



KANSAS BAR  
ASSOCIATION

# KBA REAL ESTATE, PROBATE & TRUST SECTION NEWSLETTER

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## SECTION PRESIDENT'S MESSAGE

### Section looks forward to 2003 activities

By D. Michael Dwyer  
Section President

*Dwyer, Dykes & Thurston, L.C., Overland Park*

Welcome to the revived Real Estate, Probate and Trust Section Newsletter. The Newsletter has been dormant for a few years and we are resurrecting it with new vigor. We plan to target for at least three issues a year and we will report developments in the law in our practice areas as well as apprise you of new developments we think are significant. Cal Karlin has graciously agreed to serve as Editor of the newsletter and this issue will focus on recent probate cases of significance in Kansas. In the future, we plan to add sections on real estate cases and estate tax cases of interest.



I was contacted by Peter C. Wolk, a lawyer with the U.S. Division of Transplantation

Employer Education Project, which is a division of the U.S. Department of Health and Human Services. They are conducting a program to raise the consciousness level of attorneys, and hopefully their clients, as it relates to organ donation. You will find a reprint of materials provided to me by Mr. Wolk which I hope you will find of interest.

Also, for your information, please take note that a few of the KBA brochures have been updated and these are focused in the newsletter by Cal Karlin.

I should also mention to you that Nancy Roush, Tim O'Sullivan, Martin Dickinson, Terry Fry, and Jim Weisgerber are working on an ad hoc basis to prepare draft legislation to address the present inconsistencies between the Kansas Estate Tax and the Federal Estate Tax as it relates to the exclusion amount.

If there are matters which you would like to see addressed in the newsletter, please do not hesitate to contact me or Cal Karlin.

### Kansas enacts Uniform Trust Code

By Bill Martin

*Citizens State Bank & Trust, Hiawatha*

One of the most significant enactments of the 2002 Kansas Legislature was passage of the Uniform Trust Code (UTC), which is embodied in Senate Bill 297. The Probate Advisory Committee of the Kansas Judicial Council proposed passage of UTC to the Legislature. Changes were made to the proposed legislation due to input from the Kansas Bar Association and the Kansas Bankers Association Trust Division.

The concerns of the Bar Association and Bankers Association were about a shifting focus from the desires and wishes of the sett-

lor to that of the trust beneficiaries; the erosion of the ability to structure a trust to protect its assets from claims of spouses (whether divorced or married), claims of beneficiaries and creditors in discretionary trusts, claims of family members for support and maintenance, and claims of governmental agencies.

Although this is a "uniform" bill, a number of departures were made by the Legislature at the suggestion of the Judicial Council, KBA and Kansas Bankers Association Trust Division. The major changes to the Uniform Trust Code are as follows:

## KBA Calendar

### NOVEMBER

#### 21 & 22 Practical Skills for Lawyers

Overland Park — Marriott  
12 hours CLE credit, including 2 hours professional responsibility credit.

#### 22 Family Law Update featuring the 2002 Supplement to the Practitioner's Guide to Kansas Family Law

Topeka—Capitol Plaza  
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### DECEMBER

#### 6 Plaza Lights Institute

Kansas City, Mo. — Country Club Plaza Marriott  
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### JANUARY

#### 24 Estate Planning: A new direction

Wichita — Marriott  
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#### 31 A Government of Laws

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# Dealing with mold issues in new homes

By Brett Roubel

*Shughart, Thomson & Kilroy, Kansas City*

Although there are over 100,000 different species of mold, very few produce toxins — as low as three dozen different types. However, it is these species of mold that are attracting all of the attention — and for good reason — they have been linked, in certain conditions, to cause adverse human effects.

## A. The Mold “Epidemic”

What is responsible for this new found “epidemic”? Although one specific cause

cannot be pinpointed, there are several explanations. First, according to the Mayo Clinic, the increase in indoor toxic mold growth is attributable to today’s tightly sealed and insulated homes. A tight, water-proof exterior and vapor barrier interior provides a non-visible, humid breeding ground for mold to grow. Second, many building materials used today provide the food that molds need to grow, according to the National Center for Environmental Health. Among them are cardboard, carpet, ceiling tile, drywall, insulation, paint, plas-

terboard, plywood, wallpaper, and wood products. Cellulose-based products are the main food source for mold.

