

**Estate Planning Recodification**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Anthony E. Loubet

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**LONG TITLE**

**General Description:**

This bill recodifies and amends statutes related to estate planning.

**Highlighted Provisions:**

This bill:

- coordinates definitions between Title 75, Utah Uniform Probate Code, Title 75A, Fiduciaries, and Title 75B, Trusts;
- modifies the definitions for Title 75, Utah Uniform Probate Code;
- recodifies and clarifies a statute regarding the effective date of Title 75, Utah Uniform Probate Code;
- recodifies Title 75, Chapter 7, Utah Uniform Trust Code, to Title 75B, Chapter 2, Uniform Trust Code;
- recodifies Title 75, Chapter 12, Uniform Directed Trust Act, to Title 75B, Chapter 3, Uniform Directed Trust Act;
- includes a coordination clause to explain that certain definitions will not be enacted in Title 75A, Chapter 9, Uniform Health-Care Decisions Act, if this bill and S.B. 134, Health-Care Decisions Act Amendments, both pass and become law;
- includes a coordination clause to address a technical conflict with a cross-reference change if this bill and H.B. 334, Guardianships and Supported Decision-Making Agreements Amendments, both pass and become law; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides coordination clauses.

**Utah Code Sections Affected:**

## AMENDS:

**7-5-1**, as last amended by Laws of Utah 2013, Chapter 364  
**7-5-6**, as last amended by Laws of Utah 2014, Chapter 189  
**7-5-7**, as last amended by Laws of Utah 2014, Chapters 97, 189  
**7-5-10**, as last amended by Laws of Utah 2004, Chapter 89  
**7-5-11**, as last amended by Laws of Utah 2014, Chapter 189  
**8-4-2**, as last amended by Laws of Utah 2010, Chapter 324  
**26B-3-1008**, as renumbered and amended by Laws of Utah 2023, Chapter 306  
**26B-3-1013**, as renumbered and amended by Laws of Utah 2023, Chapter 306  
**49-11-303**, as last amended by Laws of Utah 2005, Chapter 116  
**51-7-14**, as last amended by Laws of Utah 2023, Chapter 242  
**53B-8a-107**, as last amended by Laws of Utah 2023, Chapter 242  
**58-9-703**, as last amended by Laws of Utah 2007, Chapter 144  
**59-10-103**, as last amended by Laws of Utah 2023, Chapter 44  
**75-1-102**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-103**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-104**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-105**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-106**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-201**, as last amended by Laws of Utah 2024, Chapter 364  
**75-1-301**, as last amended by Laws of Utah 1992, Chapter 30  
**75-1-303**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-304**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-305**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-309**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-310**, as enacted by Laws of Utah 1975, Chapter 150  
**75-1-311**, as last amended by Laws of Utah 1977, Chapter 194  
**75-1-404**, as enacted by Laws of Utah 1975, Chapter 150  
**75-2-803**, as last amended by Laws of Utah 2024, Chapter 153  
**75-2-1209**, as last amended by Laws of Utah 2004, Chapter 89  
**75-2-1402**, as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 1  
**75-3-101**, as enacted by Laws of Utah 1975, Chapter 150  
**75-3-105**, as enacted by Laws of Utah 1975, Chapter 150

