

1                                   **UNIFORM PROBATE CODE AMENDMENTS**

2                                                           1999 GENERAL SESSION

3                                                           STATE OF UTAH

4                                                           **Sponsor: John L. Valentine**

5 AN ACT RELATING TO THE UNIFORM PROBATE CODE; AMENDING DEFINITIONS;  
6 MODIFYING PROVISIONS REGARDING ELECTIVE SHARES, DECEDENT'S NET  
7 PROBATE ESTATE, EXCLUSIONS, VALUATION, AND OVERLAPPING APPLICATION;  
8 AND MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11         **75-1-201**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

12         **75-2-202**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

13         **75-2-204**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

14         **75-2-208**, as enacted by Chapter 39, Laws of Utah 1998

15         **75-2-209**, as enacted by Chapter 39, Laws of Utah 1998

16         **75-5-401**, as last amended by Chapter 104, Laws of Utah 1988

17 *Be it enacted by the Legislature of the state of Utah:*

18         Section 1. Section **75-1-201** is amended to read:

19         **75-1-201. General definitions.**

20             Subject to additional definitions contained in the subsequent chapters that are applicable  
21 to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

22             (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,  
23 an individual authorized to make decisions concerning another's health care, and an individual  
24 authorized to make decisions for another under a natural death act.

25             (2) "Application" means a written request to the registrar for an order of informal probate  
26 or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

27             (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present

28 or future interest, vested or contingent, and also includes the owner of an interest by assignment  
29 or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust;  
30 as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance  
31 or annuity policy, of an account with POD designation, of a security registered in beneficiary form  
32 (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate  
33 transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes  
34 a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a  
35 donee, appointee, or taker in default of a power of appointment, and a person in whose favor a  
36 power of attorney or a power held in any individual, fiduciary, or representative capacity is  
37 exercised.

38 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an  
39 insurance or annuity policy, of an account with POD designation, of a security registered in  
40 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other  
41 nonprobate transfer at death.

42 (5) "Child" includes any individual entitled to take as a child under this code by intestate  
43 succession from the parent whose relationship is involved and excludes any person who is only  
44 a stepchild, a foster child, a grandchild, or any more remote descendant.

45 (6) "Claims," in respect to estates of decedents and protected persons, includes liabilities  
46 of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities  
47 of the estate which arise at or after the death of the decedent or after the appointment of a  
48 conservator, including funeral expenses and expenses of administration. "Claims" does not include  
49 estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person  
50 to specific assets alleged to be included in the estate.

51 (7) "Conservator" means a person who is appointed by a court to manage the estate of a  
52 protected person.

53 (8) "Court" means any of the courts of record in this state having jurisdiction in matters  
54 relating to the affairs of decedents.

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

58 (10) "Devise," when used as a noun, means a testamentary disposition of real or personal

59 property and, when used as a verb, means to dispose of real or personal property by will.

60 (11) "Devisee" means any person designated in a will to receive a devise. For the purposes  
61 of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing  
62 trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the  
63 beneficiaries are not devisees.

64 (12) "Disability" means cause for a protective order as described by Section 75-5-401.

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

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

75 (15) "Exempt property" means that property of a decedent's estate which is described in  
76 Section 75-2-403.

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

78 (17) "Foreign personal representative" means a personal representative of another  
79 jurisdiction.

80 (18) "Formal proceedings" means proceedings conducted before a judge with notice to  
81 interested persons.

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

86 (20) "Guardian" means a person who has qualified as a guardian of a minor or  
87 incapacitated person pursuant to testamentary or court appointment, but excludes one who is  
88 merely a guardian ad litem.

89 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the

90 surviving spouse and state, who are entitled under the statutes of intestate succession to the  
91 property of a decedent.

92 (22) "Incapacitated person" means [~~an individual described in Section 75-5-303~~] any  
93 person who is impaired by reason of mental illness, mental deficiency, physical illness or  
94 disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent  
95 of lacking sufficient understanding or capacity to make or communicate responsible decisions.