Third, there have been some specific building products that have been identified as sources of water leaks into homes. Synthetic stucco, a/k/a EIFS (Exterior Insulation and Finish System) is the main culprit. There have been national class-action settlements regarding these products.

Finally, and perhaps most importantly, knowledge and awareness of the general  
*continued on page 3*

## Trust code creates default rules that will apply if not overridden by specific trust language

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Under the Kansas version of Section 103, the definition of “qualified beneficiary” was changed to limit the scope to current income and principal beneficiaries of a trust and to those first tier remainder beneficiaries who would take if the trust terminated on that date. This eliminates secondary or contingent beneficiaries from the definition.

The Uniform Trust Code creates default rules that will apply if not overridden by specific trust language. Section 105(b) of the Code outlines 14 mandatory rules. The Kansas version of Section 105 reduces the number of these mandatory rules to 10. One of the major mandatory rules removed was the duty to notify all qualified beneficiaries of the trust terms and the duty to provide reports. Now the trustee must only do so if requested by qualified beneficiaries. Another provision that was removed was the inability of a trust grantor to fully create an effective spendthrift provision. The Uniform Trust Code provided that certain creditors could pierce the provisions of an otherwise valid spendthrift clause. The Kansas version of the act retains prior Kansas law with respect to the broad scope of a valid spendthrift clause.

Section 111: Nonjudicial Settlement Agreements. The final Kansas version of this section sets forth a limited number of specific acts that can be resolved by a nonjudicial settlement agreement. The consensus of those involved in the legislation was that access to Kansas courts is sufficiently easy that other matters outside the purview of Section 111 can be handled by a settlement agreement that is subject to court review and approval.

Section 413. Cy Pres. The uniform act was amended by changing K.S.A. 59-22a01 to specifically allow for reformation or amendment to preserve the federal estate tax deduction and also negates the cy pres rule where the grantor has provided for an alternative plan.

Section 417. Combination and Division of Trusts. The Kansas version combines the Uniform Act language with an amended form of K.S.A. 58-2420.

Section 418. Reference to Written Statement. This “section” was not part of the uniform act but was added to replace K.S.A. 59-

2296, which has been suggested for repeal.

Section 502, 503 and 504. Spendthrift Provisions. The provisions of 502 were modified to make it clear that spendthrift provisions are to be considered valid. The provisions of 503 were stricken. The provisions of 504 were modified to clarify that a discretionary trust remains truly discretionary even in the absence of a specific spendthrift provision.

Section 702. Trustee’s Bond. The Kansas version requires a bond unless waived or modified by the terms of the trust.

Section 706. Removal of Trustee. This provision provides that a trustee can be removed by the court for breach of trust, lack of cooperation between co-trustees, persistent failure to administer the trust effectively, or a substantial change of circumstances and that removal will serve the interest of the beneficiaries and be consistent with the terms of the trust.

Section 801. Powers to Direct. The Kansas version adds a new paragraph (e) that is intended to clear title to real estate by allowing title to be acquired in the name of the trust instead of requiring the trustee to be named.

Section 813. Duty to Inform and Report. The Kansas version provides that the only required notice by a trustee is to a “qualified beneficiary” as requested by said beneficiary. In addition, such notice need not be given to persons other than a surviving spouse as long as the surviving spouse may be entitled to receive income or principal (such as under a marital or family trust) or should the spouse hold a general power of appointment and should the beneficiaries be issue of the surviving spouse.

Section 814. Discretionary Powers. The uniform version of this section included a provision that was titled as “Tax Savings”. It provided a list of tax savings provisions designed to avoid the creation of inadvertent general powers of appointment. However, the comments indicate that the drafting committee of the Probate Advisory Committee was divided as to the language of these provisions and, therefore, it was deleted in its entirety.

Senate Bill 297 will become Kansas law on January 1, 2003.

