(d). Any benefit from any acquisition of property in which the decedent had an interest.</p>
Difference between MPC and UPC	There is no equivalent section in the UPC.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	2-804
SUBJECT	REVOCAION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

UPC Statute (with Maine amendments shown)	<p>(a) Definitions. In this section:</p> <p>(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.</p> <p>(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.</p> <p>(3) "Divorced individual" includes an individual whose marriage has been annulled.</p> <p>(4) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse.</p> <p>(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.</p> <p>(6) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.</p> <p>(b) Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:</p> <p>(1) revokes any revocable</p> <p>(A) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,</p>
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	<p>(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and</p> <p>(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and</p> <p>(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship for as community property with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.</p> <p>(c) Effect of Severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.</p> <p>(d) Effect of Revocation. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.</p> <p>(e) Revival if Divorce Nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.</p> <p>(f) No Revocation for Other Change of Circumstances. No change of circumstances other than as described in this section and in Section 2-803 effects a revocation.</p> <p>(g) Protection of Payors and Other Third Parties.</p> <p>(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.</p>
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	<p>(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.</p> <p>(h) Protection of Bona Fide Purchasers; Personal Liability of Recipient.</p> <p>(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.</p> <p>(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.</p>
18-A M.R.S.A.	Section § 2-508. Revocation by divorce; no revocation by other

	<p>changes of circumstances</p> <p>If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802, subsection (b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.</p>
Difference between MPC and UPC	The UPC expands the scope of current Section 2-508 (similar to the changes made by new UPC Section 2-803 - Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance and Beneficiary Designations), and it ties into and is consistent with Section 2-802 (Effect of Divorce, Annulment and Decree of Separation on the status of a surviving spouse).
Recommendation	Adopt the UPC with the change shown.
Maine Probate Code Proposed Comments	

UPC SECTION	§ 2-805
SUBJECT	REFORMATION TO CORRECT MISTAKES.
UPC Statute (with Maine amendments shown)	The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether expression or inducement.
18-A M.R.S.A.	None.
Difference between MPC and UPC	There is no existing statute in the Maine Probate Code that allows for this type of reformation of donative documents. Section 2-603 of the Maine Probate Code, provides: "The intention of a testator as expressed in his will controls the legal effect of his dispositions." This would be a new provision in the Maine Probate Code, which would break away from current authority that mandates strict compliance with the statutory formalities. Although there is no such provision in the Maine Probate Code, there is a similar provision in the Maine Trust Code. 18B M.R.S.A. 415 provides: "The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement."
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This Section is new, with no previous counterpart in the MPC. This Section constitutes a substantial change to Maine law, but provides consistency between the Maine Trust Code (18B M.R.S.A. §415) and Maine laws that govern wills.

UPC SECTION	§ 2-806
SUBJECT	MODIFICATION TO ACHIEVE TRANSFEROR'S TAX OBJECTIVES
UPC Statute (with Maine amendments shown)	To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.
18-A M.R.S.A.	None.
Difference between MPC and UPC	
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC, but it provides consistency between the Maine Trust Code (18B M.R.S.A. §416) and Maine laws that govern wills.

UPC SECTION	NONE (CURRENTLY MPC 18A M.R.S.A. 2-807)
SUBJECT	ACTIONS FOR WRONGFUL DEATH

UPC Statute (with Maine amendments shown)	<p>[There is no UPC Section, The following reflects changes to the current Maine Wrongful Death statute]</p> <p>(a) Whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued shall be liable for damages as provided in this section, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.</p> <p><i>B) Every wrongful death action must be brought by and in the name of the personal representative <u>or special administrator</u> of the deceased person, <u>and shall be distributable, after payment for funeral expenses and the costs of recovery including attorney fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided below.</u> The amount recovered in every wrongful death action, except as <u>specifically provided below, is for the exclusive benefit of the surviving spouse if no minor children, of the children if no surviving spouse, one half for the exclusive benefit of the surviving spouse and one half for the exclusive benefit of the minor children to be divided equally among them if there are both surviving spouse and minor children and to the deceased's heirs to be distributed to the individuals and in the proportions as provided in 18A M.R.S.A. §2-102 and §2-103 if there is neither surviving spouse nor minor children.</u> The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death, <u>Damages are payable to the estate of the deceased person only if the jury specifically makes an award and in addition shall give such damages that will compensate the estate of the deceased person for payable to the estate for</u> reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses; <u>or if in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same.</u> In addition, the jury may give damages not exceeding \$500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$250,000. An action under</i></p>
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	<p>this section must be commenced within 2 years after the decedent's death. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.</p> <p>(c). Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death shall, in addition to the action at common law and damages recoverable therein, be liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection (b), separately found, but in such cases there shall be only one recovery for the same injury.</p> <p>(d). Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118, shall be limited as provided in those sections.</p>
<p>18-A M.R.S.A.</p>	<p>Section 2-804 Actions for Wrongful Death</p> <p>A) Whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued shall be liable for damages as provided in this section, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.</p> <p>B) Every wrongful death action must be brought by and in the name of the personal representative of the deceased person. The amount recovered in every wrongful death action, except as otherwise provided, is for the exclusive benefit of the surviving spouse if no minor children, of the children if no surviving spouse, one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive benefit of the minor children to be divided equally among them if there are both surviving spouse and minor children and to the deceased's heirs to be distributed as provided in section 2-106 if there is neither surviving spouse nor minor children. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death and in addition shall give such damages that will</p>

	<p>compensate the estate of the deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses. In addition, the jury may give damages not exceeding \$ 500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$250,000. An action under this section must be commenced within 2 years after the decedent's death. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.</p> <p>C) Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death shall, in addition to the action at common law and damages recoverable therein, be liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection (b), separately found, but in such cases there shall be only one recovery for the same injury.</p> <p>D) Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118, shall be limited as provided in those sections.</p>
<p>Difference between MPC and UPC</p>	<p>The Maine Uniform Probate Code does not contain a Wrongful Death statute. In other states, the Wrongful Death Statute is set forth in various sections of Codes, including Probate Code, Civil Procedure and Torts.</p> <p>The language would serve to clarify the ambiguity and provide guidance for the litigating and probate attorneys. After examining the ambiguity, the Committee raised concerns about the specified beneficiaries named under the wrongful death statute. The statute does not consider changes in the family structures that have been extensively discussed and considered in the laws of intestate succession. For this reason, the Committee recommends using the beneficiaries designated under the Maine laws of intestacy in the wrongful death statute.</p>
<p>Recommendation</p>	<p>Retain Maine Wrongful Death Statute with the changes shown.</p>
<p>Maine Probate Code</p>	<p>The language does not constitute a substantive change to Maine law</p>

Proposed Comments	on wrongful death claims. It does, however, affect the procedures for distribution of the proceeds from wrongful death claims, and ties the beneficiaries to those named in the Maine intestacy statutes.
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UPC SECTION	UPC 2-901 / To be: 33 M.R.S.A. § 101
SUBJECT	STATUTORY RULE AGAINST PERPETUITIES

UPC Statute (with Maine amendments shown)	<p>Section 2-901 33 M.R.S.A. § 101. STATUTORY RULE AGAINST PERPETUITIES.</p> <p>(a) Validity of Nonvested Property Interest. A nonvested property interest is invalid unless:</p> <ol style="list-style-type: none"> (1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or (2) the interest either vests or terminates within 90 years after its creation. <p>(b) Validity of General Power of Appointment Subject to a Condition Precedent. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:</p> <ol style="list-style-type: none"> (1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or (2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation. <p>(c) Validity of Nongeneral or Testamentary Power of Appointment. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:</p> <ol style="list-style-type: none"> (1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or (2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation. <p>(d) Possibility of Post-death Child Disregarded. In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.</p> <p>(e) Effect of Certain "Later-of" Type Language. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives</p>
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	in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.
18-A M.R.S.A.	There is no comparable provision in the MPC..
Difference between MPC and UPC	<p>The Rule Against Perpetuities is addressed in 33 M.R.S. § 101 et seq. Generally speaking, Maine follows the common law rule with “wait-and-see” modification that looks at facts known when the life or lives in being end. 33 M.R.S. § 101; <i>White v. Fleet Bank of Maine</i>, 739 A.2d 373 (Me. 1999).</p> <p>The UPC provides greater certainty and clarity than did the prior Maine statutory Rule. Sections (a)(1), (b)(1) and (c)(1) of the UPC provide that interests that are clearly vested under the common-law Rule Against Perpetuities continue to be valid under the statutory rule and can be declared so at their inception. Paragraphs 2 of sections (a),(b) and (c) establish the wait and see rule, which is that an interest is valid if it does not remain in existence when the permissible 90 year vesting period expires.</p>
Recommendation	Adopt the UPC. but move to Title 33 in Maine law.
Proposed Comment	

UPC SECTION	None. MPC Current 33 M.R.S.A. § 101
SUBJECT	APPLICATION OF RULE
UPC Statute (with Maine amendments shown)	None / Repeal current Maine Statue 33 M.R.S.A. § 101
18A M.R.S.A. / Current 33 M.R.S.A.	<p>33 M.R.S.A. § 101</p> <p>In applying the rule against perpetuities to an interest in real or personal property limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives. In this section an interest which must terminate not later than the death of one or more persons is a “life estate” even though it may terminate at an earlier time.</p>
Difference between MPC and UPC	This provision is not in the UPC, it is only in the MPC.
Recommendation	Repeal current Maine Law 33 M.R.S.A. § 101.
Proposed Comment	

UPC SECTION	2-902; To be: 33 M.R.S.A. § 102
SUBJECT	WHEN NON VESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED

<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-902 § 102. WHEN NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED.</p> <p>(a) Except as provided in subsections (b) and (c) and in Section 2-905(a)<u>105(a)</u>, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.</p> <p>(b) For purposes of {Subpart} 1 of this {part}<u>this chapter</u>, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in Section 2-901<u>101</u>(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. [For purposes of {Subpart} 1 of this {part}, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.]</p> <p>(c) For purposes of {Subpart} 1 of this {part}<u>this chapter</u>, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.</p>
<p>18-A M.R.S.A. /current 33 M.R.S.A.</p>	<p>There is no comparable provision in the MPC, Title 18-A M.R.S.A. or in existing Chapter 5 of Title 33 M.R.S.A.</p>
<p>Difference between MPC and UPC</p>	<p>There is no comparable statutory provision in existing Maine law.</p>
<p>Recommendation</p>	<p>Adopt the UPC, to be codified at 33 M.R.S.A. § 102</p> <p>Also, delete existing Title 33 M.R.S.A. § 102 which provides as follows: “§102. Age may be reduced to 21 If an interest in real or personal property would violate the rule against perpetuities as modified by section 101 because such interest is contingent upon any person attaining or failing to attain an age in excess of 21, the age contingency shall be reduced to 21 as to all persons subject to the same age contingency.” There are only 4 states in the U.S. that have comparable statutes, but none of them have adopted statutes similar to UPC § 2-903, which provides broader authority to reform in order to avoid violation of the Rule. Continuing to include existing 33 M.R.S. §102 in the</p>

	statute is not necessary.
Proposed Comment	
UPC SECTION	NONE. MPC CURRENT 33 M.R.S.A. § 102
SUBJECT	AGE MAY BE REDUCED TO 21

UPC Statute (with Maine amendments shown)	None / Repeal current Maine Statute 33 M.R.S.A. § 102
18-A M.R.S.A. / Current 33 M.R.S.A.	33 M.R.S.A. § 102 AGE MAY BE REDUCED TO 21 If an interest in real or personal property would violate the rule against perpetuities as modified by section 101 because such interest is contingent upon any person attaining or failing to attain an age in excess of 21, the age contingency shall be reduced to 21 as to all persons subject to the same age contingency.
Difference between MPC and UPC	There are only 4 states in the U.S. that have comparable statutes, but none of them have adopted statutes similar to UPC § 2-903, which provides broader authority to reform in order to avoid violation of the Rule. Continuing to include existing 33 M.R.S. § 102 in the statute is not necessary.
Recommendation	Repeal 33 M.R.S.A. § 102
Proposed Comment	

UPC SECTION	UPC 2-903 / TO BE: 33 M.R.S.A. § 103
SUBJECT	REFORMATION
<p>UPC Statute (with Maine amendments shown)</p>	<p>SECTION 2-903 § 103. REFORMATION.</p> <p>Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor’s manifested plan of distribution and is within the 90 years allowed by Section 2-90+101(a)(2), 2-90+101(b)(2), or 2-90+101(c)(2) if:</p> <p>(1) a nonvested property interest or a power of appointment becomes invalid under Section 2-90+101 (statutory rule against perpetuities);</p> <p>(2) a class gift is not but might become invalid under Section 2-90+101 (statutory rule against perpetuities) and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or</p> <p>(3) a nonvested property interest that is not validated by Section 2-90+101(a)(1) can vest but not within 90 years after its creation.</p>
<p>18-A M.R.S./current 33 M.R.S.A.</p>	<p>There is no comparable provision in the MPC, Title 18-A M.R.S. or in existing Chapter 5 of Title 33 M.R.S.</p>
<p>Difference between MPC and UPC</p>	<p>There is no comparable statutory provision in existing Maine law, nor does Maine zealously apply the common-law rule known as the doctrine of infectious invalidity.</p>
<p>Recommendation</p>	<p>Adopt the UPC, to be codified at 33 M.R.S.A. § 103 (new Chapter 5).</p>
<p>Maine Proposed Comment</p>	

UPC SECTION	UPC 2-904 / TO BE: 33 M.R.S.A. § 104
SUBJECT	EXCLUSION FROM STATUTORY RULE AGAINST PERPETUITIES

UPC Statute (with Maine amendments shown)	<p>SECTION 2-904 § 104. EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.</p> <p>Section 2-904101 (statutory rule against perpetuities) does not apply to:</p> <p>(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of</p> <ul style="list-style-type: none"> (A) a premarital or postmarital agreement, (B) a separation or divorce settlement, (C) a spouse's election, (D) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (E) a contract to make or not to revoke a will or trust, (F) a contract to exercise or not to exercise a power of appointment, (G) a transfer in satisfaction of a duty of support, or (H) a reciprocal transfer; <p>(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;</p> <p>(3) a power to appoint a fiduciary;</p> <p>(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;</p> <p>(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;</p> <p>(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property</p>
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	<p><u>interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or</u></p> <p><u>(6) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or</u></p> <p><u>(7) a trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee or other person to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute or common law to sell, mortgage or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest. This subdivision shall apply to all trusts created by will or inter vivos agreement executed or amended on or after September 18, 1999, and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after September 18, 1999.</u></p>
<p>18-A-M.R.S.A. /current 33 M.R.S.A.</p>	<p>§ 101-A. Trusts exempt from rule against perpetuities</p> <p>The rule against perpetuities does not apply to a trust created after the effective date of this section if:</p> <p>1. Declaration in instrument. The instrument creating the trust states that the rule against perpetuities does not apply to the trust; and</p> <p>2. Power to sell, lease or mortgage. The trustee or other person to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute or common law to sell or mortgage property or to lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest in order to be valid under the rule against perpetuities.</p>
<p>Difference between MPC and UPC</p>	<p>The opt out provision contained in subsection 7 is presently found in 33 M.R.S. § 101-A in slightly different form. And, a provision similar, but not identical, to subsection (6) of the UPC, concerning exemption of employee benefit plans from the Rule, is found at 26 M.R.S. § 841.</p>

<p>Recommendation</p>	<p>Adopt the UPC with changes shown to be codified at 33 M.R.S.A. § 104 (new Chapter 5A). Section 2-904(6) of the UPC should be excluded because the substance of its provisions are already found in Title 26. Most states which have a similar exemption for employee benefit trusts include the exemption in the labor statutes, rather than the property statutes.</p>
<p>Maine Probate Code Proposed Comment</p>	

UPC SECTION	UPC 2-905 / TO BE: 33 M.R.S.A. § 105
SUBJECT	APPLICATION

UPC Statute (with Maine amendments shown)	<p>SECTION 2-905 <u>§ 105. PROSPECTIVE APPLICATION.</u></p> <p><u>(a) Nonvested property interest or a power of appointment created prior to effective date of this chapter.</u></p> <p><u>(1) Except as provided in the first sentence of section 106, this chapter shall not be construed to invalidate or modify the terms of any limitation which would have been valid prior to August 20, 1955.</u></p> <p><u>(2) This chapter shall apply only to inter vivos instruments taking effect after August 20, 1955, to wills where the testator dies after August 20, 1955, and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before said August 20th.</u></p> <p><u>(3) Section 104(7) shall apply to all trusts created by will or inter vivos agreement executed or amended on or after September 18, 1999, and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after September 18, 1999.</u></p> <p><u>(b) Nonvested property interest or a power of appointment created on or after effective date of this chapter.</u></p> <p><u>(1) Except as extended by subsection (b2), Subpart 1 of this partchapter applies to a nonvested property interest or a power of appointment that is created on or after the effective date of Subpart 1 of this part chapter. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.</u></p> <p><u>(2) If a nonvested property interest or a power of appointment was created before the effective date of Subpart 1 of this partthis chapter and is determined in a judicial proceeding, commenced on or after the effective date of Subpart 1 of this partthis chapter, to violate this state's rule against perpetuities as that rule existed before the effective date of Subpart 1 of this partthis chapter, a court upon the petition of an interested person</u></p>
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	<p>may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.</p>
<p>18-A M.R.S.A./ current 33 M.R.S.A.</p>	<p>33 M.R.S.A. § 105. Retroactive effect</p> <p>Except as provided in the first sentence of section 103, this chapter shall not be construed to invalidate or modify the terms of any limitation which would have been valid prior to August 20, 1955.</p> <p>33 M.R.S.A. § 106. Instrument affected</p> <p>This chapter shall apply only to inter vivos instruments taking effect after August 20, 1955, to wills where the testator dies after August 20, 1955, and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before said August 20th.</p>
<p>Difference between MPC and UPC</p>	<p>Sections (a)(1) and (a)(2) above are the same as existing sections 105 and 106 of Title 33. And section (a)(3) integrates the provisions of existing section 101-A of Title 33.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown. Incorporate the effective dates in existing sections 101-A, 105 and 106 into this new section (§105). This includes retitling old §103 to new §106 (as outlined below). This also includes titling new § 105 "Application", and replacing the phrase "Subpart 1 of this part" with "this chapter".</p>
<p>Maine Probate Code Proposed Comment</p>	

UPC SECTION	NONE. TO BE: 33 M.R.S.A. § 106
SUBJECT	CONTINGENT INTERESTS
UPC Statute (with Maine amendments shown)	<p><u>33 M.R.S.A. §106. Contingent interests.</u></p> <p><u>A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken shall become a fee simple absolute if the specified contingency does not occur within 30 years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If such contingency occurs within said 30 years the succeeding interest, which may be an interest in a person other than the person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. But if a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect as limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant to the State or any political subdivision thereof.</u></p>
18-A M.R.S.A./current 33 M.R.S.A.	<p>33 M.R.S.A. § 103 Continent interests.</p> <p>A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken shall become a fee simple absolute if the specified contingency does not occur within 30 years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If such contingency occurs within said 30 years the succeeding interest, which may be an interest in a person other than the person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. But if a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect as limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant to the State or any political subdivision thereof.</p>
Difference between MPC and UPC	
Recommendation	Retain Maine law (33 M.R.S. §103) however retitle it Chapter 5-A,

	33 M.R.S. §106.
Maine Probate Code Proposed Comment	The language does not contain a substantive change to Maine law.

UPC SECTION	NONE / TO BE: 33 M.R.S.A. § 107
SUBJECT	APPLICATION OF PROVISIONS

UPC Statute (with Maine amendments shown)	<u>§107. Application of provisions</u> <u>This chapter shall apply to both legal and equitable interests.</u>
18-A M.R.S.A./current 33 M.R.S.A. §104	§ 104. Application of provisions This chapter shall apply to both legal and equitable interests.
Difference between MPC and UPC	
Recommendation	Retain Maine law (33 M.R.S. §104); however retitle it Chapter 33 M.R.S.A. §107.
Maine Probate Code Proposed Comment	

UPC SECTION	2-906 TO BE: 33 M.R.S.A. § 108
SUBJECT	SUPERSESION AND REPEAL

UPC Statute (with Maine amendments shown)	SECTION 2-906. §108. {SUPERSESION,} AND REPEAL. Subpart 1 of this part This chapter {supersedes the rule of the common law known as the rule against perpetuities} and it {repeals and replaces Title 33, Chapter 5{list statutes to be repealed}}.
18-A M.R.S.A./current 33 M.R.S.A.	None
Difference between MPC and UPC	
Recommendation	Adopt UPC.
Maine Proposed Comment	

UPC SECTION	2-907
SUBJECT	HONORARY TRUSTS; TRUSTS FOR PETS.

UPC Statute (with Maine amendments shown)	<p>(a) [Honorary Trust.] Subject to subsection (c), if (i) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for [21] years but no longer, whether or not the terms of the trust contemplate a longer duration.</p> <p>(b) [Trust for Pets.] Subject to this subsection and subsection (c), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.</p> <p>(c) [Additional Provisions Applicable to Honorary Trusts and Trusts for Pets.] In addition to the provisions of subsection (a) or (b), a trust covered by either of those subsections is subject to the following provisions:</p> <p style="padding-left: 40px;">———— (1) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.</p> <p style="padding-left: 40px;">———— (2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:</p> <p style="padding-left: 80px;">———— (A) as directed in the trust instrument;</p> <p style="padding-left: 80px;">———— (B) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and</p> <p style="padding-left: 80px;">———— (C) if no taker is produced by the application of subparagraph (A) or (B), to the transferor's heirs under Section 2-711.</p> <p style="padding-left: 40px;">———— (3) For the purposes of Section 2-707, the residuary clause is treated as creating a future interest under the terms of a trust.</p> <p style="padding-left: 40px;">———— (4) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.</p> <p style="padding-left: 40px;">———— (5) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.</p> <p style="padding-left: 40px;">———— (6) A court may reduce the amount of the property</p>
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	<p>transferred, if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (e)(2).</p> <p>————(7) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.]</p>
18-B M.R.S.A.	<p>Section 408. Trust for care of animal</p> <p>1. To provide care for animal; termination. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.</p> <p>2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.</p> <p>3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor’s successors in interest.</p>
Difference between MPC and UPC	
Recommendation	Retain Maine law, addressed in Section 408 of the Maine Trust Code.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1001
SUBJECT	DEFINITIONS

UPC Statute (with Maine amendments shown)	<p>SECTION 2-1001. DEFINITIONS. In this [part:]</p> <p>(1) “International will” means a will executed in conformity with Sections 2-1002 through 2-1005.</p> <p>(2) “Authorized person” and “person authorized to act in connection with international wills” mean a person who by Section 2-1009, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1002
SUBJECT	INTERNATIONAL WILLS; VALIDITY

UPC Statute (with Maine amendments shown)	<p>(a) A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this [part].</p> <p>(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.</p> <p>(c) This [part] shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1003
SUBJECT	INTERNATIONAL WILLS; REQUIREMENTS

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The will shall be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.</p> <p>(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.</p> <p>(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.</p> <p>(d) When the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator to sign the testator's name for him, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him.</p> <p>(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.</p>
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18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1004
SUBJECT	INTERNATIONAL WILL; OTHER POINTS OF FORM.

UPC Statute (with Maine amendments shown)	<p>(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.</p> <p>(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.</p> <p>(c) The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Section 2-1005.</p> <p>(d) A will executed in compliance with Section 2-1003 shall not be invalid merely because it does not comply with this section.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1005
SUBJECT	INTERNATIONAL WILL; CERTIFICATE

<p>UPC Statute (with Maine amendments shown)</p>	<p>The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this [part] for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:</p> <p style="text-align: center;">CERTIFICATE (Convention of October 26, 1973)</p> <p>1. I, _____ (name, address and capacity), a person authorized to act in connection with international wills</p> <p>2. Certify that on _____ (date) at _____ (place)</p> <p>3. (testator) _____ (name, address, date and place of birth) in my presence and that of the witnesses</p> <p>4. (a) _____ (name, address, date and place of birth)</p> <p>— (b) _____ (name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.</p> <p>5. I furthermore certify that:</p> <p>6. (a) in my presence and in that of the witnesses</p> <p>— (1) the testator has signed the will or has acknowledged his signature previously affixed.</p> <p>— *(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _____</p> <p>— I have mentioned this declaration on the will</p> <p>— *the signature has been affixed by _____</p> <p style="text-align: center;">_____ (name, address)</p> <p>7. (b) the witnesses and I have signed the will;</p> <p>8. *(c) each page of the will has been signed by _____ and numbered;</p> <p>9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;</p> <p>10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;</p> <p>11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:</p> <p>_____</p> <p>_____</p> <p>*To be completed if appropriate</p> <p>12. PLACE</p>
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	13. DATE 14. SIGNATURE and, if necessary, SEAL
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1006
SUBJECT	INTERNATIONAL WILL; EFFECT OF CERTIFICATE

UPC Statute	In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this [part]. The absence or irregularity of a certificate shall not affect the formal validity of a will under this [part].
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1007
SUBJECT	INTERNATIONAL WILLS; REVOCATION
UPC Statute (with Maine amendments shown)	The international will shall be subject to the ordinary rules of revocation of wills.
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1008
SUBJECT	SOURCE AND CONSTRUCTION

UPC Statute (with Maine amendments shown)	Sections 2-1001 through 2-1007 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this [part], regard shall be had to its international origin and to the need for uniformity in its interpretation.
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1009
SUBJECT	PERSONS AUTHORIZED TO ACT IN RELATIONSHIP TO INTERNATIONAL WILL; ELIGIBILITY; RECOGNATION BY AUTHORIZING AGENCY.

UPC Statute (with Maine amendments shown)	Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1010
SUBJECT	INTERNATIONAL WILL INFORMATION REGISTRATION

UPC Statute	<p>The [Secretary of State] shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The [Secretary of State], at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.]</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not address international wills.
Recommendation	Maine has chosen not to adopt 2-1001 <i>et. seq.</i> because the statutes create a false sense that wills complying with the statutes will be effective in all other countries.
Maine Probate Code Proposed Comments	

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UPC SECTION	2-1102
SUBJECT	DEFINITIONS

<p>UPC Statute (With Maine Amendments)</p>	<p>(1) “Disclaimant” means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.</p> <p>(2) “Disclaimed interest” means the interest that would have passed to the disclaimant had the disclaimer not been made.</p> <p>(3) “Disclaimer” means the refusal to accept an interest in or power over property.</p> <p>(4) “Fiduciary” means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.</p> <p>(5) “Jointly held property” means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.</p> <p>(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.</p> <p>(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.</p> <p>(8) “Trust” means:</p> <p>(A) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and</p> <p>(B) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.</p>
<p>18-A M.R.S.A.</p>	<p>Section 2-801 Renunciation of Property Interests</p> <p>(a) A person, or a person with legal authority to represent an incapacitated or protected person or the estate of a deceased person, to whom an interest in or with respect to property or an interest therein or a power of appointment over such property devolves by whatever means may renounce it in whole or in part by delivering a written renunciation under this section. The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision of similar restriction.</p>

(b) A renunciation under this section must be an irrevocable and unqualified refusal by a person to accept an interest in property, and must comply with the following requirements:

(1) If the property, interest or power has devolved to the person renouncing under a testamentary instrument or by the laws of intestacy, the renunciation must be received by the personal representative, or other fiduciary, of the decedent or deceased donee of a power of appointment, or by the holder of the legal title to the property to which the interest relates, (i) in the case of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of the power, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. A copy of the renunciation may be filed in the Registry of Probate of the court in which proceedings for the administration of the deceased owner or deceased donee of the power have been commenced, or if no administration has been commenced, in the court where such proceedings could be commenced.

(2) If the property, interest or power has devolved to the person renouncing under a nontestamentary instrument or contract, the renunciation must be received by the transferor, his legal representative, or the holder of the legal title to the property to which the interest relates (i) in the case of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. If the person entitled to renounce does not have actual knowledge of the existence of his interest, the time limits for receipt of the renunciation shall be extended to not later than 9 months after he has knowledge of the existence of his interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest.

(c) A surviving joint tenant may renounce as a separate interest any property or interest therein devolving to him by right of

survivorship. A surviving joint tenant may renounce the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

(d). If real property or an interest therein or a power thereover is renounced, a copy of the renunciation may be recorded in the Registry of Deeds of the county in which the property is located, and the recording or lack of recording shall have the same effect for purposes of the recording act as the recording or lack of recording of other instruments under Title 33, section 201.

(e). A renunciation under this section shall describe the property, interest or power renounced, declare the renunciation and extent thereof, be signed by the person renouncing, and if within the provisions of subsection (b), paragraph (2), declare the date the person renouncing first had actual knowledge of the existence of his interest whenever that date is material under subsection (b), paragraph (2).

(f). The devolution of any property or interest renounced under this section is governed by the following provisions of this subsection:

(1). If the property or interest devolved to the person renouncing under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the person renouncing had predeceased the decedent or, if the person renouncing was designated to take under a power of appointment exercised by a testamentary instrument, it devolves as if the person renouncing had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced, takes effect as if the person renouncing had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A renunciation relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be.

(2). If the property or interest devolved to the person renouncing under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the person renouncing had died

	<p>before the effective date of the instrument or contract. Any future interest that takes effect in possession or enjoyment at or after the termination of the renounced estate or interest, takes effect as if the person renouncing had died before the event determining the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A renunciation relates back for all purposes to the effective date of the instrument or the date of the determinative event, as the case may be.</p> <p>(3). The renunciation or the written waiver of the right to disclaim is binding upon the person renouncing or waiving and upon all persons claiming through or under him.</p> <p>(g). The right to renounce property or an interest therein or a power of appointment is barred by (1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to renounce, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the renunciation is effected.</p> <p>(h). This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein or a power of appointment under any other statute.</p> <p>(i). An interest in property that exists on the effective date of this section as to which the time for renouncing has not expired under this section, may be renounced by compliance with this section.</p> <p>(j). Any renunciation which is effective as a "qualified disclaimer" under section 2518(b) of the Internal Revenue Code is effective as a renunciation under this section, notwithstanding any provisions of this section to the contrary.</p>
Difference between MPC and UPC	There are no definitions in the MPC.
Recommendations	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-1103
SUBJECT	SCOPE
UPC Statute (With Maine Amendments)	This part applies to disclaimers of any interest in or power over property, whenever created.
18-A M.R.S.A.	None.
Difference between MPC and UPC	
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	2-1104
SUBJECT	PART SUPPLEMENTED BY OTHER LAW.
UPC Statute (With Maine Amendments)	<p>(a) Unless displaced by a provision of this part, the principles of law and equity supplement this part.</p> <p>(b) This part does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this part.</p>
18-A M.R.S.A.	<p>The pertinent section of 2-801 is:</p> <p>(h). This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein or a power of appointment under any other statute.</p>
Difference between MPC and UPC	Sub-Section (a), while somewhat redundant of (b), makes it clear that the principles of both law and equity support the disclaimer statute and notes the possibility that the statute might “displace” such principles.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

UPC SECTION	2-1105
SUBJECT	POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE

UPC Statute (With Maine Amendments)	<p>(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.</p> <p>(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.</p> <p>(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in Section 2-1112. In this subsection:</p> <p style="padding-left: 40px;">(1) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and</p> <p style="padding-left: 40px;">(2) "signed" means, with present intent to authenticate or adopt a record, to;</p> <p style="padding-left: 80px;">(A) execute or adopt a tangible symbol; or</p> <p style="padding-left: 80px;">(B) attach to or logically associate with the record an electronic sound, symbol, or process.</p> <p>(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.</p> <p>(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Section 2-1112 or when it becomes effective as provided in Sections 2-1106 through 2-1111, whichever occurs later.</p> <p>(f) A disclaimer made under this part is not a transfer, assignment, or release.</p>
18-A M.R.S.A.	The pertinent sections of Section 2-801 are:

	<p>(a). A person, or a person with legal authority to represent an incapacitated or protected person or the estate of a deceased person, to whom an interest in or with respect to property or an interest therein or a power of appointment over such property devolves by whatever means may renounce it in whole or in part by delivering a written renunciation under this section. The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision of similar restriction.</p> <p>(e). A renunciation under this section shall describe the property, interest or power renounced, declare the renunciation and extent thereof, be signed by the person renouncing, and if within the provisions of subsection (b), paragraph (2), declare the date the person renouncing first had actual knowledge of the existence of his interest whenever that date is material under subsection (b), paragraph (2).</p> <p>There are no MPC corollaries to UPC subsections (d), (e) and (f).</p>
Difference between MPC and UPC	The UPC (in sub-section (a)) specifies the ability to disclaim a <u>power</u> (including a power of appointment) and (in sub-section (b)) the ability of a fiduciary to disclaim any interest in or power over property. The UPC (sub-section (c)) makes reference to the “delivery” or “filing” of the disclaimer, something absent from the MPC. The UPC also states the various ways a partial disclaimer may be expressed (d), specifies the point at which a disclaimer becomes irrevocable (e), and differentiates a disclaimer from a “transfer, assignment, or release” (f).
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section removes ambiguity under previous Maine law regarding delivery.

UPC SECTION	2-1106
SUBJECT	DISCLAIMER OF INTEREST IN PROPERTY.

UPC Statute (With Maine Amendments)	<p>(a) In this section:</p> <p>(1) “Future interest” means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.</p> <p>(2) “Time of Distribution” means the time when a disclaimed interest would have taken effect in possession or enjoyment.</p> <p>(b) Except for a disclaimer governed by Section 2-1107 or 2-1108, the following rules apply to a disclaimer of an interest in property:</p> <p>(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate’s death.</p> <p>(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.</p> <p>(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:</p> <p>(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.</p> <p>(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.</p> <p>(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.</p> <p>(D) If the disclaimed interest would pass to the disclaimant’s estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor’s intestate estate under the intestate succession law of the transferor’s domicile had the transferor died at the time of distribution. However, if the</p>
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	<p>transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.</p> <p>(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.</p>
<p>18-A M.R.S.A.</p>	<p>The pertinent provisions of Section 2-801 are:</p> <p>(f). The devolution of any property or interest renounced under this section is governed by the following provisions of this subsection:</p> <p>(1). If the property or interest devolved to the person renouncing under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the person renouncing had predeceased the decedent or, if the person renouncing was designated to take under a power of appointment exercised by a testamentary instrument, it devolves as if the person renouncing had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced, takes effect as if the person renouncing had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A renunciation relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be.</p> <p>(2). If the property or interest devolved to the person renouncing under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the person renouncing had died before the effective date of the instrument or contract. Any future interest that takes effect in possession or enjoyment at or after the termination of the renounced estate or interest, takes effect as if the person renouncing had died before the event determining the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A renunciation relates back for all purposes to the effective date of the instrument or the date of the determinative event, as the case may be.</p>

	(3). The renunciation or the written waiver of the right to disclaim is binding upon the person renouncing or waiving and upon all persons claiming through or under him.
Difference between MPC and UPC	<p>The essence of the existing MPC provision is to state that the effect of a disclaimer, barring the statement of an alternative disposition in the relevant instrument, is that the disclaimed property passes as though the disclaimant predeceased the decedent, predeceased the donee of a power of appointment, died before the effective date of the relevant contract or instrument, or, in the case of a future interest, as though the disclaimant died before the event that determined the property interest had vested, all as the case may be.</p> <p>The proposed UPC provision adds detail, much of it consistent with the MPC, but which which serves to: (i) describe when the disclaimer “takes effect” rather than stating that it “relates back,” (ii) state specifically that a property owner can direct what happens to property if disclaimed (where the MPC assumed that was the case), (iii) add a statement regarding the disposition of property if the disclaimant is not an individual, and add a provision to ensure under some circumstances that disclaimed property does not end up back in the disclaimant’s estate (thereby defeating any attempt to avoid estate taxes).</p>
Recommendations	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law, but removes existing ambiguities and adds clarity and direction.

UPC SECTION	2-1107
SUBJECT	DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.
UPC Statute (With Maine Amendments)	<p>(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:</p> <p>(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or</p> <p>(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.</p> <p>(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.</p> <p>(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.</p>
18-A M.R.S.A.	<p>The pertinent provision of Section 2-801 is:</p> <p>(c). A surviving joint tenant may renounce as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may renounce the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.</p>
Difference between MPC and UPC	Existing MPC is ambiguous. The first sentence is probably intended to allow a disclaimer of any part of joint tenancy property which disclaimant did not contribute. The UPC changes the focus from “creating” the joint tenancy to the “contribution” of property by the disclaimant. The UPC also allows disclaimer of a fractional interest even if disclaimant contributed all the property to the joint tenancy. The UPC also adds detail regarding when a disclaimer of joint tenancy property takes effect and how the disclaimed interest devolves.
Recommendations	Adopt UPC
Maine Probate Code Proposed Comments	This section removes ambiguity under previous Maine law and adds clarity.

UPC SECTION	2-1108
SUBJECT	DISCLAIMER OF INTEREST BY TRUSTEE
UPC Statute (With Maine Amendments)	If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.
18-A M.R.S.A.	None
Difference between MPC and UPC	There is no MPC corollary.
Recommendation	Adopt the UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-1109
SUBJECT	DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.
UPC Statute (With Maine Amendments shown)	<p>If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:</p> <p>(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.</p> <p>(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.</p> <p>(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	There is no MPC corollary
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-1110
SUBJECT	DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.
UPC Statute (With Maine Amendments shown)	(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable. (b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.
18-A M.R.S.A.	None
Difference between MPC and UPC	There is no MPC corollary.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-1111
SUBJECT	DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.
UPC Statute (With Maine Amendments shown)	<p>(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.</p> <p>(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.</p> <p>(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	There is no MPC corollary
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC.

UPC SECTION	2-1112
SUBJECT	DELIVERY OR FILING.

<p>UPC Statute (With Maine Amendments shown)</p>	<p>(a) In this section, “beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of:</p> <ol style="list-style-type: none"> (1) an annuity or insurance policy; (2) an account with a designation for payment ; (3) a security registered in beneficiary form; (4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or (5) any other nonprobate transfer at death <p>(b) Subject to subsections (c) through (l), delivery of a disclaimer may be affected by personal delivery, first-class mail, or any other method likely to result in its receipt.</p> <p>(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:</p> <ol style="list-style-type: none"> (1) a disclaimer must be delivered to the personal representative of the decedent’s estate, <u>or the special administrator of the decedent’s estate;</u> or (2) if no personal representative is then serving, it must be filed with <u>the Probate Court</u> court having jurisdiction to appoint the personal representative. <p>(d) In the case of an interest in a testamentary trust:</p> <ol style="list-style-type: none"> (1) a disclaimer must be delivered to the trustee serving, or if no trustee is then serving, to the personal representative of the decedent’s estate; or (2) if no <u>trustee or</u> personal representative is then serving, it must be filed with the <u>Probate Court</u> having jurisdiction to enforce the trust. <p>(e) In the case of an interest in an inter vivos trust:</p> <ol style="list-style-type: none"> (1) a disclaimer must be delivered to the trustee then serving; (2) if no trustee is then serving, it must be filed with <u>the Probate Court</u> having jurisdiction to enforce the trust; or (3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest. <p>(f) In the case of an interest created by a beneficiary designation which is disclaimed before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation. In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:</p> <ol style="list-style-type: none"> (1) the disclaimer of an interest in personal property must be
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	<p>delivered to the person obligated to distribute the interest; and</p> <p>(2) the disclaimer of an interest in real property must be recorded in the office of the county recorder of deeds of the county where the real property that is the subject of the disclaimer is located.</p> <p>(g) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.</p> <p>(h) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:</p> <p>(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or</p> <p>(2) if no fiduciary is then serving, it must be filed with the Probate Court having authority to appoint the fiduciary.</p> <p>(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:</p> <p>(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or</p> <p>(2) if no fiduciary is then serving, it must be filed with the Probate Court having authority to appoint the fiduciary</p> <p>(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.</p> <p>(k) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.</p>
<p>18-A M.R.S.A.</p>	<p>The pertinent provisions of 18A M.R.S.A. Section 2-801 are:</p> <p>(b). A renunciation under this section must be an irrevocable and unqualified refusal by a person to accept an interest in property, and must comply with the following requirements:</p> <p>(1). If the property, interest or power has devolved to the person renouncing under a testamentary instrument or by the laws of intestacy, the renunciation must be received by the personal representative, or other fiduciary, of the decedent or deceased donee of a power of appointment, or by the holder of the legal title to the property to which the interest relates, (i) in the case of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of the power, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is</p>

	<p>indefeasibly vested. A copy of the renunciation may be filed in the Registry of Probate of the court in which proceedings for the administration of the deceased owner or deceased donee of the power have been commenced, or if no administration has been commenced, in the court where such proceedings could be commenced.</p> <p>(2). If the property, interest or power has devolved to the person renouncing under a nontestamentary instrument or contract, the renunciation must be received by the transferor, his legal representative, or the holder of the legal title to the property to which the interest relates (i) in the case of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. If the person entitled to renounce does not have actual knowledge of the existence of his interest, the time limits for receipt of the renunciation shall be extended to not later than 9 months after he has knowledge of the existence of his interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest.</p>
Difference between MPC and UPC	The UPC sets out a very detailed protocol for delivery of notice of the disclaimer and, in conjunction with UPC §2-1105, for determining when a disclaimer is irrevocable. The UPC does not set out a time limit for the effectiveness of a disclaimer.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The section no longer contains a 9 month time limit on disclaimers.