96 (23) "Informal proceedings" mean those conducted without notice to interested persons  
97 by an officer of the court acting as a registrar for probate of a will or appointment of a personal  
98 representative.

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

105 (25) "Issue" of a person means descendant as defined in Subsection (9).

106 (26) "Joint tenants with the right of survivorship" and "community property with the right  
107 of survivorship" includes coowners of property held under circumstances that entitle one or more  
108 to the whole of the property on the death of the other or others, but excludes forms of coownership  
109 registration in which the underlying ownership of each party is in proportion to that party's  
110 contribution.

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

112 (28) "Letters" includes letters testamentary, letters of guardianship, letters of  
113 administration, and letters of conservatorship.

114 (29) "Minor" means a person who is under [~~21~~] 18 years of age.

115 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property is  
116 used as security.

117 (31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction  
118 at the time of his death.

119 (32) "Organization" includes a corporation, limited liability company, business trust,  
120 estate, trust, partnership, joint venture, association, government or governmental subdivision or

121 agency, or any other legal or commercial entity.

122 (33) "Parent" includes any person entitled to take, or who would be entitled to take if the  
123 child died without a will, as a parent under this code by intestate succession from the child whose  
124 relationship is in question and excludes any person who is only a stepparent, foster parent, or  
125 grandparent.

126 (34) "Payor" means a trustee, insurer, business entity, employer, government,  
127 governmental agency or subdivision, or any other person authorized or obligated by law or a  
128 governing instrument to make payments.

129 (35) "Person" means an individual or an organization.

130 (36) (a) "Personal representative" includes executor, administrator, successor personal  
131 representative, special administrator, and persons who perform substantially the same function  
132 under the law governing their status.

133 (b) "General personal representative" excludes special administrator.

134 (37) "Petition" means a written request to the court for an order after notice.

135 (38) "Proceeding" includes action at law and suit in equity.

136 (39) "Property" includes both real and personal property or any interest therein and means  
137 anything that may be the subject of ownership.

138 (40) "Protected person" [~~is as defined in Section 75-5-401~~] means a person for whom a  
139 conservator has been appointed. A "minor protected person" means a minor for whom a  
140 conservator has been appointed because of minority.

141 (41) "Protective proceeding" means a proceeding described in Section 75-5-401.

142 (42) "Registrar" refers to the official of the court designated to perform the functions of  
143 registrar as provided in Section 75-1-307.

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

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

152 (45) "Special administrator" means a personal representative as described in Sections  
153 75-3-614 through 75-3-618.

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

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

159 (48) "Successors" means persons, other than creditors, who are entitled to property of a  
160 decedent under the decedent's will or this title.

161 (49) "Supervised administration" refers to the proceedings described in Title 75, Chapter  
162 3, Part 5, Supervised Administration.

163 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security  
164 Registration Act, means that an individual has neither predeceased an event, including the death  
165 of another individual, nor is considered to have predeceased an event under Section 75-2-104 or  
166 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and  
167 "surviving."

168 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

169 (52) "Testator" includes an individual of either sex.

170 (53) "Trust" includes any express trust, private or charitable, with additions thereto,  
171 wherever and however created. The term also includes a trust created or determined by judgment  
172 or decree under which the trust is to be administered in the manner of an express trust. The term  
173 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal  
174 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial  
175 arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for  
176 certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans  
177 under Title 58, Chapter 58, Preneed Funeral Arrangement Act, security arrangements, liquidation  
178 trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages,  
179 profits, pensions, or employee benefits of any kind, and any arrangement under which a person is  
180 nominee or escrowee for another.

181 (54) "Trustee" includes an original, additional, or successor trustee, whether or not  
182 appointed or confirmed by the court.

183 (55) "Ward" means ~~[an individual described in Section 75-5-303]~~ a person for whom a  
184 guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed  
185 solely because of minority.

186 (56) "Will" includes codicil and any testamentary instrument which merely appoints an  
187 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the  
188 right of an individual or class to succeed to property of the decedent passing by intestate  
189 succession.