# People are more aware of problems caused by mold

*continued from page 2*

public has increased dramatically. People who in the past had been experiencing odd illnesses and living in homes with mold problems would most likely have not put the two together. Whereas five years ago, the homeowner would not have brought up this issue, we now hear about many persons who have “mold problems” in their home.

The media has fueled much of this awareness through coverage of high-profile cases, such as the \$32 million judgment in the Texas Ballard case in 2001.

## **B. Mold Science**

Mold has been alleged to pose problems to humans on several different levels: (1) as an allergen, and (2) as a producer of toxins; (3) as a producer of volatile organic compounds (“VOCs”); and (4) as a producer of irritants released when the mold’s cell wall breaks down. The effects of mold as an allergen are widely known and include sneezing, runny nose, irritated eyes, asthma and inflamed sinuses. VOCs, the byproduct produced by the breakdown of the mold cells, have been reported to cause similar effects. However, the effects that the toxins have on humans are less well known — but could be devastating. Studies have indicated that the mycotoxin byproducts that certain molds produce interfere with cell division and protein synthesis.

## **C. Investigation and Testing**

The problem with mold growth is that it often gets out of hand before the problem is discovered. Mold grows in places that are not visible to the human eye and sometimes in places that the musty smell associated with mold is covered up. However, when the mold growth becomes large enough, it will become visible or the smell will become evident. Reports of mold growth, therefore, need to be taken seriously and investigated promptly.

A walk-through should be the first step. Look for visible mold growing in the house, usually at the place reported to be a problem-area. Once mold is seen, a Certified Industrial Hygienist can be employed to perform several types of tests. The first step, and the least expensive, is a tape test.

Homeowners can actually perform this test themselves, which simply involves applying some scotch tape to the visible mold and sending it to the CIH for analysis. Depending on the results of this test, bulk sampling (actual pieces of material are collected) and air sampling (through special air “traps”) may be recommended. When the indoor levels of mold on air samples are above the outdoor levels, the CIH will have concerns about mold infestation and about the family living in such an environment.

When toxic types of mold are found in a residential house, more often than not experts will recommend that the residents evacuate their home. Remediation is the process by which the mold is removed and the house is once again made safe for living. Qualified personnel must be employed to perform the remediation. If it is not done correctly it can often lead to a worsening of the problem and contamination of areas that were previously problem-free.

When litigation is contemplated, the house should also be tested for mycotoxins and, perhaps, VOCs. Also, blood samples should be taken from the residents to test for the presence of antibodies that are known to react to certain types of mold.

## **D. Types of Claims**

Mold litigation has primarily involved claims against builders. Mold cases also involve first-party insurance litigation against homeowner’s insurers and product liability claims against manufacturers of certain products like EIFS.

Mold litigation against builders can proceed upon a number of theories, including strict products liability, negligence, breach of contract, breach of warranty, consumer protection statutes and fraud. Damages can be large, and include the potential for recovery of real property damage, personal property damage, economic (out-of-pocket) damage and personal injury damages.

## **E. Courts and Legislation**

The first reported mold decision occurred in Florida, in which the plaintiff recovered \$14 million in property damage from the builder of a courthouse in which a number of construction defects lead to the extensive

growth of mold. In 2001, the Delaware Supreme Court affirmed a \$1 million verdict for plaintiffs who alleged personal injuries stemming from exposure to toxic mold. No other verdicts have been published on appeal, but we are aware that verdicts have been obtained for both the plaintiff and defendant across the country. No case, as far as we can tell, has gone to trial in Kansas or Missouri.

California became the first state to pass legislation creating standardized mold-specific regulations. These regulations require disclosure of mold problems in sales of residential homes and require a government agency to develop acceptable standards for mold levels and remediation. Also, legislation has been introduced in both Missouri and Kansas that, although not specifically addressing mold, would, among other things, create a statutory new home warranty and extend the state implied warranty up to ten years on structural items. However, the bill has been defeated in the Missouri senate the last three years and has been defeated the only year it was introduced in the Kansas legislature.