UPC SECTION	2-1113
SUBJECT	WHEN DISCLAIMER BARRED OR LIMITED.
UPC Statute (With Maine Amendments shown)	<p>(a) A disclaimer is barred by a written waiver of the right to disclaim.</p> <p>(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:</p> <ol style="list-style-type: none"> (1) the disclaimant accepts the interest sought to be disclaimed; (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or (3) a judicial sale of the interest sought to be disclaimed occurs. <p>(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.</p> <p>(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.</p> <p>(e) A disclaimer is barred or limited if so provided by law other than this part.</p> <p>(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this part had the disclaimer not been barred.</p>
18-A M.R.S.A.	<p>The pertinent provisions of Section 2-801 is:</p> <p>(g). The right to renounce property or an interest therein or a power of appointment is barred by (1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to renounce, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the renunciation is effected.</p>
Difference between MPC and UPC	<p>The four matters that bar an effective disclaimer under the MPC are essentially re-stated in the UPC. Subsections (c), (d) and (e) provide clarification regarding the ability to disclaim the future exercise of a power and the possibility that there may be other laws that render a disclaimer ineffective. Notably, the UPC also specifies that the result of an ineffective disclaimer is that the property interest is transferred to the persons who would have received it had the</p>

	disclaimer been effective.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	2-1114
SUBJECT	TAX QUALIFIED DISCLAIMER.

UPC Statute (With Maine Amendments shown)	Notwithstanding any other provision of this part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this part.
18-A M.R.S.A.	The pertinent provision of Section 2-801 is: (j). Any renunciation which is effective as a "qualified disclaimer" under section 2518(b) of the Internal Revenue Code is effective as a renunciation under this section, notwithstanding any provisions of this section to the contrary.
Difference between MPC and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

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UPC SECTION	2-1115
SUBJECT	RECORDING OF DISCLAIMER.
UPC Statute (With Maine Amendments shown)	If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Section 2-1112(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.
18-A M.R.S.A.	The pertinent provision of Section 2-801 is: (d). If real property or an interest therein or a power thereover is renounced, a copy of the renunciation may be recorded in the Registry of Deeds of the county in which the property is located, and the recording or lack of recording shall have the same effect for purposes of the recording act as the recording or lack of recording of other instruments under Title 33, section 201.
Difference between MPC and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-1116
SUBJECT	SECTION 2-1116. APPLICATION TO EXISTING RELATIONSHIPS.

UPC Statute (With Maine Amendments shown)	Except as otherwise provided in Section 2-1113, an interest in or power over property existing on the effective date of this part as to which the time for delivering or filing a disclaimer under law superseded by this part has not expired may be disclaimed after the effective date of this part.
18-A M.R.S.A.	The pertinent provision of Section 2-801 is: (i). An interest in property that exists on the effective date of this section as to which the time for renouncing has not expired under this section, may be renounced by compliance with this section.
Difference between MPC and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	2-1117
SUBJECT	RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

UPC Statute (With Maine amendments shown)	This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).
18-A M.R.S.A.	None.
Difference between MPC and UPC	There is no MPC corollary.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the Maine Probate Code.

SECTION	§3-101
SUBJECT	DEVOLUTION OF ESTATE AT DEATH; RESTRICTIONS
UPC Statute (with Maine amendments shown)	The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse and to administration.
18-A M.R.S.A.	§ 3-101. Devolution of estate at death; restrictions The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law

UPC SECTION	§3-102
SUBJECT	NECESSITY OF ORDER OF PROBATE FOR WILL
UPC Statute (with Maine amendments shown)	Except as provided in Section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the Registrar, or an adjudication of probate by the court.
18-A M.R.S.A.	<p>§ 3-102. Necessity of order of probate for will.</p> <p>Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registers or an adjudication of probate by the judge, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.</p>
Difference between current Maine section and UPC	Current Maine section adds 2 options for duly executed and unrevoked wills that have not been probated to be admitted as evidence.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-103
SUBJECT	NECESSITY OF APPOINTMENT FOR ADMINISTRATION
UPC Statute (with Maine amendments shown)	Except as otherwise provided in Article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or Registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.
18-A M.R.S.A.	§ 3-103. Necessity of appointment for administration Except as otherwise provided in Article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the judge or registers, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-104
SUBJECT	CLAIMS AGAINST DECEDENT; NECESSITY OF ADMINISTRATION
UPC Statute (with Maine amendments shown)	No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in Section 3-1004 or from a former personal representative individually liable as provided in Section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.
18-A M.R.S.A. § 3-104	No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-105
SUBJECT	PROCEEDINGS AFFECTING DEVOLUTION AND ADMINISTRATION; JURISDICTION OF SUBJECT MATTER
UPC Statute (with Maine amendments shown)	Persons interested in decedents' estates may apply to the Registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.
18-A M.R.S.A.	§ 3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this Article. The court has exclusive jurisdiction of informal and formal proceedings to determine how decedents' estates subject to the laws of this State are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property is distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-106
SUBJECT	PROCEEDINGS WITHIN THE JURISDICTION OF COURT; SERVICE; JURISDICTION OVER PERSONS
UPC Statute (with Maine amendments shown)	In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with Section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.
18-A M.R.S.A.	§ 3-106. Proceedings within the jurisdiction of court; service; jurisdiction over persons In proceedings within the exclusive jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-107
SUBJECT	SCOPE OF PROCEEDINGS; PROCEEDINGS INDEPENDENT; EXCEPTION
UPC Statute (with Maine amendments shown)	<p>Unless supervised administration as described in Part 5 is involved,</p> <p>(1) each proceeding before the court or Registrar is independent of any other proceeding involving the same estate;</p> <p>(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;</p> <p>(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and</p> <p>(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.</p>
18-A M.R.S.A.	<p>§ 3-107. Scope of proceedings; proceedings independent; exception</p> <p>Unless supervised administration as described in Part 5 is involved,</p> <p>(1) each proceeding before the judge or register is independent of any other proceeding involving the same estate;</p> <p>(2) petitions for formal orders of the judge may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this Article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;</p> <p>(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and</p> <p>(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-108
SUBJECT	PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS; ULTIMATE TIME LIMIT
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:</p> <p>(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;</p> <p>(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;</p> <p>(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;</p> <p>(4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration has occurred within the three year period after decedent's death, but the personal representative has no right to possess estate assets as provided in Section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and</p> <p>(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.</p> <p>(b) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.</p> <p>(c) In cases under subsection (a)(1) or (2), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other</p>

	limitations provisions of this code which relate to the date of death.
18-A M.R.S.A.	<p>§ 3-108 Probate, testacy and appointment proceedings; ultimate time limit</p> <p>(a). For a decedent dying on or after January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:</p> <p>(1). If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;</p> <p>(2). Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within 3 years after the conservator becomes able to establish the death of the protected person;</p> <p>(3). A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and</p> <p>(4). Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance.</p> <p>These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under paragraph (1) or (2), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.</p> <p>b). For a decedent dying before January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 20 years after the decedent's death,</p>

	<p>except:</p> <p>(1). If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;</p> <p>(2). Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within the applicable limitation period, as set forth in this section, which shall begin to run after the conservator becomes able to establish the death of the protected person; and</p> <p>(3). A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or the running of the applicable limitation period.</p> <p>These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under paragraph (1) or (2), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of the limitations provisions of this Code that relate to the date of death.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-109
SUBJECT	STATUTES OF LIMITATION ON DECEDENT'S CAUSE OF ACTION
UPC Statute (with Maine amendments shown)	No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.
18-A M.R.S.A.	§ 3-109. Statutes of limitations on decedent's cause of action No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action which, but for this section, would have been barred less than 4 months after death, is barred after 4 months unless tolled.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-110
SUBJECT	DISCOVERY OF PROPERTY
UPC Statute (with Maine amendments shown)	UPC has no such provision
18-A M.R.S.A.	<p>§ 3-110. Discovery of property</p> <p>(a). Upon petition by a county attorney, personal representative, heir, devisees, creditor or other person interested in the estate of a decedent, anyone suspected of having concealed, withheld or conveyed away any property of the decedent, or of having fraudulently received any such property, or of aiding others in so doing, may be cited by the judge to appear before him to be examined on oath in relation thereto, and the judge may require him to produce for the inspection of the court and parties all documents within his control relating to the matter under examination. The time for filing such petitions shall be governed by section 1-106.</p> <p>(b). If a person duly cited refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such documents he shall be subject to contempt of the court and is liable to any injured party in a civil action for all the damages, expenses and charges arising from such refusal.</p>
Difference between current Maine section and UPC	UPC has no such provision.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-201
SUBJECT	VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS; LOCATION OF PROPERTY
UPC Statute (with Maine amendments shown)	<p>(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:</p> <p>(1) in the county where the decedent had his domicile at the time of his death; or</p> <p>(2) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.</p> <p>(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Section 1-303 or subsection (c).</p> <p>(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.</p> <p>(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.</p>
18-A M.R.S.A.	<p>§ 3-201. Venue for first and subsequent estate proceedings; location of property</p> <p>(a). Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:</p> <p>(1). In the county where the decedent had his domicile at the time of his death; or</p> <p>(2). If the decedent was not domiciled in this State, in any county where property was located either at the time of his death or at any time thereafter.</p> <p>(b). Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection (c) of section 1-303.</p> <p>(c). If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the judge, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.</p> <p>(d). For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or</p>

UPC SECTION	§3-201
SUBJECT	VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS; LOCATION OF PROPERTY
	commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-202
SUBJECT	APPOINTMENT OR TESTACY PROCEEDINGS; CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE
UPC Statute (with Maine amendments shown)	If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.
18-A M.R.S.A.	§ 3-202. Appointment or testacy proceedings; conflicting claim of domicile in another state If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-203
SUBJECT	PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	<p>(a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:</p> <ol style="list-style-type: none"> (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will; (2) the surviving spouse of the decedent who is a devisee of the decedent; (3) other devisees of the decedent; (4) the surviving spouse of the decedent; (5) other heirs of the decedent; (6) 45 days after the death of the decedent, any creditor. <p>(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (a) apply except that</p> <ol style="list-style-type: none"> (1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; (2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantive interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person. <p>(c) A person entitled to letters under paragraphs (2) through (5) of subsection (a) above, and a person aged 18 and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.</p> <p>(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.</p> <p>(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority although given notice of the proceedings</p>

	<p>have failed to request appointment or to nominate another for appointment, and that administration is necessary.</p> <p>(f) No person is qualified to serve as a personal representative who is:</p> <ol style="list-style-type: none"> (1) under the age of <u>18</u>; (2) a person whom the court finds unsuitable in formal proceedings. <p>(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.</p> <p>(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-203. Priority among persons seeking appointment as personal representative</p> <p>(a). Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:</p> <ol style="list-style-type: none"> (1). The person with priority as determined by a probated will including a person nominated by a power conferred in a will; (2). The surviving spouse of the decedent who is a devisee of the decedent; (3). Other devisees of the decedent; (4). The surviving spouse of the decedent; (4-A). The surviving domestic partner of the decedent; (5). Other heirs of the decedent; (6). Forty-five days after the death of the decedent, any creditor (7). Six months after the death of the decedent if no testacy proceedings have been held or no personal representative has been appointed, the State Tax Assessor upon application by that officer <p>(b). An objection to an appointment can be made only in formal proceeding. In case of objection the priorities stated in (a) apply except that</p> <ol style="list-style-type: none"> (1). If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the judge, on petition of creditors, may appoint any qualified person; (2). In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantive interest in the estate, the judge may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value, or, in default of this accord any

	<p>suitable person</p> <p>(c). A person entitled to letters under subsection (a), paragraphs (2) through (5) may nominate a qualified person to act as personal representative. Any person may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When 2 or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.</p> <p>(d). Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.</p> <p>(e). Appointment of one who does not have priority may be made only in formal proceedings. Appointment of one who has priority resulting from renunciation or nomination pursuant to subsection (c) may be made in informal proceedings. Before appointing one without priority, the judge shall determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.</p> <p>(f). No person is qualified to serve as a personal representative who is:</p> <ol style="list-style-type: none"> (1). Under the age of 18; (2). A person whom the court finds unsuitable in formal proceedings. <p>(g). A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.</p> <p>(h). This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-204
SUBJECT	DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDENT'S ESTATE
UPC Statute (with Maine amendments shown)	Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative, if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in Section 1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.
18-A M.R.S.A.	§ 3-204. Demand for notice of order or filing concerning decedent's estate ' Any person desiring notice of an order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent, and may thereupon have notice of such demand given to the personal representative, and shall thereafter receive service of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. The validity of an order or notice which is issued or a filing which is accepted without compliance with this requirement shall not be affected by the error, but the person receiving the order, giving notice, or making the filing may be liable for any damage caused by the absence of service. The requirement of notice arising from demand under this provision may be waived by the demandant in such manner and form as the Supreme Judicial Court shall by rule provide, and shall cease upon the termination of his interest in the estate.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-301
SUBJECT	INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS; APPLICATION; CONTENTS
UPC Statute (with Maine amendments shown)	<p>(a) Applications for informal probate or informal appointment shall be directed to the Registrar, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:</p> <p>(1) Every application for informal probate of a will or for informal appointment of a personal representative other than a special or successor representative, shall contain the following:</p> <ul style="list-style-type: none"> (A) a statement of the interest of the applicant; (B) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant; (C) if the decedent was not domiciled in the state at the time of his death, a statement showing venue; (D) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated; (E) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and (F) that the time limit for informal probate or appointment as provided in this article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, circumstances as described by Section 3-108 have occurred authorizing tardy probate or appointment. <p>(2) An application for informal probate of a will shall state the following in addition to the statements required by paragraph (1):</p> <ul style="list-style-type: none"> (A) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application; (B) that the applicant, to the best of his knowledge, believes the will to have been validly executed; (C) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will. <p>(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or</p>

	<p>the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.</p> <p>(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by paragraph (1):</p> <p>(A) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under Section 1-301, or, a statement why any such instrument of which he may be aware is not being probated;</p> <p>(B) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 3-203.</p> <p>(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.</p> <p>(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.</p> <p>(b) By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-301. Informal probate or appointment proceedings; application; contents (a). Applications for informal probate or informal appointment shall be directed to the register and be verified by the applicant to be accurate and complete to the best of his knowledge and belief and shall contain the following information and such other information as the Supreme Judicial Court may by rule provide:</p> <p>(1). Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:</p> <p>(i) A statement of the interest of the applicant;</p> <p>(ii) The name, and date of death of the decedent, his age, and the</p>

	<p>county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;</p> <p>(iii) If the decedent was not domiciled in the state at the time of his death, a statement showing venue;</p> <p>(iv) A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;</p> <p>(v) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and</p> <p>(vi) That the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by section 3-108 authorizing tardy probate or appointment have occurred.</p> <p>(2). An application for informal probate of a will shall state the following in addition to the statements required by paragraph (1):</p> <p>(i) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;</p> <p>(ii) That the applicant, to the best of his knowledge, believes the will to have been validly executed;</p> <p>(iii) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.</p> <p>(3). An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.</p> <p>(4). An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by paragraph (1):</p> <p>(i) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301, or, a statement why any such instrument of which he may be aware is not being probated;</p> <p>(ii) The priority of the person whose appointment is sought and the</p>
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	<p>names of any other persons having a prior or equal right to the appointment under section 3-203.</p> <p>(5). An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.</p> <p>(6). An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610, subsection (c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.</p> <p>(b). By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-302
SUBJECT	INFORMAL PROBATE; DUTY OF REGISTRAR; EFFECT OF INFORMAL PROBATE
UPC Statute (with Maine amendments shown)	Upon receipt of an application requesting informal probate of a will, the Registrar, upon making the findings required by Section 3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.
18-A M.R.S.A.	§ 3-302. Informal probate; duty of registrar; effect of informal probate Upon receipt of an application requesting informal probate of a will, the register upon making the findings required by section 3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§3-303
SUBJECT	INFORMAL PROBATE; PROOF AND FINDINGS REQUIRED
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) In an informal proceeding for original probate of a will, the Registrar shall determine whether:</p> <ol style="list-style-type: none"> (1) the application is complete; (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 1-201(23); (4) on the basis of the statements in the application, venue is proper; (5) an original, duly executed and apparently unrevoked will is in the Registrar's possession; (6) any notice required by Section 3-204 has been given and that the application is not within Section 3-304; and (7) it appears from the application that the time limit for original probate has not expired. <p>(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.</p> <p>(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 2-502, 2-503 or 2-506 have been met shall be probated without further proof. In other cases, the Registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.</p> <p>(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.</p> <p>(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in this state upon receipt by the Registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-303. Informal probate; proof and findings required</p> <p>(a). In an informal proceeding for original probate of a will, the register shall determine whether:</p> <ol style="list-style-type: none"> (1). The application is complete;

	<p>(2). The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;</p> <p>(3). The applicant appears from the application to be an interested person as defined in section 1-201, paragraph (20);</p> <p>(4). On the basis of the statements in the application, venue is proper;</p> <p>(5). An original, duly executed and apparently unrevoked will is in the register's possession;</p> <p>(6). Any notice required by section 3-204 has been given and that the application is not within section 3-304;</p> <p>(7). It appears from the application that the time limit for original probate has not expired.</p> <p>(b). The application shall be denied if it indicates that a personal representative has been appointed in another county of this State or except as provided in subsection (d), if it appears that this or another will of the decedent has been the subject of a previous probate order.</p> <p>(c). A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under sections 2-502, 2-503 or 2-506 have been met shall be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.</p> <p>(d). Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office of court where it was first probated.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§3-304
SUBJECT	INFORMAL PROBATE; UNAVAILABLE IN CERTAIN CASES.
UPC Statute (with Maine amendments shown)	Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and one or more codicils thereto) the latest of which does not expressly revoke the earlier, shall be declined.
18-A M.R.S.A.	§ 3-304. Informal probate; unavailable in certain cases Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than a will and its codicil, the latest of which does not expressly revoke the earlier, shall be declined.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-305
SUBJECT	INFORMAL PROBATE; REGISTRAR NOT SATISFIED
UPC Statute (with Maine amendments shown)	If the Registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 3-303 and 3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.
18-A M.R.S.A.	§ 3-305. Informal probate; registrar not satisfied If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-306
SUBJECT	INFORMAL PROBATE; NOTICE REQUIREMENTS
UPC Statute (with Maine amendments shown)	<p>(a)* The moving party must give notice as described by Section 1-401 of his application for informal probate to any person demanding it pursuant to Section 3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required. <u>If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services.</u> No other notice of informal probate is required.</p> <p>[(b) If an informal probate is granted, within 30 days thereafter the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by Section 3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.]</p> <p>* This paragraph becomes subsection (a) if optional subsection (b) is accepted.</p>
18-A M.R.S.A.	<p>§ 3-306. Informal probate; notice requirements</p> <p>The moving party shall give notice as described by section 1-401 of the moving party's application for informal probate to any person demanding notice pursuant to section 3-204, to an heir, devisee or personal representative who has not waived notice in a writing filed with the court and to any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of informal probate is required.</p>
Difference between current Maine section and UPC	Current Maine section 3-306 uses option "a" of the UPC's "a" or "b" choice.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The language (in this chosen UPC option) does not constitute a substantive change to Maine law.

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UPC SECTION	§3-307
SUBJECT	INFORMAL APPOINTMENT PROCEEDINGS; DELAY IN ORDER; DUTY OF REGISTRAR; EFFECT OF APPOINTMENT
UPC Statute	<p>(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 3-614, if at least 120 hours have elapsed since the decedent's death, the Registrar, after making the findings required by Section 3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a non-resident, the Registrar shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.</p> <p>(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 3-608 through 3-612, but is not subject to retroactive vacation.</p>
18-A M.R.S.A.	<p>§ 3-307. Informal appointment proceedings; delay in order; duty of registrar; effect of appointment</p> <p>(a). Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 3-614, if at least 120 hours have elapsed since the decedent's death, the register, after making the findings required by section 3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the register shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State.</p> <p>(b). The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 3-608 through 3-612, but is not subject to retroactive vacation.</p>
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-308
SUBJECT	INFORMAL APPOINTMENT PROCEEDINGS; PROOF AND FINDINGS REQUIRED
UPC Statute (with Maine amendments shown)	<p>(a) In informal appointment proceedings, the Registrar must determine whether:</p> <ol style="list-style-type: none"> (1) the application for informal appointment of a personal representative is complete; (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 1-201(23); (4) on the basis of the statements in the application, venue is proper; (5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator; (6) any notice required by Section 3-204 has been given; (7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment. <p>(b) Unless Section 3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Section 3-610(c) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.</p>
18-A M.R.S.A.	<p>§ 3-308. Informal appointment proceedings; proof and findings required</p> <p>(a). In informal appointment proceedings, the register must determine whether:</p> <ol style="list-style-type: none"> (1). The application for informal appointment of a personal representative is complete (2). The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief (3). The applicant appears from the application to be an interested person as defined in section 1-201, paragraph (20); (4). On the basis of the statements in the application, venue is proper; (5). Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator (6). Any notice required by section 3-204 has been given; (7). From the statements in the application, the person whose

	<p>appointment is sought has priority entitling him to the appointment. (b). Unless section 3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 3-610, subsection (c) has been appointed in this or another county of this State, that, unless the applicant is the domiciliary personal representative or his nominee, the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-309
SUBJECT	INFORMAL APPOINTMENT PROCEEDINGS; REGISTRAR NOT SATISFIED
UPC Statute (with Maine amendments shown)	If the Registrar Registrar Register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 3-307 and 3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.
18-A M.R.S.A.	§ 3-309. Informal appointment proceedings; register not satisfied If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 3-307 and 3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-310
SUBJECT	INFORMAL APPOINTMENT PROCEEDINGS; NOTICE REQUIREMENTS
UPC Statute (with Maine amendments shown)	The moving party must give notice as described by Section 1-401 of his intention to seek an appointment informally: (i) to any person demanding it pursuant to Section 3-204; and (ii) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required. <u>If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services.</u> No other notice of informal appointment proceeding is required.
18-A M.R.S.A.	§ 3-310. Informal appointment proceedings; notice requirements The moving party shall give notice as described by section 1-401 of the moving party's intention to seek an appointment informally: (1) to any person demanding notice pursuant to section 3-204; (2) to an heir or devisee who has not waived notice in a writing filed with the court; and (3) to any person having a prior or equal right to appointment not waived in writing and filed with the court. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of an informal appointment proceeding is required.
Difference between current Maine section and UPC	Current Maine section 3-310 adds notice requirement to DHHS for decedents 55 years old or older.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-311
SUBJECT	INFORMAL APPOINTMENT UNAVAILABLE IN CERTAIN CASES
UPC Statute (with Maine amendments shown)	If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the Registrar Register shall decline the application.
18-A M.R.S.A.	§ 3-311. Informal appointment unavailable in certain cases If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, the register shall decline the application.
Difference between current Maine section and UPC	None
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-312
SUBJECT	UNIVERSAL SUCCESSION; IN GENERAL
UPC Statute (with Maine amendments shown)s	The heirs of an intestate or the residuary devisees under a will, excluding minors and incapacitated, protected, or unascertained persons, may become universal successors to the decedent's estate by assuming personal liability for (i) taxes, (ii) debts of the decedent, (iii) claims against the decedent or the estate, and (iv) distributions due other heirs, devisees, and persons entitled to property of the decedent as provided in Sections 3-313 through 3-322.
18-A M.R.S.A. §3-312	[Contrary to UPC, Maine has no universal succession sections.]
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i> Note to Revisor: Though Maine has chosen not to adopt universal succession, please reserve §3-312 through §3-322.

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UPC SECTION	§3-313
SUBJECT	UNIVERSAL SUCCESSION; APPLICATION; CONTENTS
UPC Statute (with Maine amendments shown)	<p>(a) An application to become universal successors by the heirs of an intestate or the residuary devisees under a will must be directed to the Registrar, signed by each applicant, and verified to be accurate and complete to the best of the applicant's knowledge and belief as follows:</p> <p>(1) An application by heirs of an intestate must contain the statements required by Section 3-301(a)(1) and (4)(i) and state that the applicants constitute all the heirs other than minors and incapacitated, protected, or unascertained persons.</p> <p>(2) An application by residuary devisees under a will must be combined with a petition for informal probate if the will has not been admitted to probate in this State and must contain the statements required by Section 3-301(a)(1) and (2). If the will has been probated in this state, an application by residuary devisees must contain the statements required by Section 3-301 (a) (2) (iii). An application by residuary devisees must state that the applicants constitute the residuary devisees of the decedent other than any minors and incapacitated, protected, or unascertained persons. If the estate is partially intestate, all of the heirs other than minors and incapacitated, protected, or unascertained persons must join as applicants.</p> <p>(b) The application must state whether letters of administration are outstanding, whether a petition for appointment of a personal representative of the decedent is pending in any court of this state, and that the applicants waive their right to seek appointment of a personal representative.</p> <p>(c) The application may describe in general terms the assets of the estate and must state that the applicants accept responsibility for the estate and assume personal liability for (1) taxes, (2) debts of the decedent, (3) claims against the decedent or the estate and (4) distributions due other heirs, devisees, and persons entitled to property of the decedent as provided in Sections 3-316 through 3-322.</p>
18-A M.R.S.A.	[Unlike UPC, Maine has no Universal Succession sections.]
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-314
SUBJECT	UNIVERSAL SUCCESSION; PROOF AND FINDINGS REQUIRED
UPC Statute (with Maine amendments shown)	<p>(a) The [Registrar] shall grant the application if:</p> <p>(1) the application is complete in accordance with Section 3-313;</p> <p>(2) all necessary persons have joined and have verified that the statements contained therein are true, to the best knowledge and belief of each;</p> <p>(3) venue is proper;</p> <p>(4) any notice required by Section 3-204 has been given or waived;</p> <p>(5) the time limit for original probate or appointment proceedings has not expired and the applicants claim under a will;</p> <p>(6) the application requests informal probate of a will, the application and findings conform with Sections 3-301(a)(2) and 3-303(a)(c)(d) and (e) so the will is admitted to probate; and</p> <p>(7) none of the applicants is a minor or an incapacitated or protected person.</p> <p>(b) The [Registrar] shall deny the application if letters of administration are outstanding.</p> <p>(c) Except as provided in Section 3-322, the [Registrar] shall deny the application if any creditor, heir, or devisee who is qualified by Section 3-605 to demand bond files an objection.</p>
18-A M.R.S.A.	[Contrary to UPC, current Maine law has no universal succession sections.]
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-315
SUBJECT	UNIVERSAL SUCCESSION; DUTY OF REGISTRAR; EFFECT OF STATEMENT OF UNIVERSAL SUCCESSION
UPC Statute (with Maine amendments shown)	<p>Upon receipt of an application under Section 3-313, if at least 120 hours have elapsed since the decedent's death, the Registrar, upon granting the application, shall issue a written statement of universal succession describing the estate as set forth in the application and stating that the applicants</p> <p>(i) are the universal successors to the assets of the estate as provided in Section 3-312.</p> <p>(ii) (ii) have assumed liability for the obligations of the decedent, and</p> <p>(iii) (iii) have acquired the powers and liabilities of universal successors. The statement of universal succession is evidence of the universal successors' title to the assets of the estate. Upon its issuance, the powers and liabilities of universal successors provided in Sections 3-316 through 3-322 attach and are assumed by the applicants.</p>
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-316
SUBJECT	UNIVERSAL SUCCESSION; UNIVERSAL SUCCESSORS' POWERS
UPC Statute (with Maine amendments shown)	<p>Upon the [Registrar's] issuance of a statement of universal succession:</p> <p>(1) Universal successors have full power of ownership to deal with the assets of the estate subject to the limitations and liabilities in this [Act]. The universal successors shall proceed expeditiously to settle and distribute the estate without adjudication but if necessary may invoke the jurisdiction of the court to resolve questions concerning the estate.</p> <p>(2) Universal successors have the same powers as distributees from a personal representative under Sections 3-908 and 3-909 and third persons with whom they deal are protected as provided in Section 3-910.</p> <p>(3) For purposes of collecting assets in another state whose law does not provide for universal succession, universal successors have the same standing and power as personal representatives or distributees in this State.</p>
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.]
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-317
SUBJECT	UNIVERSAL SUCCESSION; UNIVERSAL SUCCESSORS' LIABILITY TO CREDITORS, OTHER HEIRS, DEVISEES AND PERSONS ENTITLED TO DECEDENT'S PROPERTY; LIABILITY OF OTHER PERSONS ENTITLED TO PROPERTY
UPC Statute (with Maine amendments shown)	<p>(a) In the proportions and subject to limits expressed in Section 3-321, universal successors assume all liabilities of the decedent that were not discharged by reason of death and liability for all taxes, claims against the decedent or the estate, and charges properly incurred after death for the preservation of the estate, to the extent those items, if duly presented, would be valid claims against the decedent's estate.</p> <p>(b) In the proportions and subject to the limits expressed in Section 3-321, universal successors are personally liable to other heirs, devisees, and persons entitled to property of the decedent for the assets or amounts that would be due those heirs, were the estate administered, but no allowance having priority over devisees may be claimed for attorney's fees or charges for preservation of the estate in excess of reasonable amounts properly incurred.</p> <p>(c) Universal successors are entitled to their interests in the estate as heirs or devisees subject to priority and abatement pursuant to Section 3-902 and to agreement pursuant to Section 3-912.</p> <p>(d) Other heirs, devisees, and persons to whom assets have been distributed have the same powers and liabilities as distributees under Sections 3-908, 3-909, and 3-910.</p> <p>(e) Absent breach of fiduciary obligations or express undertaking, a fiduciary's liability is limited to the assets received by the fiduciary.</p>
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.]
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-318
SUBJECT	UNIVERSAL SUCCESSION; UNIVERSAL SUCCESSORS' SUBMISSION TO JURISDICTION; WHEN HEIRS OR DEVEISEES MAY NOT SEEK ADMINISTRATION.
UPC Statute (with Maine amendments shown)	(a) Upon issuance of the statement of universal succession, the universal successors become subject to the personal jurisdiction of the Courts of this state in any proceeding that may be instituted relating to the estate or to any liability assumed by them. (b) Any heir or devisee who voluntarily joins in an application under Section 3-313 may not subsequently seek appointment of a personal representative.
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-319
SUBJECT	UNIVERSAL SUCCESSION; DUTY OF UNIVERSAL SUCCESSORS; INFORMATION TO HEIRS AND DEVISEES.
UPC Statute (with Maine amendments shown)	Not later than thirty days after issuance of the statement of universal succession, each universal successor shall inform the heirs and devisees who did not join in the application of the succession without administration. The information must be delivered or be sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the universal successors. The information must include the names and addresses of the universal successors, indicate that it is being sent to persons who have or may have some interest in the estate, and describe the court where the application and statement of universal succession has been filed. The failure of a universal successor to give this information is a breach of duty to the persons concerned but does not affect the validity of the approval of succession without administration or the powers or liabilities of the universal successors. A universal successor may inform other persons of the succession without administration by delivery or by ordinary first class mail.
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-320
SUBJECT	UNIVERSAL SUCCESSION; UNIVERSAL SUCCESSORS' LIABILITY FOR RESTITUTION TO ESTATE.
UPC Statute (with Maine amendments shown)	If a personal representative is subsequently appointed, universal successors are personally liable for restitution of any property of the estate to which they are not entitled as heirs or devisees of the decedent and their liability is the same as a distributee under Section 3-909, subject to the provisions of Sections 3-317 and 3-321 and the limitations of Section 3-1006.
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-321
SUBJECT	UNIVERSAL SUCCESSION; LIABILITY OF UNIVERSAL SUCCESSORS FOR CLAIMS, EXPENSES, INTESTATE SHARES AND DEVISEES.
UPC Statute (with Maine amendments shown)	The liability of universal successors is subject to any defenses that would have been available to the decedent. Other than liability arising from fraud, conversion, or other wrongful conduct of a universal successor, the personal liability of each universal successor to any creditor, claimant, other heir, devisee, or person entitled to decedent's property may not exceed the proportion of the claim that the universal successor's share bears to the share of all heirs and residuary devisees.
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-322
SUBJECT	UNIVERSAL SUCCESSION; REMEDIES OF CREDITORS, OTHER HEIRS, DEVISEES OR PERSONS ENTITLED TO DECEDENT'S PROPERTY
UPC Statute (with Maine amendments shown)	In addition to remedies otherwise provided by law, any creditor, heir, devisee, or person entitled to decedent's property qualified under Section 3-605, may demand bond of universal successors. If the demand for bond precedes the granting of an application for universal succession, it must be treated as an objection under Section 3-314(c) unless it is withdrawn, the claim satisfied, or the applicants post bond in an amount sufficient to protect the demandant. If the demand for bond follows the granting of an application for universal succession, the universal successors, within 10 days after notice of the demand, upon satisfying the claim or posting bond sufficient to protect the demandant, may disqualify the demandant from seeking administration of the estate.
18-A M.R.S.A.	[Contrary to UPC, Maine has no universal succession sections.].
Difference between current Maine section and UPC	UPC has universal succession sections. Maine has no universal succession sections.
Recommendation	Do not adopt UPC.
Maine Probate Code Proposed Comments	Maine has chosen not to adopt Universal Succession, as detailed in UPC §312 <i>et seq.</i>

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UPC SECTION	§3-401
SUBJECT	FORMAL TESTACY PROCEEDINGS; NATURE; WHEN COMMENCED.
UPC Statute (with Maine amendments shown)	<p>A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in Section 3-402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 3-402(b) for an order that the decedent died intestate.</p> <p>A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.</p> <p>During the pendency of a formal testacy proceeding, the Registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.</p> <p>Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.</p>
18-A M.R.S.A.	<p>§3-401. formal testacy proceedings; nature; when commenced</p> <p>A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402 , subsection (a) in which he requests that the judge, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 3-402 , subsection (b) for an order that the decedent died intestate.</p> <p>A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally</p>

	<p>probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.</p> <p>During the pendency of a formal testacy proceeding, the register shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.</p> <p>Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator.</p> <p>In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.</p>
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-402
SUBJECT	FORMAL TESTACY OR APPOINTMENT PROCEEDINGS; PETITION; CONTENTS
UPC Statute (with Maine amendments shown)	<p>(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section <u>and contain such other information and be in such form as the Supreme Judicial Court may by rule provide.</u> A petition for formal probate of a will</p> <p>(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,</p> <p>(2) contains the statements required for informal applications as stated in the six subparagraphs under Section 3-301(a)(1), the statements required by subparagraphs (B) and (C) of Section 3-301(a)(2), and</p> <p>(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.</p> <p>(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by paragraphs (1) and (4) of Section 3-301(a) and indicate whether supervised administration is sought <u>and contain such other information and be in such form as the Supreme Judicial Court may by rule provide.</u> A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (B) of Section 3-301(a)(4) above may be omitted.</p>
18-A M.R.S.A.	<p>§3-402. Formal testacy or appointment proceedings; petition; contents</p> <p>(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section, and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition for formal probate of a will</p> <p>(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been</p>

	<p>informally probated and determining the heirs</p> <p>(2) contains the statements required for informal applications as stated in the six subparagraphs under Section 3-301(a)(1), the statements required by subparagraphs (B) and (C) of Section 3-301(a)(2), and</p> <p>(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.</p> <p>(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by paragraphs (1) and (4) of Section 3-301(a) and indicate whether supervised administration is sought and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (B) of Section 3-301(a)(4) above may be omitted.</p>
Difference between current Maine section and UPC	No material difference except that current Maine section 4-402 adds additional reference to “such other information and be in such form as the Supreme Judicial Court may by rule provide.”
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-403
SUBJECT	FORMAL TESTACY PROCEEDINGS; NOTICE OF HEARING ON PETITION.
UPC Statute (with Maine amendments shown)	<p>(a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by Section 1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 3-204 of this code. Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. <u>If the decedent was 55 years of age or older, the petitioner shall give notice as described in section 1-401 to the Department of Health and Human Services.</u> Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.</p> <p>(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:</p> <p>(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;</p> <p>(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;</p> <p>(3) by engaging the services of an investigator.</p> <p>The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.</p>
18-A M.R.S.A.	<p>§ 3-403. Formal testacy proceedings; notice of hearing on petition.</p> <p>Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by section 1-401 by the petitioner to the</p>

	<p>persons enumerated in this subsection and to any additional person who has filed a demand for notice under section 3-204. Notice must be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere and any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the petitioner shall give notice as described in section 1-401 to the Department of Health and Human Services. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.</p> <p>(b). If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:</p> <p>(1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;</p> <p>(2) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;</p> <p>(3) By engaging the services of an investigator.</p> <p>The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.</p>
Difference between current Maine section and UPC	In sub-sec. (a), current Maine section 3-403 adds requirement of notice to DHHS for persons 55 years old and older.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-404
SUBJECT	FORMAL TESTACY PROCEEDINGS; WRITTEN OBJECTIONS TO PROBATE.
UPC Statute (with Maine amendments shown)	Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.
18-A M.R.S.A.	§ 3-404. Formal testacy proceedings; written objections to probate Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	M.R.S.A. § 3-405
SUBJECT	FORMAL TESTACY PROCEEDINGS; UNCONTESTED CASES; HEARINGS AND PROOF
UPC Statute (with Maine amendments shown)	If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.
18-A M.R.S.A.	§3-405. formal testacy proceedings; uncontested cases; hearings and proof If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-406
SUBJECT	FORMAL TESTACY PROCEEDINGS; CONTESTED CASES
UPC Statute (with Maine amendments shown)	<p>In a contested case in which the proper execution of a will is at issue, the following rules apply:</p> <p>(1) If the will is self-proved pursuant to Section 2-504, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.</p> <p>(2) If the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.</p> <p>(3) If the will is witnessed pursuant to Section 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.</p>
18-A M.R.S.A.	<p>§3-406. Formal Testacy proceedings: contested cases; testimony of attesting witnesses</p> <p>(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the State competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence. (b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavit annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.</p>
Difference between current Maine section and UPC	<p>Both UPC and current Maine section 3-406 set forth the requirements for “satisfying execution” of will. However, current Maine section 3-406 is simpler. Whereas the UPC details the separate requirement for 3 will scenarios (self-proved, notarized and non-notarized, current Maine section 3-406 details only 2 scenarios (self-proved and all others). (Oddly, the UPC requirement for self-proved appears more difficult than for non-self-proved but notarized in that the UPC states that, unlike the self-proved will, the simple filing of a non-self-proved but notarized is all that is needed for the rebuttable presumption of proper execution to apply. Current Maine section 3-406 appears to</p>

	have corrected this lesser requirement for non-self-proved but notarized will.).
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-407
SUBJECT	FORMAL TESTACY PROCEEDINGS; BURDENS IN CONTESTED CASES
UPC Statute (with Maine amendments shown)	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.
18-A M.R.S.A.	§ 3-407. Formal testacy proceedings; burdens in contested cases In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-408
SUBJECT	FORMAL TESTACY PROCEEDINGS; WILL CONSTRUCTION; EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION
UPC Statute (with Maine amendments shown)	A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.
18-A M.R.S.A.	§ 3-408. formal testacy proceedings; will construction; effect of final order in another jurisdiction A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-409
SUBJECT	FORMAL TESTACY PROCEEDINGS; ORDER; FOREIGN WILL
UPC Statute (with Maine amendments shown)	After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by Section 3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.
18-A M.R.S.A.	§ 3-409. Formal testacy proceedings; order; foreign will After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a foreign jurisdiction, including a place which does not require probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been probated in the foreign jurisdiction or has otherwise become effective under the law of the other place.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-410
SUBJECT	FORMAL TESTACY PROCEEDINGS; PROBATE OF MORE THAN ONE INSTRUMENT
UPC Statute (with Maine amendments shown)	If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how many provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 3-412.
18-A M.R.S.A.	§3-410. Formal testacy proceedings; probate of more than one instrument If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3-412
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-411
SUBJECT	FORMAL TESTACY PROCEEDINGS; PARTIAL INTESTACY
UPC Statute (with Maine amendments shown)	If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.
18-A M.R.S.A.	§ 3-411. Formal testacy proceedings; partial intestacy If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-412
SUBJECT	FORMAL TESTACY PROCEEDINGS; EFFECT OF ORDER; VACATION.
<p>UPC Statute (with Maine amendments shown)</p>	<p>Subject to appeal and subject to vacation as provided in this section and in Section 3-413, a formal testacy order under Sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:</p> <p>(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:</p> <p style="padding-left: 40px;">(A) were unaware of its existence at the time of the earlier proceeding; or</p> <p style="padding-left: 40px;">(B) were unaware of the earlier proceeding and were given no notice thereof, except by publication.</p> <p>(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.</p> <p>(3) A petition for vacation under paragraph (1) or (2) must be filed prior to the earlier of the following time limits:</p> <p style="padding-left: 40px;">(A) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;</p> <p style="padding-left: 40px;">(B) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or</p> <p style="padding-left: 40px;">(C) twelve months after the entry of the order sought to be vacated.</p> <p>(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.</p> <p>(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 3-403(b) was made.</p>

	<p>If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.</p>
<p>18-A M.R.S.A.</p>	<p>§3-412. Formal testacy proceedings; effect of order; vacation Subject to appeal and subject to vacation as provided in this section and in Section 3-413, a formal testacy order under Sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:</p> <p>(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:</p> <p style="padding-left: 40px;">(A) were unaware of its existence at the time of the earlier proceeding; or</p> <p style="padding-left: 40px;">(B) were unaware of the earlier proceeding and were given no notice thereof, except by publication.</p> <p>(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.</p> <p>(3) A petition for vacation under paragraph (1) or (2) must be filed prior to the earlier of the following time limits:</p> <p style="padding-left: 40px;">(A) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;</p> <p style="padding-left: 40px;">(B) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or</p> <p style="padding-left: 40px;">(C) twelve months after the entry of the order sought to be vacated.</p> <p>(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining</p>

	<p>heirs.</p> <p>(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 3-403(b) was made.</p> <p>If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-413
SUBJECT	FORMAL TESTACY PROCEEDINGS; VACATION OF ORDER FOR OTHER CAUSE
UPC Statute (with Maine amendments shown)	For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.
18-A M.R.S.A.	§ 3-413. Formal testacy proceedings; vacation of order for other cause For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-414
SUBJECT	FORMAL PROCEEDINGS CONCERNING APPOINTMENT OF PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	<p>(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.</p> <p>(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under Section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 3-611.</p>
18-A M.R.S.A.	<p>§ 3-414. Formal proceedings concerning appointment of personal representative</p> <p>(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.</p>

	(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under Section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 3-611.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-501
SUBJECT	SUPERVISED ADMINISTRATION; NATURE OF PROCEEDING
UPC Statute (with Maine amendments shown)	Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative, or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.
18-A M.R.S.A.	§ 3-501. Supervised administration; nature of proceeding Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.
Difference between current Maine section and UPC	No substantive differences.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-502
SUBJECT	SUPERVISED ADMINISTRATION; PETITION; ORDER
<p>UPC Statute (with Maine amendments shown)</p>	<p>A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:</p> <p>(1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;</p> <p>(2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or</p> <p>(3) in other cases if the court finds that supervised administration is necessary under the circumstances.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-502. Supervised administration; petition; order</p> <p>A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:</p> <p>(1) if the decedent's will directs supervised administration, it shall</p>

	<p>be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;</p> <p>(2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or</p> <p>(3) in other cases if the court finds that supervised administration is necessary under the circumstances.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-503
SUBJECT	SUPERVISED ADMINISTRATION; EFFECT ON OTHER PROCEEDINGS.
UPC Statute (with Maine amendments shown)	<p>(a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.</p> <p>(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by Section 3-401.</p> <p>(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.</p>
18-A M.R.S.A.	<p>§ 3-503. Supervised administration; effect on other proceedings.</p> <p>(a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.</p> <p>(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by Section 3-401.</p> <p>(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§3-504
SUBJECT	SUPERVISED ADMINISTRATION; POWERS OF PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.
18-A M.R.S.A.	§ 3-504. Supervised administration; powers of personal representative Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-505
SUBJECT	SUPERVISED ADMINISTRATION; INTERIM ORDERS; DISTRIBUTION AND CLOSING ORDERS
UPC Statute (with Maine amendments shown)	Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under Section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.
18-A M.R.S.A.	§ 3-505. Supervised administration; interim orders; distribution and closing orders Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under Section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-601
SUBJECT	QUALIFICATION
UPC Statute (with Maine amendments shown)	Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.
18-A M.R.S.A.	§ 3-601. Qualification Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-602
SUBJECT	ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION
UPC Statute (with Maine amendments shown)	By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.
18-A M.R.S.A.	§ 3-602. Acceptance of appointment; consent to jurisdiction By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-603
SUBJECT	BOND NOT REQUIRED WITHOUT COURT ORDER, EXCEPTIONS
UPC Statute (with Maine amendments shown)	No bond is required of a personal representative appointed in informal proceedings, except (i) upon the appointment of a special administrator; (ii) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (iii) when bond is required under Section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable, <u>or as provided in section 3-619, subsection (g)</u> . Bond required by any will may be dispensed with <u>in formal</u> proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.
18-A M.R.S.A.	§ 3-603. Bond not required without court order, exceptions No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or (3) when bond is required under section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable, or as provided in section 3-619, subsection (g). Bond required by any will or under this section may be dispensed with informal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties.
Difference between current Maine section and UPC	Current Maine section 3-603 adds bond exception for lower-valued public administrations described in current Maine section 3-619(g).
Recommendation	Adopt the UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to former Maine section 3-603, with the exception of Maine's retained exemption for a "public administration" (for estates without heirs and for whom no estate administration has commenced, as detailed

	in sections 3-619(g)). Also, former Maine section 3-603 had exemption level of \$200.
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UPC SECTION	§3-604
SUBJECT	BOND AMOUNT; SECURITY; PROCEDURE; REDUCTION.
UPC Statute (with Maine amendments shown)	If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the Registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the Registrar, or give other suitable security, in an amount not less than the estimate. The Registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The Registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.
18-A M.R.S.A.	§ 3-604. Bond amount; security; procedure; reduction If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the register indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registers, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The register may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 6-101, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the judge may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.
Difference between current Maine section and UPC	No substantive differences.
Recommendation	Adopt UPC.

Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.
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UPC SECTION	§ 3-605
SUBJECT	DEMAND FOR BOND BY INTERESTED PERSON
UPC Statute (with Maine amendments shown)	Any person apparently having an interest in the estate worth in excess of \$5,000, or any creditor having a claim in excess of \$5,000, may make a written demand that a personal representative give bond. The demand must be filed with the Registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in Section 3-603 or 3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.
18-A M.R.S.A.	§ 3-605. Demand for bond by interested person Any person apparently having an interest in the estate worth in excess of \$1,000, or any creditor having a claim in excess of \$1,000, may make a written demand that a personal representative give bond. The demand must be filed with the register and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in sections 3-603 or 3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.
Difference between current Maine section and UPC	UPC threshold interest for a person or creditor demanding bond is \$5,000, vs. current Maine section 3-605 threshold of \$1,000.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The threshold financial interest for requesting a bond is increased from \$1000 to \$5000.

UPC SECTION	§3-606
SUBJECT	TERMS AND CONDITIONS OF BONDS.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The following requirements and provisions apply to any bond required by this part:</p> <p>(1) Bonds shall name the <u>State of Maine</u> as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.</p> <p>(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.</p> <p>(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.</p> <p>(4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.</p> <p>(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.</p> <p>(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-606. Terms and conditions of bonds</p> <p>(a). The following requirements and provisions apply to any bond required by this Part:</p> <p>(1). Bonds shall name the judge as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.</p> <p>(2). Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond</p> <p>(3). By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or</p>

	<p>mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.</p> <p>(4). On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.</p> <p>(5). The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.</p> <p>(b). No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.</p>
Difference between current Maine section and UPC	No substantive differences.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-607
SUBJECT	ORDER RESTRAINING PERSONAL REPRESENTATIVE.
UPC Statute (with Maine amendments shown)	<p>(a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.</p> <p>(b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.</p>
18-A M.R.S.A.	<p>§ 3-607 Order restraining personal representative</p> <p>On petition of any person who appears to have an interest in the estate, the judge by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the judge that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.</p>
Difference between current Maine section and UPC	UPC requires that when asked to restrain the personal representative that the court provide notice and hold hearing within 10 days unless parties otherwise agree.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to former Maine section 3-607, as Maine does not adopt UPC §607(b) (additional requirement that a court schedule a hearing within 10 days).

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UPC SECTION	§ 3-608
SUBJECT	TERMINATION OF APPOINTMENT; GENERAL
UPC Statute (with Maine amendments shown)	Termination of appointment of a personal representative occurs as indicated in Sections 3-609 to 3-612 inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.
18-A M.R.S.A.	§ 3-608. Termination of appointment; general Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-609
SUBJECT	TERMINATION OF APPOINTMENT; DEATH OR DISABILITY
UPC Statute (with Maine amendments shown)	The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.
18-A M.R.S.A.	§ 3-609. Termination of appointment; death or disability The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§ 3-610
SUBJECT	TERMINATION OF APPOINTMENT; VOLUNTARY
UPC Statute (with Maine amendments shown)	<p>(a) An appointment of a personal representative terminates as provided in Section 3-1003, one year after the filing of a closing statement.</p> <p>(b) An order closing an estate as provided in Section 3-1001 or 3-1002 terminates an appointment of a personal representative.</p> <p>(c) A personal representative may resign his position by filing a written statement of resignation with the Registrar after he has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment, and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.</p>
18-A M.R.S.A.	<p>§ 3-610. Termination of appointment; voluntary</p> <p>(a) An appointment of a personal representative terminates as provided in Section 3-1003, one year after the filing of a closing statement.</p> <p>(b) An order closing an estate as provided in Section 3-1001 or 3-1002 terminates an appointment of a personal representative.</p> <p>(c) A personal representative may resign his position by filing a written statement of resignation with the Registrar after he has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment, and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-611
SUBJECT	TERMINATION OF APPOINTMENT BY REMOVAL; CAUSE; PROCEDURE
UPC Statute (with Maine amendments shown)	<p>(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.</p> <p>(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment, intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.</p>
18-A M.R.S.A	<p>§ 3-611. Termination of appointment by removal; cause; procedure</p> <p>(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.</p> <p>(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment, intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has</p>

	<p>mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-612
SUBJECT	TERMINATION OF APPOINTMENT; CHANGE OF TESTACY STATUS
UPC Statute (with Maine amendments shown)	Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.
18-A M.R.S.A.	§ 3-612. Termination of appointment; change of testacy status Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-613
SUBJECT	SUCCESSOR PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.
18-A M.R.S.A.	§ 3-613. Successor personal representative Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-614
SUBJECT	SPECIAL ADMINISTRATOR; APPOINTMENT
UPC Statute (with Maine amendments shown)	A special administrator may be appointed: (1) informally by the Registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative, or if a prior appointment has been terminated as provided in Section 3-609; (2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.
18-A M.R.S.A.	§ 3-614. Special administrator; appointment A special administrator may be appointed: (1) informally by the Registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative, or if a prior appointment has been terminated as provided in Section 3-609; (2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-615
SUBJECT	SPECIAL ADMINISTRATOR; WHO MAY BE APPOINTED
UPC Statute (with Maine amendments shown)	(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified. (b) In other cases, any proper person may be appointed special administrator.
18-A M.R.S.A.	§ 3-615. Special administrator; who may be appointed (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified. (b) In other cases, any proper person may be appointed special administrator.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-616
SUBJECT	SPECIAL ADMINISTRATOR; APPOINTED INFORMALLY; POWERS AND DUTIES
UPC Statute (with Maine amendments shown)	A special administrator appointed by the Registrar in informal proceedings pursuant to Section 3-614(1) has the duty to collect and manage the assets of the estate, to preserve them and to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.
18-A M.R.S.A.	§ 3-616. Special administrator; appointed informally; powers and duties A special administrator appointed by the register in informal proceedings pursuant to section 3-614, paragraph (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the Code necessary to perform his duties.
Difference between current Maine section and UPC	No substantive difference
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-617
SUBJECT	SPECIAL ADMINISTRATOR; FORMAL PROCEEDINGS; POWER AND DUTIES.
UPC Statute (with Maine amendments shown)	A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.
18-A M.R.S.A.	§3-617. Special administrator; formal proceedings; power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-618
SUBJECT	TERMINATION OF APPOINTMENT; SPECIAL ADMINISTRATOR
UPC Statute (with Maine amendments shown)	The appointment of a special administrator terminates in accordance with the provisions of the order of appointment, or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 3-608 through 3-611.
18-A M.R.S.A.	§ 3-618. Termination of appointment; special administrator The appointment of a special administrator terminates in accordance with the provisions of the order of appointment, or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 3-608 through 3-611.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§3-619
SUBJECT	PUBLIC ADMINSTRATORS
<p>UPC Statute (with Maine amendments shown)</p>	<p><u>(a). The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and for whom no other administration has been commenced. The public administrator shall have the same powers and duties of a personal representative under supervised administration as provided in section 3-504, and except as provided in subsection (g), shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 through 3-606. If any person entitled to appointment as personal representative under section 3-203 shall, prior to the appointment of the public administrator, file a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.</u></p> <p><u>(b). The public administrator may be allowed fees and compensation for his services as in the case of ordinary administration as provided in sections 3-719, 3-720 and 3-721, except that no fee for his own services shall be paid without prior approval by the court.</u></p> <p><u>(c). Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public administrator may proceed to conserve the property of the estate when it appears necessary or expedient.</u></p> <p><u>(d). If, before the estate of such deceased in the hands of the public administrator is fully settled, any last will and testament of the decedent is granted informal or formal probate, or if any person entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and he shall account for and deliver the assets of the estate to the private personal representative as provided therein, or to the successors under the will as provided by law if no private personal representative has been appointed.</u></p> <p><u>(e). When there are assets, other than real property, remaining in the hands of such public administrator after the payment of the decedent's debts and all costs of administration and no heirs have been discovered, the public administrator must be ordered by the judge to deposit them with the Treasurer of State, who shall receive</u></p>

	<p><u>them and dispose of them according to Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be presumed unclaimed when the judge orders the public administrator to deposit them with the Treasurer of State.</u></p> <p><u>(f). In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree thereon, and in all cases where the public administrator is ordered to pay the balance of the estate as provided in subsection (e) the judge shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the judge to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery thereof. The records and accounts of the public administrator shall be audited annually by the Office of the State Auditor.</u></p> <p><u>(g). Estates administered under this section having a value at the decedent's death not exceeding \$200 5,000 shall be exempt from all notice and filing costs and from giving bond. The cost of notice shall be paid by the court.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 3-619. Public Administrators</p> <p>(a). The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and for whom no other administration has been commenced. The public administrator shall have the same powers and duties of a personal representative under supervised administration as provided in section 3-504, and except as provided in subsection (g), shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 through 3-606. If any person entitled to appointment as personal representative under section 3-203 shall, prior to the appointment of the public administrator, file a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.</p> <p>(b). The public administrator may be allowed fees and compensation for his services as in the case of ordinary administration as provided in sections 3-719, 3-720 and 3-721, except that no fee for his own services shall be paid without prior approval by the court.</p>

	<p>(c). Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public administrator may proceed to conserve the property of the estate when it appears necessary or expedient.</p> <p>(d). If, before the estate of such deceased in the hands of the public administrator is fully settled, any last will and testament of the decedent is granted informal or formal probate, or if any person entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and he shall account for and deliver the assets of the estate to the private personal representative as provided therein, or to the successors under the will as provided by law if no private personal representative has been appointed.</p> <p>(e). When there are assets, other than real property, remaining in the hands of such public administrator after the payment of the decedent's debts and all costs of administration and no heirs have been discovered, the public administrator must be ordered by the judge to deposit them with the Treasurer of State, who shall receive them and dispose of them according to Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be presumed unclaimed when the judge orders the public administrator to deposit them with the Treasurer of State.</p> <p>(f). In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree thereon, and in all cases where the public administrator is ordered to pay the balance of the estate as provided in subsection (e) the judge shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the judge to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery thereof. The records and accounts of the public administrator shall be audited annually by the Office of the State Auditor.</p> <p>(g). Estates administered under this section having a value at the decedent's death not exceeding \$200 shall be exempt from all notice and filing costs and from giving bond. The cost of notice shall be paid by the court.</p>
Difference between current Maine section and UPC	The UPC has no section concerning public administration.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	The UPC has no section concerning public administration.

UPC SECTION	§ 3-701
SUBJECT	TIME OF ACCRUAL OF DUTIES AND POWERS
UPC Statute (with Maine amendments shown)	The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.
18-A M.R.S.A.	§ 3-701. Time of accrual of duties and powers The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§ 3-702
SUBJECT	PRIORITY AMONG DIFFERENT LETTERS
UPC Statute (with Maine amendments shown)	A person to whom general letters are first issued has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters, are not void for want of validity of appointment.
18-A M.R.S.A.	§ 3-702. Priority among different letters A person to whom general letters are first issued has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters, are not void for want of validity of appointment.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-703
SUBJECT	GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE
UPC Statute (with Maine amendments shown)	<p>(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate. <u>A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805, 806 and 807 and Title 18-B, chapter 9, except as follows.</u></p> <p><u>(1). A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets.</u></p> <p><u>(2). Except as provided in section 3-906, subsection (a), paragraphs (1) and (2), a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.</u></p> <p><u>(3). If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to such manager and, in either case, may pay reasonable compensation to the manager from the residue of the estate. A personal representative who relies on the advice of, or delegates management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment performance of the assets invested in the discretion of, or in accordance with the advice of, such investment manager.</u></p> <p>(b) A personal representative shall may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a</p>

	<p>pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.</p> <p>(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-703. General duties; relation and liability to persons interested in estate; standing to sue</p> <p>(a). A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805, 806 and 807 and Title 18-B, chapter 9, except as follows.</p> <p>(1). A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets.</p> <p>(2). Except as provided in section 3-906, subsection (a), paragraphs (1) and (2), a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.</p> <p>(3). If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to such manager and, in either case, may pay reasonable compensation to the manager from the residue of the estate. A personal representative who relies on the advice of, or delegates</p>

	<p>management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment performance of the assets invested in the discretion of, or in accordance with the advice of, such investment manager.</p> <p>(b). A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.</p> <p>(c). Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.</p>
<p>Difference between current Maine section and UPC</p>	<p>Section (a): Maine added significant language in (a)(1)-(3) that referenced applicable sections of the Maine Trust Code as well as described issued pertinent to investment strategy, reliance on investment advisors and the potential for distribution in kind instead of liquidating estate assets. These sections were tailored to former Maine section 3-703 and were not in previous editions of the UPC.</p> <p>Section (b): Maine provides Personal Representatives <u>shall</u> not be surcharged for authorized acts, while the UPC provides that Personal Representatives <u>may</u> not be surcharged for such acts. The UPC modifies those parties in interest to whom a Personal Representative owes a duty to include claimants whose claims have been allowed, while current Maine section 3-703 simply references claimants.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The language does not constitute a substantive change to former Maine law.</p>

UPC SECTION	§ 3-704
SUBJECT	PERSONAL REPRESENTATIVE TO PROCEED WITHOUT COURT ORDER; EXCEPTION
UPC Statute (with Maine amendments shown)	A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.
18-A M.R.S.A.	§3-704. Personal representative to proceed without court order; exception A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this Code, to resolve questions concerning the estate or its administration.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

	<p>the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.</p>
<p>Difference between current Maine section and UPC</p>	<p>UPC requires notice, also states that the estate is being administered by the personal representative under current Maine section 3-705 without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.</p> <p>In cases where there has been no formal testacy proceedings, current Maine section 3-705 also requires notice to the devisees in any purported will whose existence and the names of the devisees thereunder are known to the personal representative.</p>
<p>Recommendation</p>	<p>Adopt UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section adds the UPC's additional information requirements from the personal representative to heirs (including intestate heirs) and devisees in any will mentioned in the application for appointment.</p> <p>Also, this section removes former Maine section 3-705 requirements that the personal representative provide information to heirs and devisees "in any purported will whose existence . . . [was] known to the personal representative."</p>

UPC SECTION	§ 3-706
SUBJECT	DUTY OF PERSONAL REPRESENTATIVE; INVENTORY AND APPRAISEMENT
UPC Statute (with Maine amendments shown)	<p>Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and <u>file or furnish mail</u> an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. <u>The inventory shall also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation, and the amount of all such credits, exclusive of expenses and risk of settlement or collection.</u></p> <p>The personal representative shall <u>furnish send</u> a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court.</p> <p><u>When an inventory has not been filed or furnished as required under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.</u></p>
18-A M.R.S.A.	<p>§ 3-706. Duty of personal representative; inventory and appraisal</p> <p>Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or furnish an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. The inventory shall also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation, and the amount of all such credits, exclusive of expenses and risk of settlement or collection.</p> <p>The personal representative shall furnish a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court.</p> <p>When an inventory has not been filed or furnished as required under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the specific property would</p>

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	properly be excluded from the inventory.
Difference between current Maine section and UPC	<p>Current Maine section 3-706 has more inventory requirements. It requires that the inventory also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation, and the amount of all such credits, exclusive of expenses and risk of settlement or collection. Current Maine section 3-706 also requires that when an inventory has not been filed or furnished as required and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.</p> <p>Current Maine section 3-706 also uses the word “furnish” where UPC uses words “send” or “mail.”</p>
Recommendation	Adopt UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-707
Subject	EMPLOYMENT OF APPRAISERS
UPC Statute (with Maine amendments shown)	The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets as of the date of the decedent's death; but shall employ an appraiser for determining the value of real estate or securities not regularly traded on recognized exchanges. of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.
18-A M.R.S.A.	§ 3-707. Employment of appraisers The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value of all assets as of the date of the decedent's death; but shall employ an appraiser for determining the value of real estate or securities not regularly traded on recognized exchanges. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.
Difference between current Maine section and UPC	Current Maine section 3-707 requires appraisal for real estate or securities not regularly traded, while UPC relies on whether the value may be subject to reasonable doubt.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	This section tracks the UPC and now requires appraisal of "any asset the value of which may be subject to reasonable doubt."

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UPC SECTION	§ 3-708
SUBJECT	DUTY OF PERSONAL REPRESENTATIVE; SUPPLEMENTARY INVENTORY
UPC Statute (with Maine amendments shown)	If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.
18-A M.R.S.A.	§ 3-708. Duty of personal representative; supplementary inventory If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ -3-709
SUBJECT	DUTY OF PERSONAL REPRESENTATIVE; POSSESSION OF ESTATE
UPC Statute (with Maine amendments shown)	Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.
18-A M.R.S.A.	§ 3-709. Duty of personal representative; possession of estate Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-710
SUBJECT	POWER TO AVOID TRANSFERS
UPC Statute (with Maine amendments shown)	The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. <u>The personal representative is not required to institute such an action unless requested by creditors, who must pay or secure the cost and expenses of litigation.</u>
18-A M.R.S.A.	§ 3-710. Power to avoid transfers The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors, who must pay or secure the cost and expenses of litigation.
Difference between current Maine section and UPC	Current Maine section 3-710 adds that personal representative is not required to institute action unless requested by creditors, who must pay or secure the cost and expenses of litigation.
Recommendation	Adopt the UPC with the changes shown
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-711
SUBJECT	POWERS OF PERSONAL REPRESENTATIVES; IN GENERAL
UPC Statute (with Maine amendments shown)	Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.
18-A M.R.S.A.	§ 3-711. Powers of personal representatives; in general Until termination of his appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing or order of court, except as limited by this section. The personal representative shall not sell or transfer any interest in real property of the estate without giving notice at least 10 days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice
Difference between current Maine section and UPC	Maine has a requirement of a ten-day notice for sale of real estate not in the UPC.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section removes the requirement under former Maine section 3-711 that the personal representative provide a ten-day notice for sale of real estate.

UPC SECTION	§ 3-712
SUBJECT	IMPROPER EXERCISE OF POWER; BREACH OF FIDUCIARY DUTY
UPC Statute (with Maine amendments shown)	If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 3-713 and 3-714.
18-A M.R.S.A.	§ 3-712. Improper exercise of power; breach of fiduciary duty If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 3-713 and 3-714.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-713
SUBJECT	SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS
UPC Statute (with Maine amendments shown)	Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantive beneficial interest, or any transaction which is affected by a substantive conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless (1) the will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after notice to interested persons.
18-A M.R.S.A.	§3-713 . Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantive beneficial interest, or any transaction which is affected by a substantive conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless (1) the will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after notice to interested persons.
Difference between current Maine section and UPC	None
Recommendation	Adopt the UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-714
SUBJECT	PERSONS DEALING WITH PERSONAL REPRESENTATIVE; PROTECTION
UPC Statute (with Maine amendments shown)	A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 3-504 no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.
18-A M.R.S.A.	§3-714 . Persons dealing with personal representative; protection A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 3-504 no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.
Difference between current Maine section and UPC	None

Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-715
SUBJECT	TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES; EXCEPTIONS
UPC Statute (with Maine amendments shown)	<p>Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in Section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:</p> <p>(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;</p> <p>(2) receive assets from fiduciaries, or other sources;</p> <p>(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:</p> <p style="padding-left: 40px;">(A) execute and deliver a deed of conveyance, for cash payment of all sums remaining due, or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or</p> <p style="padding-left: 40px;">(B) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;</p> <p>(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims if, in the judgment of the personal representative, the decedent would have wanted the pledges completed under the circumstances;</p> <p>(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;</p> <p>(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;</p> <p>(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;</p> <p>(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving</p>

	<p>considerations; or dedicate easements to public use without consideration;</p> <p>(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;</p> <p>(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;</p> <p>(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;</p> <p>(12) vote stocks or other securities in person or by general or limited proxy;</p> <p>(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;</p> <p>(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;</p> <p>(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;</p> <p>(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;</p> <p>(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;</p> <p>(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;</p> <p>(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;</p> <p>(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;</p> <p>(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting</p>
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	<p>personally, employ one or more agents to perform any act of administration, whether or not discretionary;</p> <p>(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;</p> <p>(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;</p> <p>(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;</p> <p>(25) incorporate any business or venture in which the decedent was engaged at the time of his death;</p> <p>(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;</p> <p>(27) satisfy and settle claims and distribute the estate as provided in this code.</p> <p><u>(28) exercise any power described in Title 18-A M.R.S.A. §1-111 relating to compliance with environmental laws.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 3-715. Transactions authorized for personal representatives; exceptions</p> <p>Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in Section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:</p> <p>(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;</p> <p>(2) Receive assets from fiduciaries, or other sources;</p> <p>(3) Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:</p> <p>(A) Execute and deliver a deed of conveyance, for cash payment of all sums remaining due, or the purchaser's note for the</p>

	<p>sum remaining due secured by a mortgage or deed of trust on the land; or</p> <p>(B) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;</p> <p>(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims if, in the judgment of the personal representative, the decedent would have wanted the pledges completed under the circumstances;</p> <p>(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;</p> <p>(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;</p> <p>(7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;</p> <p>(8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;</p> <p>(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;</p> <p>(10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;</p> <p>(11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;</p> <p>(12) Vote stocks or other securities in person or by general or limited proxy;</p> <p>(13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;</p> <p>(14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal</p>
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	<p>representative is liable for any act of the nominee in connection with the security so held;</p> <p>(15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;</p> <p>(16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;</p> <p>(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;</p> <p>(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;</p> <p>(19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;</p> <p>(20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;</p> <p>(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;</p> <p>(22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;</p> <p>(23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;</p> <p>(24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none</p>
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	<p>of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;</p> <p>(25) Incorporate any business or venture in which the decedent was engaged at the time of his death;</p> <p>(26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;</p> <p>(27) Satisfy and settle claims and distribute the estate as provided in this Code.</p>
Difference between current Maine section and UPC	No substantive differences (Current Maine section 3-715 uses capital letters at the beginning of each sub-section.).
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law. Additional reference in §§(28) simply provides a reference to applicable fiduciary section in Art. 1.

UPC SECTION	§ 3-716
SUBJECT	POWERS AND DUTIES OF SUCCESSOR PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.
18-A M.R.S.A.	§ 3-716. Powers and duties of successor personal representative A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-717
SUBJECT	CO-REPRESENTATIVES; WHEN JOINT ACTION REQUIRED
UPC Statute (with Maine amendments shown)	If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.
18-A M.R.S.A.	§ 3-717. Co-representatives; when joint action required If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-718
SUBJECT	POWERS OF SURVIVING PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.
18-A M.R.S.A	§ 3-718. Powers of surviving personal representative Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-719
SUBJECT	COMPENSATION OF PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.
18-A M.R.S.A.	§ 3-719. Compensation of Personal Representative A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-720
SUBJECT	EXPENSES IN ESTATE LITIGATION
UPC Statute (with Maine amendments shown)	If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.
18-A M.R.S.A.	§3-720. Expenses in estate litigation If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-721
SUBJECT	PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND EMPLOYEES OF ESTATE
UPC Statute (with Maine amendments shown)	<p>After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.</p> <p><u>(b) Factors to be considered as guides in determining the reasonableness of a fee include the following:</u></p> <p><u>(1). The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;</u></p> <p><u>(2). The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment;</u></p> <p><u>(3). The fee customarily charged in the locality for similar services;</u></p> <p><u>(4). The amount involved and the results obtained;</u></p> <p><u>(5). The time limitations imposed by the personal representative or by the circumstances;</u></p> <p><u>(6). The experience, reputation and ability of the person performing the services.</u></p>
18-A M.R.S.A.	<p>§3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate</p> <p>(a) After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.</p> <p>(b) Factors to be considered as guides in determining the reasonableness of a fee include the following:</p> <p>(1). The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;</p>

	<p>(2). The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment;</p> <p>(3). The fee customarily charged in the locality for similar services;</p> <p>(4). The amount involved and the results obtained;</p> <p>(5). The time limitations imposed by the personal representative or by the circumstances;</p> <p>(6). The experience, reputation and ability of the person performing the services.</p>
Difference between current Maine section and UPC	Current Maine section 3-721 adds guiding factors in consideration of reasonable compensation of the personal representative.
Recommendation	Adopt UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-801
SUBJECT	NOTICE TO CREDITORS
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Unless notice has already been given under this section, a personal representative upon appointment may shall publish a notice to creditors once a week for three two successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.</p> <p>(b) A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present his [or her] claim within four months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) above or a similar notice.</p> <p>(c) The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-801. Notice to creditors</p> <p>(a) Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice to creditors once a week for 2 successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.</p> <p>(b) A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within 4 months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) above or a similar notice.</p> <p>(c) The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.</p>
<p>Difference between current Maine section and UPC</p>	<p>UPC requires the publishing of a notice to creditors once a week for 3 successive weeks in a newspaper of general circulation in the county announcing the appointment.</p> <p>Current Maine section 3-801 requires the publishing of a notice to creditors once a week for 2 successive weeks in a newspaper of general circulation in the county announcing the appointment.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>

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Maine Probate Code Proposed Comments	
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UPC SECTION	§ 3-802
SUBJECT	STATUTES OF LIMITATIONS.
UPC Statute (with Maine amendments shown)	<p>(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.</p> <p>(b) The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death, but resumes thereafter as to claims not barred by other sections.</p> <p>(c) For purposes of a statute of limitations, the presentation of a claim pursuant to Section 3-804 is equivalent to commencement of a proceeding on the claim.</p>
18-A M.R.S.A.	<p>§ 3-802. Statutes of limitations</p> <p>(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.</p> <p>(b) The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death, but resumes thereafter as to claims not barred by other sections.</p> <p>(c) For purposes of a statute of limitations, the presentation of a claim pursuant to Section 3-804 is equivalent to commencement of a proceeding on the claim.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-803
SUBJECT	LIMITATIONS ON PRESENTATION OF CLAIMS
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are barred against the estate, the personal representative, the heirs and devisees, and nonprobate transferees of the decedent, unless presented within the earlier of the following:</p> <p>(1) one year, Nine months after the decedent's death; or</p> <p>(2) the time provided by Section 3-801(b) for creditors who are given actual notice, and within the time provided in Section 3-801(a) for all creditors barred by publication.</p> <p>(b) A claim described in subsection (a) which is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in this state is barred in this state.</p> <p>(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:</p> <p>(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due; or</p> <p>(2) any other claim, within the later of four months after it arises, or at the time specified in subsection (a)(1).</p> <p>(d) Nothing in this section affects or prevents:</p> <p>(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;</p> <p>(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or</p> <p>(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-803. Limitations on presentation of claims</p> <p>(a). All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of</p>

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	<p>limitations or nonclaim statute, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following:</p> <p>(1). The time provided by section 3-801, subsection (b) for creditors who are given actual notice, and the time provided in section 3-801, subsection (a) for all creditors barred by publication; or</p> <p>(2). Nine months of the decedent's death.</p> <p>(a-1). A claim described in subsection (a) which is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.</p> <p>(b). All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:</p> <p>(1). A claim based on a contract with the personal representative, within four months after performance by the personal representative is due; or</p> <p>(2). Any other claim, within the later of 4 months after it arises, or the time specified in subsection (a), paragraph (2).</p> <p>(c). Nothing in this section affects or prevents:</p> <p>(1). Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;</p> <p>(2). To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance;</p> <p>(3). Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or</p> <p>(4). The State from filing and enforcing a claim for Medicaid reimbursement under Title 22, section 14. Notwithstanding subsection (a), paragraph (2), if this claim is filed within 4 months of published or actual notice of creditors, the claim is considered timely filed.</p>
Difference between current Maine section and UPC	UPC allows claims for 1 year after decedent's death. Current Maine section 3-803 allows claims for 9 months after decedent's death. UPC and current Maine section 3-803 letter sections differently.
Recommendation	Adopt the UPC with changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	§ 3-804
SUBJECT	MANNER OF PRESENTATION OF CLAIMS
<p>UPC Statute (with Maine amendments shown)</p>	<p>Claims against a decedent’s estate may be presented as follows:</p> <p>(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.</p> <p>(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.</p> <p>(3) If a claim is presented under paragraph (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60 day period, or to avoid injustice the court, on petition, may order an extension of the 60 day period, but in no event shall the extension run beyond the applicable statute of limitations.</p> <p><u>(4). When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the clerk of the court a written statement of claim meeting the requirements of subsection (1) and a demand for notice pursuant to section 3-204. The provisions of subsection (3) apply upon the appointment of a personal representative.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 3-804. Manner of presentation of claims</p> <p>Claims against a decedent’s estate may be presented as follows:</p> <p>(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to</p>

UPC SECTION	§ 3-804
SUBJECT	MANNER OF PRESENTATION OF CLAIMS
	<p>occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.</p> <p>(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.</p> <p>(3) If a claim is presented under paragraph (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60 day period, or to avoid injustice the court, on petition, may order an extension of the 60 day period, but in no event shall the extension run beyond the applicable statute of limitations.</p> <p>(4). When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the clerk of the court a written statement of claim meeting the requirements of subsection (1) and a demand for notice pursuant to section 3-204. The provisions of subsection (3) apply upon the appointment of a personal representative.</p>
Difference between current Maine section and UPC	Current Maine section 3-804 adds sub-section 4, outlining procedure for claimant to present claim when a decedent's estate has not been commenced.
Recommendation	Adopt the UPC with changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	§ 3-805
SUBJECT	CLASSIFICATION OF CLAIMS
UPC Statute (with Maine amendments shown)	<p>(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:</p> <ol style="list-style-type: none"> (1) costs and expenses of administration; (2) reasonable funeral expenses; (3) debts and taxes with preference under federal law; (4) Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him; (5) debts and taxes with preference under other laws of this state; (6) all other claims. <p>(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.</p>
18-A M.R.S.A.	<p>§ 3-805. Classification of claims</p> <p>(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:</p> <ol style="list-style-type: none"> (1) costs and expenses of administration; (2) reasonable funeral expenses; (3) debts and taxes with preference under federal law; (4) Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent; (5) debts and taxes with preference under other laws of this state; (6) all other claims. <p>(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.</p>
Difference between current Maine section and UPC	Current Maine section 3-805 (a)(4) specifies Title 22 Medicaid-related expenditures.
Recommendation	Adopt the UPC with changes shown
Maine Probate Code Proposed Comments	

UPC SECTION	§ 3-806
SUBJECT	ALLOWANCE OF CLAIMS
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) As to claims presented in the manner described in Section 3-804 within the time limit prescribed in 3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.</p> <p><u>(b) After allowing or disallowing a claim the personal representative may change the allowance or disallowance as hereafter provided. The personal representative may prior to payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. He shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (a). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (a); after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.</u></p> <p>(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (a). Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.</p> <p>(d) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.</p> <p><u>(e) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear</u></p>

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	<p>interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision. —). Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, section 1602-B for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.</p> <p>(1). Interest may not accrue on any allowed claims, however allowed, against an insolvent estate, except to the extent that insurance coverage or other nonprobate assets are available to pay the claim in full. This paragraph is effective for estates of decedents who die on or after October 1, 1997.</p> <p>(2). To the extent that an allowed claim against an insolvent estate is secured by property, the value of which, as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose. This paragraph is effective for estates of decedents who die on or after October 1, 1997.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-806. Allowance of Claims</p> <p>(a). As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may furnish a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to furnish notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.</p> <p>(b). Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal</p>

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	<p>representative or filed with the clerk of the court in due time and not barred by subsection (a). Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.</p> <p>(c). A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.</p> <p>(d). Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, section 1602-B for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.</p> <p>(1). Interest may not accrue on any allowed claims, however allowed, against an insolvent estate, except to the extent that insurance coverage or other nonprobate assets are available to pay the claim in full. This paragraph is effective for estates of decedents who die on or after October 1, 1997.</p> <p>(2). To the extent that an allowed claim against an insolvent estate is secured by property, the value of which, as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose. This paragraph is effective for estates of decedents who die on or after October 1, 1997</p>
Difference between current Maine section and UPC	In addition to minor changes the UPC contains a detailed discussion in new (b) of how a Personal Representative may change the allowance or disallowance of a claim. Current Maine section 3-806 specifies standards for the limited accrual of interest on claims allowed against insolvent estates.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	§ 3-807
SUBJECT	PAYMENT OF CLAIMS
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Upon the expiration of the earlier of the time limitations provided in Section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.</p> <p>(b) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:</p> <p>(1) payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or</p> <p>(2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-807 . Payment of claims</p> <p>(a) Upon the expiration of the earlier of the time limitations provided in Section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.</p> <p>(b) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:</p> <p>(1) payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the</p>

	payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or (2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-808
SUBJECT	INDIVIDUAL LIABILITY OF PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	<p>(a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</p> <p>(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.</p> <p>(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.</p>
18-A M.R.S.A.	<p>§ 3-808. Individual liability of personal representative</p> <p>(a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</p> <p>(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.</p> <p>(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.</p>
Difference between current Maine section and	None

UPC	
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-809
SUBJECT	SECURED CLAIMS
UPC Statute (with Maine amendments shown)	<p>Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:</p> <p>(1) if the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or</p> <p>(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.</p>
18-A M.R.S.A.	<p>§ 3-809. Secured claims</p> <p>Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:</p> <p>(1) if the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or</p> <p>(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-810
SUBJECT	CLAIMS NOT DUE AND CONTINGENT OR UNLIQUIDATED CLAIMS
UPC Statute (with Maine amendments shown)	<p>(a) If a claim which will become due at a future time or a contingent or unliquidated claim, becomes due, or certain, before the distribution of the estate, and if the claim has been allowed or established by a proceeding it is paid in the same manner as presently due and absolute claims of the same class.</p> <p>(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court, may provide for payment as follows:</p> <p>(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;</p> <p>(2) arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee or otherwise.</p>
18-A M.R.S.A.	<p>§ 3-810 . Claims not due and contingent or unliquidated claims</p> <p>(a) If a claim which will become due at a future time or a contingent or unliquidated claim, becomes due, or certain, before the distribution of the estate, and if the claim has been allowed or established by a proceeding it is paid in the same manner as presently due and absolute claims of the same class.</p> <p>(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court, may provide for payment as follows:</p> <p>(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;</p> <p>(2) arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee or otherwise.</p>
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-811
SUBJECT	COUNTERCLAIMS
UPC Statute (with Maine amendments shown)	In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.
18-A M.R.S.A.	§ 3-811. Counterclaims In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-812
SUBJECT	EXECUTION AND LEVIES PROHIBITED
UPC Statute (with Maine amendments shown)	No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.
18-A M.R.S.A	§ 3-812. Execution and levies prohibited No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-813
SUBJECT	COMPROMISE OF CLAIMS
UPC Statute (with Maine amendments shown)	When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.
18-A M.R.S.A.	§ 3-813. Compromise of claims When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-814
SUBJECT	ENCUMBERED ASSETS
UPC Statute (with Maine amendments shown)	If any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.
18-A M.R.S.A.	§ 3-814. Encumbered assets If any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-815
SUBJECT	ADMINISTRATION IN MORE THAN ONE STATE; DUTY OF PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	<p>(a) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.</p> <p>(b) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.</p> <p>(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.</p>
18-A M.R.S.A.	<p>§ 3-815. Administration in more than one state; duty of personal representative</p> <p>(a) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.</p> <p>(b) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.</p> <p>(c) In case the family exemptions and allowances, prior charges and</p>

	claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-816
SUBJECT	FINAL DISTRIBUTION TO DOMICILIARY REPRESENTATIVE
UPC Statute (with Maine amendments shown)	The estate of a non-resident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (i) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile; (ii) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (iii) the court orders otherwise in a proceeding for a closing order under Section 3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.
18-A M.R.S.A	§ 3-816. Final Distribution to Domiciliary Representative The estate of a non-resident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (i) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile; (ii) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (iii) the court orders otherwise in a proceeding for a closing order under Section 3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other Parts of this Article.
Difference between current Maine section and UPC	None
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	3-817
SUBJECT	SURVIVAL OF ACTIONS
UPC Statute (with Maine amendments shown)	<p><u>(a). No personal action or cause of action is lost by the death of either party, but the same survives for and against the personal representative of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes do not survive the death of the defendant. A personal representative may seek relief from a judgment in an action to which the deceased was a party to the same extent that the deceased might have done so.</u></p> <p><u>(b). When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before entry of judgment, his personal representative may appear and enter the action or any appeal that has been made, and suggest on the record the death of the party. If the personal representative does not appear within 90 days after his appointment, he may be cited to appear, and after due notice judgment may be entered against him by dismissal or default if no such appearance is made</u></p> <p><u>(c). When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the personal representative of the deceased may appear or be cited to appear as provided in subsection (b). The action may be further prosecuted or defended by the survivors and the personal representative jointly or by either of them. The survivors, if any, on both sides of the action may testify as witnesses</u></p> <p><u>(d). When a judgment creditor dies before the first execution issues or before an execution issued in his lifetime is fully satisfied, such execution may be issued or be effective in favor of the deceased judgment creditor's personal representative, but no execution shall issue or be effective beyond the time within which it would have been effective or issued if the party had not died.</u></p> <p><u>(e). An execution issued under subsection (d) shall set forth the fact that the judgment creditor has died since the rendition of the judgment and that the substituted party is the personal representative of the decedent's estate.</u></p> <p><u>(f). The personal representative proceeding under this section shall be liable, and shall hold any recovered property or award, in his representative capacity, except as otherwise provided in section 3-808.</u></p>
18-A M.R.S.A.	<p>§ 3-817. Survival of actions</p> <p>(a). No personal action or cause of action is lost by the death of either party, but the same survives for and against the personal representative of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes do not survive the death of the defendant. A personal representative may seek relief from a judgment in an action to which</p>

	<p>the deceased was a party to the same extent that the deceased might have done so.</p> <p>(b). When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before entry of judgment, his personal representative may appear and enter the action or any appeal that has been made, and suggest on the record the death of the party. If the personal representative does not appear within 90 days after his appointment, he may be cited to appear, and after due notice judgment may be entered against him by dismissal or default if no such appearance is made</p> <p>(c). When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the personal representative of the deceased may appear or be cited to appear as provided in subsection (b). The action may be further prosecuted or defended by the survivors and the personal representative jointly or by either of them. The survivors, if any, on both sides of the action may testify as witnesses</p> <p>(d). When a judgment creditor dies before the first execution issues or before an execution issued in his lifetime is fully satisfied, such execution may be issued or be effective in favor of the deceased judgment creditor's personal representative, but no execution shall issue or be effective beyond the time within which it would have been effective or issued if the party had not died.</p> <p>(e). An execution issued under subsection (d) shall set forth the fact that the judgment creditor has died since the rendition of the judgment and that the substituted party is the personal representative of the decedent's estate.</p> <p>(f). The personal representative proceeding under this section shall be liable, and shall hold any recovered property or award, in his representative capacity, except as otherwise provided in section 3-808.</p>
Difference between current Maine section and UPC	No such UPC section.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	The UPC has no section concerning survival of actions.

