

**5-303. Action on Petition—proof of execution.**

*The Register shall assume due execution of the will (a) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution; or (b), if it does not so appear, or if the will does not contain such a recital, then upon the verified statement of any person with personal knowledge of the circumstances of execution, whether or not the persons were in fact attesting witnesses.*

**5-304. Finality of action in administrative probate.**

(a) *Generally. Unless a timely request for judicial probate has been filed pursuant to subsection (b) of this Section, or unless such a request has been filed pursuant to Section 5-402 within four months of administrative probate, any action taken therein shall be final and binding as to all interested persons. Except as provided in subsection (b), no defect in a Petition or proceeding relating to administrative probate shall affect the probate or the grant of letters.*

(b) *Exceptions. An administrative probate may be set aside and a proceeding for judicial probate instituted if, following a request by an interested person within eighteen months of the decedent's death, the Court finds that*

(1) *the proponent of a later offered will, in spite of the exercise of reasonable diligence in efforts to locate any will, was actually unaware of such will's existence at the time of the prior probate; or*

(2) *the notice provided in Section 2-209 was not given to such interested person nor did he have actual notice of the Petition for Probate; or*

(3) *there was fraud, material mistake or substantial irregularity in the prior probate proceeding.*

**Part 4—Judicial Probate.**

**5-401. Nature of proceeding.**

*Judicial probate is a proceeding instituted by the filing of a petition for such probate by an interested person, or creditor, with the Court for the probate of a will or a determination of the decedent's intestacy, and for the appointment of a personal representative. Such proceeding is conducted after notice as provided in Section 5-403, and shall be final except as provided in Section 5-406. If no Petition is filed within a reasonable time the Register may file same with the approval of the Court.*

**5-402. When mandatory.**

*A proceeding for judicial probate shall be instituted at any time before administrative probate or within the period after administrative probate provided by Section 5-304.*

(a) *at the request of an interested person;*

(b) *by a creditor in the event that there has been no administrative probate;*

(c) *if it appears to the Court or the Register that the petition for administrative probate is materially incomplete or incorrect in any respect;*