## **F. Insurance**

Almost exclusively, homeowner’s insurance coverage is denied to residents claiming property damage or personal injuries from mold growth in their home. Insurance companies rely on many exclusions to deny coverage to homeowners (building defect exclusion, pollution exclusion, water leakage was not a sudden intrusion, etc.) However, homeowners insurance will usually apply where the mold growth is an ensuing loss from a covered peril (such as a flood or a tree branch falling on a roof during a storm). Many policies now specifically exclude coverage relating to mold (but retain coverage for ensuing loss). Homebuilders, on the other hand, will generally find that coverage does exist for claims made by homeowners under their completed operations clause.

If anyone would like to know more information about mold or mold claims/litigation, please feel to call Brett Roubal (816) 374-0502 or send him an e-mail ([broubal@stklaw.com](mailto:broubal@stklaw.com)).

# How lawyers can assist clients with respect to organ donation

A major cause of the shortage of organs is that regardless of a decedent's wishes, virtually no surgeon will take organs or tissue without permission from the Family. Regrettably, family members often withhold authorization because they are unaware the decedent wished to donate organs and tissues, thereby frustrating organ donors' wishes.

In fact, a national study conducted by Gallup indicates that when family members know of their loved one's wishes, 94% will honor the request. But, when family members do not know, only 54% will donate the relative's organs. Indeed, of all the causes for organs being unavailable from people who wanted to be donors, 37% are lost due to the family's refusal to consent. Those lost organs (from people who wanted to be organ donors!) could save many lives.

Attorneys are uniquely positioned to help by asking clients during estate planning and Will intake sessions if they want to be organ donors and if they have told their family. (Whether someone decides to be or not to be an organ donor is a personal decision that is respected; the purpose here is to ensure that people who want to make anatomical gifts do not have their wishes thwarted.) Sharing the decision to be an organ donor also has the effect of sparing surviving family members from the difficulty of having to make a burdensome, personal decision at an emotional time.

The American Bar Association supports more client education about organ donation issues:

RESOLVED, That the American Bar Association urges all attorneys to raise with their clients, when appropriate, the topic of organ and tissue donations and to provide donation forms to those clients who indicate an interest in making a donation.

Summary of Action of the House of Delegates, American Bar Association 1992 Mid-Year Meeting, Dallas, Texas, p. 30 (February 3-4, 1992). (Full text of the Resolutions and additional organ donor information is printed in the ABA pamphlet: "A Legacy for Life" (free on the ABA website; \$12/100 pamphlets in print).

As a lawyer, you can help by asking your clients the following questions during Will intake interviews:

1. Do you wish to be an organ and tissue donor?  
Self Yes  No   
Spouse Yes  No
2. If yes, have you signed an organ donor card or indicated on your driver's license your intent to be an organ and tissue donor?  
Self Yes  No   
Spouse Yes  No
3. Have you told your family about your intention to be an organ and tissue donor?  
Self Yes  No   
Spouse Yes  No

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## How to Become an Organ and Tissue Donor in Kansas

If you wish to be an organ and tissue donor, all you have to do is

say yes to organ and tissue donation on your donor card and/or driver's license and discuss your decision with your family.

Nationally, about 63 people receive an organ transplant every day, but another 15 people on the waiting list die because not enough organs are available. In Kansas alone, 13 people died last year waiting for an organ donation and 218 people are currently awaiting organ and tissue transplants.

One part of the problem is that some people who sign donation cards are not treated as donors. Even if you've signed something, your family will likely be asked to give consent before donation can occur. Make sure that you talk to your family members about organ and tissue donation so they know your wishes! One individual organ donor can save or improve the quality of life for more than 50 people who suffer from organ failure, congenital defects, bone cancer, orthopedic injuries, burns or blindness.

Who can become a donor? All individuals can indicate their intent to donate (persons under 18 years of age must have parent's or guardian's consent). Medical suitability for donation is determined at the time of death.

Are there age limits for donors? There are no age limitations on who can donate. The deciding factor on whether a person can donate is the person's physical condition, not the person's age. Newborns as well as senior citizens have been organ donors. Persons under 18 years of age must have parent's or guardian's consent.

How do I express my wishes to become an organ and tissue donor?