UPC SECTION	3-818
SUBJECT	DAMAGES LIMITED TO ACTUAL DAMAGES
UPC Statute (with Maine amendments shown)	<u>In any tort action against the personal representative of a decedent's estate, in his representative capacity, the plaintiff can recover only the value of the goods taken or damage actually sustained.</u>
18-A M.R.S.A.	§3-818 . Damages limited to actual damages In any tort action against the personal representative of a decedent's estate, in his representative capacity, the plaintiff can recover only the value of the goods taken or damage actually sustained.
Difference between current Maine section and UPC	No such UPC section.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	UPC has no section concerning damages limited to actual damages.

UPC SECTION	§ 3-901
SUBJECT	SUCCESSORS' RIGHTS IF NO ADMINISTRATION
UPC Statute (with Maine amendments shown)	In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.
18-A M.R.S.A.	§ 3-901. Successors' rights if no administration In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	§ 3-902
SUBJECT	DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT
UPC Statute (with Maine amendments shown)	<p>(a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.</p> <p>(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.</p> <p>(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.</p>
18-A M.R.S.A.	<p>§ 3-902. Distribution; order in which assets appropriated; abatement</p> <p>(a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.</p> <p>(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise</p>

	would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator. (c). If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	.

UPC SECTION	§ 3-902-A
SUBJECT	DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT. ((addendum for adoption in community property states)
UPC Statute (with Maine amendments shown)	<p>[(a) and (b) as above.]</p> <p>(e) If an estate of a decedent consists partly of separate property and partly of community property, the debts and expenses of administration shall be apportioned and charged against the different kinds of property in proportion to the relative value thereof.</p> <p>[(d) same as (e) in common law state.]]</p>
18-A M.R.S.A.	Maine is not a community property state and so has no 3-902-A section.
Difference between current Maine section and UPC	UPC has community property section. Maine does not.
Recommendation	Do Not Adopt UPC. Because Maine is not a community property state, Maine has no community property section.
Maine Probate Code Proposed Comments	Not being a community property state, Maine does not adopt UPC §3-902-A.

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UPC SECTION	§ 3-903
SUBJECT	RIGHTS OF RETAINER
UPC Statute (with Maine amendments shown)	The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt. <u>Such debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor.</u>
18-A M.R.S.A.	§ 3-903. Rights of retainer The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt. Such debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor.
Difference between current Maine section and UPC	The Maine Statute adds the following: "Such debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor."
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-904
SUBJECT	INTEREST ON GENERAL PECUNIARY DEVISE
UPC Statute (with Maine amendments shown)	General pecuniary devises bear interest at the legal rate <u>of 5%</u> beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.
18-A M.R.S.A.	§ 3-904. Interest on general pecuniary device General pecuniary devises bear interest at the legal rate of 5% per year beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated in the will or is implicit in light of the unproductive or underproductive nature or decline in value, during the administration of the estate, of the portion of the estate out of which such devise is payable.
Difference between current Maine section and UPC	UPC sets interest at “the legal rate.” Current Maine section 3-904 sets the legal rate of 5%. UPC does not require the payment of interest if “a contrary intent is indicated by the will or is implicit in light of the unproductive or underproductive nature or decline in value, during the administration of the estate, of the portion of the estate out of which such devise is payable.”
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	This section removes language allowing a lower than 5% rate for underproductive property.

UPC SECTION	§ 3-905
SUBJECT	PENALTY CLAUSE FOR CONTEST
UPC Statute (with Maine amendments shown)	A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.
18-A M.R.S.A.	§ 3-905. Penalty clause for contest A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-906
SUBJECT	DISTRIBUTION IN KIND; VALUATION; METHOD
UPC Statute (with Maine amendments shown)	<p>(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:</p> <p>(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 2-403, 2-402 shall receive the items selected.</p> <p>(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind, <u>in the personal representative's discretion</u>, provided</p> <p>(i) the person entitled to the payment has not demanded payment in cash;</p> <p>(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and</p> <p>(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate <u>or if, a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will.</u></p> <p>(3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.</p> <p>(4) The residuary estate shall be distributed in any equitable manner. <u>may be distributed by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares; except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.</u></p>

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	<p>(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-906. Distribution in kind; valuation; method</p> <p>(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate must be distributed as follows.</p> <p>(1) A specific devisee must receive the thing devised to that devisee, and a spouse or child who has selected particular assets of an estate as provided in section 2-402 must receive the items selected.</p> <p>(2) Any homestead or family allowance or pecuniary devise may be satisfied by value in kind, in the personal representative's discretion, if:</p> <p>(i) The person entitled to the payment has not demanded payment in cash;</p> <p>(ii) The property distributed in kind is valued at fair market value as of the date of its distribution; and</p> <p>(iii) No residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate or if, a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will.</p> <p>(3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.</p> <p>(4) The residuary estate may be distributed by the personal representative in cash or in kind, in accordance with the best</p>

	<p>interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares; except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.</p> <p>(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.</p>
Difference between current Maine section and UPC	<p>The UPC has always had a bias in favor of distributions in kind. Initially, Maine adopted the UPC section without change. However, in 1997, the Legislature made significant changes to Section 3-906. Current Maine section 3-906 gives the personal representative discretion to allocate assets among beneficiaries in cash or in kind in pro rata or non-pro rata shares provided stated conditions are met.</p>
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-907
SUBJECT	DISTRIBUTION IN KIND; EVIDENCE
UPC Statute (with Maine amendments shown)	If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.
18-A M.R.S.A.	§ 3-907. Distribution in kind; evidence If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change Maine law

UPC SECTION	§ 3-908
SUBJECT	DISTRIBUTION; RIGHT OR TITLE OF DISTRIBUTE
UPC Statute (with Maine amendments shown)	Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.
18-A M.R.S.A.	§ 3-908. Distribution; right or title of distributee Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-909
SUBJECT	IMPROPER DISTRIBUTION; LIABILITY OF DISTRIBUTE
UPC Statute (with Maine amendments shown)	Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.
18-A M.R.S.A	§ 3-909. Improper distribution; liability of distributee Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-910
SUBJECT	Purchasers From Distributees Protected
<p>UPC Statute (with Maine amendments shown)</p>	<p>If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that such transfer was made for value.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-910. Purchasers from distributees protected If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the register of deeds notes by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that</p>

	the transfer was made for value.
Difference between current Maine section and UPC	No substantive difference. (At the end of this statute, and per the UPC’s explicit invitation (in brackets), current Maine section 3-910 inserts “Maine Real Estate Transfer Tax Paid” as the applicable transfer tax stamp which serves as the “prima facie evidence that the transfer was made for value.”).
Recommendation	Adopt UPC with the changes shown.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§ 3-911
SUBJECT	PARTITION FOR PURPOSE OF DISTRIBUTION
UPC Statute (with Maine amendments shown)	When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the Court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the Court shall partition the property in the same manner as provided by the law for civil actions of partition. The Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.
18-A M.R.S.A	§ 3-911. Partition for purpose of distribution When 2 or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	§ 3-912
SUBJECT	PRIVATE AGREEMENTS AMONG SUCCESSORS TO DECEDENT BINDING ON PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.
18-A M.R.S.A	. § 3-912. Private agreements among successors to decedent binding on personal representative Subject to the rights of creditors and taxing authorities competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trust.
Difference between current Maine section and UPC	No substantive difference. (In the UPC section, the very last word is the plural word, “trusts.” In the current Maine section, the very last word is the singular word, “trust.”)
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	§ 3-913
SUBJECT	DISTRIBUTIONS TO TRUSTEE
UPC Statute (with Maine amendments shown)	<p>(a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 7-303.</p> <p>(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate Court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the Court has acted.</p> <p>(c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).</p>
18-A M.R.S.A.	<p>§ 3-913. Distributions to Trustee</p> <p>(a). Repealed. Laws 2003</p> <p>(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.</p> <p>(c) No inference of negligence on the part of the personal representative may be drawn from the personal representative's failure to exercise the authority conferred by subsection (b).</p>
Difference between current Maine section and UPC (Redlining conforms Maine to UPC)	Current Maine section 3-913 no longer provides for the registration of trusts.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

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UPC SECTION	§ 3-914
SUBJECT	DISPOSITION OF UNCLAIMED ASSETS
UPC Statute (with Maine amendments shown)	<p>(a) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the [state treasurer], to become a part of the [state escheat fund]. <u>it must be disposed of according to Title 33, chapter 41.</u></p> <p>(b) The money received by [state treasurer] shall be paid to the person entitled on proof of his right thereto or, if the [state treasurer] refuses or fails to pay, the person may petition the Court which appointed the personal representative, whereupon the Court upon notice to the [state treasurer] may determine the person entitled to the money and order the [treasurer] to pay it to him. No interest is allowed thereon and the heir, devisee or claimant shall pay all costs and expenses incident to the proceeding. If no petition is made to the [court] within 8 years after payment to the [state treasurer], the right of recovery is barred.</p>
18-A M.R.S.A.	<p>§ 3-914. Disposition of unclaimed assets (A) If an heir, devisee or claimant can not be found, the personal representative shall distribute the share of the missing person to the person's conservator, if any; otherwise it must be disposed of according to Title 33, chapter 41.</p>
Difference between current Maine section and UPC	Current Maine section 3-914 modified the UPC to incorporate a Maine statutory reference to Maine's version of the Uniform Unclaimed Property Act (UUPA), 33 M.R.S.A. §§ 1951 et seq. In that UUPA details state treasure duties and procedures, there was no longer a need for the next sub-section (b) of the UPC.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law..

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UPC SECTION	§ 3-915
SUBJECT	DISTRIBUTION TO PERSON UNDER DISABILITY
UPC Statute (with Maine amendments shown)	<p>(a) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.</p> <p>(b) Unless contrary to an express provision in the will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by Section 5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.</p> <p>(c) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:</p> <p>(1) an attorney in fact who has authority under a power of attorney to receive property for that person; or</p> <p>(2) the spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year, or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value. Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection.</p>
18-A M.R.S.A.	<p>§ 3-915. Distribution to person under disability A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.</p>
Difference between current Maine section and UPC	UPC provides greater distribution options and guidance.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section adds options and guidance to former Maine section 3-915 when making a distribution to a person under disability.

UPC SECTION	3-916 [referenced as “UPC Part 9A” in UPC]
SUBJECT	UNIFORM ESTATE TAX APPORTIONMENT ACT (2003)
UPC Statute (with Maine amendments shown)	SECTION 3-9A-101. Short Title. This part may be cited as the Uniform Estate Tax Apportionment Act.
	SECTION 3-9A-102. Definitions. In this part:
	(1) “Apportionable estate” means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:
	(A) any claim or expense allowable as a deduction for purposes of the tax;
	(B) the value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and
	(C) any amount added to the decedent’s gross estate because of a gift tax on transfers made before death.
	(2) “Estate tax” means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.
	(3) “Gross estate” means, with respect to an estate tax, all interests in property subject to the tax.
	(4) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
	(5) “Ratable” means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. “Ratably” has a corresponding meaning.
	(6) “Time-limited interest” means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest
	(7) “Value” means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.
	SECTION 3-9A-103. Apportionment by Will or Other Dispositive Instrument.
	(a) Except as otherwise provided in subsection (c), the following rules apply:

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(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.

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(2) Any portion of an estate tax not apportioned pursuant to paragraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph,

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(A) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

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(B) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

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(3) If any portion of an estate tax is not apportioned pursuant to paragraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

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(b) Subject to subsection (c), and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

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(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest,

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(A) the tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument, or

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(B) if the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

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(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

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(3) Except as otherwise provided in paragraph (4), if an apportionment provision directs that an estate tax be apportioned to

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property in which one or more time-limited interests exist, other than interests in specified property under Section 3-9A-107, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

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(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

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(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

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SECTION 3-9A-104. Statutory Apportionment of Estate Taxes. To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 3-9A-103 and except as otherwise provided in Sections 3-9A-106 and 3-9A-107, the following rules apply:

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(1) Subject to paragraphs (2), (3), and (4), the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

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(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

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(3) If property is included in the decedent's gross estate because of Section 2044 of the Internal Revenue Code of 1986 or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

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(4) Except as otherwise provided in Section 3-9A-103(b)(4) and except as to property to which Section 3-9A-107 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

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SECTION 3-9A-105. Credits and Deferrals. Except as otherwise provided in Sections 3-9A-106 and 3-9A-107, the following rules apply to credits and deferrals of estate taxes:

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(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

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(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary, of the property, on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

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(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

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SECTION 3-9A-106. Insulated Property: Advancement of Tax.

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(a) In this section:

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(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

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(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c).

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(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

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(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

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(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

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(b) If an estate tax is to be advanced pursuant to subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest other than property to which Section 3-9A-107 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

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(c) Subject to Section 3-9A-109(b) and (d), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable

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estate under Section 3-9A-102(1)(B) as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantively more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsured holders.

(e) When a distribution of insulated property is made, each uninsured holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsured holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon a distribution of insulated property for which, pursuant to subsection (d), the distributee becomes obligated to make a payment to uninsured holders, a court may award an uninsured holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsured holder.

SECTION 3-9A-107. Apportionment and Recapture of Special Elective Benefits.

(a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(A) a reduced valuation of specified property that is included in the gross estate;

(B) a deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) an exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are

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liable for the additional tax under the law providing for the recapture.

SECTION 3-9A-108. Securing Payment of Estate Tax from Property in Possession of Fiduciary.

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

SECTION 3-9A-109. Collection of Estate Tax by Fiduciary.

(a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in Section 3-9A-106, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

- (1) any person having an interest in the apportionable estate which is not exonerated from the tax;
- (2) any other person having an interest in the apportionable estate;
- (3) any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to this part may not exceed the value of the person's interest.

SECTION 3-9A-110. Right of Reimbursement.

(a) A person required under Section 3-9A-109 to pay an estate tax greater than the amount due from the person under Section 3-9A-103 or 3-9A-104 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by Section 3-9A-103 or 3-9A-104 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under Section 3-9A-109(b).

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

SECTION 3-9A-111. Action to Determine or Enforce Part. A fiduciary, transferee, or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court

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	<p>determine and enforce this part.</p> <p>SECTION 3-9A-112. Reserved.</p> <p>SECTION 3-9A-113. Reserved.</p> <p>SECTION 3-9A-114. Delayed Application.</p> <p>(a) Sections 3-9A-103 through 3-9A-107 do not apply to the estate of a decedent who dies on or within three years after the effective date of this part, nor to the estate of a decedent who dies more than three years after the effective date of this part if the decedent continuously lacked testamentary capacity from the expiration of the three-year period until the date of death.</p> <p>(b) For the estate of a decedent who dies on or after the effective date of this part to which Sections 3-9A-103 through 3-9A-107 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before the effective date of this part.</p> <p>SECTION 3-9A-115. Effective Date. This part takes effect _____.</p>
<p>18-A M.R.S.A.</p>	<p>§ 3-916. Apportionment of estate taxes</p> <p>(a) For purposes of this section:</p> <p>(1) “Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State;</p> <p>(2) “Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;</p> <p>(3) “Person interested in the estate” means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent’s estate. It includes a personal representative, conservator, and trustee;</p> <p>(4) “State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;</p> <p>(5) “Tax” means the federal estate tax, the Maine estate tax whenever it is imposed, and interest and penalties imposed in addition to the tax;</p> <p>(6) “Fiduciary” means personal representative or trustee;</p> <p>(b) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent’s will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls;</p> <p>(c) (1) The court in which venue lies for the administration of</p>

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	<p>the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.</p> <p>(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.</p> <p>(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.</p> <p>(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code the determination of the court in respect thereto shall be prima facie correct.</p> <p>(d) (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.</p> <p>(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.</p> <p>(e) (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.</p> <p>(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.</p> <p>(3) Any deduction for property previously taxed and any credit for</p>
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	<p>gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.</p> <p>(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.</p> <p>(5) To the extent that property passing to or in trust for a surviving spouse, or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b), and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.</p> <p>(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.</p> <p>(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.</p> <p>(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another</p>
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	state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.
Difference between current Maine section and UPC	<p>The variations are substantive and extensive. Maine section 3-916 apportions estate taxes. Maine adopted the version of the Uniform Estate Tax Apportionment Act ("UETAA") as it existed in 1979. Maine has not amended or updated this section since 1979.</p> <p>The UETAA was extensively revised in 2003, and now appears as Part 9A of the UPC. The UETAA deals with a broad range of issues that Maine section 3-916 does not. For example, the UETAA deals with the following issues which are not addressed by current Maine section 3-916:</p> <ul style="list-style-type: none"> • Generation-skipping taxes on direct skips occurring at the death of the decedent. • The priority of tax clauses as between a will and other documents, such as revocable trusts or gift instruments. • The treatment of gift taxes pulled back into an estate. • The treatment of estate taxes apportioned against assets from which contribution cannot be secured, such as qualified retirement plan assets. • Rates of recovery by fiduciaries, and by beneficiaries as against one another. • Apportionment of foreign estate taxes.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	<p>This section adds UETAA amendments to former Maine section 3-916.</p> <p>Note to Revisor: Sub-sections may need to be re-initialed and/or re-numbered. Also, date that section is effective needs to be added in the blank space at the very end of the section.</p>

UPC SECTION	§ 3-1001
SUBJECT	FORMAL PROCEEDINGS TERMINATING ADMINISTRATION; TESTATE OR INTESTATE; ORDER OF GENERAL PROTECTION
UPC Statute (with Maine amendments shown)	<p>(a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.</p> <p>(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.</p>
18-A M.R.S.A.	<p>§ 3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection</p> <p>(a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The</p>

	<p>petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.</p> <p>(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.</p>
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	3-1002
SUBJECT	FORMAL PROCEEDINGS TERMINATING TESTATE ADMINISTRATION; ORDER CONSTRUING WILL WITHOUT ADJUDICATING TESTACY.
UPC Statute (with Maine amendments shown)	<p>A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of Section 3-1001.</p>
18-A M.R.S.A.	<p>§ 3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy</p> <p>A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and</p>

	directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 3-1001.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	3-1003
SUBJECT	CLOSING ESTATES; BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.
UPC Statute (with Maine amendments shown)	<p>(a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative, or a previous personal representative, has:</p> <ol style="list-style-type: none"> (1) determined that the time limited for presentation of creditors' claims has expired; (2) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or state in detail other arrangements that have been made to accommodate outstanding liabilities; and (3) sent a copy of the statement to all distributees of the estate to all persons who would have a claim to succession under the testacy status upon which the personal representative is authorized to proceed and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby. <p>(b) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed the appointment of the personal representative terminates.</p>
	18-A M.R.S.A.

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	<p>presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and</p> <p>(3) Sent a copy of the statement to all distributees, to all persons who would have a claim to succession under the testacy status upon which the personal representative is authorized to proceed, and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.</p> <p>(b) If no proceedings involving the personal representative are pending in the court one year after the closing statement is file filed, the appointment of the personal representative terminates.</p>
<p>Difference between current Maine section and UPC</p>	<p>The UPC is significantly less inclusive than the current Maine section 3-1003 with respect to those to whom the personal representative must provide a closing statement. The UPC requires that the personal representative must send a copy of the closing statement to “all distributees . . . and all creditors or other claimants.” Current Maine section 3-1003 adds “persons who would have a claim to succession under the testacy status upon which the personal representative is authorized to proceed.” In other words, unlike the UPC, current Maine section 3-1003 requires the personal representative to provide a closing statement to people who for various reasons were affected by ademption, abatement, mistake, or fraud. Other, non-substantive differences: The UPC uses a “which” where current Maine section 3-1003 uses a “that.” UPC and current Maine section 3-1003 also varies slightly in that in the middle of this section, the UPC adds the words “distributees of the estate.”</p>
<p>Recommendation</p>	<p>Adopt UPC with changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section removes the requirement that the personal representative also provide a closing statement to “all persons who would have a claim under the testacy status,” meaning persons who, for various reasons, were affected by ademption, abatement, mistake, or fraud.</p>

UPC SECTION	3-1004
SUBJECT	LIABILITY OF DISTRIBUTEES TO CLAIMANTS
UPC Statute (with Maine amendments shown)	After assets of an estate have been distributed and subject to Section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.
18-A M.R.S.A.	§ 3-1004. Liability of distributees to claimants After assets of an estate have been distributed and subject to section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	3-1005
SUBJECT	LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.
18-A M.R.S.A.	§ 3-1005. Limitations on proceedings against personal representative Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change Maine law.

UPC SECTION	3-1006
SUBJECT	LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES
UPC Statute (with Maine amendments shown)	Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in the heirs' or devisee's behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or one year after the time of its distribution thereof, but all claims of creditors of the decedent, are barred <u>one year</u> 9 months after the decedent's death. This section does not bar an action to recover property or value received as a result of fraud.
18-A M.R.S.A.	§ 3-1006. Limitations on actions and proceedings against distributees Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in the heir's or devisee's behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred 9 months after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud.
Difference between current Maine section and UPC	UPC and current Maine section have 2 non-substantive differences ("a" vs. "any" and "heir's or devisee's" vs. "heirs" or devisees") and 1 substantive difference (1 year, vs. 9 months, after decedent's death for the barring of claims of creditors).
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	

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UPC SECTION	3-1007
SUBJECT	CERTIFICATE DISCHARGING LIENS SECURING FIDUCIARY PERFORMANCE
UPC Statute (with Maine amendments shown)	After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the Registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.
18-A M.R.S.A	§ 3-1007. Certificate discharging liens securing fiduciary performance After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the Registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change Maine law.

UPC SECTION	3-1008
SUBJECT	SUBSEQUENT ADMINISTRATION
UPC Statute (with Maine amendments shown)	If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.
18-A M.R.S.A.	§ 3-1008. Subsequent administration If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change Maine law.

UPC SECTION	3-1101
SUBJECT	EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS, INALIENABLE INTERESTS, OR INTERESTS OF THIRD PERSONS
UPC Statute (with Maine amendments shown)	A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.
18-A M.R.S.A.	§ 3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.
Difference between current Maine section and UPC	The UPC more broadly includes a compromise as to the effect of any “governing instrument,” while current Maine section 3-1101 narrowly limits this to a compromise regarding the effect of any “probated will.”
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section expands its reference under former Maine section 3-1101 from “any probated will” to “any governing instrument.”

UPC SECTION	3-1102
SUBJECT	PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE
UPC Statute (with Maine amendments shown)	<p>The procedure for securing court approval of a compromise is as follows:</p> <p>(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents <u>or legal guardians who have both actual custody and legal responsibility for a minor child</u> acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.</p> <p>(2) Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.</p> <p>(3) After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.</p>
18-A M.R.S.A.	<p>§ 3-1102. Procedure for securing court approval of compromise</p> <p>The procedure for securing court approval of a compromise is as follows:</p> <p>(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons, and parents or legal guardians who have both actual custody and legal responsibility for a minor child acting for any such minor child, who have beneficial interests or claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.</p> <p>(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its</p>

	<p>approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.</p> <p>(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.</p>
Difference between current Maine section and UPC	<p>In Sec. 3-1102(1), the UPC requires that a compromise must be set forth in an agreement executed by all competent persons “and parents acting for any minor child.”</p> <p>Current Maine section 3-1102 adds the following: “or legal guardians who have both actual custody and legal responsibility for a minor child acting for any such minor child.”</p> <p>In Maine section 3-1102(2), the UPC adds “if any” after “personal representative.” Maine omits “if any.”</p> <p>In Maine section 3-1102(3) the UPC adds “of any estate” after “personal representative.” current Maine section changes “any” to “the” estate.</p>
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	3-1201
SUBJECT	COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT
UPC Statute (with Maine amendments shown)	<p>(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of <u>tangible</u> personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the <u>tangible</u> personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:</p> <ol style="list-style-type: none"> (1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$5025,000; and (2) 30 days have elapsed since the death of the decedent; and (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and (4) the claiming successor is entitled to payment or delivery of the property. <p>(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).</p>
18-A M.R.S.A.	<p>§ 3-1201. Collection of personal property by affidavit</p> <p>(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:</p> <ol style="list-style-type: none"> (1) The value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$20,000; (2) Thirty days have elapsed since the death of the decedent; (3) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and (4) The claiming successor is entitled to payment or delivery of the property. <p>(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).</p>

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Difference between current Maine section and UPC	The UPC now allows the use of the affidavit process to close a small estate for estates of up to \$25,000, vs. current Maine section 3-1201 reference to estates of up to \$20,000.
Recommendation	Adopt UPC with changes shown.
Maine Probate Code Proposed Comments	Former Maine section 3-1201 set affidavit amount at \$20,000 and included “tangibles,” thereby including all accounts of financial institutions.

UPC SECTION	3-1202
SUBJECT	EFFECT OF AFFIDAVIT
UPC Statute (with Maine amendments shown)	The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.
18-A M.R.S.A.	§ 3-1202. Effect of Affidavit The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	3-1203
SUBJECT	SMALL ESTATES; SUMMARY ADMINISTRATIVE PROCEDURE
UPC Statute (with Maine amendments shown)	If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 3-1204.
18-A M.R.S.A.	§ 3-1203. Small estates; summary administrative procedure If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 3-1204.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	3-1204
SUBJECT	SMALL ESTATES; CLOSING BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE
UPC Statute	<p>(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of Section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:</p> <p>(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;</p> <p>(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and</p> <p>(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred, and has furnished a full account in writing of his administration to the distributees whose interests are affected.</p> <p>(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.</p> <p>(c) A closing statement filed under this section has the same effect as one filed under Section 3-1003.</p>
18-A M.R.S.A.	<p>§ 3-1204. Small estates; closing by sworn statement of personal representative</p> <p>(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:</p> <p>(1) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;</p> <p>(2) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and</p> <p>(3) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or</p>

	<p>other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.</p> <p>(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.</p> <p>(c) A closing statement filed under this section has the same effect as one filed under section 3-1003.</p>
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute substantive change to Maine law.

UPC SECTION	None
SUBJECT	SOCIAL SECURITY PAYMENTS
<p>Recommendation (No UPC § 3-1205)</p>	<p><u>If, (1) not less than 30 days after the death of a Maine resident entitled, at the time of his death, to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits not in excess of \$1,000 is paid by the United States to the surviving spouse, one or more of the deceased's children, or descendants of his deceased children, the deceased's father or mother, or the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, upon an affidavit made and filed with the Department of Health and Human Services by the surviving spouse or other relative by whom or on whose behalf request for payment is made, and (2) the affidavit shows the date of death of the deceased, the relationship of the affiant to the deceased, that no personal representative for the deceased has been appointed and qualified, and that, to the affiant's knowledge, there exists at the time of filing of the affidavit, no relative of a closer degree of kindred to the deceased than the affiant, then such payment pursuant to the affidavit shall be deemed to be a payment to the legal representative of the decedent and, regardless of the truth or falsity of the statements made therein, shall constitute a full discharge and release of the United States from any further claim for such payment to the same extent as if such payment had been made to the personal representative of the decedent's estate.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 3-1205. Social security payments If, (1) not less than 30 days after the death of a Maine resident entitled, at the time of his death, to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits not in excess of \$1,000 is paid by the United States to the surviving spouse, one or more of the deceased's children, or descendants of his deceased children, the deceased's father or mother, or the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, upon an affidavit made and filed with the Department of Health, Education and Welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made, and (2) the affidavit shows the date of death of the deceased, the relationship of the affiant to the deceased, that no personal representative for the deceased has been appointed and qualified, and that, to the affiant's knowledge, there exists at the time of filing of the affidavit, no relative of a closer degree of kindred to the deceased than the affiant, then such payment pursuant to the affidavit shall be deemed to be a payment to the</p>

UPC SECTION	None
SUBJECT	SOCIAL SECURITY PAYMENTS
	legal representative of the decedent and, regardless of the truth or falsity of the statements made therein, shall constitute a full discharge and release of the United States from any further claim for such payment to the same extent as if such payment had been made to the personal representative of the decedent's estate.
Difference between current Maine section and UPC	UPC does not address post-mortem social security payment issues.
Recommendation	Retain Maine law, with changes shown.
Maine Probate Code Proposed Comments	Maine section 3-1205 on post-mortem social security payment issues has no counterpart in the UPC. Former Maine section 3-1205 used earlier name of Maine's current "Department of Health and Human Services."

UPC SECTION	4-101
SUBJECT	DEFINITIONS
UPC Statute (with Maine amendments shown)	<p>(1) “local administration” means administration by a personal representative appointed in this state pursuant to appointment proceedings described in [Article] III.</p> <p>(2) “local personal representative” includes any personal representative appointed in this state pursuant to appointment proceedings described in [Article] III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to Section 4-205.</p> <p>(3) “resident creditor” means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a non-resident decedent.</p>
18-A M.R.S.A	<p>§4-101. Definitions and use of terms</p> <p>(1) "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article III.</p> <p>(2) "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in Article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.</p> <p>(3) "Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate of a non-resident decedent.</p>
Difference between current Maine section and UPC	No substantive differences (Current Maine section 4-101 uses more capital letters.).
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-201
SUBJECT	PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL ADMINISTRATION
UPC Statute (with Maine amendments shown)	<p>At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the non-resident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:</p> <p>(1) the date of the death of the nonresident decedent, (2) that no local administration, or application or petition therefor, is pending in this state, (3) that the domiciliary foreign personal representative is entitled to payment or delivery.</p>
18-A M.R.S.A.	<p>§4-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration</p> <p>At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:</p> <p>(1) The date of the death of the nonresident decedent, (2) That no local administration, or application or petition therefor, is pending in this State, (3) That the domiciliary foreign personal representative is entitled to payment or delivery.</p>
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-202
SUBJECT	PAYMENT OR DELIVERY DISCHARGES
UPC Statute (with Maine amendments shown)	Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.
18-A M.R.S.A.	§4-202. Payment or delivery discharges Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-203
SUBJECT	RESIDENT CREDITOR NOTICE
UPC Statute (with Maine amendments shown)	Payment or delivery under Section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.
18-A M.R.S.A.	§4-203. Resident creditor notice Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-204
SUBJECT	PROOF OF AUTHORITY; BOND
UPC Statute (with Maine amendments shown)	If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a <i>[county]</i> in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.
18-A M.R.S.A.	§4-204. Proof of authority; bond If no local administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located, authenticated copies of his appointment, and of any official bond he has given <i>and a certificate, dated within 60 days, proving his current authority.</i>
Difference between current Maine section and UPC	Current Maine section adds the requirement that the domiciliary foreign personal representative file with the Court a certificate of appointment no more than sixty (60) days old. This added requirement is not particularly cumbersome, but it is a departure from the UPC.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section removes the requirement under former Maine section 4-204 that the foreign personal representative also must file proof of current authority.

UPC SECTION	4-205
SUBJECT	POWERS
UPC Statute (with Maine amendments shown)	A domiciliary foreign personal representative who has complied with Section 4-204 may exercise as to assets in this state all powers of a local personal representative, and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.
18-A M.R.S.A	§4-205. Powers A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.
Difference between current Maine section and UPC	No substantive difference.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-206
SUBJECT	POWER OF REPRESENTATIVES IN TRANSITION
UPC Statute (with Maine amendments shown)	The power of a domiciliary foreign personal representative under Section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who before receiving actual notice of a pending local administration has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.
18-A M.R.S.A.	§4-206. Power of representatives in transition The power of a domiciliary foreign personal representative under section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this State.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-207
SUBJECT	ANCILLARY AND OTHER LOCAL ADMINISTRATIONS; PROVISIONS GOVERNING
UPC Statute (with Maine amendments shown)	In respect to a nonresident decedent, the provisions of [Article] III of this [code] govern: (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.
18-A M.R.S.A.	§4-207. Ancillary and other administrations; provisions governing In respect to a nonresident decedent, the provisions of Article III of this Code govern (1) proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change Maine law.

UPC SECTION	4-301
SUBJECT	JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	A foreign personal representative, submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by (i) filing authenticated copies of his appointment as provided in Section 4-204, (ii) receiving payment of money or taking delivery of personal property under Section 4-201, or (iii) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under clause (ii) is limited to the money or value of personal property collected.
18-A M.R.S.A.	§4-301. Jurisdiction by act of foreign personal representative A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in section 4-204, (2) receiving payment of money or taking delivery of personal property under section 4-201, or (3) doing any act as a personal representative in this State which would have given the State jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-302
SUBJECT	JURISDICTION BY ACT OF DECEDENT
UPC Statute (with Maine amendments shown)	In addition to jurisdiction conferred by Section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.
18-A M.R.S.A.	§4-302. Jurisdiction by act of decedent In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that his decedent was subject to jurisdiction immediately prior to death.
Difference between current Maine section and UPC	None.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	4-303
SUBJECT	SERVICE ON FOREIGN PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	<p>(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.</p> <p>(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least [30] days within which to appear or respond.</p> <p>Service of process may be made upon the foreign personal representative in such manner as the Supreme Judicial Court shall by rule provide.</p>
18-A M.R.S.A	<p>§4-303. Service on foreign personal representative Service of process may be made upon the foreign personal representative in such manner as the Supreme Judicial Court shall by rule provide.</p>
Difference between current Maine section and UPC	The UPC provides that service may be made by registered or certified mail with restricted delivery. Current Maine section 4-303 generally deals with service of process requirements in the rules.
Recommendation	Retain Maine law.
Maine Probate Code Proposed Comments	

UPC SECTION	4-401
SUBJECT	EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE
UPC Statute (with Maine amendments shown)	An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.
18-A M.R.S.A.	§4-401. Effect of adjudication for or against personal representative An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.
Difference between current Maine section and UPC	None.
Recommendation	Amend UPC.
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	5-101
SUBJECT	SHORT TITLE.
UPC Statute (with Maine amendments shown)	This article may be cited as the Uniform Guardianship and Protective Proceedings Act.
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	MPC Article V has no short title.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-102
SUBJECT	DEFINITIONS.
UPC Statute (with Maine amendments shown)	<p>In this article:</p> <p>(1) “Conservator” means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.</p> <p><u>(1-A). The "best interest of the minor" is as determined in Title 19-A, section 1653, subsection 3.</u></p> <p>(2) “Court” means the [designate appropriate court] <u>any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.</u></p> <p>(3) “Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse, or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.</p> <p>(4) “Incapacitated person” means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate <u>informed</u> decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with <u>reasonably available</u> appropriate technological assistance.</p> <p>(5) “Legal representative” includes the lawyer for the respondent, a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.</p> <p>(6) “Minor” means an unemancipated individual who has not attained 18 years of age.</p> <p>(7) “Parent” means a parent whose parental rights have not been terminated.</p> <p>(8) “Protected person” means a minor or other individual for whom a conservator has been appointed or other protective order has been made.</p> <p>(9) “Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought.</p> <p>(10) “Ward” means an individual for whom a guardian has been appointed.</p>
18-A M.R.S.A.	<p>§5-101. Definitions and use of terms</p> <p>Unless otherwise apparent from the context, in this Code:</p> <p>(1). "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or</p>

	<p>disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;</p> <p>(1-A). The "best interest of the child" is determined according to this subsection.</p> <p>(a). In determining the best interest of the child the court shall consider the following factors:</p> <ol style="list-style-type: none"> (1) The wishes of the party or parties as to custody; (2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference; (3) The child's primary caregiver; (4) The bonding and attachment between each party and the child; (5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest; (6) The child's adjustment to home, school and community; (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (8) The permanence, as a family unit, of the existing or proposed home; (9) The mental and physical health of all individuals involved; (10) The child's cultural background; (11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any; (12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and (13) All other factors having a reasonable bearing on the physical and psychological well-being of the child. <p>(b). The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others;</p> <p>(1-B). "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:</p> <ol style="list-style-type: none"> (a). If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or (b). If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive. <p>"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a parent or guardian of a child under section 5-104, adopts a child under Article</p>
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	<p>9 or has a child placed in the individual's care under Title 22, chapter 1071;</p> <p>(1-C). "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.</p> <p>In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:</p> <p>(a). The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian;</p> <p>(b). The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence;</p> <p>(c). The facts and circumstances of the parent's, parents' or legal custodian's absence;</p> <p>(d). The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and</p> <p>(e). Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect.</p> <p>Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;</p> <p>(2). A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;</p> <p>(3). A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;</p> <p>(4). A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC defines the following, and the current Maine section does not:</p> <ul style="list-style-type: none"> Conservator Court Guardian Legal Representative Minor

	<p>Parent Respondent</p> <p>The current Maine section defines the following, and the UPC does not:</p> <ul style="list-style-type: none"> Best interest of child De facto guardian Demonstrated lack of consistent participation Protective proceeding
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC with changes shown.</p> <p>NOTE: The definition of incapacitated person in the adult protective statute, 22 M.R.S. § 3472, will need to be amended to make it consistent with the modified UPC definition.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>In the UPC definition of “incapacitated person,” Maine has inserted “informed” before “decisions.” Lack of capacity to make an “informed” decision is a statutory condition for involuntary treatment in a psychiatric hospital. “Informed” consent to treatment is a term used in other healthcare contexts. This change to the uniform language promotes consistency across Maine statutes related to capacity to decide or consent.</p> <p>Also in that definition, the Maine has inserted “reasonably available” before “technological assistance.” There is an argument to be made that if technological assistance exists to address functional deficits, a guardianship or conservatorship is not “least restrictive.” However, under the UPC language, if the respondent cannot afford technological assistance and if the assistance is not otherwise available, the respondent is precluded from getting either technological assistance or the protection that guardianship or conservatorship would provide.</p> <p>“Best interest of the minor” is undefined in the UPC. Maine retains a definition of best interest of the minor, using currently existing criteria in Title 19-A to promote uniformity across Maine statutes. The UPC does not include definitions of “de facto guardian” and “demonstrated lack of consistent participation,” both added to the former Maine Probate Code as part of P.L. 2005 ch. 371, § 2, which law provided rights to adults who were caring for minors, but not under court appointment. The UPC treatment of persons “other than a parent or guardian having care or custody of a minor” provides those individuals notice of guardianship proceedings, opportunity to object, and potential guardianship appointment.</p>

UPC SECTION	5-103
SUBJECT	[RESERVED.]
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	
Difference between MPC and UPC	
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-104
SUBJECT	FACILITY OF TRANSFER.
UPC Statute (with Maine amendments shown)	<p>(a) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding †\$10,000‡ a year, by transferring it to:</p> <p>(1) a person who has the care and custody of the minor and with whom the minor resides;</p> <p>(2) a guardian of the minor;</p> <p>(3) a custodian under the Uniform Transfers To Minors Act or custodial trustee under the Uniform Custodial Trust Act; or</p> <p>(4) a financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; <u>or</u></p> <p><u>(5) the minor, if married.</u></p> <p>(b) A person who transfers money or property in compliance with this section is not responsible for its proper application.</p> <p>(c) A guardian or other person who receives money or property for a minor under subsection (a)(1) or (2) may only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess must be preserved for the future support, care, education, health, and welfare of the minor, and any balance must be transferred to the minor upon emancipation or attaining majority.</p>
18-A M.R.S.A.	<p>§ 5-103 Facility of payment or delivery.</p> <p>Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per year, by paying or delivering the money or property to (1) the minor, if married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. Persons who pay or deliver money or property in accordance with the provisions of this section are not responsible for actions taken by another after payment or delivery. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by</p>

	<p>way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums must be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when the minor attains majority. Prior to distribution, the custodian of the money or property shall account to the court and the minor.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC transfer limit is \$10,000, and requires that any excess funds be turned over to the minor upon emancipation.</p> <p>The MPC transfer limit is \$5,000. The MPC allows delivery to a married minor and makes no mention of emancipation.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC, with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>Maine adopts the Uniform Probate Code, with a single change to allow transfer of funds under this provision to a married minor. This is consistent with other statutes treating married minors as adults, such as 22 M.R.S.A. § 1503, which gives married minors authority to give consent for healthcare services. With the exception of an increase of the permitted transfer amount from \$5000 to \$10,000, this does not constitute a substantive change to Maine law.</p>

UPC SECTION	5-105
SUBJECT	DELEGATION OF POWER BY PARENT OR GUARDIAN.
UPC Statute (with Maine amendments shown)	<p>(a) A parent or a guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six <u>twelve</u> months, any power regarding care, custody or property of the minor or ward, except the power to consent to marriage or adoption.</p> <p><u>(b). Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.</u></p> <p><u>This subsection applies only if the parent or guardian's service is in support of:</u></p> <p><u>(1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or</u></p> <p><u>(2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.</u></p>
18-A M.R.S.A.	<p>5-104. Delegation of powers by parent or guardian</p> <p>(a). A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. A delegation by a court-appointed guardian becomes effective only when the power of attorney is filed with the court.</p> <p>(b). Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.</p> <p>This subsection applies only if the parent or guardian's service is in support of:</p> <p>(1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or</p>

	(2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.
Difference between MPC and UPC	The UPC limits a delegation under power of attorney to 6 month. The MPC provides for a 12-month delegation, requires a court-appointed guardian to file any POA with court, and automatically extends the power of attorney delegation by certain parents on active duty.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Maine adopts the UPC, with two exceptions. First, Maine uses a 12-month effective period for a power of attorney rather than the 6-month period in the UPC. Second, Maine provides for an automotive extension for parents on active military duty. Adoption of the UPC removes the requirement under former Maine law that a delegation by a court-appointed guardian through a power of attorney be filed with the court.