62        **75-3-303**, as last amended by Laws of Utah 2013, Chapter 364  
63        **75-3-308**, as last amended by Laws of Utah 1998, Chapter 39  
64        **75-3-504**, as enacted by Laws of Utah 1975, Chapter 150  
65        **75-3-608**, as enacted by Laws of Utah 1975, Chapter 150  
66        **75-3-616**, as enacted by Laws of Utah 1975, Chapter 150  
67        **75-3-703**, as last amended by Laws of Utah 2004, Chapter 89  
68        **75-3-704**, as last amended by Laws of Utah 1988, Chapter 110  
69        **75-3-710**, as last amended by Laws of Utah 1983, Chapter 226  
70        **75-3-714**, as last amended by Laws of Utah 1992, Chapter 30  
71        **75-3-913**, as last amended by Laws of Utah 2004, Chapter 89  
72        **75-3-915**, as enacted by Laws of Utah 1975, Chapter 150  
73        **75-3-916**, as last amended by Laws of Utah 1983, Chapter 226  
74        **75-3-1008**, as enacted by Laws of Utah 1975, Chapter 150  
75        **75-5-303**, as last amended by Laws of Utah 2024, Chapter 113  
76        **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150  
77        **75-5-416**, as last amended by Laws of Utah 2014, Chapter 142  
78        **75-5-417**, as last amended by Laws of Utah 2022, Chapter 358  
79        **75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253  
80        **75-6-201**, as last amended by Laws of Utah 1986, Chapter 158  
81        **75A-1-101**, as enacted by Laws of Utah 2024, Chapter 364  
82        **75A-1-201**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
83        **75A-2-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
84        **75A-2-120**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
85        **75A-3-101**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
86        **75A-4-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
87        **75A-4-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
88        **75A-5-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
89        **75A-5-202**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
90        **75A-5-203**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
91        **75A-5-303**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
92        **75A-5-304**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
93        **75A-6-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
94        **75A-6-112**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
95        **75A-6-113**, as renumbered and amended by Laws of Utah 2024, Chapter 364

96       **75A-7-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364

97       **75A-8-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364

98       **75B-1-101**, as enacted by Laws of Utah 2024, Chapter 364

99       **75B-1-201**, as enacted by Laws of Utah 2024, Chapter 364

100       **75B-1-301**, as enacted by Laws of Utah 2024, Chapter 364

101       **75B-1-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364

102       **78B-5-505**, as last amended by Laws of Utah 2021, Chapter 260

103   ENACTS:

104       **75B-2-101**, Utah Code Annotated 1953

105       **75B-3-101**, Utah Code Annotated 1953

106   RENUMBERS AND AMENDS:

107       **75-1-111**, (Renumbered from 75-8-101, as enacted by Laws of Utah 1975, Chapter  
108       150)

109       **75B-2-102**, (Renumbered from 75-7-102, as enacted by Laws of Utah 2004, Chapter  
110       89)

111       **75B-2-103**, (Renumbered from 75-7-103, as last amended by Laws of Utah 2020,  
112       Chapter 348)

113       **75B-2-104**, (Renumbered from 75-7-104, as enacted by Laws of Utah 2004, Chapter  
114       89)

115       **75B-2-105**, (Renumbered from 75-7-105, as last amended by Laws of Utah 2024,  
116       Chapter 364)

117       **75B-2-106**, (Renumbered from 75-7-106, as enacted by Laws of Utah 2004, Chapter  
118       89)

119       **75B-2-107**, (Renumbered from 75-7-107, as last amended by Laws of Utah 2024,  
120       Chapter 364)

121       **75B-2-108**, (Renumbered from 75-7-108, as enacted by Laws of Utah 2004, Chapter  
122       89)

123       **75B-2-109**, (Renumbered from 75-7-109, as enacted by Laws of Utah 2004, Chapter  
124       89)

125       **75B-2-110**, (Renumbered from 75-7-110, as enacted by Laws of Utah 2004, Chapter  
126       89)

127       **75B-2-111**, (Renumbered from 75-7-111, as enacted by Laws of Utah 2004, Chapter  
128       89)

129       **75B-2-112**, (Renumbered from 75-7-112, as enacted by Laws of Utah 2004, Chapter

89)

