

# House Research Act Summary

**CHAPTER:** 171

**SESSION:** 1999 Regular Session

**TOPIC:** Probate, Trust, and Guardianship Law

**Date:** May 26, 1999

**Analyst:** Deborah K. McKnight, 651-296-5056

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- 1 Intestate estate.** Clarifies what is meant by intestate estate. It includes (1) the estate not specified as the share of a child or spouse under current probate law, and (2) property not disposed of by will.
- 2 Requirement of survival for 120 hours and simultaneous death act.** Amends the current simultaneous death act. Under that act, where the title to property depends on the order in which individuals died (e.g. spouses) and it appears they died simultaneously, the property of each person is disposed of as if that person died last. The act creates exceptions to this rule. Provides that the following individuals who do not survive the designated individuals by at least 120 hours are considered to have died first for purposes of determining title to property passing by the trust, will, or by exercise of the power of appointment:
  - (1) a trust beneficiary where the grantor has reserved a power to change or terminate the trust;
  - (2) a devisee (person who takes under a will) who does not survive the testator (person who made the will); or
  - (3) an appointee of a power of appointment who does not survive the holder of the power.Applies this change to property of persons who die on or after August 1, 1999. Exempts from the provision documents exercising powers of appointment that make a distribution plan different from this law. Exempts from the provision trusts that are part of a retirement plan or IRA.
- 3 Apportionment of estate taxes and generation skipping tax.** Prior law apportioned estate tax and federal generation skipping tax among persons interested in the estate as provided by law or using another method specified by the will. The act requires that taxes be apportioned as provided by the statute unless the will specifically indicates an intent to waive any right of recovery under Internal Revenue Code sections on estate taxes resulting from inclusion in the estate of (1) qualified terminal interest property or (2) property included because of the decedent's retained interest in the property.

- 4 **By proposed ward or conservatee.** Prior law allowed a proposed ward or conservatee who had sufficient capacity to nominate or give instructions to a guardian or conservator in an instrument executed and attested like a will. The act allows in addition the use of a writing (1) signed by the proposed ward or conservatee or by someone in her or his presence and at her or his direction and (2) acknowledged by the proposed ward or conservatee by a notary who is not the nominated conservator or guardian.
- 5 **Revisor's instruction.** Directs replacing "executor" and "administrator" in Minnesota Statutes, chapter 48 (banks) with "personal representative." Requires adding the word "conservator" wherever the word "guardian" appears in the same chapter except when guardian refers to a guardian of a minor.