UPC SECTION	5-106
SUBJECT	SUBJECT-MATTER JURISDICTION.
UPC Statute (with Maine amendments shown)	<p>(a) Except to the extent the guardianship is subject to the insert citation to Uniform Child Custody Jurisdiction and Enforcement Act, the court of this state has jurisdiction over guardianship for minors domiciled or present in this state. The court of this state has jurisdiction over protective proceedings for minors domiciled in or having property located in this state.</p> <p>(b) The court of this state has jurisdiction over guardianship and protective proceedings for an adult individual as provided in the insert citation to Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.</p>
18-A M.R.S.A.	<p>§ 5-102. Jurisdiction of subject matter; consolidation of proceedings</p> <p>(a) The court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5- 402.</p> <p>(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.</p> <p>§ 5-211 Proceedings subsequent to appointment, venue</p> <p>(a). The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.</p> <p>(b). If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian must be sent to the court in which acceptance of appointment is filed.</p> <p>§ 5-313 Proceedings subsequent to appointment, venue</p> <p>(a). The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.</p> <p>(b). If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and</p>

	<p>after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.</p> <p>§ 5-402 Protective proceedings; jurisdiction of affairs of protected persons</p> <p>After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:</p> <p>(1). Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;</p> <p>(2). Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;</p> <p>(3). Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.</p>
Difference between MPC and UPC	Maine law has multiple jurisdiction and venue statements throughout the Probate Code.
Recommendation of Probate Code Review Committee	Adopt the UPC. NOTE: Provisions of 4 M.R.S. §253 will have to be amended.
Maine Probate Code Proposed Comments	Maine adopts the UPC language concerning jurisdiction. This does not change the Probate Court's role as the exclusive court in the State of Maine with jurisdiction over guardianship and protective proceedings for minors and adults, except as that jurisdiction may be reserved specifically to another court.

UPC SECTION	5-107
SUBJECT	TRANSFER OF JURISDICTION.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Except as otherwise provided in subsection (b), the following rules apply:</p> <p>(1) After the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another county in this state or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.</p> <p>(2) If a guardianship or protective proceeding is pending in another state or a foreign country and a petition for guardianship or protective proceeding is filed in a court in this state, the court in this state shall notify the original court and, after consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or protected person.</p> <p>(3) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this state if venue in this state is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ward or protected person, if the ward or protected person has attained 14 years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this article were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ward or protected person. On the filing of an acceptance of office appointment and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Not later than 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.</p> <p>(b) This section does not apply to a guardianship or protective proceeding for an adult individual that is subject to the transfer provisions of insert citation to Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) sections 5-531 and 5-532.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-313 Proceedings subsequent to appointment; venue (a). The court where the ward resides has concurrent jurisdiction</p>

	<p>with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.</p> <p>(b). If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.</p>
Difference between MPC and UPC	The MPC is inexact in its use of the terms venue and jurisdiction, and has multiple jurisdiction and venue statements, as noted in the discussion of UPC § 5-106, above.
Recommendation	<p>Adopt the UPC, but using the more familiar “acceptance of appointment” rather than “acceptance of office.”</p> <p>NOTE: Provisions of 4 M.R.S. §253 will have to be amended.</p>
Maine Probate Code Proposed Comments	

UPC SECTION	5-108
SUBJECT	VENUE.
UPC Statute (with Maine amendments shown)	<p>(a) Venue for a guardianship proceeding for a minor is in the {county} of this state in which the minor resides or is present at the time the proceeding is commenced.</p> <p>(b) Venue for a guardianship proceeding for an incapacitated person is in the {county} of this state in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the {county} in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the {county} in which the respondent is present.</p> <p>(c) Venue for a protective proceeding is in the {county} of this state in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this state, in any {county} of this state in which property of the respondent is located.</p> <p>(d) If a proceeding under this {article} is brought in more than one {county} in this state, the court of the {county} in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.</p>
18-A M.R.S.A.	<p>§ 5-205. Court appointment of guardian of minor; venue The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.</p> <p>§ 5-302. Venue The venue for guardianship proceedings for an incapacitated person is the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.</p> <p>§ 5-402. Protective proceedings; jurisdiction of affairs of protected persons After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:</p> <ol style="list-style-type: none"> (1). Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated; (2). Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State shall be managed, expended or distributed to or for the use of the protected person or any of his dependents; (3). Concurrent jurisdiction to determine the validity of claims

	<p>against the person or estate of the protected person and his title to any property or claim.</p> <p>§ 5-403 Venue</p> <p>Venue for proceedings under this Part is:</p> <p>(1). In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or</p> <p>(2). If the person to be protected does not reside in this State, in any place where he has property.</p>
Difference between MPC and UPC	The MPC is inexact in its use of the terms venue and jurisdiction, and has multiple jurisdiction and venue statements, as noted in the discussion of UPC § 5-106, above.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-109
SUBJECT	[RESERVED.]
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	
Difference between MPC and UPC	
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-110
SUBJECT	LETTERS OF OFFICE APPOINTMENT.
UPC Statute (with Maine amendments shown)	<p>Upon the guardian’s filing of an acceptance of office appointment, the court shall issue appropriate letters of guardianship. Upon the conservator’s filing of an acceptance of office appointment and any required bond, the court shall issue appropriate letters of conservatorship. Letters of guardianship must indicate whether the guardian was appointed by the court, a parent, or the spouse. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship must be endorsed on the guardian’s or conservator’s letters.</p>
18-A M.R.S.A.	<p>§ 5-105 In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order.</p> <p>§ 5-202 “Upon acceptance of [a testamentary] appointment [of a guardian of a minor]...”</p> <p>§ 5-208 “By accepting a testamentary or court appointment as guardian [of a minor]...” “Letters of guardianship must indicate whether the guardian was appointed by will or court order.”</p> <p>§5-301(a) “A testamentary appointment by a parent becomes effective when ... the guardian files acceptance of appointment...”</p> <p>§ 5-305 “By accepting appointment, a guardian...”</p> <p>§ 5-413 “By accepting appointment, a conservator...”</p> <p>§ 5-304(a) “The court shall . . . make appointments and other orders only to the extent necessitated . . .” (similarly, § 5-408(a))</p>
Difference between MPC and UPC	The UPC requires that the letters of guardianship or conservatorship include any limitations on the appointment, whereas the MPC calls for limited powers to be enumerated in the decree or order. The UPC also requires the letters to include language saying whether the appointment was a parental appointment.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section expands previous Maine law by stating content requirements for letters of appointment.

UPC SECTION	5-111
SUBJECT	EFFECT OF ACCEPTANCE OF APPOINTMENT.
UPC Statute (with Maine amendments shown)	By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.
18-A M.R.S.A.	<p>§5-208: By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.</p> <p>§5-305: By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.</p> <p>§5-413: By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.</p>
Difference between MPC and UPC	The UPC consolidates these sections into one.
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	Language does not constitute a substantive change to Maine law.

UPC SECTION	5-112
SUBJECT	TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.

UPC Statute (with Maine amendments shown)	<p>(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. †A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. ‡ Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.</p> <p>(b) A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.</p> <p>(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.</p> <p><u>(d) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age. In a contested action, the court also may appoint counsel for any indigent guardian or petitioner.</u></p> <p><u>(e) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship</u></p>
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	<p><u>is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.</u></p> <p><u>(f) A party opposing a parent’s petition to terminate a guardianship bears the burden of proving, by a preponderance of the evidence, that the parent seeking to terminate the guardianship is currently unfit to regain custody of the child. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent’s fitness to regain custody, the court shall terminate the guardianship.</u></p>
<p>18-A M.R.S.A.</p>	<p>§5-210. Termination of appointment of guardian; general A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p> <p>§5-212. Resignation or removal proceedings</p> <p>(a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.</p> <p>(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.</p> <p>(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.</p> <p>(d) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.</p> <p>(e) In a contested action, the court may appoint counsel for any indigent guardian or petitioner.</p>

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§5-306. Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

§5-307. Removal or resignation of guardian; termination of guardianship.

(a) On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order that may be appropriate.

(b) The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian or accepting the resignation of a guardian, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

(d) In an action by the ward, upon presentation by the petitioner of evidence establishing a prima facie case that the ward is not incapacitated or the appointment is no longer necessary or desirable as a means of providing continuing care and supervision of the ward, the court shall order the termination unless the respondent proves by clear and convincing evidence that the ward is incapacitated and guardianship is necessary or desirable as a means of providing continuing care and supervision of the ward.

§5-415. Death, resignation or removal of conservator

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

§5-430. Termination of proceeding

The protected person, the protected person's personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. In an action to terminate a

	<p>conservatorship brought by the protected person, upon presentation by the petitioner of evidence establishing a prima facie case that the person is able to manage the person's property and affairs, the court shall order the termination unless the respondent proves by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. The court, upon determining that a conservatorship is no longer necessary, shall terminate the conservatorship upon approval of a final account. Upon termination, title to assets of the estate passes to the former protected person or to the former protected person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors, to evidence the transfer.</p> <p>§ 5-304(b): "The court may appoint a guardian or co-guardians . . ."</p>
Difference between MPC and UPC	Both the former MPC and the UPC contemplate appointment of co-guardians. The UPC explicitly authorizes appointment of contingent co-guardian or co-conservators, or of contingent successor guardians or conservators.
Recommendation of Probate Code Review Committee	Adopt the UPC, including the suggested language in paragraph 5-112(a) about an informal parental or spousal appointment by will terminating if the will is denied in formal probate. That language carries forward a similar provision in MPC § 5-210.
Maine Probate Code Propose Comments	<p>This section adds to Maine law explicit authority to appoint contingent co-guardians or successor guardians or conservators. <u>The section preserves the court's discretion to appoint counsel for the ward, indigent parents or guardians or to "make any order that may be appropriate" as provided under the former §5-212. The section confirms Maine law, as interpreted by the Maine Supreme Judicial Court in <i>In re Guardianship of David C.</i>, 2010 ME 136, ¶¶ 6-7 and <i>In re Guardianship of Jeremiah T.</i>, 2009 ME 74, ¶¶ 24-28.</u></p>

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UPC SECTION	5-113
SUBJECT	NOTICE.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with [insert the applicable rule of civil procedure] <u>such manner as the Supreme Judicial Court shall by rule provide</u> at least 14 days before the hearing.</p> <p>(b) Proof of notice must be made before or at the hearing and filed in the proceeding.</p> <p>(c) A notice under this article must be given in plain language.</p>
<p>18-A M.R.S.A.</p>	<p>§1-401. Notice Whenever notice of any proceeding or any hearing is required under this Code, it shall be given to any interested person in such manner as the Supreme Judicial Court shall by rule provide. Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice.</p> <p>§5-207. Court appointment of guardian of minor; procedure (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:</p> <ol style="list-style-type: none"> 1. The minor, if he is 14 or more years of age; 2. The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and 3. Any living parent of the minor. <p>(c) ... Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and cannot be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.</p> <p>§5-309. Notices in guardianship proceedings (a). In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:</p> <ol style="list-style-type: none"> (1). The ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, adult children and any

	<p>domestic partner known to the court;</p> <p>(2). Any person who is serving as his guardian, conservator or who has his care and custody; and</p> <p>(3). In case no other person is notified under paragraph (1), at least one of his closest adult relatives or, if none, an adult friend, if any can be found.</p> <p>(b). Notice shall be served personally on the ward or the allegedly incapacitated person at least 14 days before the date of the hearing. Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor. Representation of the ward or the allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.</p> <p>(c). Notice to the spouse, adult children, domestic partner and parents required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested, at least 14 days before the date of the hearing.</p> <p>If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.</p> <p>If the certified mail to the spouse or domestic partner is not delivered, that person cannot be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.</p> <p>If the certified mail to the spouse or domestic partner and adult children is not delivered, the spouse or domestic partner and all adult children cannot be found within the State and the certified mail is not delivered to any parent, notice must be served personally on a parent who can be found within the State.</p> <p>If no spouse, domestic partner, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice must be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice must be served personally on the adult friend.</p> <p>Notice required by subsection (a) to any person serving as a guardian or conservator or who has a person's care and custody must</p>
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	<p>be served by certified mail, with restricted delivery and return receipt requested.</p> <p>Except as otherwise provided in this section, notice must be given as prescribed by court rule under section 1-401.</p> <p>§5-405. Notice</p> <p>(a) On a petition for appointment of a conservator or other protective order or on a petition under section 5-416, the person to be protected or the protected person must be served personally with notice of the proceeding at least 14 days before the date of the hearing. Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor. The court may order that the petition and hearing notice be served by the visitor.</p> <p>(a-1). The spouse or domestic partner and all adult children of the person to be protected or the protected person or, if none, the person's parents or closest adult relative or, if none, a friend must be given notice of the proceeding. Notice under this subsection must be served by certified mail, restricted delivery and return receipt requested, at least 14 days before the date of the hearing. If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person. If the certified mail to the spouse or domestic partner is not delivered, that person cannot be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State. If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice must be served personally on a parent or the adult relative if a parent or adult relative can be found within the State. If notice is served on the person's friend and the certified mail is not delivered, notice must be served personally on the friend if the friend can be found within the State. Except as otherwise provided in this subsection and subsection (a), notice must be given as prescribed by court rule under section 1-401.</p> <p>(b). Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (a-1), notice shall be given as prescribed by court rule under section 1-401.</p>
Difference between MPC and UPC	The UPC requires petitioner to provide notices. The MPC has no plain language requirement.

Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section adds a plain language requirement to Maine law, and specifies that the petitioner must give the required notices.

UPC SECTION	5-114
SUBJECT	WAIVER OF NOTICE.
UPC Statute (with Maine amendments shown)	A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.
18-A M.R.S.A.	<p>§1-402 Notice; waiver A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice in such manner as the Supreme Judicial Court shall by rule provide.</p> <p>§5-207(b) ... Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.</p> <p>§5-309(b) ... Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor.</p> <p>§5-405(a) ... Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.</p>
Difference between MPC and UPC	The UPC prohibits waiver of notice for a respondent, ward, or protected person. Current Maine law allows waiver with independent confirmation.
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	This section removes the authority under former Maine law, §5-309(b) and §5-405(a), for a ward or protected person to waive notice if he or she attended the hearing, or if the waiver was confirmed by his or her counsel, the guardian ad litem, or the visitor.

UPC SECTION	5-115
SUBJECT	GUARDIAN AD LITEM.

UPC Statute (with Maine amendments shown)	At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.
18-A M.R.S.A.	<p>§1-112. Guardian ad litem</p> <p>(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.</p> <p>(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.</p> <p>(c). If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.</p> <p>(d). The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.</p> <p>(e). If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.</p> <p>(f). A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.</p> <p>(g). A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.</p> <p>§ 5-303: (b). Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the</p>

allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.

§ 5-407: (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of

	<p>the following: a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.</p> <p>(b-1) If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.</p>
Difference between MPC and UPC	The MPC provides differing requirements for guardians ad litem in proceedings involving guardianship of minors, and in proceedings involving adult guardianships or conservatorships. The UPC provides the court with flexibility in outlining the role and duties of guardians ad litem.
Recommendation of	Adopt UPC.

Probate Code Review Committee	
Maine Probate Code Proposed Comments	This section removes the specific requirements of former sections §1-112, §5-303, and § 5-407 addressing appointment and duties of guardians ad litem in guardianship and conservatorship proceedings. This section consolidates the appointment sections, and gives the court discretion and a duty to tailor the role of the guardian ad litem to the circumstances.

UPC SECTION	5-116
SUBJECT	REQUEST FOR NOTICE; INTERESTED PERSONS.
UPC Statute (with Maine amendments shown)	An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in a protective proceeding.
18-A M.R.S.A.	§ 5-406. Protective proceedings; request for notice; interested persons Any interested person who desires to receive notice of any filing, hearing or order in a protective proceeding may file a demand for notice with the court, shall thereupon have notice of such demand given to any conservator who has been appointed, and shall thereafter receive notice of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.
Difference between MPC and UPC	The UPC requires an interested party to state its interest, and clearly applies to guardianship proceedings, as well as protective proceedings.
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	This section expands previous Maine law by allowing an individual not otherwise entitled to notice to receive notice in a guardianship or a conservatorship proceeding, provided that the individual has provide a statement showing the individual's interest and an address to which notice should be sent.

UPC SECTION	5-117
SUBJECT	MULTIPLE APPOINTMENTS OR NOMINATIONS.
UPC Statute (with Maine amendments shown)	If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-201
SUBJECT	APPOINTMENT AND STATUS OF GUARDIAN.
UPC Statute (with Maine amendments shown)	A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or minor ward. <u>This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.</u>
18-A M.R.S.A.	§ 5-201 Status of guardian of minor; general A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.
Difference between MPC and UPC	The UPC allows for a “parental appointment” whereas the MPC only provides for a “testamentary appointment.” The MPC specifically addresses the appointment of guardians where a permanency guardian has been appointed in a child protective proceeding.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Maine law (22 M.R.S. § 4038-C) permits District Courts in child protective proceedings to appoint a permanency guardian. The Maine Probate Code departs from the Uniform Probate Code to recognize that authority and to assure that the Probate Court does not appoint a guardian without leave of the District Court if the District Court has appointed a permanency guardian.

UPC SECTION	5-202
SUBJECT	PARENTAL APPOINTMENT OF GUARDIAN.

UPC Statute (with Maine amendments shown)	<p>(a) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.</p> <p>(b) Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within two years, and after notice as provided in Section 5-205(a), the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.</p> <p>(c) Subject to Section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person, or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.</p> <p>(d) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:</p> <ol style="list-style-type: none"> (1) file the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and (2) give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor. <p>(e) Unless the appointment was previously confirmed by the court, the notice given under subsection (d)(2) must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in Section 5-203.</p> <p>(f) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in Section 5-205(a).</p> <p>(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has</p>
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	<p>priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.</p> <p>(h) The powers of a guardian who timely complies with the requirements of subsections (d) and (f) relate back to give acts by the guardian which are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.</p> <p>(i) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to Section 5-203.</p>
18-A M.R.S.A.	<p>§ 5-202. Testamentary appointment of guardian of minor The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This State recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.</p>
Difference between MPC and UPC	The MPC does not provide for parental appointment.
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	The UPC provisions permitting parental appointment of a so-called stand-by guardian are new to Maine law.

UPC SECTION	5-203
SUBJECT	OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT.
UPC Statute (with Maine amendments shown)	<p>Until the court has confirmed an appointee under Section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under Section 5-204, and proceed accordingly.</p>
18-A M.R.S.A.	<p>§ 5-203. Objection by minor of 14 or older to testamentary appointment. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.</p>
Difference between MPC and UPC	<p>The UPC provides an opportunity to object to <u>parental</u> appointment. The MPC only provides opportunity for a <u>testamentary</u> appointment.</p>
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-204
SUBJECT	JUDICIAL APPOINTMENT OF GUARDIAN: CONDITIONS FOR APPOINTMENT.

UPC Statute (with Maine amendments shown)	<p>(a) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.</p> <p>(b) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and <u>finds</u>:</p> <ol style="list-style-type: none"> (1) <u>that</u> the parents consent; (2) <u>that</u> all parental rights have been terminated; or (3) <u>by clear and convincing evidence that</u> the parents are unwilling or unable to exercise their parental rights. <p>(c) If a guardian is appointed by a parent pursuant to Section 5-202 and the appointment has not been prevented or terminated under Section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under Section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.</p> <p>(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in Section 5-113 must be given to the parents and to a minor who has attained 14 years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under Section 5-205.</p> <p>(e) If the court finds that following the procedures of this [part] will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed [30] days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48</p>
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	<p>hours after the appointment and a hearing on the appropriateness of the appointment held within [five] days after the appointment.</p> <p><u>(d) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (e).</u></p> <p><u>Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under section 5-113 and section 5-205, except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and cannot be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.</u></p> <p><u>(e) If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:</u></p> <p><u>(1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or</u></p> <p><u>(2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.</u></p> <p><u>(f) A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.</u></p> <p><u>(g) In a proceeding on a petition for judicial appointment of a guardian, the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph.</u></p> <p><u>(h) If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-110 and section 5-206, and any parental rights and responsibilities retained by the parent of the minor.</u></p>
18-A M.R.S.A.	§ 5-204. Court appointments of guardian of minor; conditions

for appointment

The court may appoint a guardian or coguardians for an unmarried minor if:

- (a). All parental rights of custody have been terminated or suspended by circumstance or prior court order;
- (b). Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;
- (c). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or
- (d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel.

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph.

	<p>If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor.</p> <p>§ 5-207(c). If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).</p> <p>Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.</p> <p>§ 5-207(c-1). If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:</p> <p>(1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or</p> <p>(2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC specifies who may petition. The MPC does not. The UPC standard for parents who do not consent is simply “unwilling or unable to exercise parental rights.” The MPC standards are that current living situation “is at least temporarily intolerable for the child” or there is a “lack of consistent participation” by a non-consenting parent.</p> <p>The UPC provides for temporary guardian in this section; MPC provides for temporary guardian in § 5-207, allowing waiver of serving notice.</p> <p>The UPC provides for “emergency guardian,” with 30 day limit. The MPC requires lawyers for indigent non-consenting parents. The MPC in § 5-213 provides for transitional arrangements for a minor.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC with the changes shown. Specifically,</p> <p>(1.) Adopt UPC 5-204(a), (b) and (c) in place of MPC 5-204(a), (b) and (c), but do not adopt UPC 5-204(d) and (e).</p> <p>(2.) Retain MPC 5-207(c) and (c-1) concerning temporary</p>

	<p>guardianships, calling them 5-204(d) and (e).</p> <p>(3.) Retain the principles in the last three paragraphs of MPC 5-204(d) that are applicable to proceedings described in this section, calling the paragraphs 5-204(f), (g) and (h).</p> <p>(4.) Retain MPC 5-213, transitional arrangements for minors, calling it 5-211.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>Maine does not adopt the temporary and emergency guardianship language of the UPC. The existing process in Maine, including authority to issue orders for transitional arrangements, accommodates prompt disposition and appropriate protections for participants in the context of Maine’s part-time Probate Courts. <u>The statute retains the “clear and convincing evidence” burden of proof.</u> Maine also retains additional protections, previously codified in the last three paragraphs of 18-A M.R.S. § 5-204(d), in 5-204(f), (g) and (h), concerning legal representation for indigent parents, cost-effective participation of child support enforcement agents in guardianship proceedings, and specifying any parental rights retained if a limited guardian is appointed.</p>

UPC SECTION	5-205
SUBJECT	JUDICIAL APPOINTMENT OF GUARDIAN: PROCEDURE.
UPC Statute (with Maine amendments shown)	<p>(a) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:</p> <ul style="list-style-type: none"> (1) the minor, if the minor has attained 14 years of age and is not the petitioner; (2) any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition; (3) each living parent of the minor or, if there is none, the adult nearest in kinship that can be found; (4) any person nominated as guardian by the minor if the minor has attained 14 years of age; (5) any appointee of a parent whose appointment has not been prevented or terminated under Section 5-203; and (6) any guardian or conservator currently acting for the minor in this state or elsewhere. <p>(b) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of Section 5-204(b) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.</p> <p>(c) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age.</p>
18-A M.R.S.A.	<p>5-207. Court appointment of guardian of minor; procedure</p> <p>(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:</p> <ul style="list-style-type: none"> (1) The minor, if he is 14 or more years of age; (2) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and (3) Any living parent of the minor. <p>(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the</p>

	<p>matter that will best serve the interest of the minor.</p> <p>(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).</p> <p>Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and cannot be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.</p> <p>(c-1) If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:</p> <p>(1) An operational mission for which members of the reserve components have been ordered to active duty without their consent; or</p> <p>(2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.</p> <p>(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC requires notice (in addition to notices also in the MPC) to next of kin if there is no living parent, 14-year-old, minor's nominee, parental appointee, and any current guardian or conservator.</p> <p>The MPC addresses temporary guardians and parents on active military duty. (See proposed § 5-204 for disposition of these sections.)</p>
<p>Recommendation of Maine Probate Code Review Committee</p>	<p>Adopt UPC.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section adds to the people entitled to notice of a guardianship petition, but otherwise does not constitute a substantive change to Maine law.</p>

UPC SECTION	5-206
SUBJECT	JUDICIAL APPOINTMENT OF GUARDIAN: PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.

UPC Statute (with Maine amendments shown)	<p>(a) The court shall appoint as guardian <u>or co-guardians</u> a person <u>or persons</u> whose appointment will be in the best interest of the minor. The court shall appoint a person <u>or persons</u> nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor.</p> <p>(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor or other interested person, may limit the powers of a guardian <u>or co-guardians</u> otherwise granted by this part and thereby create a limited guardianship. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.</p>
18-A M.R.S.A.	<p>§ 5-105. Limited guardianships. In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order.</p> <p>§ 5-204. Court appointment of guardian of minor; conditions for appointment ... If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor.</p> <p>§ 5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption.</p>
Difference between MPC and UPC	<p>The MPC describes co-guardians specifically. UPC in § 5-112(c) provides general authority for such an appointment. The MPC prohibits appointment of guardian for a minor child who will be removed from Maine for adoption.</p>

	The UPC specifically authorizes court to limit power of guardian so that the ward develops self-reliance.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section adds a specific criterion for limiting the power of guardian in the interest of developing self-reliance of a ward, consistent with adult guardianship statute. This section removes the prohibition under previous Maine law against appointing a guardian who intends to remove the minor from the state for purposes of adoption, leaving the decision as to the minor's best interest in the sound discretion of the court.

UPC SECTION	5-207
SUBJECT	DUTIES OF GUARDIAN.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence, and prudence.</p> <p>(b) A guardian shall:</p> <p>(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;</p> <p>(2) take reasonable care of the ward's personal effects and bring a protective proceeding if necessary to protect other property of the ward;</p> <p>(3) expend money of the ward which has been received by the guardian for the ward's current needs for support, care education, health, and welfare;</p> <p>(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's future needs;</p> <p>(5) report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule; and</p> <p>(6) inform the court of any change in the ward's custodial dwelling or address.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-209. Powers and duties of guardian of minor A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties.</p> <p>(a) The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.</p> <p>(b) The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also</p>

	<p>may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.</p> <p>(c) The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.</p> <p>(d) A guardian must report the condition of the ward and of the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.</p>
<p>Difference between MPC and UPC</p>	<p>The MPC mixes powers and duties under a single section, while the UPC separates them into two sections, but the powers and duties are generally the same.</p> <p>The UPC requires guardian to become and remain acquainted with ward and inform court of change in ward's address.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt UPC.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section expands the statutory duties of a guardian under previous Maine law, requiring the guardian to become and remain acquainted with a ward, and to inform the court of a change in the ward's address, but this section does not otherwise constitute a substantive change to Maine law.</p>

UPC SECTION	5-208
SUBJECT	POWERS OF GUARDIAN.
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.</p> <p>(b) A guardian may:</p> <ol style="list-style-type: none"> (1) apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship; (2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's custodial dwelling outside the state upon express authorization of the court; (3) if a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward; (4) <u>except as limited by section 8-506</u>, consent to medical or other care, treatment, or service for the ward; (5) consent to the marriage of the ward; and (6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being. <p>(c) The court may specifically authorize the guardian to consent to the adoption of the ward.</p> <p><u>(d) If co-guardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.</u></p>
18-A M.R.S.A.	<p>§ 5-209. Powers and duties of guardians of a minor</p> <p>A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties.</p> <ol style="list-style-type: none"> (a) The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward. (b) The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract,

devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.

(d) A guardian must report the condition of the ward and of the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.

§5-104. Delegation of powers by parent or guardian

(a) A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. A delegation by a court-appointed guardian becomes effective only when the power of attorney is filed with the court.

(b) Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces

	<p>under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.</p> <p>This subsection applies only if the parent or guardian's service is in support of:</p> <ul style="list-style-type: none"> (1) An operational mission for which members of the reserve components have been ordered to active duty without their consent; or (2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.
Difference between MPC and UPC	<p>The UPC addresses power to name the ward's custodial dwelling. The UPC in this section provides a power of delegation that appears in MPC § 5-104.</p> <p>The UPC in § 5-208(b)(4) gives unlimited authority to consent to medical and other care or treatment.</p>
Recommendation of Probate Code Review Committee	<p>Adopt the UPC with the changes shown.</p>
Maine Probate Code Proposed Comments	<p>The Maine amendments to the UPC reconcile it with section 5-806 of the Uniform Healthcare Decisions Act (18-A M.R.S. §§ 5-801 – 5-818), which section limits certain health care decision-making by the guardian.</p> <p>The Maine amendments also assure that people who rely on a co-guardian's authority to act may rely on the consent or action of either co-guardian separately.</p>

UPC SECTION	5-209
SUBJECT	RIGHTS AND IMMUNITIES OF GUARDIAN.
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.</p> <p>(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-209. Powers and duties of guardian of minor A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties.</p> <p>(a) The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.</p> <p>(b) The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the</p>

	<p>welfare of the ward.</p> <p>(c) The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.</p> <p>(d) A guardian must report the condition of the ward and of the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.</p>
Difference between MPC and UPC	<p>The UPC is explicit about guardian compensation and reimbursement. The MPC has some provisions. Both require court approval.</p> <p>The UPC provides more comprehensive guidance on liability of guardian.</p>
Recommendation of Probate Code Review Committee	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-210
SUBJECT	TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT.
UPC Statute (with Maine amendments shown)	<p>(a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation, <u>marriage</u>, or attainment of majority or as ordered by the court.</p> <p>(b) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained 14 years of age and is not the petitioner, the guardian, and any other person as ordered by the court.</p>
18-A M.R.S.A.	<p>§ 5-210. Termination of appointment of guardian; general A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p>
Difference between MPC and UPC	<p>Under the UPC, guardianship terminates upon emancipation. The MPC is silent on this. The UPC provides general power for subsequent orders in ward's best interest. MPC specifically addresses termination proceedings.</p>
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Maine adopts the UPC, but retains a provision traditional in Maine that the marriage of a minor ward terminates a guardianship.

UPC SECTION	5-211
SUBJECT	TRANSITIONAL ARRANGEMENT FOR MINORS
UPC Statute (with Maine amendments shown)	<u>In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation.</u>
18-A M.R.S.A.	§ 5-213. Transitional arrangement for minors <u>In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the child. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation.</u>
Difference between MPC and UPC	No UPC provision.
Recommendation of Probate Code Review Committee	Retain Maine law.
Maine Probate Code Proposed Comments	The UPC has no provision concerning transitional arrangements for minors. This section carries forward the former 18-A M.R.S. § 5-213, enacted in 2011, to support transition arrangements in the best interest of the minor. See comment for § 5-204.

UPC SECTION	5-301
SUBJECT	Appointment and Status of Guardian.
UPC Statute (with Maine amendments shown)	A person becomes a guardian of an incapacitated person by a parental, or spousal, <u>or domestic partner</u> appointment, or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	This section identifies the different processes by which a guardian may be appointed, and guardianship's duration.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies the UPC to treat domestic partners in a manner comparable to their treatment in other sections of the MPC.

UPC SECTION	5-302
SUBJECT	Appointment of Guardian By Will or Other Writing.
UPC Statute (with Maine amendments shown)	<p>(a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.</p> <p>(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse <u>or domestic partner</u> who the appointing spouse <u>or domestic partner</u> believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.</p> <p>(c) The incapacitated person, the person having care or custody of the incapacitated person if other than the appointing parent, <u>domestic partner</u> or spouse, or the adult nearest in kinship to the incapacitated person may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection does not preclude judicial appointment of the person selected by the parent, <u>domestic partner</u> or spouse. Notice of the objection must be given to the guardian and any other person entitled to notice of the acceptance of the appointment. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under Section 5-312 or for the appointment of a limited or unlimited guardian under Section 5-304 and proceed accordingly.</p> <p>(d) Upon petition of the appointing parent, <u>domestic partner</u> or spouse, and a finding that the appointing parent, <u>domestic partner</u> or spouse will likely become unable to care for the incapacitated person within two years, and after notice as provided in this section, the court, before the appointment becomes effective, may confirm the appointing parent's, <u>domestic partner</u> or spouse's selection of a guardian and terminate the rights of others to object.</p>
18-A M.R.S.A.	<p>5-301 Testamentary appointment of guardian for incapacitated person</p> <p>(a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is formally or informally probated, if prior thereto both parents are dead or the surviving parent is judged incapacitated, and if the</p>

	<p>incapacitated person is not under the care of his spouse. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.</p> <p>(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.</p> <p>(c) This State shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.</p> <p>(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part.</p>
Difference between MPC and UPC	<p>MPC 5-301 allows testamentary appointments by spouses and parents of incapacitated persons. UPC 5-302 allows appointment by will “or other signed writing”. The “other signed writing” may be used in advance of the appointing parent or spouse’s anticipated inability to continue as guardian. The MPC and the UPC specify different procedures for objecting to an appointment. The UPC anticipates ratification of the appointment by the court, and allows that to occur prior to the appointing parent or spouse’s inability to care for the incapacitated person.</p>
Recommendation of Probate Code Review Committee	<p>Adopt the UPC with the changes shown.</p>
Maine Probate Code Proposed Comments	<p>This section modifies the UPC to treat domestic partners in a manner comparable to their treatment in other sections of the MPC. The UPC provisions permitting parental or spousal appointment of a so-called stand-by guardian are new to Maine law.</p>

UPC SECTION	5-303
SUBJECT	Appointment of Guardian By Will or Other Writing: Effectiveness; Acceptance; Confirmation.

UPC Statute (with Maine amendments shown)	<p>(a) The appointment of a guardian under Section 5-302 becomes effective upon the death of the appointing parent, <u>domestic partner</u> or spouse, the adjudication of incapacity of the appointing parent, <u>domestic partner</u> or spouse, or a written determination by a physician who has examined the appointing parent, <u>domestic partner</u> or spouse that the appointing parent, <u>domestic partner</u> or spouse is no longer able to care for the incapacitated person, whichever first occurs.</p> <p>(b) A guardian appointed under Section 5-302 becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:</p> <p style="padding-left: 40px;">(1) file the notice of acceptance of appointment and a copy of the will with the court of the †county† in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court in the †county† in which the incapacitated person resides or is present; and</p> <p style="padding-left: 40px;">(2) give written notice of the acceptance of appointment to the appointing parent, <u>domestic partner</u> or spouse if living, the incapacitated person, a person having care or custody of the incapacitated person other than the appointing parent, <u>domestic partner</u> or spouse, and the adult nearest in kinship.</p> <p>(c) Unless the appointment was previously confirmed by the court, the notice given under subsection (b)(2) must include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in Section 5-302.</p> <p>(d) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.</p> <p>(e) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian appointed under Section 5-302 shall file a petition in the court for confirmation of the appointment. Notice of the filing must be given in the manner provided in Section 5-309.</p> <p>(f) The authority of a guardian appointed under Section 5-302 terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to Section 5-302, whichever first occurs.</p> <p>(g) The appointment of a guardian under this section is not a determination of incapacity.</p> <p>(h) The powers of a guardian who timely complies with the</p>
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	<p>requirements of subsections (b) and (e) relate back to give acts by the guardian which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of appointment.</p>
<p>18-A M.R.S.A.</p>	<p>5-301 Testamentary appointment of guardian for incapacitated person</p> <p>(a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is formally or informally probated, if prior thereto both parents are dead or the surviving parent is judged incapacitated, and if the incapacitated person is not under the care of his spouse. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.</p> <p>(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.</p> <p>(c) This State shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.</p> <p>(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part.</p>
<p>Difference between MPC and UPC</p>	<p>MPC 5-301 allows testamentary appointments by spouses and parents of incapacitated persons. UPC 5-303 allows appointment by will “or other signed writing”. The MPC and the UPC specify different procedures by objecting to an appointment. UPC 5-303 contains a procedure for activating an appointment made by an “other signed writing”. The UPC requires a judicial confirmation process for testamentary appointments that is not required by the MPC.</p>

Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The section modifies the UPC to treat domestic partners in a manner comparable to their treatment in other sections of the MPC.

UPC SECTION	5-304
SUBJECT	Judicial Appointment of Guardian: Petition.

UPC Statute (with Maine amendments shown)	<p>(a) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian, for the individual.</p> <p>(b) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:</p> <p style="padding-left: 40px;">(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;</p> <p style="padding-left: 40px;">(2) the name and address of the respondent's:</p> <p style="padding-left: 80px;">(A) spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and</p> <p style="padding-left: 80px;">(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found, <u>or, if none, an adult friend if any can be found</u>;</p> <p style="padding-left: 40px;">(3) the name and address of any person responsible for care or custody of the respondent;</p> <p style="padding-left: 40px;">(4) the name and address of any legal representative of the respondent;</p> <p style="padding-left: 40px;">(5) the name and address of any person nominated as guardian by the respondent;</p> <p style="padding-left: 40px;">(6) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;</p> <p style="padding-left: 40px;">(7) the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;</p> <p style="padding-left: 40px;">(8) if an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and</p> <p style="padding-left: 40px;">(9) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.</p> <p><u>(c) The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the</u></p>
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	<p><u>type of proposed living arrangement for the respondent, how the respondent's financial needs will be met, how the respondent's medical and other remedial needs will be met, how the respondent's social needs will be met and a plan for the respondent's continuing contact with relatives and friends.</u></p> <p><u>(d) The respondent must be examined by a physician, a psychologist, or other individual who is qualified to evaluate the respondent's alleged impairment. The person who examines the respondent shall submit a report in writing to the court, providing diagnoses; a description of the respondent's actual mental and functional limitations, including the ability to receive and evaluate information, make decisions, and communicate decisions; and prognoses.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-303. Procedure for court appointment of a guardian of an incapacitated person</p> <p>(a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.</p> <p>(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.</p> <p>(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The</p>

	<p>visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.</p> <p>(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.</p> <p>(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.</p>
Difference between MPC and UPC	No exact Maine counterpart. This section specifies in detail the information that must be included in a guardianship petition. The information required by UPC 5-304 is substantially similar that that required by Maine probate forms PP-201 and PP-205. MPC 5-303 requires the filing of a guardianship plan. UPC 5-304 does not.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies the UPC to add subsections (c) and (d), requiring a guardianship plan and a certification from a health care provider, consistent with former 18-A M.R.S. § 5-303(a) and (b).