190 Section 2. Section **75-2-202** is amended to read:

191 **75-2-202. Elective share -- Supplemental elective share amount -- Effect of election**  
192 **on statutory benefits -- Nondomiciliary.**

193 (1) The surviving spouse of a decedent who dies domiciled in Utah has a right of election,  
194 under the limitations and conditions stated in this part, to take an elective-share amount equal to  
195 the value of 1/3 of the augmented estate.

196 (2) If the sum of the amounts described in [~~Section 75-2-207,~~] Subsection 75-2-209(1)[~~(a)~~],  
197 and that part of the elective-share amount payable from the decedent's probate estate and  
198 nonprobate transfers to others under Subsections 75-2-209(2) and (3) is less than \$25,000, the  
199 surviving spouse is entitled to a supplemental elective-share amount equal to \$25,000, minus the  
200 sum of the amounts described in those sections. The supplemental elective-share amount is  
201 payable from the decedent's probate estate and from recipients of the decedent's nonprobate  
202 transfers to others in the order of priority set forth in Subsections 75-2-209(2) and (3).

203 (3) If the right of election is exercised by or on behalf of the surviving spouse, the  
204 surviving spouse's homestead allowance, exempt property, and family allowance, if any, are  
205 charged against, and are not in addition to, the elective-share and supplemental elective-share  
206 amounts. [~~Any nonprobate transfer, as provided in Section 75-2-206, received by the surviving~~  
207 ~~spouse is also chargeable against the elective-share and supplemental elective-share amounts.]~~

208 (4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside  
209 Utah to take an elective share in property in Utah is governed by the law of the decedent's domicile  
210 at death.

211 Section 3. Section **75-2-204** is amended to read:

212 **75-2-204. Decedent's net probate estate.**

213 [~~The~~] Unless excluded under Section 75-2-208, the value of the augmented estate includes

214 the value of the decedent's probate estate, reduced by funeral and administration expenses,  
215 homestead allowance, family allowances, exempt property, and enforceable claims.

216 Section 4. Section **75-2-208** is amended to read:

217 **75-2-208. Exclusions, valuation, and overlapping application.**

218 (1) The value of any separate property of the decedent or the decedent's surviving spouse  
219 is excluded from the augmented estate even if it otherwise would be included in the augmented  
220 estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property  
221 if:

222 (a) owned at the date of the most recent marriage of the decedent and the decedent's  
223 surviving spouse;

224 (b) acquired by gift or disposition at death from a person other than the decedent or the  
225 decedent's surviving spouse;

226 (c) acquired in exchange for or with the proceeds of other separate property;

227 (d) designated as separate property by written waiver under Section 75-2-213; or

228 (e) acquired as a recovery for personal injury but only to the extent attributable to expenses  
229 paid or otherwise satisfied from separate property.

230 (2) Income attributable to investment, rental, licensing or other use of separate property  
231 during the most recent marriage of the decedent and the decedent's surviving spouse is separate  
232 property.

233 (3) Appreciation in the value of separate property during the most recent marriage of the  
234 decedent and the decedent's surviving spouse is separate property.

235 (4) Except as provided in this Subsection (4), any increase in the value of separate property  
236 due to improvements to or the reduction in debt owed against separate property during the most  
237 recent marriage of the decedent and the decedent's surviving spouse is separate property. An  
238 amount equal to any payment for improvements to or the reduction in debt owed against separate  
239 property of the decedent made during the most recent marriage of the decedent and the decedent's  
240 surviving spouse from the joint or commingled funds of the decedent and the decedent's surviving  
241 spouse, or from the separate property of the surviving spouse, shall not be separate property to the  
242 extent of the amount actually paid for the improvements or the amount actually paid for the  
243 reduction in debt, including principal, interest, and other payments under the note, owed against  
244 separate property. The amount that is determined not to be separate property may not exceed the



245 value of the separate property.