1. Indicate your intent to be an organ and tissue donor on your driver's license.
2. Carry an organ donor card.
3. Most important, discuss your decision with family members and loved ones

If I sign a donor card or indicate my donation preferences on my driver's license, will my wishes be carried out?

Even if you sign a donor card it is ESSENTIAL THAT YOUR FAMILY KNOWS your wishes. Your family may be asked to sign a consent form in order for your donation to occur. If you wish to learn how organ donation preferences are documented and honored where you live, contact your local organ procurement organization (OPO). The OPO can advise you of specific local procedures, such as joining donor registries, that are available to residents in your area.

What can be donated?

- Organs: heart, kidneys, pancreas, lungs, liver, and intestines
- Tissue: cornea, skin, bone marrow, heart valves, and connective tissue
- Bone marrow

If I sign a donor card, will it affect the quality of medical care I receive at the hospital?

No! Every effort is made to save your life before donation is considered.

*Continued on the next page*

Will donation disfigure my body? Can there be an open casket funeral?

Donation does not disfigure the body and does not interfere with having a funeral, including open casket services.

Why should minorities be particularly concerned about organ donation?

Some diseases of the kidney, heart, lung, pancreas and liver are found more frequently in racial and ethnic minority populations than in the general population. Successful transplantation often is enhanced by the matching of organs between members of the same ethnic and racial group.

Are there any costs to my family for donation?

The donor's family does NOT pay for the cost of the organ donation. All costs related to donation of organs and tissues are paid by the recipient, usually through insurance, Medicare or Medicaid.

Can I sell my organs?

No! The National Organ Transplant Act (Public Law 98-507) makes it ILLEGAL to sell human organs and tissues. Violators are subject to fines and imprisonment. Among the reasons for this rule is the concern of Congress that buying and selling of organs might lead to inequitable access to donor organs with the wealthy having an unfair advantage.

How are organs distributed?

Patients are matched to organs based on a number of factors including blood and tissue typing, medical urgency, time on the waiting list, and geographical location.

How many people are currently waiting for each organ to become available so they can have a transplant?

Click here for the most current data -> United Network for Organ Sharing.

Can I be an organ and tissue donor and also donate my body to medical science?

Total body donation is an option, but not if you choose to be an organ and tissue donor. If you wish to donate your entire body, you should directly contact the facility of your choice to make arrangements. Medical schools, research facilities and other agencies need to study bodies to gain greater understanding of disease mechanisms in humans. This research is vital to saving and improving lives.

Where can I get additional information about organ and tissue donation?

■ Statistics and additional information about organ and tissue donation is available at: United Network for Organ Sharing [www.unos.org](http://www.unos.org) and at the Division of Transplantation, U.S. Department of Health and Human Services website: [www.organdonor.gov](http://www.organdonor.gov).

■ Information on minorities and organ donation and transplantation is available at the website of the Minority Organ Tissue Transplantation Education Program: [www.nationalmottep.org](http://www.nationalmottep.org).

■ Information about the American Bar Association's efforts with regard to organ donation, the Third National Health Care Decisions Week (October 20-26, 2002), and the ABA pamphlet entitled "A Legacy for Life"

may be found at: <http://www.abanet.org/rppt>; "A Legacy for Life;" and RPPT National Health Care Decisions Week Home Page.

■ Information about local Organ Procurement Organizations and local activities and facts about organ donation may be found at: Organ Procurement Organizations (Organ procurement organizations coordinate activities relating to organ procurement in a designated service area. They evaluate potential donors, discuss donation with family members, and arrange for the surgical removal of donated organs. OPOs also are responsible for preserving organs and arranging for their distribution according to national organ sharing policies. There are currently 59 organ procurement organizations throughout the U.S.), and, the Association of Organ Procurement Organizations (The Association of Organ Procurement Organizations (AOPO) is a private, nonprofit organization recognized as a national representative of organ procurement organizations.)

■ Information about the Uniform Health-Care Decisions Act (UHCDA) (approved by the Uniform Law Commissioners in 1993) is available at [www.nccusl.org](http://www.nccusl.org).