UPC SECTION	5-305
SUBJECT	Judicial Appointment of Guardian: Preliminaries to Hearing.

UPC Statute (with Maine amendments shown)	<p>(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a {visitor}. The duties and reporting requirements of the {visitor} are limited to the relief requested in the petition. The {visitor} must be an individual having training or experience in the type of incapacity alleged.</p> <p>Alternative A</p> <p>(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:</p> <ol style="list-style-type: none"> (1) requested by the respondent; (2) recommended by the {visitor}; or (3) the court determines that the respondent needs representation. <p>Alternative B</p> <p>(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding, regardless of the respondent's ability to pay.</p> <p>End of Alternatives</p> <p>(c) The {visitor} shall interview the respondent in person <u>outside the presence of the person or persons seeking guardianship</u> and, to the extent that the respondent is able to understand:</p> <ol style="list-style-type: none"> (1) explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian; (2) determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship; (3) inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and (4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate. <p>(d) In addition to the duties imposed by subsection (c), the {visitor} shall:</p> <ol style="list-style-type: none"> (1) interview the petitioner and the proposed guardian; (2) visit the respondent's present dwelling and any dwelling in which the respondent will live if the appointment is made; (3) obtain information from any physician or other person who is known to have treated, advised, or assessed the
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	<p>respondent's relevant physical or mental condition; and</p> <p>(4) make any other investigation the court directs.</p> <p>(e) The visitor shall promptly file a report in writing with the court, which must include:</p> <p>(1) a recommendation as to whether a lawyer should be appointed to represent the respondent;</p> <p>(2) a summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage<u>the respondent's medical conditions, cognitive functioning, everyday functioning, values and preferences, risks and levels of supervision needed, and any means to enhance the respondent's capacity;</u></p> <p>(3) recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian<u>[reserved]</u>;</p> <p>(4) a statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;</p> <p>(5) a statement as to whether the proposed dwelling meets the respondent's individual needs;</p> <p>(6) a recommendation as to whether a professional evaluation or further evaluation is necessary; and</p> <p>(7) any other matters the court directs.</p> <p><i>Legislative Note: Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all proceedings for appointment of a guardian should not enact subsection (e)(1).</i></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-303. Procedure for court appointment of a guardian of an incapacitated person</p> <p>(a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.</p> <p>(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an</p>

	<p>attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.</p> <p>(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.</p> <p>(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.</p> <p>(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.</p>
Difference between MPC and UPC	UPC 5-305 and MPC 5-303 both deal with the appointment of an independent person who evaluates the alleged incapacitated person

	and the guardianship nominee and reports to the court with findings and recommendations. MPC 5-303 allows the court to dispense with an appointment if the alleged incapacitated person is represented by an attorney. UPC 5-305 does not. MPC 5-303 allows various types of appointment, including a GAL, an attorney or a visitor. UPC 5-305 requires the appointment of a visitor and provides two alternative statutory provisions specifying the circumstances that require the appointment of an attorney.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comment	Maine adopts UPC Alternative A, permitting the court to retain discretion existing under former Maine law not to appoint a lawyer in uncontested proceedings.

UPC SECTION	5-306
SUBJECT	Judicial Appointment of Guardian: Professional Evaluation.

<p>UPC Statute (with Maine amendments shown)</p>	<p>At or before a hearing under this part, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands <u>or if necessary to satisfy the requirements of section 5-304(d). The cost of the evaluation must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available.</u> If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:</p> <ul style="list-style-type: none"> (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations <u>to receive and evaluation information, make decisions and communicate decisions;</u> (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.
<p>18-A M.R.S.A.</p>	<p>§ 5-303. Procedure for court appointment of a guardian of an incapacitated person</p> <p>(a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.</p> <p>(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly</p>

	<p>incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.</p> <p>(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.</p> <p>(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.</p> <p>(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.</p>
<p>Difference between MPC and UPC</p>	<p>UPC 5-306 allows the court to order a professional evaluation of an alleged incapacitated person by a physician, psychologist or "other individual. . . who is qualified." MPC 5-303(b) provides that "The person alleged to be incapacitated must be examined by a physician or a licensed psychologist acceptable to the court... ." In practice, compliance with MPC 5-303(b) consists of the submission of a completed Form PP-505.</p>

Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies the UPC to grant the court specific authority to order the examination required under § 5-304(d), and so that the costs of evaluation are treated as the costs of a visitor, a guardian ad litem, or a court-appointed attorney were treated under former 18-A M.R.S. § 5-303(b).

UPC SECTION	5-307
SUBJECT	Confidentiality of Records.
UPC Statute (with Maine amendments shown)	<p>The written report of a {visitor} and any professional evaluation are confidential and must be sealed upon filing. but <u>The person who files the visitor's report or a professional evaluation must provide notice of filing and a copy of the report or evaluation to the respondent at the time of filing. Copies of the report or evaluation</u> are available to:</p> <ul style="list-style-type: none"> (1) the court; (2) the respondent without limitation as to use; <p><u>And, unless the respondent files an objection with the court within 10 days of receiving a copy of the report or evaluation, with a showing of good cause, copies of the report are available to:</u></p> <ul style="list-style-type: none"> (3) the petitioner, the {visitor}, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and (4) other persons for such purposes as the court may order for good cause.
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section is new, with no previous counterpart in the MPC. This section modifies the UPC to provide the respondent with an opportunity to object to an interested party's access to reports or evaluations that would otherwise be made available to that party.

UPC SECTION	5-308
SUBJECT	Judicial Appointment of Guardian: Presence and Rights at Hearing.
UPC Statute (with Maine amendments as shown)	<p>(a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The<u>In contested proceedings, the respondent and witnesses shall attend and participate in the hearing in person,</u> unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent, or may be held by telephonic or other electronic conferencing, and may be closed upon the request of the respondent and a showing of good cause. <u>The court may allow any interested person to attend a hearing by telephonic or other electronic conferencing, subject however to the requirement that in contested cases the respondent and witnesses shall attend in person unless excused by the court for good cause.</u></p> <p>(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.</p>
18-A M.R.S.A.	<p>§ 5-303. Procedure for court appointment of a guardian of an incapacitated person</p> <p>(a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.</p> <p>(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the</p>

	<p>allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.</p> <p>(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.</p> <p>(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.</p> <p>(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.</p>
Difference between MPC and UPC	MPC § 5-303(c) provides that the alleged incapacitated person is entitled to attend the hearing. The MPC does not address the petitioner's obligation to attend the hearing.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies the UPC to require the respondent's attendance only in contested proceedings, to eliminate the requirement that the respondent "participate" in the hearing, and to

	allow telephonic or other electronic participation in hearings, in keeping with the practice in most of Maine's probate courts.
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UPC SECTION	5-309
SUBJECT	Notice.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must (i) include a statement that the respondent must be physically present unless excused by the court <u>informing the respondent of the respondent's right to attend the hearing in uncontested proceedings, and of the respondent's obligation to be present at the hearing in contested proceedings unless excused by the court,</u> (ii) inform the respondent of the respondent's rights at the hearing, and (iii) include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.</p> <p>(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.</p> <p>(c) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.</p> <p>(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the report.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-309. Notices in guardianship proceedings</p> <p>(a) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:</p> <ol style="list-style-type: none"> (1) The ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, adult children and any domestic partner known to the court; (2) Any person who is serving as his guardian, conservator or who has his care and custody; and (3) In case no other person is notified under paragraph (1), at least one of his closest adult relatives or, if none, an adult friend, if any can be found. <p>(b) Notice shall be served personally on the ward or the allegedly incapacitated person at least 14 days before the date of the hearing. Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor. Representation of the ward</p>

	<p>or the allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.</p> <p>(c) Notice to the spouse, adult children, domestic partner and parents required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested, at least 14 days before the date of the hearing.</p> <p>If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.</p> <p>If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.</p> <p>If the certified mail to the spouse or domestic partner and adult children is not delivered, the spouse or domestic partner and all adult children can not be found within the State and the certified mail is not delivered to any parent, notice must be served personally on a parent who can be found within the State.</p> <p>If no spouse, domestic partner, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice must be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice must be served personally on the adult friend.</p> <p>Notice required by subsection (a) to any person serving as a guardian or conservator or who has a person's care and custody must be served by certified mail, with restricted delivery and return receipt requested.</p> <p>Except as otherwise provided in this section, notice must be given as prescribed by court rule under section 1-401.</p>
Difference between MPC and UPC	MPC § 5-309 contains greater detail than the UPC on the persons who must be served and the manner of service.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies the UPC for consistency with the Maine modifications to UPC § 5-308.

UPC SECTION	5-310
SUBJECT	Who May Be Guardian: Priorities.
UPC Statute (with Maine amendments shown)	<p>(a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:</p> <ol style="list-style-type: none"> (1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere; (2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent had sufficient capacity to express a preference; (3) an agent appointed by the respondent under fa durable power of attorney for health care [the Uniform Health-Care Decisions Act(1993)]; (4) the spouse <u>or domestic partner</u> of the respondent or an individual nominated by will or other signed writing of a deceased spouse <u>or deceased domestic partner</u>; (5) an adult child of the respondent; (6) a parent of the respondent, or an individual nominated by will or other signed writing of a deceased parent; and (7) an adult with whom the respondent has resided for more than six months before the filing of the petition; and (8) <u>a person nominated by the person who is caring for the respondent or paying benefits to the respondent.</u> <p>(b) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.</p> <p>(c) An owner, operator, or employee of fa long-term-care institution at which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption, <u>or unless a domestic partner of the respondent.</u></p>
18-A M.R.S.A.	<p>§ 5-311. Who may be guardian; priorities</p> <p>(a) Any competent person or a suitable institution may be appointed guardian of an incapacitated person, except as provided in subsection (c).</p> <p>(b) Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:</p> <ol style="list-style-type: none"> (1) The person or institution nominated in writing by the incapacitated person; (2) The spouse of the incapacitated person;

	<p>(2-A) The domestic partner of the incapacitated person;</p> <p>(3) An adult child of the incapacitated person;</p> <p>(3-A) A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday;</p> <p>(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;</p> <p>(5) Any relative of the incapacitated person with whom the incapacitated person resided for more than 6 months prior to the filing of the petition; or</p> <p>(6) A person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person.</p> <p>(e) An owner, proprietor, administrator, employee or other person with a substantial financial interest in a facility or institution licensed under Title 22, sections 1817 and 7801 may not act as guardian of an incapacitated person who is a resident, as defined in Title 22, section 7852, subsection 13, unless the person requesting to be appointed guardian is one of the following:</p> <p>(1) The spouse of the incapacitated person;</p> <p>(1-A) The domestic partner of the incapacitated person;</p> <p>(2) An adult child of the incapacitated person;</p> <p>(2-A) A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday;</p> <p>(3) A parent of the incapacitated person or a person nominated by the will of a deceased parent; or</p> <p>(4) A relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition for appointment.</p>
<p>Difference between MPC and UPC</p>	<p>MPC 5-311(b)(2-A) gives domestic partners priority comparable to spouses. MPC 5-311(b)(5) and UPC 5-310(a)(7) are comparable, but the MPC gives priority to a "relative" with whom the allegedly incapacitated person has resided, and the UPC gives priority to "an adult" with whom the respondent has resided.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section modifies the UPC to treat domestic partners in a manner comparable to their treatment elsewhere in the MPC. The former MPC § 5-311(b)(5) gave priority to a "relative" with whom the respondent has resided. Adoption of the UPC gives</p>

	priority to an “adult” with whom the respondent has resided. This section carries forward from the former MPC § 5-311(b)(6) consideration, as a last priority for guardianship, of a person nominated by someone who is caring for the respondent or is paying benefits to the respondent.
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UPC SECTION	5-311
SUBJECT	FINDINGS; ORDER OF APPOINTMENT.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The court may:</p> <p>(1) appoint a limited or unlimited guardian <u>or co-guardians</u> for a respondent only if it finds by clear and convincing evidence that:</p> <p>(A) the respondent is an incapacitated person; and</p> <p>(B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate <u>reasonably available</u> technological assistance; and</p> <p><u>(C) the appointment is necessary or desirable;</u> or</p> <p>(2) with appropriate findings, treat the petition as one for a protective order under Section 5-401, enter any other appropriate order, or dismiss the proceeding.</p> <p>(b) The court, whenever feasible, shall <u>appoint a limited guardian unless it makes specific findings why the appointment of an unlimited guardian is appropriate and</u> grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.</p> <p>(c) Within 14 days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.</p>
<p>18-A M.R.S.A.</p>	<p>§5-304. Findings; order of appointment</p> <p>(a). The court shall exercise the authority conferred in Parts 3 and 6 so as to encourage the development of maximum self reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.</p> <p>(b). The court may appoint a guardian or coguardians as requested if the court finds by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person .</p> <p>(b-1). If the allegedly incapacitated person files voluntary written consent to the appointment of a guardian with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a guardian or coguardians as requested upon a finding by a preponderance of the evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing</p>

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	<p>continuing care and supervision of the incapacitated person. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking guardianship.</p> <p>(b-2). If the allegedly incapacitated person has not attended the hearing, the court must determine if an inquiry has been made as to whether that person wished to attend the hearing.</p> <p>(c). In its order, the court may make separate findings of fact and conclusions of law. If a party requests separate findings and conclusions, within 5 days of notice of the decision, the court shall make them. As an alternative to the appointment of a guardian under subsection (b) or (b-1), the court may dismiss the proceeding or enter any other appropriate order.</p>
Difference between MPC and UPC	<p>The UPC requires that technological assistance be addressed specifically, when requiring that the allegedly incapacitated person's needs must not be able to be met by less restrictive means, including use of appropriate technological assistance. This does not appear in the current MPC.</p> <p>The UPC does not expressly authorize the court to make separate findings of fact and conclusions of law, or permit a party to request that the court do so, as the current MPC does. (Maine Rule of Probate Procedure 52 addresses this.)</p>
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	See Maine comment to § 5-102.

UPC SECTION	5-312
SUBJECT	EMERGENCY GUARDIAN.

UPC Statute (with Maine amendments shown)	<p>(a) If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed 60 days <u>6 months</u> and who may exercise only the powers specified in the order. <u>A petition for emergency guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guardian. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a lawyer to represent the respondent in the proceeding.</u></p> <p><u>(a-1) Prior to filing a petition under this section, notice shall be provided as follows:</u></p> <p><u>(1) The petitioner shall provide notice orally or in writing to the following:</u></p> <p><u>(i) The allegedly incapacitated person and the person's spouse, parents, adult children and any domestic partner known to the court;</u></p> <p><u>(ii) Any person who is serving as guardian or conservator or who has care and custody of the allegedly incapacitated person; and</u></p> <p><u>(iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the allegedly incapacitated person or, if none, an adult friend, if any can be found.</u></p> <p><u>(2) Notice under paragraph (1) must include the following information:</u></p> <p><u>(i) The temporary authority that the petitioner is requesting;</u></p> <p><u>(ii) The location and telephone number of the court in which the petition is being filed; and</u></p> <p><u>(iii) The name of the petitioner and the intended date of filing.</u></p> <p><u>(3) The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section.</u></p>
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(4) Notice is not required under this subsection in the following circumstances:

- (i) Giving notice will place the allegedly incapacitated person at substantial risk of abuse, neglect or exploitation;
- (ii) Notice, if provided, would not be effective; or
- (iii) Other good cause as determined by the court.

(5) If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

(a-2) Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition must be given to the respondent ~~and the respondent's spouse, parents, adult children, any domestic partner known to the court,~~ and any other persons as the court directs.

(b) ~~An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer and others described in subsection (a) only if the court finds from affidavit or testimony that the respondent will suffer serious, immediate and irreparable harm be substantially harmed before a hearing on the appointment can be held.~~ If the court appoints an emergency guardian without notice ~~as provided in subsection (a-1), to the respondent, the respondent must be given~~ notice of the appointment must be given within 48 hours after the appointment to the persons specified in subsection (a-1). ~~The court shall hold a hearing on the appropriateness of the appointment within [five] days after the appointment.~~

(b-1) If the court takes action to appoint an emergency guardian, then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or guardian ad litem to visit the respondent and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the respondent with a copy of the order appointing the emergency guardian and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the respondent whether that person wishes to contest any aspect of the emergency guardianship or seek any limitation of the emergency guardian's powers. The visitor or guardian ad litem shall advise the respondent of that person's right to be represented in the proceeding by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the emergency guardian, except in cases where the court itself has taken action to exercise the powers of

an emergency guardian. In the report to the court, the visitor or guardian ad litem shall inform the court that the respondent has received a copy of the order appointing the emergency guardian. The visitor or guardian ad litem shall advise the court if circumstances indicate the respondent wishes to contest any aspect of the emergency guardianship or seek a limitation of the emergency guardian's powers and whether the respondent is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the emergency guardian is in the respondent's best interest.

(b-2) If it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the respondent wishes to contest any aspect of the emergency guardianship or seek a limitation of the emergency guardian's powers, or that an issue exists with respect to whether the emergency guardianship is in the respondent's best interest, the court shall hold an expedited hearing on the appropriateness of the appointment within forty (40) days after the appointment. The court may continue the expedited hearing if the petitioner and the attorney for the respondent, or, if none, the visitor or the guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the order. If the appointment of a guardian is contested by the respondent and the person is not already represented by an attorney, the court shall appoint counsel to represent the respondent in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the respondent if the court is satisfied that sufficient funds are available. At the hearing, the petitioner has the burden of showing by clear and convincing evidence that emergency guardianship continues to be necessary to provide the person with continuing care, protection or support pending a final hearing.

(b-3) Notice of the expedited hearing under subsection (b-2) must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and cannot be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the respondent, upon a showing of good cause.

(c) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian at any time.

	<p>An emergency guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to an emergency guardian.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-310-A. Temporary guardians</p> <p>(a) When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an order, ex parte or otherwise, appointing a temporary guardian in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be incapacitated. A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guardian. In the order and in the letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.</p> <p>(1) Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:</p> <ul style="list-style-type: none"> (i) The allegedly incapacitated person and the person's spouse, parents, adult children and any domestic partner known to the court; (ii) Any person who is serving as guardian or conservator or who has care and custody of the allegedly incapacitated person; and (iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the allegedly incapacitated person or, if none, an adult friend, if any can be found. <p>(2) Notice under paragraph (1) must include the following information:</p> <ul style="list-style-type: none"> (i) The temporary authority that the petitioner is requesting; (ii) The location and telephone number of the court in which the petition is being filed; and (iii) The name of the petitioner and the intended date of filing. <p>(3) The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section</p>

	<p>5-309 do not apply to this section.</p> <p>(4) Notice is not required under this subsection in the following circumstances:</p> <ul style="list-style-type: none"> (i) Giving notice will place the allegedly incapacitated person at substantial risk of abuse, neglect or exploitation; (ii) Notice, if provided, would not be effective; or (iii) Other good cause as determined by the court. <p>(5) If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.</p> <p>(a-1) If the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the allegedly incapacitated person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the allegedly incapacitated person with a copy of the order appointing the temporary guardian and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the allegedly incapacitated person whether that person wishes to contest any aspect of the temporary guardianship or seek any limitation of the temporary guardian's powers. The visitor or guardian ad litem shall advise the allegedly incapacitated person of that person's right to contest the temporary guardianship by requesting a hearing under subsection (b) and shall advise the allegedly incapacitated person of that person's right to be represented in the proceeding by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary guardian, except in cases where the court itself has taken action to exercise the powers of a temporary guardian. In the report to the court, the visitor or guardian ad litem shall inform the court that the allegedly incapacitated person has received a copy of the order appointing the temporary guardian. The visitor or guardian ad litem shall advise the court if circumstances indicate the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers and whether the allegedly incapacitated person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary guardian is in the allegedly incapacitated</p>
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	<p>person's best interest.</p> <p>(b) If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers, or that an issue exists with respect to whether the temporary guardianship is in the allegedly incapacitated person's best interest, the court shall hold an expedited hearing within 40 days of the entry of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the allegedly incapacitated person, or, if none, the visitor or the guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a guardian is contested by the allegedly incapacitated person and the person is not already represented by an attorney, the court shall appoint counsel to represent the allegedly incapacitated person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied that sufficient funds are available. At the hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary guardianship continues to be necessary to provide the person with continuing care, protection or support pending a final hearing. Notice of the expedited hearing must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the allegedly incapacitated person, upon a showing of good cause.</p> <p>(c) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary guardianship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order or at any prior time if the court determines the circumstances leading to the order for temporary guardianship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-303 with findings made pursuant to section 5-304.</p> <p>(d) If the court denies the request for an ex parte order pursuant to</p>
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	<p>subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).</p> <p>(e) If an appointed guardian is not effectively performing that guardian's duties and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person for a specified period not to exceed 6 months.</p> <p>(f) A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may not seek the involuntary hospitalization of this ward in any institution outside the State. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this Code concerning guardians apply to temporary guardians.</p> <p>(g) A petition for temporary guardianship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge, other than the judge of the county in which venue properly lies, acts on a petition for temporary guardianship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county, other than the county in which venue properly lies, is deemed to have been entered in the docket on the date and at the time endorsed upon it.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC standard for appointing an emergency or temporary guardian is likely substantial harm. The MPC current standard requires serious, immediate and irreparable harm to health or financial interests.</p> <p>The UPC suggests the appointment of a temporary guardian not exceed 60 days. The MPC limit is currently 6 months.</p> <p>The UPC requires that the court immediately upon receipt of the petition appoint an attorney to represent the respondent. The MPC requires only appointment of a visitor or guardian ad litem to visit the respondent, and that appointment must occur within 2 days. The visitor or guardian ad litem then has 10 days to report to the court.</p> <p>The UPC notice requirements are less strict than the MPC requirements.</p> <p>The UPC does not expressly require submission of an affidavit.</p>

	<p>The MPC addresses expedited hearings and ex parte orders in detail. The UPC states that an emergency guardian may be appointed without notice to the respondent and his/her attorney if the court finds that the respondent will be substantially harmed before a hearing can be held. A hearing on any emergency appointment must be held within 5 days.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section adopts the UPC in part, but retains the role under former MPC § 5-310-A of the visitor and guardian ad litem in cases of emergency guardianships. Given the nature of the probate courts in the State of Maine, it is not practical to require the assignment of a lawyer immediately upon the receipt of a petition for an emergency guardian, or to adopt the shortened time limits contained in the UPC. Partly for that reason, Maine continues to require the filing of an affidavit with the petition for emergency appointment, setting forth the factual basis for the emergency and the powers requested, as in former MPC § 5-310-A. The role of the guardian ad litem and visitor will continue to ensure that the respondent's interests are represented, without limiting the court's authority to appoint a lawyer for the respondent at a later time on a case-by-case basis.</p> <p>This section carries forward from the former MPC § 5-310-A a heightened standard of harm as the basis for an ex parte appointment.</p> <p>Instead of adopting the shorter time limits contained in the UPC, this section integrates provisions of the former MPC § 5-310-A providing for emergency appointment to be followed by a visit with a guardian ad litem or visitor.</p>

UPC SECTION	5-313
SUBJECT	TEMPORARY SUBSTITUTE GUARDIAN.
UPC Statute (with Maine amendments shown)	<p>(a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment, <u>except a temporary substitute guardian may not seek the involuntary hospitalization of the ward in any institution outside the State.</u> The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian, the court, within five days after the appointment, shall inform the ward or guardian of the appointment.</p> <p>(b) The court may remove a temporary substitute guardian at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to a temporary substitute guardian.</p>
18-A M.R.S.A.	<p>§ 5-310-A. Temporary guardians</p> <p>(e) If an appointed guardian is not effectively performing that guardian's duties and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person for a specified period not to exceed 6 months.</p> <p>(f) A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may not seek the involuntary hospitalization of this ward in any institution outside the State. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this Code concerning guardians apply to temporary guardians.</p>
Difference between MPC and UPC	<p>The UPC expressly requires notice within 5 days of appointment of a temporary guardian, if the appointment was made without notice.</p> <p>The MPC prohibits a temporary guardian from seeking involuntary hospitalization of the ward in any institution outside of Maine.</p>
Recommendation of	Adopt UPC.

Probate Code Review Committee	
Maine Probate Code Proposed Comments	This section removes the statutory prohibition under previous Maine law against a temporary guardian seeking involuntary hospitalization of a ward outside the State. However, t The court retains discretion to impose limits on the authority of a temporary substitute guardian.

UPC SECTION	5-314
SUBJECT	DUTIES OF GUARDIAN.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.</p> <p>(b) A guardian shall:</p> <p>(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;</p> <p>(2) take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;</p> <p>(3) expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;</p> <p>(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;</p> <p>(5) immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and</p> <p>(6) inform the court of any change in the ward's custodial dwelling or address.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-312. General powers and duties of guardian</p> <p>(a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:</p> <p>(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to</p>

	<p>detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law.</p> <p>(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.</p> <p>(3) A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity.</p> <p>(4) If no conservator for the estate of the ward has been appointed, he may:</p> <ul style="list-style-type: none">(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. <p>(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or</p>
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	<p>control, as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.</p> <p>The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made.</p> <p>The visitor shall report his findings to the court in writing.</p> <p>(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.</p> <p>(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC requires the guardian to notify the court immediately if the ward's condition has changed such that he or she is capable of exercising rights previously removed. Under the MPC, the guardian must report the condition of the ward as required by the court.</p> <p>The UPC requires the guardian to notify the court of any change in the ward's custodial dwelling or address. The MPC expressly allows the guardian to establish the ward's place of abode in or outside of Maine, but does not address notice requirements to the court.</p>
<p>Recommendation</p>	<p>Adopt UPC.</p>
<p>Maine Probate Code Proposed Comments</p>	

UPC SECTION	5-315
SUBJECT	POWERS OF GUARDIAN.
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise limited by the court, a guardian may:</p> <p>(1) apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;</p> <p>(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside this state upon express authorization of the court;</p> <p>(3) if a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;</p> <p>(4) <u>except as limited by 18-A M.R.S. § 5-806,</u> consent to medical or other care, treatment, or service for the ward;</p> <p>(5) consent to the marriage or [divorce] of the ward;</p> <p>and</p> <p>(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.</p> <p>(b) The court may specifically authorize the guardian to consent to the adoption of the ward.</p> <p><u>(c) If co-guardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.</u></p>
18-A M.R.S.A.	<p>§ 5-312. General powers and duties of guardian</p> <p>(a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:</p> <p>(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within</p>

	<p>or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law.</p> <p>(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.</p> <p>(3) A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity.</p> <p>(4) If no conservator for the estate of the ward has been appointed, he may:</p> <ul style="list-style-type: none">(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. <p>(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.</p>
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	<p>The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his findings to the court in writing.</p> <p>(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.</p> <p>(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.</p>
Difference between MPC and UPC	The MPC states that the guardian has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor. The UPC specifically addresses the guardian's consent to the marriage, divorce, and adoption of the ward.
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	The Maine amendments to the UPC reconcile it with section 5-806 of the Uniform Healthcare Decisions Act (18-A M.R.S. §§ 5-801 – 5-818), which section limits certain health care decisions by the guardian. The Maine amendments also assure that people who rely on a co-guardian's authority to act may rely on the consent or action of either co-guardian separately.

UPC SECTION	5-316
SUBJECT	RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A guardian is entitled to reasonable compensation for services as guardian based on the factors set forth in section 3-721(b) and to reimbursement for room, board, and clothing provided to the ward, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.</p> <p>(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third party.</p> <p>(c) A guardian, without authorization of the court, may not revoke a power of attorney for health care made pursuant to the Uniform Health-care Decisions Act (1993) of which the ward is the principal. If a power of attorney for health care pursuant to the Uniform Health-care Decisions Act (1993) is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.</p> <p>(d) A guardian may not initiate the commitment of a ward to a mental health-care institution <u>psychiatric hospital</u> except in accordance with the state's <u>statutes and</u> procedure for involuntary civil commitment.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-312. General powers and duties of guardian</p> <p>(a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:</p> <p>(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law.</p>

	<p>(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.</p> <p>(3) A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity.</p> <p>(4) If no conservator for the estate of the ward has been appointed, he may:</p> <ul style="list-style-type: none"> (i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty; (ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. <p>(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule. The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his</p>
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	<p>findings to the court in writing.</p> <p>(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.</p> <p>(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.</p>
Difference between MPC and UPC	<p>The UPC includes the guardian's entitlement to reasonable compensation, but only with a court order. The MPC authorizes compensation only when there is also a conservator appointed, subject to agreement between the guardian and conservator and further provided compensation is reasonable under the circumstances.</p> <p>The UPC absolves a guardian of liability in the selection of health care or other service providers so long as the guardian exercised reasonable care in doing so. The MPC does not contain a similar provision.</p> <p>The UPC in this section expressly states that a guardian cannot revoke a health care directive executed by the ward without court approval, and specifies that a decision by the agent under such directive will take precedence over any decision of the guardian. This is consistent with current Maine law found in 18-A M.R.S. § 5-806.</p> <p>The UPC prohibits the guardian from initiating the ward's commitment to a mental health facility except in accordance with the state's procedure for involuntary civil commitment.</p>
Recommendation of Probate Code Review Committee	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Maine has amended subsection (d) to refer to a "psychiatric hospital" as opposed to a "mental health-care institution", to conform to Title 34-B, Section 3863, which addresses involuntary civil commitment.

UPC SECTION	5-317
SUBJECT	REPORTS; MONITORING OF GUARDIANSHIP.
UPC Statute (with Maine amendments shown)	<p>(a) Within 30 days after appointment, a guardian shall report to the court in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control.</p> <p>A guardian shall report at least annually thereafter and whenever ordered by the court, or as otherwise specified by the court or provided by court rule. A report must state or contain:</p> <ol style="list-style-type: none"> (1) the current mental, physical, and social condition of the ward; (2) the living arrangements for all addresses of the ward during the reporting period; (3) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care; (4) a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making; (5) if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest; (6) plans for future care; and (7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship. <p>(b) The court may appoint a visitor <u>or guardian ad litem</u> to review a report, interview the ward or guardian, and make any other investigation the court directs.</p> <p>(c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports. Reserved.</p> <p><u>(d) Notwithstanding the requirements of paragraph (a), a guardian appointed before the effective date of this Act shall be required to report only as directed by the court.</u></p>
18-A M.R.S.A.	<p>§ 5-312. General powers and duties of guardian</p> <p>(a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:</p>

	<p>(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law.</p> <p>(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.</p> <p>(3) A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity.</p> <p>(4) If no conservator for the estate of the ward has been appointed, he may:</p> <ul style="list-style-type: none"> (i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty; (ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. <p>(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control,</p>
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	<p>as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.</p> <p>The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his findings to the court in writing.</p> <p>(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.</p> <p>(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC requires reporting by the guardian to the court within 30 days of the appointment, and at least annually thereafter and whenever ordered by the court. The MPC leaves reporting requirements to discretion of the court.</p> <p>The UPC also lists items to be contained in reports. The MPC leaves it to the court.</p> <p>The UPC requires the court to establish a system for monitoring guardianships, including the filing and review of annual reports.</p>
<p>Recommendation of Probate Code Review Committee</p>	
<p>Maine Probate Code Proposed Comments</p>	<p>This section allows the court discretion to direct the timing of reporting by guardians, and allows reporting requirements for guardianships existing on the effective date of the Act to remain in place unless altered by the court. It also allows courts to retain systems currently in place for monitoring.</p>

UPC SECTION	5-318
SUBJECT	TERMINATION OR MODIFICATION OF GUARDIANSHIP.

<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A guardianship terminates upon the death of the ward or upon order of the court.</p> <p>(b) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. <u>A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.</u> The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.</p> <p><u>(b-1) On petition of the guardian, the court may accept the guardian's resignation and make any other order that may be appropriate.</u></p> <p><u>(b-2) On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interest of the ward.</u></p> <p>(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship <u>or accepting the resignation of a guardian</u>, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven <u>by clear and convincing evidence</u> that <u>continuation of the guardianship is in the best interest of the ward:</u></p> <p><u>(A) the respondent is an incapacitated person;</u> <u>(B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate reasonably available technological assistance; and</u> <u>(C) continuation of the appointment is necessary or desirable.</u></p>
<p>18-A M.R.S.A.</p>	<p>§5-306. Termination of guardianship for incapacitated person The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.</p>

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	<p>§5-307. Removal or resignation of guardian; termination of guardianship</p> <p>(a). On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order that may be appropriate.</p> <p>(b). The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.</p> <p>(c). Before removing a guardian or accepting the resignation of a guardian, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.</p> <p>(d). In an action by the ward, upon presentation by the petitioner of evidence establishing a prima facie case that the ward is not incapacitated or the appointment is no longer necessary or desirable as a means of providing continuing care and supervision of the ward, the court shall order the termination unless the respondent proves by clear and convincing evidence that the ward is incapacitated and guardianship is necessary or desirable as a means of providing continuing care and supervision of the ward.</p>
<p>Difference between MPC and UPC</p>	<p>The MPC provides that upon an action by the ward, the guardianship can be terminated by the court if the ward is no longer incapacitated or the appointment is otherwise no longer necessary. Under the UPC, the ward, a guardian, or another person interested in the ward's welfare can bring the petition.</p> <p>The MPC expressly provides that a testamentary appointment of a guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p> <p>The UPC does not address resignation or removal of a guardian, other than in connection with appointment of a substitute guardian.</p>
<p>Recommendation of Probate Code Review Committee</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The Maine amendments to the UPC include specific resignation provisions for the guardian; a provision to allow the ward or others to petition for removal of a guardian; and a requirement of clear and convincing evidence to show that continuing guardianship is in the best interest of the ward, once a prima facie case for termination has been made.</p>

UPC SECTION	5-401
SUBJECT	Protective Proceeding
<p>UPC Statute (with Maine amendments shown)</p>	<p>Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this {part} in relation to the estate and affairs of:</p> <p>(1) a minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor’s age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or</p> <p>(2) any individual, including a minor, if the court determines that, for reasons other than age:</p> <p>(A) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make or communicate informed decisions, even with the use of appropriate reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and</p> <p>(B) by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual’s support and that protection is necessary or desirable to obtain or provide money.</p> <p><u>(C) If an allegedly incapacitated adult files voluntary written consent to the appointment of a conservator with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a conservator as requested upon a finding by a preponderance of the evidence that the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make or communicate informed decisions, even with the use of appropriate reasonably available technological assistance. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking conservatorship.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-401. Protective proceedings Upon petition and after notice and hearing in accordance with the provisions of this Part, the court may appoint a conservator, coconservator or make other protective order for cause as follows.</p>

	<p>(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.</p> <p>(2). Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines : by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and by a preponderance of the evidence that the person has property that will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds. If the allegedly incapacitated person files voluntary written consent to the appointment of a conservator with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a conservator or coconservator as requested upon a finding by a preponderance of the evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking conservatorship.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC provides for a limited or unlimited conservator and does not mention a co-conservator.</p> <p>With respect to conservatorships for reasons other than minority, the UPC introduces a new standard for cases based on clear and convincing evidence.</p> <p>The UPC eliminates the material concerning the consent of the incapacitated person and mandates the appointment of a visitor (with limited exceptions) in § 5-406.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section adds language about communicating informed consent and reasonably available technological assistance consistent with the</p>

	<p>additions to § 5-102 and the accompanying Maine comments. This section adds subsection (C) to Section 2 of the UPC provision in order to retain the exception to the clear and convincing standard under former Maine law, 18-A M.R.S. § 5-401(2), for a conservatorship to which an allegedly incapacitated adult has consented.</p>
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UPC SECTION	5-402
SUBJECT	Jurisdiction Over Business Affairs of Protected Person
UPC Statute (with Maine amendments shown)	<p>After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:</p> <p>(1) exclusive jurisdiction to determine the need for a conservatorship or other protective order;</p> <p>(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and</p> <p>(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.</p>
18-A M.R.S.A.	<p>§ 5-402. Protective proceedings; jurisdiction of affairs of protected persons</p> <p>After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:</p> <p>(1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;</p> <p>(2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;</p> <p>(3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.</p>
Difference between MPC and UPC	The UPC and MPC sections are essentially the same, except that the UPC specifies that the court has exclusive jurisdiction over payments to the protected person, dependents “and other claimants.”
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This language does not constitute a substantive change to Maine law.

UPC SECTION	5-403
SUBJECT	Original Petition for Appointment or Protective Order
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The following may petition for the appointment of a conservator or for any other appropriate protective order:</p> <ol style="list-style-type: none"> (1) the person to be protected; (2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or (3) a person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected. <p>(b) A petition under subsection (a) must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known state or contain the following with respect to the respondent and the relief requested:</p> <ol style="list-style-type: none"> (1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made; (2) if the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment; (3) if the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts; (4) the name and address of the respondent's: <ol style="list-style-type: none"> (A) spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and (B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found, <u>or, if none, an adult friend if any can be found</u>; (5) the name and address of the person responsible for care or custody of the respondent; (6) the name and address of any legal representative of the respondent; (7) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;

	<p>and</p> <p>(8) the reason why a conservatorship or other protective order is in the best interest of the respondent.</p> <p>(c) If a conservatorship is requested, the petition must also set forth to the extent known:</p> <p>(1) the name and address of any proposed conservator and the reason why the proposed conservator should be selected;</p> <p>(2) the name and address of any person nominated as conservator by the respondent if the respondent has attained 14 years of age; and</p> <p>(3) the type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-403. Venue Venue for proceedings under this Part is:</p> <p>(1) In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or</p> <p>(2) If the person to be protected does not reside in this State, in any place where he has property.</p> <p>§ 5-404. Original petition for appointment or protective order</p> <p>(a) The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected including the parent, guardian, custodian or domestic partner of the person to be protected or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.</p> <p>(b) The petition shall contain such information and be in such form as the Supreme Judicial Court shall by rule provide.</p> <p>(c) A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.</p> <p>(1) The petition must include the following information and may include other information required by rule:</p> <p>(i) Name, address and telephone number of the petitioner;</p> <p>(ii) Name, address and telephone number of the principal;</p> <p>(iii) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;</p> <p>(iv) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs</p>

	<p>effectively and any facts supporting an allegation that an emergency exists;</p> <p>(v) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and</p> <p>(vi) Names, addresses and relationships of all persons who are required to receive notice of the petition.</p> <p>(2) This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court.</p>
Difference between MPC and UPC	The UPC addresses venue for both guardianships and conservatorships in § 5-108(d) and does not include the separate conservatorship provision that now appears in MPC § 5-403.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	In conjunction with proposed 18-A M.R.S. § 5-404, this requires that notice of a protective proceeding be given to an adult friend if any can be found and if no family can be found. This is similar to the requirement of former 18-A M.R.S. § 5-405(a-1).

UPC SECTION	5-404
SUBJECT	Notice
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent must be made by substituted service for publication. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.</p> <p>(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.</p> <p>(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, must be given to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.</p> <p>(d) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person <u>if the person can be located, has attained 14 years of age, and has sufficient mental capacity to understand these matters</u>, and <u>to</u> any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the inventory, report, or plan of conservatorship.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-405. Notice</p> <p>(a) On a petition for appointment of a conservator or other protective order or on a petition under section 5-416, the person to be protected or the protected person must be served personally with notice of the proceeding at least 14 days before the date of the hearing. Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor. The court may order that the petition and hearing notice be served by the visitor.</p>

	<p>(a-1) The spouse or domestic partner and all adult children of the person to be protected or the protected person or, if none, the person's parents or closest adult relative or, if none, a friend must be given notice of the proceeding. Notice under this subsection must be served by certified mail, restricted delivery and return receipt requested, at least 14 days before the date of the hearing. If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.</p> <p>If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.</p> <p>If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice must be served personally on a parent or the adult relative if a parent or adult relative can be found within the State.</p> <p>If notice is served on the person's friend and the certified mail is not delivered, notice must be served personally on the friend if the friend can be found within the State.</p> <p>Except as otherwise provided in this subsection and subsection (a), notice must be given as prescribed by court rule under section 1-401.</p> <p>(b) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (a-1), notice shall be given as prescribed by court rule under section 1-401.</p> <p>§ 5-406. Protective proceedings; request for notice; interested person</p> <p>Any interested person who desires to receive notice of any filing, hearing or order in a protective proceeding may file a demand for notice with the court, shall thereupon have notice of such demand given to any conservator who has been appointed, and shall thereafter receive notice of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.</p>
<p>Difference between MPC and UPC</p>	<p>Both the UPC and MPC require personal service on the respondent, but the MPC allows the visitor to waive a hearing on behalf of the respondent if minority is not the reason for the conservatorship. (The UPC provisions on attendance at the hearing are contained in § 5-408.)</p>

	<p>The UPC provides that notice must also be given to the persons named in the petition, whereas the MPC names certain family members to receive notice (generally the same persons listed in the petition pursuant to UPC § 5-403).</p> <p>UPC § 5-404(d) requires that the conservator's inventory and reports be provided to the protected person regardless of capacity, whereas MPC § 5-418 requires the conservator to provide a copy of the inventory to the protected person only if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters. MPC § 5-419 provides that the conservator shall account to the court as specified by the court and only mandates that the protected person receive a copy of the accounting in the case of a final accounting on termination of the protected person's minority or disability.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section adds language from the former 18-A M.R.S. § 5-418 limiting obligations to provide notice of filing of inventories, reports or plans to people who can be located, are at least 14 years of age, and are able to understand the filings.