**75B-2-113**, (Renumbered from 75-7-1201, as enacted by Laws of Utah 2004, Forth  
Special Session, Chapters 1, 1)

**75B-2-201**, (Renumbered from 75-7-201, as last amended by Laws of Utah 2003,  
Second Special Session, Chapters 3, 3)

**75B-2-202**, (Renumbered from 75-7-202, as last amended by Laws of Utah 2004,  
Chapter 89)

**75B-2-203**, (Renumbered from 75-7-203, as last amended by Laws of Utah 2024,  
Chapter 158)

**75B-2-204**, (Renumbered from 75-7-204, as last amended by Laws of Utah 2003,  
Second Special Session, Chapters 3, 3)

**75B-2-205**, (Renumbered from 75-7-205, as last amended by Laws of Utah 2024,  
Chapter 158)

**75B-2-301**, (Renumbered from 75-7-301, as last amended by Laws of Utah 2024,  
Chapter 364)

**75B-2-302**, (Renumbered from 75-7-302, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-303**, (Renumbered from 75-7-303, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-304**, (Renumbered from 75-7-304, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-305**, (Renumbered from 75-7-305, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-401**, (Renumbered from 75-7-401, as last amended by Laws of Utah 2009,  
Chapter 278)

**75B-2-402**, (Renumbered from 75-7-402, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-403**, (Renumbered from 75-7-403, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-404**, (Renumbered from 75-7-404, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-405**, (Renumbered from 75-7-405, as repealed and reenacted by Laws of Utah  
2004, Chapter 89)

**75B-2-406**, (Renumbered from 75-7-406, as repealed and reenacted by Laws of Utah

164 2004, Chapter 89)  
165 **75B-2-407**, (Renumbered from 75-7-407, as repealed and reenacted by Laws of Utah  
166 2004, Chapter 89)  
167 **75B-2-408**, (Renumbered from 75-7-408, as repealed and reenacted by Laws of Utah  
168 2004, Chapter 89)  
169 **75B-2-409**, (Renumbered from 75-7-409, as repealed and reenacted by Laws of Utah  
170 2004, Chapter 89)  
171 **75B-2-410**, (Renumbered from 75-7-410, as repealed and reenacted by Laws of Utah  
172 2004, Chapter 89)  
173 **75B-2-411**, (Renumbered from 75-7-411, as repealed and reenacted by Laws of Utah  
174 2004, Chapter 89)  
175 **75B-2-412**, (Renumbered from 75-7-412, as enacted by Laws of Utah 2004, Chapter  
176 89)  
177 **75B-2-413**, (Renumbered from 75-7-413, as enacted by Laws of Utah 2004, Chapter  
178 89)  
179 **75B-2-414**, (Renumbered from 75-7-414, as enacted by Laws of Utah 2004, Chapter  
180 89)  
181 **75B-2-415**, (Renumbered from 75-7-415, as enacted by Laws of Utah 2004, Chapter  
182 89)  
183 **75B-2-416**, (Renumbered from 75-7-416, as enacted by Laws of Utah 2004, Chapter  
184 89)  
185 **75B-2-417**, (Renumbered from 75-7-417, as enacted by Laws of Utah 2004, Chapter  
186 89)  
187 **75B-2-501**, (Renumbered from 75-7-501, as last amended by Laws of Utah 2024,  
188 Chapter 364)  
189 **75B-2-502**, (Renumbered from 75-7-502, as enacted by Laws of Utah 2004, Chapter  
190 89)  
191 **75B-2-503**, (Renumbered from 75-7-503, as last amended by Laws of Utah 2021,  
192 Chapter 260)  
193 **75B-2-504**, (Renumbered from 75-7-504, as enacted by Laws of Utah 2004, Chapter  
194 89)  
195 **75B-2-505**, (Renumbered from 75-7-505, as last amended by Laws of Utah 2024,  
196 Chapter 364)  
197 **75B-2-506**, (Renumbered from 75-7-506, as enacted by Laws of Utah 2004, Chapter