Local Information: Kansas Organ Procurement Organizations:

Midwest Transplant Network  
1900 West 47th Place, Suite 400  
Westwood, KS 66205  
Phone: (913) 262-1668  
Web: [www.mwob.org](http://www.mwob.org)

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## RPT Section studying legislative issues

By Paul T. Davis

*KBA Legislative Counsel*

The Executive Committee of the KBA Real Estate, Probate & Trust Section is currently studying several legislative proposals and would welcome your input on these proposals. The proposals being studied are:

- 1) Recodification of the Kansas power of attorney statutes as proposed by the Kansas Judicial Council;
- 2) Repeal of the current succession tax and enactment of a Kansas estate tax (in addition to the "pick-up" tax);

- 3) Repeal of current beneficiary designation statutes and enactment of a single universal beneficiary designation statute (similar to Missouri);

- 4) Repeal of K.S.A. 59-505 due to being anachronistic after enactment of spousal elective share statutes;

- 5) Statutory expansion of the pre-marital agreement act to cover post-marital agreements (mostly a codification of case law);

- 6) Amendment to the Uniform Trust Code to avoid self-settled trust consequences when one spouse's power over assets in trust of

other spouse lapses at predeceased spouse's death;

- 7) Proposed amendment to K.S.A. 58-2420 regarding the impact of a transfer of property on insurance and homestead, exemption and redemption rights

If you would like to comment on any of these proposals or if you would like more information on these proposals, please contact Paul Davis at (785) 234-5696 or [davisp@ksbar.org](mailto:davisp@ksbar.org)

# PROBATE AND TRUST CASES

## ***In re Estate of Keller***

*46 P. 3d 1135 (2002)*

Kansas declaratory judgment statutes (K.S.A. 60-1701 et seq.) were used to construe a decedent's will to preserve the marital deduction. The decedent had crossed out the 60 day survival period for his spouse and replaced it with a 365 day period. The Kansas Supreme Court relied upon K.S.A. 58-820(b) to construe the will to bring it into conformity with the federal estate tax marital deduction.

## ***In re Estate of Gardiner,***

*42 P. 3d 120 (2002)*

The decedent's son (by a prior marriage) successfully opposed the receipt of a spousal share by a transsexual who married the decedent. Sex reassignment surgery physically changed the transsexual from a male to a female prior to the alleged marriage. The transsexual still had male chromosomes, could not produce ova and could not bear offspring. The Kansas Supreme Court held that a marriage contemplates the union of a biological man and a biological woman. The alleged marriage was therefore void as against public policy and would not support the transsexual's claim to a spousal share.

## ***Johnson v. Wieggers,***

*46 P. 3d 563 (2002)*

Lawyer and his firm obtained dismissal of lawsuit by decedent's husband (individually and as administrator of deceased wife's estate) where lawyer assisted daughter (from a prior marriage) in changing the decedent's IRA beneficiary to favor the daughter shortly before the decedent's death. The husband did regain his status as sole beneficiary of the IRA, but was denied any damages against the lawyer for negligence or breach of fiduciary duty. The Kansas Court of Appeals held that there is no duty owed by an attorney to a non-client third party if the third party is an adversary of the client and if the third party was not an intended beneficiary of the attorney's services. The Court found that the attorney's duty

was to assist the daughter in becoming the sole beneficiary.

## ***In re Estate of Farr,***

*49 P. 3d 415 (2002)*

The Kansas Supreme Court reiterated the tests for testamentary capacity and found that despite senile dementia the testator understood the nature of his property, his natural heirs and his desired distribution. Although the witnesses to the will were not under oath and the testator did not specifically declare that the will was freely and voluntarily executed, the Supreme Court pointed out that the question of the validity of a self-proving affidavit is moot once a will is contested pursuant to K.S.A. 59-606. A competent witness who was close to the decedent (but not a beneficiary under the will) was not disqualified as being "interested" (since this did not involve an oral will under K.S.A. 59-608). The burden in challenging testamentary capacity (as with other defenses to a will) was reiterated as requiring "clear, satisfactory and convincing evidence." The Court stated that "both expert and lay testimony is competent on the question of mental capacity". While evidence regarding capacity before or after execution of a will may serve as an aid in determining capacity the test is whether the testator knew his property, heirs and desired distribution at the time the will was executed. Although the testator was alleged to have had memory lapses in recalling recent events or recognizing people, the testimony was that he "recited or acknowledged the majority of his property, recited or acknowledged his sons were Marvin and Howard" and inquired whether the will was similar to his prior will that excluded his two granddaughters (by a previously deceased son). The Supreme Court upheld the trial court's finding of testamentary capacity based upon evidence and over the objection of the excluded granddaughters.