UPC SECTION	5-405
SUBJECT	Original Petition: Minors; Preliminaries to Hearing
UPC Statute (with Maine amendments shown)	<p>(a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age.</p> <p>(b) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the minor as may be required for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a master visitor to assist in that task.</p>
18-A M.R.S.A.	<p>§ 5-407. Procedure concerning hearing and order on original petition</p> <p>(a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.</p>
Difference between MPC and UPC	UPC § 5-405(a) is essentially the same as MPC § 5-407(a) except that the MPC provides that a lawyer appointed to represent a minor respondent has the powers and duties of a guardian ad litem. Because the UPC does not provide for the appointment of a temporary conservator, § 5-405 contains subsection (b) to allow the court to make orders to preserve and apply the minor's property pending the appointment of a conservator.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Adoption of this section is not intended to change the existing Maine rule that a lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

UPC SECTION	5-406
SUBJECT	Original Petition: Preliminaries to Hearing
UPC Statute (with Maine amendments shown)	<p>(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court shall appoint a {visitor} unless the petition does not request the appointment of a conservator and the respondent is represented by a lawyer. The duties and reporting requirements of the {visitor} are limited to the relief requested in the petition. The {visitor} must be an individual having training or experience in the type of incapacity alleged.</p>
	<p>Alternative A</p> <p>(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:</p> <ol style="list-style-type: none"> (1) requested by the respondent; (2) recommended by the {visitor}; or (3) the court determines that the respondent needs representation. <p>Alternative B</p> <p>(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding, regardless of the respondent's ability to pay.</p> <p>End of Alternatives</p> <p>(c) The {visitor} shall interview the respondent in person and, to the extent that the respondent is able to understand:</p> <ol style="list-style-type: none"> (1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding; (2) if the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship; (3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and (4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate. <p>(d) In addition to the duties imposed by subsection (c), the {visitor} shall:</p> <ol style="list-style-type: none"> (1) interview the petitioner and the proposed conservator, if any; and (2) make any other investigation the court directs.

	<p>(e) The visitor shall promptly file a report with the court, which must include:</p> <ol style="list-style-type: none"> (1) a recommendation as to whether a lawyer should be appointed to represent the respondent; (2) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority; (3) a statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship; (4) a recommendation as to whether a professional evaluation or further evaluation is necessary; and (5) any other matters the court directs. <p>(f) The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.</p> <p>(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a master visitor to assist in that task.</p> <p><i>Legislative Note: Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all protective proceedings should not enact subsection (e)(1).</i></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-407. Procedure concerning hearing and order on original petition</p> <p>(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of the following: a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged</p>

disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

(b-1) If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.

(b-2) The person nominated to serve as conservator shall file a plan which, where relevant and to the extent pertinent information is reasonably available to the nominee, shall include, but not be limited to, how the protected person's financial needs will be met, as well as a plan for the management of the protected person's estate.

(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court and all parties of record at least 10 days before any hearing on the petition.

(e) When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and

	counsel present if the statements made are a matter of record.
Difference between MPC and UPC	<p>UPC § 5-406(a) provides that a visitor shall be appointed in all proceedings for the appointment of a conservator, whereas the MPC provides that a visitor, guardian ad litem or lawyer shall be appointed unless the respondent is already represented. (The UPC comments make it clear that the UPC views the visitor as an agent of the court and not as an advocate for the respondent.)</p> <p>UPC § 5-406(b) Alternative A, like the MPC, states that the court shall appoint a lawyer to represent the respondent only in limited circumstances, whereas Alternative B requires a lawyer to be appointed in all cases.</p> <p>The UPC and MPC sections are substantially similar in other respects.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section adopts UPC Alternative A, permitting the court to retain discretion existing under former Maine law not to appoint a lawyer in uncontested proceedings.

UPC SECTION	5-407
SUBJECT	Confidentiality of Records
UPC Statute (with Maine amendments shown)	<p>The written report of a {visitor} and any professional evaluation are confidential and must be sealed upon filing. but <u>The person who files the visitor's report or a professional evaluation must provide notice of filing and a copy of the report or evaluation to the respondent at the time of filing. Copies of the report or evaluation</u> are available to:</p> <ul style="list-style-type: none"> (1) the court; (2) the respondent without limitation as to use; <p><u>And, unless the respondent files an objection with the court within 10 days of receiving a copy of the report or evaluation, with a showing of good cause, copies of the report are available to:</u></p> <ul style="list-style-type: none"> (3) the petitioner, the {visitor}, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and (4) other persons for such purposes as the court may order for good cause.
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section modifies UPC § 5-407 to provide the respondent with an opportunity to object to an interested party's access to reports or evaluations that would otherwise be made available to that party.

UPC SECTION	5-408
SUBJECT	Original Petition: Procedure at Hearing
UPC Statute (with Maine amendments shown)	<p>(a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. <u>In a contested hearing, the</u> The respondent <u>and witnesses</u> shall attend and participate in the hearing <u>in person</u>, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent, <u>or by telephone or other electronic conferencing</u>, and may be closed upon request of the respondent and a showing of good cause. <u>The court may allow any interested person to attend a hearing by telephonic or other electronic conferencing, subject however to the requirement that in contested cases the respondent and witnesses shall attend in person unless excused by the court for good cause.</u></p> <p>(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.</p>
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	Maine has modified the UPC to require the respondent's attendance only in contested proceedings, to eliminate the requirement that the respondent "participate" in the hearing, and to allow telephonic or other electronic participation in hearings, in keeping with the practice in most of Maine's probate courts.

UPC SECTION	5-409
SUBJECT	Original Petition: Orders
UPC Statute (with Maine amendments shown)	<p>(a) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.</p> <p>(b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.</p> <p>(c) Within 14 days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.</p> <p>(d) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.</p>
18-A M.R.S.A.	<p>§ 5-408. Permissible court orders The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.</p>
Difference between MPC and UPC	<p>UPC § 5-409 does not have an exact counterpart in the MPC, but the UPC and MPC are in general agreement that the court should make the least restrictive orders necessary under the circumstances. Limiting conservatorships is a particular UPC theme.</p>
Recommendation	Adopt the UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-410
SUBJECT	Powers of Court
UPC Statute (with Maine amendments shown)	<p>(a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:</p> <p>(1) with respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and</p> <p>(2) with respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person which the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.</p> <p>(b) Subject to Section 5-110 requiring endorsement of limitations on the letters of office appointment, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.</p>
18-A M.R.S.A.	<p>§ 5-408. Permissible court orders . . . The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons;</p> <p>(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents, in accordance with the procedures set forth in section 5-408-A.</p> <p>(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.</p> <p>§ 5-426. Enlargement or limitation of powers of conservator Subject to the restrictions in section 5-408, paragraph (4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 5-424 and 5-425, any power which the court itself could exercise under sections 5-408, paragraph (2) and 5-408, paragraph (3). The court may, at the time of appointment or later, limit the</p>

	<p>powers of a conservator otherwise conferred by sections 5-424 and 5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 5-424 or section 5-425, the limitation shall be endorsed upon his letters of appointment.</p>
<p>Difference between MPC and UPC</p>	<p>UPC § 5-410 does not have an exact counterpart in the MPC, but both the UPC and MPC allow the court, after a hearing but before a conservator has been appointed, to exercise all powers over the protected person's property that he or she could exercise directly, either directly or by a conservator with prior court approval. The UPC adopts a best interest standard where the basis for the conservatorship is minority.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	

UPC SECTION	5-411
SUBJECT	Required Court Approval
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) After notice to interested persons and upon express authorization of the court, a conservator may:</p> <ol style="list-style-type: none"> (1) make gifts, except as not otherwise provided <u>authorized</u> in Section 5-427(b); (2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties; (3) exercise or release a power of appointment; (4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person; (5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value; (6) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and (7) make, amend, or revoke the protected person's will. <p>(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with the state's statute for executing wills <u>Title 18-A, Section 2-502, on the execution of wills.</u></p> <p>(c) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:</p> <ol style="list-style-type: none"> (1) the financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors; (2) possible reduction of income, estate, inheritance, or other tax liabilities; (3) eligibility for governmental assistance; (4) the protected person's previous pattern of giving or level of support; (5) the existing estate plan; (6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and (7) any other factors the court considers relevant.

	<p>(d) Without authorization of the court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-408. Permissible court orders ...The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons; ...(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer. (4) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power. (5) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person. (6) The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds: (a). That the remaining estate assets of the protected person are</p>

	<p>sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and</p> <p>(b). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months.</p> <p>If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (a) and (b).</p> <p>This subsection does not prevent a transfer to a trust established pursuant to 42 United States Code, Section 1396p(d)(4) or otherwise specifically allowed by law governing the federal Medicaid program under 42 United States Code.</p>
Difference between MPC and UPC	<p>The main difference is that UPC authorizes the conservator to make, amend or revoke the protected person's will, whereas the MPC specifically makes this an exception to the actions a court may approve. The MPC also has specific provisions relating to MaineCare that are not included in the UPC.</p>
Recommendation	<p>Adopt the UPC with the changes shown.</p>
Maine Probate Code Proposed Comments	<p>This section amends UPC § 5-411(a)(1) to make it unambiguous.</p> <p>This section also removes the provision under previous Maine law (18-A M.R.S. § 5-408(6)(b), enacted by P.L. 2005, ch. 12, § DDD-4, as amended by P.L. 2011, ch. 155, § 1) prohibiting courts from authorizing gifts that would hasten a protected person's MaineCare eligibility.</p>

UPC SECTION	5-412
SUBJECT	Protective Arrangements and Single Transactions
UPC Statute (with Maine amendments shown)	<p>(a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:</p> <p>(1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:</p> <p>(A) payment, delivery, deposit, or retention of funds or property;</p> <p>(B) sale, mortgage, lease, or other transfer of property;</p> <p>(C) purchase of an annuity;</p> <p>(D) making a contract for life care, deposit contract, or contract for training and education; or</p> <p>(E) addition to or establishment of a suitable trust [-, including a trust created under the Uniform Custodial Trust Act (1987)]; and</p> <p>(2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person’s property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.</p> <p>(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Section 5-411(c).</p> <p>(c) The court may appoint a {master} visitor to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The {master}-visitor has the authority conferred by the order and shall serve until discharged by order after report to the court.</p>
18-A M.R.S.A.	<p>§ 5-409. Protective arrangements and single transactions authorized</p> <p>(a) If it is established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.</p> <p>(b) If it has been established in a proper proceeding that a basis</p>

	<p>exists as described in section 5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person, subject to the provisions of subsection (d).</p> <p>(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.</p> <p>(d). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:</p> <p>(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and</p> <p>(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months.</p> <p>If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).</p> <p>§ 5-408-A. Temporary conservator</p> <p>(a) When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a conservator or may enter an order, ex parte or otherwise, appointing a temporary conservator in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be in need of protection and to preserve and apply the property of the person to be protected as may be required for that person's benefit or</p>
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	<p>the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.</p> <p>(1) Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:</p> <p>(i) The person alleged to be in need of protection and the person's spouse, parents, adult children and any domestic partner known to the court;</p> <p>(ii) Any person who is serving as guardian or conservator or who has care and custody of the person alleged to be in need of protection; and</p> <p>(iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the person alleged to be in need of protection or, if none, an adult friend, if any can be found.</p> <p>(2) Notice under paragraph (1) must include the following information:</p> <p>(i) The temporary authority that the petitioner is requesting;</p> <p>(ii) The location and telephone number of the court in which the petition is being filed; and</p> <p>(iii) The name of the petitioner and the intended date of filing.</p> <p>(3) The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-405 do not apply to this section.</p> <p>(4) Notice is not required under this subsection in the following circumstances:</p> <p>(i) Giving notice will place the person alleged to be in need of protection at substantial risk of abuse, neglect or exploitation;</p> <p>(ii) Notice, if provided, would not be effective; or</p> <p>(iii) Other good cause as determined by the court.</p> <p>(5) If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.</p>
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	<p>(a-1) If the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the protected person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the protected person with a copy of the order appointing the temporary conservator and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the protected person whether that person wishes to contest any aspect of the temporary conservatorship or seek any limitation of the temporary conservator's powers. The visitor or guardian ad litem shall advise the protected person of that person's right to contest the temporary conservatorship by requesting an expedited hearing under subsection (b) and shall advise the protected person of that person's right to be represented by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary conservator, except in cases where the court itself has taken action to exercise the powers of a temporary conservator. In the report to the court, the visitor or guardian ad litem shall inform the court that the protected person has received a copy of the order appointing the temporary conservator and shall advise the court if circumstances indicate that the protected person wishes to contest any aspect of the temporary conservatorship or seek a limitation of the temporary conservator's powers and whether the protected person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary conservator is in the protected person's best interest.</p> <p>(b) If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the protected person wishes to contest any aspect of the temporary conservatorship or to seek a limitation of the temporary conservator's powers, or if it appears that there is an issue with respect to whether the temporary conservatorship is in the protected person's best interest, the court shall hold an expedited hearing within 40 days of the signing of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the protected person, or, if none, the visitor or guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances</p>
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	<p>beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a conservator is contested by the protected person and the person is not already represented by an attorney, the court shall appoint counsel to represent the person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the protected person if the court is satisfied that sufficient funds are available. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to protect and preserve the person's estate pending final hearing. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the person to be protected, upon a showing of good cause.</p> <p>(c) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order, or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-407 with findings made pursuant to section 5-401.</p> <p>(d) If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).</p> <p>(e) If an appointed conservator is not effectively performing that conservator's duties and the court finds that an emergency exists that requires the appointment of a temporary successor conservator in order to preserve and apply the property of the protected person for the protected person's benefit or the benefit of the protected person's dependents, it may appoint, with or without notice, a temporary successor conservator for the protected person for a specified period not to exceed 6 months.</p> <p>(f) A temporary conservator has all the powers of a permanent conservator provided in this code, unless expressly limited by</p>
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	<p>the court. A temporary successor conservator has the same powers as the previously appointed conservator, unless the court indicates otherwise in the letters of appointment. The authority of a previously appointed conservator is suspended as long as the temporary conservator has authority. A temporary conservator may be removed at any time. A temporary conservator shall account to the court at the termination of the temporary conservatorship.</p> <p>(g) A petition for temporary conservatorship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge other than the judge of the county in which venue properly lies acts on a petition for temporary conservatorship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county other than the county in which venue properly lies is deemed to have been entered in the docket on the date and at the time endorsed upon it.</p>
Difference between MPC and UPC	
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section removes the provision under previous Maine law (18-A M.R.S. § 5-409(d), enacted by P.L. 2005, ch. 12, § DDD-6, as amended by P.L. 2011, ch. 155, § 1) prohibiting courts from authorizing gifts that would hasten a protected person's MaineCare eligibility.

UPC SECTION	5-413
SUBJECT	Who May be Conservator: Priorities
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:</p> <ol style="list-style-type: none"> (1) a conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides; (2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 14 years of age and at the time of the nomination had sufficient capacity to express a preference; (3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney; (4) the spouse of the respondent; (5) an adult child of the respondent; (6) a parent of the respondent; and (7) an adult with whom the respondent has resided for more than six months before the filing of the petition. <p>(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.</p> <p>(c) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.</p> <p>(d) An owner, operator, or employee of †a long-term care facility or institution† at which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.</p>
18-A M.R.S.A.	<p>§ 5-410. Who may be appointed conservator; priorities</p> <p>(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:</p> <ol style="list-style-type: none"> (1) A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides; (2) An individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

	<p>(3) The spouse of the protected person; (3-A) The domestic partner of the protected person; (4) An adult child of the protected person; (5) A parent of the protected person, or a person nominated by the will of a deceased parent; (6) Any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition; (7) A person nominated by the person who is caring for him or paying benefits to him. (b) A person in subsection (a), paragraphs (1), (3), (4), (5), or (6) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority. (c) A facility or institution licensed under Title 22, sections 1817 and 7801, or an owner, proprietor, administrator, employee or other person with substantial financial interest in the facility or institution, may not act as conservator of the estate of a resident of that facility or institution, unless he is entitled to appointment under subsection (a), paragraph (3), (4), (5) or (6). (d) When appointed by the court, the conservator shall inform the court as to the conservator's residence. If the residence changes, the conservator shall inform the court of that change. If the conservator is a corporation, the corporate offices are considered the conservator's residence for the purposes of this section.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC and MPC sections are substantially similar. Both give priority to a person nominated to serve as conservator by the protected person, but the UPC specifically mentions a nomination in a durable power of attorney and also gives priority to an agent acting under a durable power. The UPC gives priority to an “adult” (not just a “relative” as under the MPC) with whom the protected person has resided for more than six months. This would include a domestic partner. As with MPC § 5-411 on bonds, the MPC provision requires notice to the court of the conservator’s change of residence and as with UPC § 5-415 on bonds, the UPC does not contain this provision.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section removes “domestic partner” from the priority list for consideration as conservator. The spousal priority now applies to same sex couples, and a person who has chosen not to marry may be considered later in the priority list as “an adult with whom the respondent has resided for more than six months.”</p>

	Although this section does not require it, the court may order the conservator to notify the court of any change of address.
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UPC SECTION	5-414
SUBJECT	Petition for Order Subsequent to Appointment
UPC Statute (with Maine amendments shown)	<p>(a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:</p> <ol style="list-style-type: none"> (1) requiring bond or collateral or additional bond or collateral, or reducing bond; (2) requiring an accounting for the administration of the protected person's estate; (3) directing distribution; (4) removing the conservator and appointing a temporary or successor conservator; (5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or (6) granting other appropriate relief. <p>(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.</p> <p>(c) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.</p>
18-A M.R.S.A.	<p>§ 5-416. Petitions for orders subsequent to appointment</p> <p>(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.</p> <p>(b) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.</p> <p>(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.</p>
Difference between MPC and UPC	The UPC and MPC sections are essentially the same, except that the UPC adds subsection (5) allowing for an existing conservatorship to be limited in subsequent proceedings. This is consistent with the UPC policy to limit conservatorships to the extent possible.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-415
SUBJECT	Bond
<p>UPC Statute (with Maine amendments shown)</p>	<p>The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the court, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.</p> <p><u>The following persons wishing to serve as conservators are exempt furnishing a bond under this section:</u></p> <p><u>(1) A spouse;</u></p> <p><u>(2) A financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A, or their employees; and</u></p> <p><u>(3) A person who is already bonded in the course of the person's business if the bond is sufficient to cover the duties of conservator.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-411. Bond</p> <p>The following provisions govern bonds for conservators.</p> <p>(a) The Probate Court shall require a conservator of an estate of \$25,000 or more to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it specifies, unless the court makes a specific finding as to why a bond should not be required. With respect to estates of less than \$25,000, the court may in its discretion require a bond or other surety. In making a finding as to why a bond is not required, the court shall consider the person's creditworthiness, financial solvency or past financial management.</p> <p>(b) A conservator who moves out of State while serving as conservator shall notify the Probate Court regarding the change of residence. The court may require a conservator who moves or locates out of State while serving as conservator to furnish a bond at that time. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation</p>

	<p>of power, lacks power to sell or convey without court authorization. In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.</p> <p>(c) The following persons wishing to serve as conservators are exempt from the bonding requirements of this section:</p> <p>(1) Spouses;</p> <p>(2) Financial institutions authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A, or their employees; and</p> <p>(3) Persons who are already bonded in their course of business if the bond is sufficient to cover the duties of conservator.</p>
Difference between MPC and UPC	<p>The UPC leaves the necessity of a bond to the court's discretion. The MPC also gives the court discretion, but requires a specific finding as to why a bond should not be required. And the court has no discretion under the MPC to order a bond from a spouse, a financial institution authorized to do business in Maine and anyone already bonded in the course of their business. The MPC also requires the conservator to notify the court if he or she moves out of state so the court can reassess the need for a bond, using the same standard as to amount as in the UPC.</p>
Recommendation	<p>Adopt the UPC with the changes shown.</p>
Maine Probate Code Proposed Comments	<p>This section carries forward statutory exceptions to bonding requirements found in former Maine law at 18-A MRSA § 5-411(c).</p> <p>Although this section does not require it, the court may order the conservator to notify the court if the conservator moves out of state, and the court may reassess the need for a bond at that time.</p>

UPC SECTION	5-416
SUBJECT	Terms and Requirements of Bond
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The following rules apply to any bond required:</p> <p>(1) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.</p> <p>(2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.</p> <p>(3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.</p> <p>(4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.</p> <p>(b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-412. Terms and requirements of bonds</p> <p>(a) The following requirements and provisions apply to any bond required under section 5-411:</p> <p>(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;</p> <p>(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;</p> <p>(3) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;</p> <p>(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.</p> <p>(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary</p>

	obligor is barred by adjudication or limitation.
Difference between MPC and UPC	The UPC and MPC sections are the same in substance.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	Language does not constitute a substantive change to Maine law.

UPC SECTION	5-417
SUBJECT	Compensation and Expenses
UPC Statute (with Maine amendments shown)	<p>If not otherwise compensated for services rendered, a guardian, conservator, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person’s estate, or any other person appointed by the court is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order. If the court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate.</p> <p><u>The factors set forth in section 3-721, subsection (b) should be considered in determining the reasonableness of compensation under this section.</u></p>
18-A M.R.S.A.	<p>§ 5-414. Compensation and expenses If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. The factors set forth in section 3-721, subsection (b) should be considered as guides in determining the reasonableness of compensation under this section.</p> <p>§ 3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate</p> <p>(b) Factors to be considered as guides in determining the reasonableness of a fee include the following:</p> <ol style="list-style-type: none"> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly; (2) The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment; (3) The fee customarily charged in the locality for similar services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the personal representative or by the circumstances; (6) The experience, reputation and ability of the person performing the services.
Difference between MPC and UPC	<p>The UPC adds guardian to the list of permissible recipients of compensation, does not specifically name conservator, visitor or physician. The UPC limits “lawyer” to the lawyer for the respondent or a lawyer whose services resulted in a protective order or in an order beneficial to a protected person’s estate, but</p>

	anyone appointed by the court may receive compensation.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	

UPC SECTION	5-418
SUBJECT	General Duties of Conservator; Plan
UPC Statute (with Maine amendments shown)	<p>(a) A conservator, in relation to powers conferred by this part or implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.</p> <p>(b) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.</p> <p>(c) Within 60 days after appointment, a conservator shall file with the appointing court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan must be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections of expenses and resources.</p> <p>(d) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.</p>
18-A M.R.S.A.	<p>§ 5-417. General duty of conservator In the exercise of the conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Title 18-B, sections 802 to 807 and chapter 9.</p> <p>§ 5-427. Preservation of estate plan In investing the estate, and in selecting assets of the estate for distribution under section 5-425, subsections (a) and (b), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.</p>
Difference between MPC	The MPC delineates a conservator's duties by reference to the

and UPC	<p>Maine Trust Code provisions on a trustee’s duties of loyalty, impartiality, and prudence, as well as the Trust Code provisions on the costs of administration, a trustee’s skills, and the delegation of trustee powers.</p> <p>The UPC, in contrast, describes a conservator as a trustee-guardian hybrid having fiduciary duties coupled with personal duties to the protected person meant to encourage the participation of the protected person in the management of his or her affairs. This reflects the UPC theme of limiting conservatorships to the extent possible.</p> <p>UPC § 5-418(d) is in substance the same as MPC § 5-427.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	<p>While former Maine Probate Code section 5-418 required that a conservator provide a copy of an inventory to protected persons over 14 who were capable of understanding, by adopting the uniform code, Maine is endorsing a view of conservatorship that more clearly encourages participation by the protected person in management of his or her affairs to the maximum extent of the protected person’s ability.</p>

UPC SECTION	5-419
SUBJECT	Inventory; Records
UPC Statute (with Maine amendments shown)	<p>(a) Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. <u>The conservator shall provide a copy of the completed inventory to the protected person if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.</u></p> <p>(b) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person.</p> <p><u>(c) If a conservator fails without good cause to file an inventory, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the inventory. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.</u></p>
18-A M.R.S.A.	<p>§ 5-418. Inventory and records</p> <p>(a) Within 90 days following a conservator's appointment, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of the completed inventory to the protected person if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.</p> <p>(b) A conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.</p> <p>(c) If a conservator fails without good cause to file an inventory, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the inventory. The payments required by this subsection are in addition to any other award or remedy available at law or</p>

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	<p>in equity for fiduciary misconduct of the conservator.</p> <p>(d) If any property not included in the original inventory comes to the knowledge of the conservator or if the conservator or court learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the conservator shall make a supplementary inventory or appraisal showing the market value of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court and furnish copies to persons interested in the new information.</p> <p>(e) When an inventory has not been filed under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the conservator has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.</p>
Difference between MPC and UPC	<p>The UPC requires an inventory to be filed within 60 days after appointment, whereas the MPC makes it 90 days.</p> <p>The MPC section contains additional provisions giving consequences for failure to file a complete inventory.</p>
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section removes specific provisions under previous Maine law concerning sanctions for failure to file an inventory. The court retains discretion to impose any appropriate sanctions and take other necessary steps based on breach of fiduciary duty.

UPC SECTION	5-420
SUBJECT	Reports; Appointment of {Visitor}; Monitoring
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.</p> <p>(b) A report must state or contain:</p> <p>(1) a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;</p> <p>(2) a list of the services provided to the protected person; and</p> <p>(3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.</p> <p>(c) The court may appoint a {visitor} to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.</p> <p>(d) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans. Reserved.</p> <p>(e) Notwithstanding the preceding provisions of this Section, a private conservator appointed before January 2, 2008 shall not be required to submit reports pursuant to subsection (a), but shall only be required to submit such periodic reports as may be directed in the order of appointment.</p> <p>(f) If the conservator fails without good cause to file the accounting required by the court, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the accounting. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.</p>

<p>18-A M.R.S.A.</p>	<p>§ 5-419. Accounts</p> <p>(a) Every conservator shall account to the court for the administration of the trust as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule and upon resignation or removal. Notwithstanding any other duty to render an accounting, a private conservator appointed after January 1, 2008 shall file an annual account with the court for approval. The court, for good cause shown by a conservator who is the spouse or domestic partner of the protected person, may waive or modify the duty to file an annual account. The annual account must be approved by the court before the conservator's obligation to file the annual account ends.</p> <p>Prior to the termination of the protected person's minority, the conservator shall account to the court and the protected person. On termination of the protected person's minority or disability, a conservator shall file a final accounting with the court and that accounting must be approved by the court before the conservator's obligation to account ends. The conservator shall provide a copy of the final accounting to the former protected person or that person's personal representative at the time it is filed with the court.</p> <p>(b) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.</p> <p>(c) The court may appoint a visitor to review the conservator's accounts and determine if appropriate provision for the use, care and protection of the protected person's property has been made. The visitor shall report the findings to the court in writing.</p> <p>(d) If the conservator fails without good cause to file the accounting required by the court, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the accounting. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary</p>
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	misconduct of the conservator.
Difference between MPC and UPC	<p>The UPC requires an annual report from every conservator unless the court otherwise directs. It also mandates that the court establish a system for monitoring conservatorships, which, as the UPC comments acknowledge, may involve some expense.</p> <p>The MPC requires an annual accounting from any private conservator appointed after 2007 and allows the court to waive the accounting if the conservator is the spouse or domestic partner of the protected person.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section allows courts to retain systems currently in place for monitoring, and carries forward from the former 18-A M.R.S. § 5-419(d) penalty provisions related to failure of the conservator to file an accounting.

UPC SECTION	5-421
SUBJECT	Title by Appointment
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.</p> <p>(b) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person, or the person's successors.</p> <p>(c) Subject to the requirements of other statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.</p> <p><u>(d) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-420. Conservators; title by appointment The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC and MPC sections similarly provide that title passes to the conservator as trustee, but the UPC allows for a conservatorship limited to certain assets and the MPC provides that the appointment of a conservator is not a transfer for purposes of general statutes, insurance policies, pension plans,</p>

	trusts and the like.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section does not constitute a substantive change to Maine law.

UPC SECTION	5-422
SUBJECT	Protected Person's Interest Inalienable
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise provided in subsections (c) and (d), the interest of a protected person in property vested in a conservator is not transferrable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in Section 5-429.</p> <p>(b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under Section 5-429.</p> <p>(c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.</p> <p>(d) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.</p>
18-A M.R.S.A.	<p>§ 5-421. Recording of conservator's letters Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.</p>
Difference between MPC and UPC	The MPC provides that all of the protected person's property is transferred to the conservator. Because the UPC allows for a limited conservatorship, it contains more specific provisions and refers to § 5-429 on the allowance of claims.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-423
SUBJECT	Sale, Encumbrance, or Other Transaction Involving Conflict of Interest
UPC Statute (with Maine amendments shown)	<p>Any transaction involving the conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.</p>
18-A M.R.S.A.	<p>§ 5-422. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.</p>
Difference between MPC and UPC	The UPC section is more detailed than the MPC as to the relationships that may create a conflict of interest.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	5-424
SUBJECT	Protection of Person Dealing With Conservator
UPC Statute (with Maine amendments shown)	<p>(a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under Section 5-410 or 5-411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section 5-110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.</p> <p>(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.</p>
18-A M.R.S.A.	<p>§ 5-423. Persons dealing with conservators; protection A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</p>
Difference between MPC and UPC	The UPC and MPC sections are the same in substance.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This language does not constitute a substantive change to Maine law.

UPC SECTION	5-425
SUBJECT	Powers of Conservator In Administration
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this state.</p> <p>(b) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:</p> <ol style="list-style-type: none"> (1) collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made; (2) receive additions to the estate; (3) continue or participate in the operation of any business or other enterprise; (4) acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest; (5) invest assets of the estate as though the conservator were a trustee; (6) deposit money of the estate in a financial institution, including one operated by the conservator; (7) acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate; (8) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings; (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration; (10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship; (11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement; (12) grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset; (13) vote a security, in person or by general or limited proxy;

	<p>(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;</p> <p>(15) sell or exercise stock-subscription or conversion rights;</p> <p>(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;</p> <p>(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;</p> <p>(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;</p> <p>(19) borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;</p> <p>(20) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;</p> <p>(21) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;</p> <p>(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;</p> <p>(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:</p> <p style="padding-left: 40px;">(A) to the guardian of the distributee;</p> <p style="padding-left: 40px;">(B) to a distributee's custodian under the <u>Maine Uniform Transfers to Minors Act (1983/1986)</u> or custodial trustee under the Uniform Custodial Trust Act (1987) <u>the laws of another state</u>; or</p> <p style="padding-left: 40px;">(C) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;</p> <p>(24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of</p>
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	<p>the conservator in the performance of fiduciary duties; and (25) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator; and <u>(26) Exercise any powers described in section 1-111 relating to compliance with environmental laws.</u></p>
<p>18-A M.R.S.A.</p>	<p>§ 5-424. Powers of conservator in administration (a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this State. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 5-209 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2. (b) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee. (b-1) A conservator may remove items of tangible property that are assets of the estate to a location out of this State only with court authorization. (c) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to (1) Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested; (2) Receive additions to the estate; (3) Continue or participate in the operation of any business or other enterprise; (4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest; (5) Invest and reinvest estate assets in accordance with subsection (b); (6) Deposit estate funds in a bank including a bank operated by the conservator; (7) Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset; (8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;</p>

	<p>(9) Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;</p> <p>(10) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;</p> <p>(11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;</p> <p>(12) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;</p> <p>(13) Vote a security, in person or by general or limited proxy;</p> <p>(14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;</p> <p>(15) Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;</p> <p>(16) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;</p> <p>(17) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;</p> <p>(18) Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;</p> <p>(19) Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;</p> <p>(20) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;</p> <p>(21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation</p>
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	<p>of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;</p> <p>(22) Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;</p> <p>(23) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;</p> <p>(24) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and</p> <p>(25) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator,</p>
Difference between MPC and UPC	<p>The main difference between the UPC and MPC sections is that the MPC allows the conservator of a minor to exercise the powers of a guardian and the UPC does not.</p> <p>The MPC list of powers includes a power to hire professionals and act on their advice (subsection (c)(23)); the UPC covers this in its delegation provision (§ 5-426). The UPC list of powers includes the power to consent to corporate changes (subsection (b)(16)) which does not appear in the MPC list of powers.</p>
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	<p>This section eliminates the provision of prior Maine law giving a conservator of the estate of an unmarried minor, as to whom no one has parental rights, the duties and powers of a guardian of the minor, recognizing that a guardian of the minor can be appointed if needed.</p> <p>This section includes language in subparagraph 23(B) similar to language in the Maine Uniform Trust Code, 18-B M.R.S. § 816(21)(B), which recognizes that Maine has not adopted the Uniform Custodial Trust Act, but other states have.</p>

UPC SECTION	5-426
SUBJECT	Delegation
UPC Statute (with Maine amendments shown)	<p>(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.</p> <p>(b) The conservator shall exercise reasonable care, skill, and caution in:</p> <ol style="list-style-type: none"> (1) selecting an agent; (2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship; (3) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and (4) redressing an action or decision of an agent which would constitute a breach of trust if performed by the conservator. <p>(c) A conservator who complies with subsections (a) and (b) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.</p> <p>(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.</p> <p>(e) By accepting a delegation from a conservator subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.</p>
18-A M.R.S.A.	No Maine equivalent.
Difference between MPC and UPC	The UPC is consistent with the provisions of the Maine Trust Code at 18-B M.R.S. § 807 with respect to delegation by trustees, but the UPC specifies that a conservator may not delegate the entire administration of the estate.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the Maine Probate Code. It is analogous to section 807 of the Maine Uniform Trust Code.

UPC SECTION	5-427
SUBJECT	Principles of Distribution by Conservator
UPC Statute (with Maine amendments shown)	<p>(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to Section 5-418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:</p> <p>(1) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.</p> <p>(2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.</p> <p>(3) In making distributions under this subsection, the conservator shall consider:</p> <p>(A) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;</p> <p>(B) the accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and</p> <p>(C) other money or sources used for the support of the protected person.</p> <p>(4) Money expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.</p>

	<p>(b) If the estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year 20 percent of the income of the estate in that year.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-425. Distributive duties and powers of conservator</p> <p>(a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:</p> <p>(1) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.</p> <p>(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.</p> <p>(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.</p> <p>(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.</p> <p>(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power</p>

	<p>to make gifts to charity and other objects as the protected person might have been expected to make, in amounts that do not exceed in total for any year 20% of the income from the estate, subject to the provisions of subsection (b-1).</p> <p>(b-1). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:</p> <p>(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and</p> <p>(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months.</p> <p>If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).</p> <p>(c) When a minor who has not been adjudged disabled under section 5-401, paragraph (2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.</p> <p>(d) When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC expands permissible distributions to include distributions for the health and welfare of individuals who are in fact dependent on the protected person without being dependents, such as children over the age of 18. MPC subsections (c) and (d) are included, in substance, in UPC § 5-431.</p>
<p>Recommendation</p>	<p>Adopt UPC.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>The UPC expands distributions permissible under former Maine law to include distributions not only for the health and welfare of the protected person but also for others who are in fact dependent on the protected person without being dependents.</p>

UPC SECTION	5-428
SUBJECT	Death of Protected Person
UPC Statute (with Maine amendments shown)	<p>¶(a) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.</p> <p>¶(b) If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to administer and distribute the decedent's estate. Upon application for an order conferring upon the conservator the powers of a personal representative, after notice given by the conservator to</p> <ol style="list-style-type: none"> (1) any person nominated as personal representative by any will of which the applicant is aware, (2) <u>all of the decedent's heirs, and</u> (3) <u>all devisees of the will, if any.</u> <p>the court may grant the application upon determining that there is no objection and endorse the letters of conservatorship to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative.</p> <p>(c) The issuance of an order under this section has the effect of an order of appointment of a personal representative as provided in Section 3-308 and Parts6 through 10 of Article III]. However, the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the conservator as personal representative.]</p>
18-A M.R.S.A.	<p>§ 5-425. Distributive duties and powers of conservator</p> <p>(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon</p>

	<p>application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 3-308 and Parts 6 through 10 of Article III except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC and MPC sections are the same in substance, except that where the conservator applies for appointment as personal representative the MPC requires notice to any person who has filed a demand for notice, in addition to any person nominated as personal representative in the protected person's will.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section includes requirements for notice to individuals likely to be affected by a conservator's request for authority to exercise the powers of a personal representative.</p>

UPC SECTION	5-429
SUBJECT	Presentation and Allowance of Claims
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:</p> <ol style="list-style-type: none"> (1) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or (2) filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator. <p>(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.</p> <p>(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.</p> <p>(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:</p> <ol style="list-style-type: none"> (1) costs and expenses of administration; (2) claims of the federal or state government having priority under other law; (3) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person; (4) claims arising before the conservatorship; and

	<p>(5) all other claims.</p> <p>(e) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.</p> <p>(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for payment of any or all claims at a future date.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-428. Claims against protected person; enforcement</p> <p>(a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.</p> <p>(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.</p> <p>(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.</p>
<p>Difference between MPC and UPC</p>	<p>The UPC states that the conservator “may” pay claims, but the MPC states that the conservator “must” pay claims as long as they are “just.” Otherwise the sections are the same in substance, except that the UPC allows the conservator to disallow a claim at any time before it has been paid. The UPC is also more detailed</p>

	as to the priority of claims.
Recommendation	Adopt UPC.
Maine Probate Code Proposed Comments	The UPC allows the conservator to disallow a claim at any time before it has been paid. This is a change from former Maine law.

UPC SECTION	5-430
SUBJECT	Personal Liability of Conservator
UPC Statute (with Maine amendments shown)	<p>(a) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.</p> <p>(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate, <u>including liability for violation of environmental law</u>, only if personally at fault.</p> <p>(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.</p> <p>(d) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.</p> <p>[(e) A conservator is not personally liable for any environmental condition or injury resulting from any environmental condition on land solely by reason of an acquisition of title under Section 5-421.]</p>
18-A M.R.S.A.	<p>§ 5-429. Individual liability of conservator</p> <p>(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.</p> <p>(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.</p> <p>(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.</p> <p>(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for</p>

	accounting, surcharge, or indemnification, or other appropriate proceeding or action.
Difference between MPC and UPC	UPC and MPC subsections (a) through (d) are the same in substance. UPC subsection (e) on environmental liability is new.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section addresses environmental liability in conformity with Title 18-B section 1010, subsection 2.

UPC SECTION	5-431
SUBJECT	Termination of Proceedings
<p>UPC Statute (with Maine amendments shown)</p>	<p>(a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.</p> <p>(b) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors. The conservator shall file a final report and petition for discharge within 30 days after distribution.</p> <p>(c) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.</p> <p>(d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.</p> <p>(e) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. The order of termination must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.</p> <p>(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.</p>
<p>18-A M.R.S.A.</p>	<p>§ 5-430. Termination of proceeding The protected person, the protected person's personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. In an action to terminate a conservatorship brought by the protected person, upon presentation by the petitioner of evidence establishing a prima facie case that the person is able to manage</p>

	<p>the person's property and affairs, the court shall order the termination unless the respondent proves by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. The court, upon determining that a conservatorship is no longer necessary, shall terminate the conservatorship upon approval of a final account. Upon termination, title to assets of the estate passes to the former protected person or to the former protected person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors, to evidence the transfer.</p>
Difference between MPC and UPC	<p>The UPC and MPC provisions are substantively the same except that the MPC provision contains a list of examples of reasons for a conservatorship, which is eliminated by adopting UPC § 5-401, and the UPC provides that the conservator's final report and petition for discharge must be filed within 30 days after distribution.</p>
Recommendation	<p>Adopt UPC.</p>
Maine Probate Code Proposed Comments	<p>This section eliminates the list found in previous Maine law of reasons for terminating conservatorship and adds a requirement that the conservator's final report be filed within 30 days after distribution.</p>

UPC SECTION	5-432
SUBJECT	Registration of Guardianship Orders
UPC Statute (with Maine amendments shown)	If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court <u>the Probate Court</u> , in any appropriate county of this state, certified copies of the order and letters of office <u>appointment</u> .
18-A M.R.S.A.	§5-541. Registration of guardianship If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office and the guardian's notification to the appointing court of an intent to register in this State.
Difference between MPC and UPC	The current Maine provision related to registration of guardianship orders from another state appears in Article V, Part 5-A, of the MPC (the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) and applies only to adults.
Recommendation	Adopt the UPC with the changes shown.
Maine Probate Code Proposed Comments	This section, by its relocation from Part 5-A into this Part 5, expands previous Maine law pertaining to registration of guardianship orders so that orders relating to minors as well as to adults may be registered.