198 89)  
199 **75B-2-507**, (Renumbered from 75-7-507, as enacted by Laws of Utah 2004, Chapter  
200 89)  
201 **75B-2-508**, (Renumbered from 75-7-508, as last amended by Laws of Utah 2023,  
202 Chapter 330)  
203 **75B-2-509**, (Renumbered from 75-7-509, as last amended by Laws of Utah 2023,  
204 Chapter 330)  
205 **75B-2-510**, (Renumbered from 75-7-510, as renumbered and amended by Laws of  
206 Utah 2004, Chapter 89)  
207 **75B-2-511**, (Renumbered from 75-7-511, as last amended by Laws of Utah 2023,  
208 Chapter 330)  
209 **75B-2-512**, (Renumbered from 75-7-512, as renumbered and amended by Laws of  
210 Utah 2004, Chapter 89)  
211 **75B-2-513**, (Renumbered from 75-7-513, as last amended by Laws of Utah 2004,  
212 Chapter 282 and renumbered and amended by Laws of Utah 2004, Chapter 89)  
213 **75B-2-514**, (Renumbered from 75-7-514, as renumbered and amended by Laws of  
214 Utah 2004, Chapter 89)  
215 **75B-2-515**, (Renumbered from 75-7-515, as renumbered and amended by Laws of  
216 Utah 2004, Chapter 89)  
217 **75B-2-516**, (Renumbered from 75-7-516, as renumbered and amended by Laws of  
218 Utah 2004, Chapter 89)  
219 **75B-2-517**, (Renumbered from 75-7-517, as renumbered and amended by Laws of  
220 Utah 2004, Chapter 89)  
221 **75B-2-518**, (Renumbered from 75-7-518, as renumbered and amended by Laws of  
222 Utah 2004, Chapter 89)  
223 **75B-2-519**, (Renumbered from 75-7-519, as renumbered and amended by Laws of  
224 Utah 2004, Chapter 89)  
225 **75B-2-601**, (Renumbered from 75-7-604, as enacted by Laws of Utah 2004, Chapter  
226 89)  
227 **75B-2-602**, (Renumbered from 75-7-605, as enacted by Laws of Utah 2004, Chapter  
228 89)  
229 **75B-2-603**, (Renumbered from 75-7-606, as last amended by Laws of Utah 2019,  
230 Chapter 153)  
231 **75B-2-604**, (Renumbered from 75-7-607, as enacted by Laws of Utah 2004, Chapter

232 89)  
233 **75B-2-701**, (Renumbered from 75-7-701, as enacted by Laws of Utah 2004, Chapter  
234 89)  
235 **75B-2-702**, (Renumbered from 75-7-702, as enacted by Laws of Utah 2004, Chapter  
236 89)  
237 **75B-2-703**, (Renumbered from 75-7-703, as last amended by Laws of Utah 2019,  
238 Chapter 153)  
239 **75B-2-704**, (Renumbered from 75-7-704, as enacted by Laws of Utah 2004, Chapter  
240 89)  
241 **75B-2-705**, (Renumbered from 75-7-705, as enacted by Laws of Utah 2004, Chapter  
242 89)  
243 **75B-2-706**, (Renumbered from 75-7-706, as enacted by Laws of Utah 2004, Chapter  
244 89)  
245 **75B-2-707**, (Renumbered from 75-7-707, as enacted by Laws of Utah 2004, Chapter  
246 89)  
247 **75B-2-708**, (Renumbered from 75-7-708, as enacted by Laws of Utah 2004, Chapter  
248 89)  
249 **75B-2-709**, (Renumbered from 75-7-709, as enacted by Laws of Utah 2004, Chapter  
250 89)  
251 **75B-2-801**, (Renumbered from 75-7-801, as enacted by Laws of Utah 2004, Chapter  
252 89)  
253 **75B-2-802**, (Renumbered from 75-7-802, as enacted by Laws of Utah 2004, Chapter  
254 89)  
255 **75B-2-803**, (Renumbered from 75-7-803, as enacted by Laws of Utah 2004, Chapter  
256 89)  
257 **75B-2-804**, (Renumbered from 75-7-804, as enacted by Laws of Utah 2004, Chapter  
258 89)  
259 **75B-2-805**, (Renumbered from 75-7-805, as enacted by Laws of Utah 2004, Chapter  
260 89)  
261 **75B-2-806**, (Renumbered from 75-7-806, as enacted by Laws of Utah 2004, Chapter  
262 89)  
263 **75B-2-807**, (Renumbered from 75-7-807, as enacted by Laws of Utah 2004, Chapter  
264 89)  
265 **75B-2-808**, (Renumbered from 75-7-808, as enacted by Laws of Utah 2004, Chapter