## **2002 Legislative Developments**

Two significant acts were enacted

during the 2002 Kansas legislative session. Kansas became the first state to adopt the Uniform Trust Code, effective January 1, 2003. The Kansas Act for Obtaining a Guardian or a Conservator became effective July 1, 2002. The KBA 2002 Kansas Annual Survey handbook has an extensive discussion of both Acts prepared by Web Golden and Evan Ice.

■ K.S.A. 59-605 was revised to invalidate any devise or bequest in a will or trust in favor of the scrivener or the scrivener's parent, child, issue, sibling or spouse, except in two situations: (1) if the preparer is related to the testator or grantor by blood or marriage and the devise or bequest does not give the beneficiary more than under the laws of intestacy; or (2) it affirmatively appears that the testator or grantor knew the contents of the will or trust and had independent legal advice.

■ K.S.A. 59-6a213 was amended, effective July 1, 2002, to provide that spousal waiver of a homestead or statutory family allowance must be clearly provided and be "understandably and knowledgeably waived."

A nonresident can now be appointed as administrator if a resident agent is named. The legislature also clarified that a resident agent must accept his or her appointment in writing.

## **New Pamphlets**

Thanks to the efforts of Gary Howland, Dan Peare and Tim O'Sullivan, two new pamphlets from the KBA Real Estate Probate and Trust Section are now available. They are "Death in the Family" and "Probate Avoidance". A list of all currently available pamphlets is available at the KBA website: [www.ksbar.org](http://www.ksbar.org), by clicking on the Public Information Pamphlets" icon. If you need a stack for a speaking engagement or client distribution just call the KBA office to have some sent to you.

— Submitted by:  
Calvin J. Karlin

Barber, Emerson, Springer,



**KANSAS BAR ASSOCIATION**

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KBA member regular registration(s) . . . . . \$169 \_\_\_\_\_

Nonmember registration(s) . . . . . \$209 \_\_\_\_\_

Additional seminar papers. . . . . \$35.38 \_\_\_\_\_

*(Materials \$30, P/H \$3, Tax \$2.38)*

**ENCLOSED IS MY PAYMENT TO THE KBA . . . . . \$ \_\_\_\_\_**

Celebrating its 20th anniversary, our Annual Plaza Lights Institute promises to uphold the KBA holiday tradition of excellent CLE opportunities with the sights and festivities of the holiday on the Plaza. Practitioners from three of the KBA's sections- Corporation, Business & Banking; Real Estate, Probate & Trust; and Tax Law- come together to provide you with comprehensive coverage of the latest information concerning closely held businesses.

**Topics to be covered include:**

- Succession planning
- Choice of entity
- Financing issues
- Legislative & case law update
- Ethics in negotiation

The KBA has reserved a block of rooms with a special rate of \$114 at the Country Club Plaza Marriott. Reservations should be made by November 14, to ensure availability. To make reservations, please call (800) 810-3708 and let them know you are with the Kansas Bar Association.

## Write for 'The Journal'

*The Journal of the Kansas Bar Association* is always looking for good articles that would be of interest to Kansas lawyers and primarily deal with Kansas law. Articles should be no longer than 30 pages, including footnotes, double spaced in Word or WordPerfect.

You may send a hard copy of the article or an outline of a proposed article to:

Susan McKaskle, editor,  
Kansas Bar Association  
1200 S.W. Harrison  
Topeka, KS 66612.

*Articles are reviewed  
by the Board of Editors.*



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2003 Annual Meeting of the  
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June 8-10  
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