246 (5) All property of the decedent or the decedent's surviving spouse, whether or not  
247 commingled, is rebuttably presumed not to be separate property. [~~Separate property that has been~~  
248 ~~commingled with other property that is not separate property shall be rebuttably presumed not to~~  
249 ~~be separate property unless it can be shown what percentage or amount of the commingled~~  
250 ~~property came from separate property, in which case the amount or percentage of commingled~~  
251 ~~property will remain separate property. Property held by the decedent and the decedent's surviving~~  
252 ~~spouse as joint tenants at the date of the decedent's death shall not be separate property.]~~

253 (6) The value of any property is excluded from the decedent's nonprobate transfers to  
254 others:

255 (a) to the extent the decedent received adequate and full consideration in money or  
256 money's worth for a transfer of the property; or

257 (b) if the property was transferred with the written joinder of, or if the transfer was  
258 consented to in writing by, the surviving spouse.

259 (7) The value of property:

260 (a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is  
261 reduced in each category by enforceable claims against the included property; and

262 (b) includes the commuted value of any present or future interest and the commuted value  
263 of amounts payable under any trust, life insurance settlement option, annuity contract, public or  
264 private pension, disability compensation, death benefit or retirement plan, or any similar  
265 arrangement, exclusive of the federal Social Security system.

266 (8) In case of overlapping application to the same property of the section or subsections  
267 of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under  
268 the provision yielding the greatest value, and under only one overlapping provision if they all yield  
269 the same value.

270 Section 5. Section **75-2-209** is amended to read:

271 **75-2-209. Sources from which elective share payable -- Elective share amount --**  
272 **Unsatisfied balance.**

273 (1) In a proceeding for an elective share, the following are applied first to satisfy the  
274 elective-share amount and to reduce or eliminate any contributions due from the decedent's probate  
275 estate and recipients of the decedent's nonprobate transfers to others:

276 (a) amounts included in the augmented estate under Section 75-2-204 [~~which~~] that pass  
277 or have passed to the surviving spouse by testate or intestate succession and amounts included in  
278 the augmented estate under Section 75-2-206;

279 (b) amounts included in the augmented estate under Section 75-2-207; [~~and~~]

280 (c) the [~~aggregate~~] value at the decedent's death of the decedent's separate property, as  
281 defined in Section 75-2-208, that passes or has passed from the decedent to the decedent's  
282 surviving spouse by reason of the decedent's death, whether by testate or intestate succession or  
283 by nonprobate transfer [~~under Section 75-2-206 that are not included in the augmented estate~~] at  
284 the decedent's death; and

285 (d) the surviving spouse's homestead allowance, exempt property, and family allowance,  
286 \_\_\_\_\_.

(2) If, after the application of Subsection (1), 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 probate estate and in the decedent's nonprobate transfers to others, other than amounts included under Subsection 75-2-205(3)(a) or (c), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's 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 equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(3) If, after the application of Subsections (1) and (2), 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-share amount is equitably 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.

Section 6. Section **75-5-401** is amended to read:

**75-5-401. Protective proceedings.**

(1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

307 (a) Appointment of a conservator or other protective order may be made in relation to the  
308 estate and affairs of a minor if the court determines that a minor owns money or property that  
309 requires management or protection which cannot otherwise be provided, has or may have business  
310 affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's  
311 support and education and protection is necessary or desirable to obtain or provide funds.

312 (b) The provisions of Subsection (1) (a) may be applied to a person beyond minority up  
313 to age 21 under special circumstances as determined by the court.

314 (2) Appointment of a conservator or other protective order may be made in relation to the  
315 estate and affairs of a person if the court determines that the person:

316 (a) is unable to manage the person's property and affairs effectively for reasons such as  
317 mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic  
318 intoxication, confinement, detention by a foreign power, or disappearance; and

319 (b) has property which will be wasted or dissipated unless proper management is provided  
320 or that funds are needed for the support, care, and welfare of the person or those entitled to be  
321 supported by the person and protection is necessary or desirable to obtain or provide funds.

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**Legislative Review Note**  
**as of 2-4-99 10:31 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**