UPC SECTION	5-433
SUBJECT	Registration of Protective Orders
UPC Statute (with Maine amendments shown)	<p>If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in <u>the Probate Court</u> a court of this state, in any county in which property belonging to the protected person is located; certified copies of the order and letters of office appointment and of any bond.</p>
18-A M.R.S.A.	<p>§ 5-432. Foreign conservator; proof of authority; bond; powers If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, a domiciliary foreign conservator may file with a court in this State in a county in which property belonging to the protected person is located, authenticated copies of his appointment, of any official bond he has given and a certificate, dated within 60 days, proving his current authority. Thereafter, he may exercise as to assets in this State all powers of a local conservator and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.</p> <p>§ 5-431. Payment of debt and delivery of property to foreign conservator without local proceedings Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:</p> <p>(1) That no protective proceeding relating to the protected person is pending in this State; and</p> <p>(2) That the foreign conservator is entitled to payment or to receive delivery.</p> <p>If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.</p> <p>§5-542. Registration of protective orders If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the</p>

	<p>appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office, of the conservator's notification to the appointing court of an intent to register in this State and of any bond.</p>
<p>Difference between MPC and UPC</p>	<p>The current Maine provision related to registration of conservatorship orders from another state appears in Article V, Part 5-A, of the MPC (the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) and applies only orders pertaining to adults. In addition, the current Article V, Part 4 contains provisions pertaining to foreign conservators that are not reconciled with Part 5-A.</p>
<p>Recommendation</p>	<p>Adopt the UPC with the changes shown.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>This section, by its relocation from Part 5-A into this Part 5, expands previous Maine law pertaining to registration of conservatorship orders so that orders relating to minors as well as to adults are covered, and provides a single procedure for dealing with foreign conservatorships.</p>

UPC SECTION	5-434
SUBJECT	Effect of Registration
UPC Statute (with Maine amendments shown)	<p>(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.</p> <p>(b) A court of this state may grant any relief available under this farticle and other law of this state to enforce a registered order.</p>
18-A M.R.S.A.	<p>§ 5-432. Foreign conservator; proof of authority; bond; powers If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, a domiciliary foreign conservator may file with a court in this State in a county in which property belonging to the protected person is located, authenticated copies of his appointment, of any official bond he has given and a certificate, dated within 60 days, proving his current authority. Thereafter, he may exercise as to assets in this State all powers of a local conservator and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.</p> <p>§ 5-431. Payment of debt and delivery of property to foreign conservator without local proceedings Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:</p> <p>(1) That no protective proceeding relating to the protected person is pending in this State; and</p> <p>(2) That the foreign conservator is entitled to payment or to receive delivery.</p> <p>If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.</p>
Difference between MPC and UPC	The current Maine provision related to the effect of registration of conservatorship orders from another state appears in Article

	V, Part 5-A, of the MPC (the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) and applies only to orders pertaining to adults. In addition, the current Article V, Part 4, contains provisions concerning the effect of orders of certain foreign conservators that are not reconciled with Part 5-A.
Recommendation	Adopt the UPC.
Maine Probate Code Proposed Comments	This section, by its relocation from Part 5-A into this Part 5, expands previous Maine law pertaining to the effect of conservatorship orders so that orders relating to minors as well as to adults are covered, and clarifies in a single statute the authority of foreign conservators.

UPC SECTION	None
SUBJECT	UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§5-511 through §5-553
Difference between MPC and UPC	
Recommendation	<p>PATLAC did not review Article V, Part 5-A, of the MPC (the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) in its entirety, given its recent adoption in Maine. (P.L. 2011, ch. 564, eff. July 1, 2013.)</p> <p>In its review of sections 5-432, 5-433, and 5-434 of the UPC, however, PATLAC noted that those sections match verbatim sections 5-541, 5-542, and 5-543 of Maine’s Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. As described in the review of sections 5-432, 5-433, and 5-434, PATLAC recommends adopting the three UPC sections in Article V, Part 5, and deleting the three sections from Article V, Part 5-A.</p>
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	PUBLIC GUARDIANSHIP AND CONSERVATORSHIP
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§5-601 through §5-614
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article V, Part 6, of the MPC (Maine's Public Guardianship and Conservatorship). There is no equivalent in the UPC.
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	UNIFORM HEALTH-CARE DECISIONS ACT
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§5-801 through §5-818
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article V, Part 8, of the MPC (Maine's Uniform Health-Care Decisions Act).
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	MAINE UNIFORM POWER OF ATTORNEY ACT
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§5-901 through §5-964
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article V, Part 9, of the MPC (the Maine Uniform Power of Attorney Act).
Maine Probate Code Proposed Comments	

UPC SECTION	6-101
SUBJECT	NONPROBATE TRANSFERS ON DEATH
UPC Statute (with Maine amendments shown)	<p>(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:</p> <p>(1) Money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;</p> <p>(2) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or</p> <p>(3) Any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.</p> <p>(b) <u>Nothing in this section limits the rights of creditors under other laws of this State.</u></p>
18-A M.R.S.A.	<p>§6-201. Provisions for payment on transfer at death</p> <p>(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this Code does not invalidate the instrument or any provision:</p> <p>(1) That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;</p> <p>(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of</p>

	<p>the promise or the promisor before payment or demand; or</p> <p>(3) That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.</p> <p>(b) Nothing in this section limits the rights of creditors under other laws of this State.</p>
Difference between MPC and UPC	<p>New Section 6-101 Nonprobate Transfers on Death is essentially the same as existing Section 6-201 Provisions for payment or transfer at death.</p> <p>The two sections are virtually identical. Existing Maine law includes a sub-paragraph (b) that nothing in this section limits the rights of creditors under other laws of this State.</p> <p>Although there is no harm in retaining the existing Maine non-uniform addition, it does not appear to add anything of substance.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The section does not constitute a substantive change to Maine law. Maine has retained paragraph (b) from section 6-201 of prior Maine law, which was a non-uniform provision.

UPC SECTION	6-102
SUBJECT	LIABILITY OF NONPROBATE TRANSFEREES FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES

UPC Statute (with Maine amendments shown)	<p>(a) In this section, “nonprobate transfer” means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this State to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor’s probate estate.</p> <p>(b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent’s probate estate and statutory allowances to the decedent’s spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.</p> <p>(c) Nonprobate transferees are liable for the insufficiency described in subsection (b) in the following order of priority:</p> <ol style="list-style-type: none"> (1) A transferee designated in the decedent’s will or any other governing instrument, as provided in the instrument; (2) The trustee of a trust serving as the principal nonprobate instrument in the decedent’s estate plan as shown by its designation as devisee of the decedent’s residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; (3) Other nonprobate transferees, in proportion to the values received. <p>(d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.</p> <p>(e) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.</p> <p>(f) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this State, whether or not the transferee is located in this State.</p> <p>(g) A proceeding under this section may not be commenced unless the personal representative of the decedent’s estate has</p>
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	<p>received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.</p> <p>(h) A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.</p> <p>(i) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:</p> <p>(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.</p> <p>(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.</p>
<p>18-A M.R.S.A.</p>	<p>§6-107. Rights of creditors</p> <p>No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced later than 2 years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's</p>

	<p>estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.</p> <p>§6-310. Nontestamentary transfer on death</p> <p>(b) A registration in beneficiary form is not effective against an estate of a deceased owner to transfer to a surviving sums needed to pay debts, taxes and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving sole owner or beneficiary who receives a security after the death of a deceased owner is liable to account to the personal representative of the decedent's estate for amounts the decedent owned beneficially immediately before the decedent's death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. A proceeding to assert this liability may not be commenced later than 2 years following the death of the decedent. Sums recovered by the personal representative must be administered as part of the decedent's estate.</p>
<p>Difference between MPC and UPC</p>	<p>Section 6-102, Liability of Nonprobate Transferees for creditor claims and Statutory Allowances is a new section although the concepts expressed therein are already included in Maine law in existing Section 6-107 (dealing with the estate and creditors' rights in multi-party accounts), Section 6-310(b)(dealing with the estate and creditors' rights in transfer on death accounts) and the Maine Trust code part 5 (and specifically Section 505).</p> <p>The new section serves a useful function of addressing these issues in a comprehensive way and attempting to establish an order of priority in the procedure for enforcing claims against various non probate assets.</p> <p>Note that this Section does not apply to joint tenancy in real estate or to life insurance contracts. This Section also does not supersede existing legislation that insulates death benefits in life insurance contracts, retirement plans or IRAs from creditors' claims.</p> <p>Although the new proposed law appears to be more comprehensive in its scope, there is certainly a questions as to its practical utility. An informal canvas of opinion among</p>

	<p>practitioners, bankers, and court personnel indicates that the existing provisions of law in Section 6-107 and 6-301(b) are rarely utilized and that creditors and personal representatives seldom if ever bring proceedings to collect joint or payable on death assets for the purpose of paying claims, debts, expenses or allowances. The requirement to first secure the appointment of a personal representative appears to be a considerable deterrent to creditor action if the estate is otherwise insolvent. Further, individual creditors have demonstrated considerable reluctance to actually petition to serve as Personal Representative due to a reluctance to take on the fiduciary duties to all other creditors and interested parties which a Personal Representative incurs.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	<p>Section 6-102 is a new section but the concepts for the most part were previously included in various sections of Maine law, including the Maine Trust Code. The new section serves a useful function of addressing these issues in a comprehensive way and establishing an order of priority in the procedure for enforcing claims against various non probate assets. One significant change from prior Maine law is to shorten the time period for bringing a claim under this section from two years after the decedent's date of death to one year. This section does not supersede existing law that insulates death benefits in life insurance contracts, retirement plans or IRAs from creditors' claims.</p>

UPC SECTION	6-201
SUBJECT	DEFINITIONS
<p>UPC Statute (with Maine amendments shown)</p>	<p>(1) “Account” means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.</p> <p>(2) “Agent” means a person authorized to make account transactions for a party.</p> <p>(3) “Beneficiary” means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.</p> <p>(4) “Financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.</p> <p>(5) “Multiple-party account” means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.</p> <p>(6) “Party” means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.</p> <p>(7) “Payment” of sums on deposit includes withdrawal, payment to a party or third person pursuant to a check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.</p> <p>(8) “P.O.D. designation” means the designation of (i) a beneficiary in an account payable on request to one party during the party’s lifetime and on the party’s death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.</p> <p>(9) “Receive,” as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.</p> <p>(10) “Request” means a request for payment complying with all terms of the account, including special requirements</p>

	<p>concerning necessary signatures and regulations of the financial institution; but, for purposes of this [part], if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment;</p> <p>(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party;</p> <p>(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.</p>
<p>18-A M.R.S.A.</p>	<p>§6-101. Definitions</p> <p>In this Part, unless the context otherwise requires:</p> <p>(1) "Account" means a contract between a customer and a financial institution in the nature of a deposit of funds primarily to be used in its banking business, whether or not insured, and includes a checking account, savings account, certificate of deposit, share account, repurchase agreement and other like arrangement;</p> <p>(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;</p> <p>(3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions;</p> <p>(4) "Joint account" means an account payable on request to one or more of 2 or more parties whether or not mention is made of any right of survivorship;</p> <p>(5) A "multiple-party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;</p> <p>(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for</p>

	<p>him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;</p> <p>(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;</p> <p>(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge;</p> <p>(9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section 1-107;</p> <p>(10) "P.O.D. account" ["payable on death account"] means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees;</p> <p>(11) "P.O.D. payee" ["payable on death payee"] means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons;</p> <p>(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this Part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;</p> <p>(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in</p>
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	<p>addition any deposit life insurance proceeds added to the account by reason of the death of a party;</p> <p>(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;</p> <p>(15) "Withdrawal" includes payment to a 3rd person pursuant to check or other directive of a party.</p>
<p>Difference between MPC and UPC</p>	<p><u>Agent</u> – no definition in MPC (which comports with no MPC adoption of §6-205 (Designation of Agent) and 6-224 (payment to designated agent for financial institution protections))</p> <p><u>Beneficiary</u> – under UPC also includes “a person named as one to whom sums on deposit in an account are payable on request after death of all parties” [in addition to “for whom a party is named as trustee.”] UPC Comments state this provision means either POD beneficiary or a beneficiary of a Totten Trust which are treated the same under this part. MPC separates definitions into “Beneficiary” (for trusts) and POD Payee (for POD accounts)</p> <p><u>Multiple Party Account</u> -</p> <p>UPC - an account payable on request to one or more of two or more parties regardless of reference to right of survivorship.</p> <p>MPC – defines “multiple party” account as either a joint account, POD account or Trust account. [“Joint Account” not defined in UPC but included in MPC]</p> <p><u>Net Contributions</u> – MPC definition at 101(6) while UPC defines the term at 6-211. MPC refers to deposit to <u>joint</u> account. UPC refers to deposit to <u>an</u> account.</p> <p>UPC deducts a proportionate share of any charges deducted from the account</p> <p>MPC – no such reference</p> <p>UPC refers to proportionate share of any interest or dividends <u>earned whether or not included</u> in the current balance.</p> <p>MPC refers to pro rata share of any interest or dividends included in current balance.</p> <p><u>POD Designation</u> – UPC definition subsumes the MPC definitions “POD Account”, “POD Payee” and “Trust account”. According to UPC Comments, POD accounts and Totten Trust accounts serve the same function and are treated the same by</p>

	<p>UPC. UPC Comments state POD designation is more direct means of achieving the same purpose as a Totten Trust account and the UPC discourages use of Totten Trusts in favor of POD designations.</p> <p><u>Receiver</u> – no MPC counterpart definition</p> <p><u>Sums on Deposit</u> – UPC clarifies interest and dividends earned are included “whether or not included in the current balance”; phrase not included in MPC</p> <p><u>Terms of the Account</u> – no MPC counterpart</p> <p>Certain MPC definitions add language which may clarify but does not expand UPC definition, e.g. “Party” under MPC includes guardian, conservator, personal representative and assignee and UPC states not a party but “governed by general law”.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	<p>Maine adopts the UPC wording to coordinate definitions and consolidate the application of POD accounts and so called “Totten Trusts” into the comprehensive framework of POD accounts through appropriate definitions of “Beneficiary”, “Party”, “POD designation”. The term “joint account” used throughout this section under Maine law is replaced with “multiple party” account and other accounts previously designated under Maine law as multiple party accounts are addressed through definitions of “POD Designation” and “Beneficiary” as well as other provisions of the UPC.</p>

UPC SECTION	6-202
SUBJECT	LIMITATION ON SCOPE OF PART
UPC Statute (with Maine amendments shown)	This [part] does not apply to: (1) an account established for a partnership, joint venture, or other organization for a business purpose, (2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.
18-A M.R.S.A.	§6-101(5). Definitions A multiple-party account”...does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.
Difference between MPC and UPC	None other than format and MPC refers to “association” for business purposes and UPC uses term “organization”. MPC includes the exception language in the definition section of MPC 6-101(5).
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-203
SUBJECT	TYPES OF ACCOUNT; EXISTING ACCOUNTS
UPC Statute (with Maine amendments shown)	<p>(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 6-212(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.</p> <p>(b) An account established before, on, or after the effective date of this [part], whether in the form prescribed in Section 6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this [part], and is governed by this [part].</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	N/A
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC. It coordinates with the adoption of forms under UPC §6-204 and sets out clearly the options when an account is established.

UPC SECTION	6-204
SUBJECT	FORMS

UPC Statute (with Maine amendments shown)	<p>(a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this [part] applicable to an account of that type:</p> <p style="text-align: center;">UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM</p> <p>PARTIES [Name One or More Parties]: _____</p> <p>OWNERSHIP [Select One And Initial]: <input type="checkbox"/> SINGLE-PARTY ACCOUNT <input type="checkbox"/> MULTIPLE-PARTY ACCOUNT Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.</p> <p>RIGHTS AT DEATH [Select One And Initial]: <input type="checkbox"/> SINGLE-PARTY ACCOUNT At death of party, ownership passes as part of party's estate. <input type="checkbox"/> SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION [Name One Or More Beneficiaries]: _____</p> <p style="padding-left: 40px;">At death of party, ownership passes to POD beneficiaries and is not part of party's estate.</p> <p><input type="checkbox"/> MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP At death of party, ownership passes to surviving parties. <input type="checkbox"/> MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION [Name One Or More Beneficiaries]: _____</p> <p style="padding-left: 40px;">At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.</p> <p><input type="checkbox"/> MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP At death of party, deceased party's ownership</p>
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	<p>passes as part of deceased party's estate.</p> <p>AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]</p> <p>Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries. [To Add Agency Designation To Account, Name One Or More Agents]:</p> <p>_____</p> <p>_____</p> <p>[Select One And Initial]: <input type="checkbox"/> AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES <input type="checkbox"/> AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES</p> <p>(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) is governed by the provisions of this [part] applicable to the type of account that most nearly conforms to the depositor's intent.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	The MPC does not include a form. The mechanics of this form could encourage a depositor and the financial institution to consider more thoroughly the rights during lifetime and after death of any party to the account. Since the form is not required to make the terms of the multiple-party account effective, it offers a helpful alternative.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC. The mechanics of this form should encourage the depositor and financial institution to consider the rights of a party to the account during lifetime and the distribution of the account after a party's death. Since the form is not required to make the terms of the multiple-party account effective, it offers flexibility and a helpful alternative for depositors.

UPC SECTION	6-205
SUBJECT	DESIGNATION OF AGENT
UPC Statute (with Maine amendments shown)	<p>(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.</p> <p>(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.</p> <p>(c) Death of the sole party or last surviving party terminates the authority of an agent.</p>
18-A M.R.S.A.	None
Difference between MPC and UPC	N/A
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	<p>This section is new and had no previous counterpart in the MPC. This section allows financial institutions to offer an option to depositors who seek the convenience of an agency relationship but intend the proceeds of account to pass according to the depositor's will or to the depositor's heirs after death. While not supplanting the comprehensive Maine Uniform Power of Attorney Law, 18-A M.R.S.A. §5-901 et seq., this section offers a limited agency role for specific financial accounts.</p>

UPC SECTION	6-206
SUBJECT	APPLICABILITY OF PART
UPC Statute (with Maine amendments shown)	The provisions of [Subpart] 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. [Subpart] 3 governs the liability and set-off rights of financial institutions that make payments pursuant to it.
18-A M.R.S.A.	§6-102. Ownership as between parties, and others; protection of financial institutions The provisions of sections 6-103 to 6-105 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 6-108 to 6-113 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.
Difference between MPC and UPC	None
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-211
SUBJECT	OWNERSHIP DURING LIFETIME
UPC Statute (with Maine amendments shown)	<p>(a) In this section, “net contribution” of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.</p> <p>(b) During the lifetime of all parties, sums deposited into an account belong to the parties in proportion to the net contribution of each, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.</p> <p>(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.</p> <p>(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.</p>
18-A M.R.S.A.	<p>§6-101(6). Definition</p> <p>(6)“Net contribution” of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.</p> <p>§6-103. Ownership during lifetime</p> <p>(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contribution by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.</p> <p>(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if 2 or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.</p> <p>(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account</p>

	<p>belongs beneficially to the trustee during his lifetime, and if 2 or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.</p>
<p>Difference between MPC and UPC</p>	<p><u>Net Contribution</u> – The term is defined as subsection (a) in UPC 6-211. MPC includes it in Section 6-101 separate from the statute on ownership of joint accounts (MPC 6-103). UPC refers to deposit to <u>an</u> account. MPC refers to deposit to <u>joint</u> account. UPC includes proportionate share of any interest or dividends <u>earned whether or not included</u> in the current balance. MPC does not cover such income earned but not included in current balance. The UPC definition deducts “a proportionate share of any charges deducted from the account”; MPC does not deduct charges. UPC 6-211(b) presumes equal net contribution by married parties; counterpart MPC 6-103(a) does not include the presumption. UPC 6-211(c) refers to a “beneficiary” of a POD account; MPC 6-103(b) refers to POD “payees” and details rights of “co-payees” are governed by proportionate shares under 6-103(a). (d) There is no MPC counterpart to “agent” on an account under 6-211(d); subject to adoption of UPC Sections 6-205 and 6-224. MPC 6-103(d) subject to limitations, MPC states trust accounts belong to Trustee, or proportionately if more than one Trustee. UPC comments under 6-201 clarify UPC treats POD and Totten Trust accounts the same as they serve the same purpose. UPC discourages use of Totten Trusts in favor of POD accounts.</p>
<p>Recommendation</p>	<p>Adopt UPC</p>
<p>Maine Probate Code Proposed Comments</p>	<p>In the absence of proof otherwise, subparagraph (b) creates a presumption, as between parties married to each other, that the net contribution of each is presumed to be an equal amount.</p>

UPC SECTION	6-212
SUBJECT	RIGHTS AT DEATH

UPC Statute (th Maine amendments shown)	<p>(a) Except as otherwise provided in this [part], on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 6-211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 6-211 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 6-211, and the right of survivorship continues between the surviving parties.</p> <p>(b) In an account with a POD designation:</p> <p style="padding-left: 20px;">(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a).</p> <p style="padding-left: 20px;">(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.</p> <p>(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under Section 6-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.</p> <p>(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to</p>
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	discharge the request for payment.
18-A M.R.S.A.	<p>§6-104. Right of survivorship</p> <p>(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are 2 or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.</p> <p>(b) If the account is a P.O.D. account;</p> <p>(1) On death of one of 2 or more original payees the rights to any sums remaining on deposit are governed by subsection (a);</p> <p>(2) On death of the sole original payee or of the survivor of 2 or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees in equal and undivided shares if surviving, or to the survivor of them if one or more die before the original payee; if 2 or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.</p> <p>(c) If the account is a trust account:</p> <p>(1) On death of one of 2 or more trustees, the rights to any sums remaining on deposit are governed by subsection (a);</p> <p>(2) On the death of the sole trustee or the survivor of 2 or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries in equal and undivided shares, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if 2 or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.</p> <p>(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.</p>

<p>Difference between MPC and UPC</p>	<p>Rights of survivorship at death are contained in MPC 6-104 and have parallels to UPC Section 6-212.</p> <p>UPC 6-212 (a) does not include the right under existing Maine law to prove that there was a different intention at the time account was created, other than account passing to surviving joint tenant. UPC 6-212(a) provides in part that if two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 6-211 belongs to the surviving spouse.</p> <p>UPC 6-212(b)(2) refers to beneficiary or beneficiaries or “party” rather than “payees”, which reflects difference between definitions of P.O.D. account in UPC and MPC.</p> <p>UPC 6-212(c) – First sentence reflects same intent as MPC §6-104(d).</p> <p>UPC 6-212(c) There is no MPC counterpart for second sentence: “A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.”</p> <p>UPC 6-212(d) There is no MPC counterpart: The ownership right of a surviving party or beneficiary, or of the decedent’s estate, in sums on deposit is subject to requests for payment made by a party before the party’s death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent’s estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.</p>
<p>Recommendation</p>	<p>Adopt UPC</p>
<p>Maine Probate Code Proposed Comments</p>	<p>Maine law is revised to delete the right to rebut the presumption that amounts held in a joint account pass to the surviving joint tenant. Prior Maine law permitted the personal representative of an estate to claim proceeds passed to the estate if there were “clear and convincing evidence of a different intention at the time the account [was] created.”</p> <p>The section includes the presumption that the deceased spouse’s interest in a multiparty account passes to surviving spouse. In most cases, any other party to a multiparty account with spouses is a child of the spouses and the intent is to pass the interest after death to that child but not to increase a child’s lifetime interest.</p>

	<p>Subsection (d) is new to Maine law and clarifies a surviving party's interest in a multiple-party account can be reduced by outstanding checks or other withdrawals by the deceased party which were made prior to death. Such reductions might also include repayment of any automatic deposit, such as Social Security payment, or automatic withdrawals for bills of a decedent.</p>
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UPC SECTION	6-213
SUBJECT	ALTERATION OF RIGHTS
UPC Statute (with Maine amendments shown)	<p>(a) Rights at death of a party under Section 6-212 are determined by the terms of the account at the death of the party. A party may alter the terms of the account by a notice signed by the party and given to the financial institution to change the terms of the account or to stop or vary payment under the terms of the account. To be effective, the notice must be received by the financial institution during the party's lifetime.</p> <p>(b) A right of survivorship arising from the express terms of the account, Section 6-212, or a POD designation, may not be altered by will.</p>
18-A M.R.S.A.	<p>§6-105. Effect of written notice to financial institution</p> <p>The provisions of section 6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.</p> <p>§6-104. Right of survivorship</p> <p>(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will. 1979, c. 540, §1, eff. Jan. 1, 1981</p>
Difference between MPC and UPC	<p>MPC sections which parallel UPC 6-213 are found in MPC 6-105 and 6-104(e).</p> <p>No substantive difference</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-214
SUBJECT	ACCOUNTS AND TRANSFERS NONTESTAMENTARY
UPC Statute (with Maine amendments shown)	Except as provided in [Part] 2 of [Article] II (elective share of surviving spouse) or as a consequence of, and to the extent directed by, Section 6-215, a transfer resulting from the application of Section 6-212 is effective by reason of the terms of the account involved and this [part] and is not testamentary or subject to [Articles] I through IV (estate administration).
18-A M.R.S.A.	§6-106. Accounts and transfers nontestamentary Any transfers resulting from the application of section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I through IV, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, section 6-107.
Difference between MPC and UPC	MPC parallel of UPC 6-214 is found at MPC 6-106
Recommendation	N/A
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-215
SUBJECT	RESERVED

UPC Statute (with Maine amendments shown)	[RESERVED.]
18-A M.R.S.A.	N/A
Difference between MPC and UPC	N/A
Recommendation	N/A
Maine Probate Code Proposed Comments	N/A

UPC SECTION	6-216
SUBJECT	COMMUNITY PROPERTY AND TENANCY BY THE ENTIRETIES
UPC Statute (with Maine amendments shown)	(a) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 6-212 may not be altered by will. (b) This [part] does not affect the law governing tenancy by the entireties.
18-A M.R.S.A.	None
Difference between MPC and UPC	UPC Section relates only to community property and tenancy by the entireties, neither of which are recognized under Maine law
Recommendation	Do not adopt UPC
Maine Probate Code Proposed Comments	Maine has chosen not to adopt UPC §6-216 because Maine does not recognize either community property or tenancies by the entireties.

UPC SECTION	6-221
SUBJECT	AUTHORITY OF FINANCIAL INSTITUTION
UPC Statute (with Maine amendments shown)	A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.
18-A M.R.S.A.	§6-108. Financial institution protection; payment on signature of one party Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.
Difference between MPC and UPC	MPC parallel of UPC 6-221 is found at MPC 6-108 MPC does not specifically state that such accounts may include accounts with POD or agency designation.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law other than incorporating the agency designation adopted in Sections 6-205 and related sections.

UPC SECTION	6-222
SUBJECT	PAYMENT ON MULTIPLE-PARTY ACCOUNT
UPC Statute (with Maine amendments shown)	<p>A financial institution, on request, may pay sums on deposit in a multiple-party account to:</p> <p>(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or</p> <p>(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under Section 6-212.</p>
18-A M.R.S.A.	<p>§6-109. Financial institution protection; payment after death or disability; joint account</p> <p>Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 6-104.</p>
Difference between MPC and UPC	<p>MPC parallel of UPC 6-222 is found at MPC 6-109</p> <p>UPC 6-222 breaks into two subparagraphs the authority of a financial institution to make payments to a surviving party and payments to personal representative or heirs of an estate. The UPC applies the term “multiple party” rather than “joint” account.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comment	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-223
SUBJECT	PAYMENT ON POD DESIGNATION
UPC Statute (with Maine amendments shown)	<p>A financial institution, on request, may pay sums on deposit in an account with a POD designation to:</p> <p>(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;</p> <p>(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or</p> <p>(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.</p>
18-A M.R.S.A.	<p>§6-110. Financial institution protection; payment of P.O.D. account</p> <p>Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payee. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.</p>
Difference between MPC and UPC	<p>MPC parallel of UPC 6-223 is found at MPC 6-110</p> <p>UPC 6-223 uses terms “party” and “beneficiary”. MPC 6-110 uses “payee”. UPC added (1) as an additional protection to the financial institution.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The second clause in subsection (1) serves as additional protection to financial institutions.

UPC SECTION	6-224
SUBJECT	PAYMENT TO DESIGNATED AGENT
UPC Statute (with Maine amendments shown)	A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not include this section
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC. It coordinates with the adoption by Maine of Uniform Probate Code UPC §6-205.

UPC SECTION	6-225
SUBJECT	PAYMENT TO MINOR
UPC Statute (with Maine amendments shown)	If a financial institution is required or permitted to make payment pursuant to this [part] to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act (1983/1986).
18-A M.R.S.A.	None
Difference between MPC and UPC	MPC does not include this section.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	This section is new and had no previous counterpart in the MPC. The section provides for the efficient and economical transfer of funds to a minor. The cost and delay associated with probate court proceedings to appoint a guardian or conservator can be substantial, compared with the need to provide for the efficient and economical transfer of an account and the protections under Uniform Transfers to Minors Act are sufficient.

UPC SECTION	6-226
SUBJECT	DISCHARGE
UPC Statute (with Maine amendments shown)	<p>(a) Payment made pursuant to this [part] in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.</p> <p>(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.</p> <p>(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.</p> <p>(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.</p>
18-A M.R.S.A.	<p>§6-112. Financial institution protection; discharge</p> <p>Payment made pursuant to Sections 6-108, 6-109, 6-110 or 6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be</p>

	<p>permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the right of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.</p>
<p>Difference between MPC and UPC</p>	<p>MPC parallel of UPC 6-226 is found at MPC 6-112</p> <p>(a) UPC includes in this subparagraph “Payment may be made whether or not a party, beneficiary or agent is disabled, incapacitated or deceased when payment is requested, received, or made.”</p> <p>(b) UPC (b) includes:</p> <ul style="list-style-type: none"> • reference to agency designation; • limits on complying with written notice from a party “and the financial institution has had a reasonable opportunity to act on [written notice] when the payment is made”; • adds that a financial institution served with process in an action or proceeding must also comply with such notice. <p>UPC (c) is included only in UPC; not MPC</p>
<p>Recommendation</p>	<p>Adopt UPC with exception of deleting UPC provision that if a financial institution receives any non-written notice which gives the financial institution “reason to believe that a dispute exists”, it may refuse payment.</p>
<p>Maine Probate Code Proposed Comments</p>	<p>Maine has chosen not to adopt the clause in UPC §6-226(c) which permits a financial institution to refuse payment if it receives any non-written notice giving the financial institution “reason to believe that a dispute exists” as to payment rights. Maine determined this clause was vague and created unnecessary uncertainty with respect to a financial institution’s right to withhold payment to a party and should not be adopted.</p>

UPC SECTION	6-227
SUBJECT	SET-OFF
UPC Statute (with Maine amendments shown)	Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under Section 6-211 or, in the absence of proof of that proportion, an equal share with all parties.
18-A M.R.S.A.	§6-113. Financial institution protection; set-off Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.
Difference between MPC and UPC	MPC parallel of UPC 6-227 is found at MPC 6-113
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-301
SUBJECT	Definitions
UPC Statute (with Maine amendments shown)	<p>(1) “Beneficiary form” means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.</p> <p>(2) “Register,” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.</p> <p>(3) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.</p> <p>(4) “Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.</p> <p>(5) “Security account” means (i) a reinvestment account associates with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner’s death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner’s death.</p>
18-A M.R.S.A.	<p>§6-302. Definitions</p> <p>As used in this part, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>(a) “Beneficiary form” means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who becomes the owner of the security upon the death of the owner.</p> <p>(b) “Register,” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.</p>

	<p>(c) “Registering entity” means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.</p> <p>(d) “Security” means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.</p> <p>(e) “Security account” means:</p> <p>(1) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner’s death; or</p> <p>(2) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner’s death.</p>
Difference between MPC and UPC	<p>Existing MPC Section 6-301, Short Title, is deleted.</p> <p>MPC parallel of UPC Section 6-301, Definitions, is the same as existing MPC Section 6-302.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-302
SUBJECT	REGISTRATION IN BENEFICIARY FORM; SOLE OR MULTIPLE OWNER

UPC Statute (with Maine amendments shown)	Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.
18-A M.R.S.A.	§6-303. Registration in beneficiary form; sole or multiple owner Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship and not as tenants in common.
Difference between MPC and UPC	Existing MPC Section 6-302, Definitions is renumbered MPC Section 6-301. MPC parallel of UPC Section 6-302, Registration in Beneficiary Form; Sole or Joint Tenancy Ownership, is substantially same as existing MPC Section 6-303.
Recommendation	Adopt UPC but exclude references to tenants by the entireties and community property which are inapplicable under Maine law.
Maine Probate Code Proposed Comments	The ownership forms of tenancy by the entirety and community property have been deleted from the Uniform Transfer on Death Security Registration Act because they cannot be created under Maine law.

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UPC SECTION	6-303
SUBJECT	REGISTRATION IN BENEFICIARY FORM; APPLICABLE LAW
UPC Statute (with Maine amendments shown)	A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.
18-A M.R.S.A.	§6-304. Registration in beneficiary form; applicable law A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made in nevertheless presumed to be valid and authorized as a matter of contract law.
Difference between MPC and UPC	Existing MPC Section 6-303, Registration in Beneficiary Form; Sole or Joint Tenancy Ownership, is renumbered as UPC Section 6-302. MPC parallel of UPC Section 6-303, Registration in Beneficiary Form, Applicable Law, is the same as existing MPC Section 6-304.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-304
SUBJECT	ORIGINATION OF REGISTRATION IN BENEFICIARY FORM
UPC Statute (with Maine amendments shown)	A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.
18-A M.R.S.A.	<p>§6-305. Origination of registration in beneficiary form</p> <p>A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.</p>
Difference between MPC and UPC	<p>Existing MPC Section 6-304, Registration in Beneficiary Form, Applicable Law is renumbered as UPC Section 6-303.</p> <p>MPC parallel of UPC Section 6-304, Origination of Registration in Beneficiary Form, is the same as existing MPC Section 6-305.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-305
SUBJECT	FORM OF REGISTRATION IN BENEFICIARY FORM
UPC Statute (with Maine amendments shown)	Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD,” or by the words “pay on death” or the abbreviation “POD,” after the name of the registered owner and before the name of a beneficiary.
18-A M.R.S.A.	<p>§6-306. Form of Registration in beneficiary form</p> <p>Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD” after the name of the registered owner and before the name of a beneficiary.</p>
Difference between MPC and UPC	<p>Existing MPC Section 6-305, Origination of Registration in Beneficiary Form, is renumbered as UPC Section 6-304.</p> <p>MPC parallel of UPC Section 6-305, Form of Registration in Beneficiary Form, is essentially the same as existing MPC Section 6-306. UPC adds as “pay on death” or abbreviation “POD” to “TOD” in MPC</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-306
SUBJECT	EFFECT OF REGISTRATION IN BENEFICIARY FORM
UPC Statute (with Maine amendments shown)	The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.
18-A M.R.S.A.	§6-307. Effect of registration in beneficiary form The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.
Difference between MPC and UPC	Existing MPC Section 6-306, Form of Registration in Beneficiary Form, is renumbered as UPC Section 6-305. MPC parallel of UPC Section 6-306, Effect of Registration in Beneficiary Form, is the same as existing MPC Section 6-307.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	This section replaces MPC Section 6-312 which previously permitted changes of beneficiary of a security by will.

UPC SECTION	6-307
SUBJECT	OWNERSHIP ON DEATH OF OWNER
UPC Statute (with Maine amendments shown)	On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.
18-A M.R.S.A.	§6-308. Ownership on death of owner. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.
Difference between MPC and UPC	Existing MPC Section 6-307, Effect of Registration in Beneficiary Form, is renumbered as UPC Section 6-306. MPC parallel of UPC Section 6-307, Ownership on Death of Owner, is the same as existing MPC Section 6-308.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-308
SUBJECT	PROTECTION OF REGISTERING ENTITY
UPC Statute (with Maine amendments shown)	<p>(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.</p> <p>(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this part.</p> <p>(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 6-307 and does so in good faith reliance (i) on the registration, (ii) on this part, (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.</p> <p>(d) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.</p>
18-A M.R.S.A.	<p>§6-309. Protection of registering entity</p> <p>(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Part.</p> <p>(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Part.</p> <p>(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased</p>

	owner if it registers a transfer of the security in accordance with section 6-308 and does so in good faith reliance on the registration, on this Part and on information provided to it by affidavit of the personal representative of the deceased owner or by the surviving beneficiary or by registering entity. The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Part. (d) The protection provided by this Part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.
Difference between MPC and UPC	Existing MPC Section 6-308, Ownership on Death of Owner, is renumbered as UPC Section 6-307. MPC parallel of UPC Section 6-308, Protection of Registering Entity, is the same as MPC Section 6-309.
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-309
SUBJECT	NON TESTAMENTARY TRANSFER ON DEATH.
UPC Statute (with Maine amendments shown)	A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Act and is not testamentary.
18-A M.R.S.A.	<p>§6-310. Nontestamentary transfer on death</p> <p>(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary or subject to Articles I through IV, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, subsection (b).</p> <p>(b) A registration in beneficiary form is not effective against an estate of a deceased owner to transfer to a survivor sums need to pay debts, taxes and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving sole owner or beneficiary who receives a security after the death of a deceased owner is liable to account to the personal representative of the decedent's estate for amounts the decedent owned beneficially immediately before the decedent's death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. A proceeding to assert this liability may not be commenced later than 2 years following the death of the decedent. Sums recovered by the personal representative must be administered as part of the decedent's estate.</p>
Difference between MPC and UPC	<p>Existing MPC Section 6-309, Protection of Registering Entity, is renumbered as UPC Section 6-308.</p> <p>MPC parallel of UPC Section 6-309, Non-testamentary Transfer on Death, is essentially the same as paragraph (a) of existing MPC Section 6-310. Paragraph (b) of existing MPC Section 6-310 which deals with the ability of the Estate to reach TOD assets to pay debts, taxes, expenses, and allowances is essentially relocated to UPC Section 6-102.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	The language does not constitute a substantive change to Maine law.

UPC SECTION	6-310
SUBJECT	TERMS, CONDITIONS, AND FORMS FOR REGISTRATION
UPC Statute (with Maine amendments shown)	<p>(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing or "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.</p> <p>(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:</p> <ol style="list-style-type: none"> (1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr. (2) Multiple owners-sole beneficiary: John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr. (3) Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.
18-A M.R.S.A.	<p>§6-311. Terms, conditions, and forms for registration</p> <p>(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it receives requests for registrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The</p>

	<p>terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters PCEG, standing for "per capita at each generation." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.</p> <p>(b) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:</p> <ul style="list-style-type: none"> (1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.: (2) Multiple owners- sole beneficiary: John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr.; or (3) Multiple owners-primary and secondary (substituted) beneficiaries by either: <ul style="list-style-type: none"> (i) John S. Brown, Mary B. Brown, JT TEN TOD John S. Brown Jr. SUB BENE Peter O. Brown; or (ii) John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr. PCEG.
Difference between MPC and UPC	<p>Existing MPC Section 6-310, Nontestamentary Transfer on Death, is essentially reallocated to UPC Section 6-309 and Section 6-102.</p> <p>MPC parallel of UPC Section 6-310 Terms, Conditions and Forms for Registration, is the same as existing MPC Section 6-311.</p>
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	UPC renumbering adopted. The language does not constitute a substantive change to Maine law.

UPC SECTION	6-311
SUBJECT	APPLICATION OF PART
UPC Statute (with Maine amendments shown)	This part applies to registrations of securities in beneficiary form made before or after [effective date], by decedents dying on or after [effective date].
18-A M.R.S.A.	No Maine equivalent
Difference between MPC and UPC	
Recommendation	Adopt UPC
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	TRUST ADMINISTRATION
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§7-105 through §7-774
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article VII of the MPC.
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	MISCELLANEOUS PROVISIONS
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§8-101 through §8-401
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article VIII of the MPC.
Maine Probate Code Proposed Comments	

UPC SECTION	None
SUBJECT	ADOPTION
UPC Statute (with Maine amendments shown)	
18-A M.R.S.A.	§9-101 through §9-404
Difference between MPC and UPC	
Recommendation	PATLAC did not review Article IX of the MPC.
Maine Probate Code Proposed Comments	