266 89)  
267 **75B-2-809**, (Renumbered from 75-7-809, as enacted by Laws of Utah 2004, Chapter  
268 89)  
269 **75B-2-810**, (Renumbered from 75-7-810, as enacted by Laws of Utah 2004, Chapter  
270 89)  
271 **75B-2-811**, (Renumbered from 75-7-811, as enacted by Laws of Utah 2004, Chapter  
272 89)  
273 **75B-2-812**, (Renumbered from 75-7-812, as enacted by Laws of Utah 2004, Chapter  
274 89)  
275 **75B-2-813**, (Renumbered from 75-7-813, as enacted by Laws of Utah 2004, Chapter  
276 89)  
277 **75B-2-814**, (Renumbered from 75-7-814, as last amended by Laws of Utah 2024,  
278 Chapter 364)  
279 **75B-2-815**, (Renumbered from 75-7-815, as enacted by Laws of Utah 2004, Chapter  
280 89)  
281 **75B-2-816**, (Renumbered from 75-7-816, as last amended by Laws of Utah 2024,  
282 Chapter 364)  
283 **75B-2-817**, (Renumbered from 75-7-817, as enacted by Laws of Utah 2004, Chapter  
284 89)  
285 **75B-2-901**, (Renumbered from 75-7-901, as enacted by Laws of Utah 2004, Chapter  
286 89)  
287 **75B-2-902**, (Renumbered from 75-7-902, as enacted by Laws of Utah 2004, Chapter  
288 89)  
289 **75B-2-903**, (Renumbered from 75-7-903, as enacted by Laws of Utah 2004, Chapter  
290 89)  
291 **75B-2-904**, (Renumbered from 75-7-904, as enacted by Laws of Utah 2004, Chapter  
292 89)  
293 **75B-2-905**, (Renumbered from 75-7-905, as enacted by Laws of Utah 2004, Chapter  
294 89)  
295 **75B-2-906**, (Renumbered from 75-7-906, as enacted by Laws of Utah 2004, Chapter  
296 89)  
297 **75B-2-907**, (Renumbered from 75-7-907, as enacted by Laws of Utah 2004, Chapter  
298 89)  
299 **75B-2-1001**, (Renumbered from 75-7-1001, as enacted by Laws of Utah 2004, Chapter

300 89)  
301 **75B-2-1002**, (Renumbered from 75-7-1002, as enacted by Laws of Utah 2004, Chapter  
302 89)  
303 **75B-2-1003**, (Renumbered from 75-7-1003, as enacted by Laws of Utah 2004, Chapter  
304 89)  
305 **75B-2-1004**, (Renumbered from 75-7-1004, as enacted by Laws of Utah 2004, Chapter  
306 89)  
307 **75B-2-1005**, (Renumbered from 75-7-1005, as enacted by Laws of Utah 2004, Chapter  
308 89)  
309 **75B-2-1006**, (Renumbered from 75-7-1006, as enacted by Laws of Utah 2004, Chapter  
310 89)  
311 **75B-2-1007**, (Renumbered from 75-7-1007, as enacted by Laws of Utah 2004, Chapter  
312 89)  
313 **75B-2-1008**, (Renumbered from 75-7-1008, as enacted by Laws of Utah 2004, Chapter  
314 89)  
315 **75B-2-1009**, (Renumbered from 75-7-1009, as enacted by Laws of Utah 2004, Chapter  
316 89)  
317 **75B-2-1010**, (Renumbered from 75-7-1010, as enacted by Laws of Utah 2004, Chapter  
318 89)  
319 **75B-2-1011**, (Renumbered from 75-7-1011, as last amended by Laws of Utah 2018,  
320 Chapter 281)  
321 **75B-2-1012**, (Renumbered from 75-7-1012, as enacted by Laws of Utah 2004, Chapter  
322 89)  
323 **75B-2-1013**, (Renumbered from 75-7-1013, as enacted by Laws of Utah 2004, Chapter  
324 89)  
325 **75B-2-1101**, (Renumbered from 75-7-1101, as enacted by Laws of Utah 2004, Chapter  
326 89)  
327 **75B-2-1102**, (Renumbered from 75-7-1102, as enacted by Laws of Utah 2004, Chapter  
328 89)  
329 **75B-2-1103**, (Renumbered from 75-7-1103, as enacted by Laws of Utah 2004, Chapter  
330 89)  
331 **75B-3-102**, (Renumbered from 75-12-102, as enacted by Laws of Utah 2019, Chapter  
332 153)  
333 **75B-3-103**, (Renumbered from 75-12-103, as enacted by Laws of Utah 2019, Chapter

334 153)  
335 **75B-3-104**, (Renumbered from 75-12-104, as enacted by Laws of Utah 2019, Chapter  
336 153)  
337 **75B-3-105**, (Renumbered from 75-12-105, as enacted by Laws of Utah 2019, Chapter  
338 153)  
339 **75B-3-106**, (Renumbered from 75-12-106, as enacted by Laws of Utah 2019, Chapter  
340 153)  
341 **75B-3-107**, (Renumbered from 75-12-107, as enacted by Laws of Utah 2019, Chapter  
342 153)  
343 **75B-3-108**, (Renumbered from 75-12-108, as enacted by Laws of Utah 2019, Chapter  
344 153)  
345 **75B-3-109**, (Renumbered from 75-12-109, as enacted by Laws of Utah 2019, Chapter  
346 153)  
347 **75B-3-110**, (Renumbered from 75-12-110, as enacted by Laws of Utah 2019, Chapter  
348 153)  
349 **75B-3-111**, (Renumbered from 75-12-111, as enacted by Laws of Utah 2019, Chapter  
350 153)  
351 **75B-3-112**, (Renumbered from 75-12-112, as enacted by Laws of Utah 2019, Chapter  
352 153)  
353 **75B-3-113**, (Renumbered from 75-12-113, as enacted by Laws of Utah 2019, Chapter  
354 153)  
355 **75B-3-114**, (Renumbered from 75-12-114, as enacted by Laws of Utah 2019, Chapter  
356 153)  
357 **75B-3-115**, (Renumbered from 75-12-115, as enacted by Laws of Utah 2019, Chapter  
358 153)  
359 **75B-3-116**, (Renumbered from 75-12-116, as enacted by Laws of Utah 2019, Chapter  
360 153)  
361 **75B-3-117**, (Renumbered from 75-12-117, as enacted by Laws of Utah 2019, Chapter  
362 153)  
363 **75B-3-118**, (Renumbered from 75-12-118, as enacted by Laws of Utah 2019, Chapter  
364 153)  
365 REPEALS:  
366 **75-7-101**, as repealed and reenacted by Laws of Utah 2004, Chapter 89  
367 **75-12-101**, as enacted by Laws of Utah 2019, Chapter 153

**Utah Code Sections affected by Coordination Clause:****7-5-1**, as last amended by Laws of Utah 2013, Chapter 364*Be it enacted by the Legislature of the state of Utah:**The following section is affected by a coordination clause at the end of this bill.*Section 1. Section **7-5-1** is amended to read:**7-5-1 . Definitions -- Allowable trust companies -- Exceptions.**

(1) As used in this chapter:

(a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.

(b) "Trust" means the same as that term is defined in Section 75B-1-101.

~~[(b)]~~ (c) "Trust business" means, except as provided in Subsection ~~[(1)(e)]~~ (1)(d), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law~~[-, including the definition of "trust" set forth in Subsection 75-1-201(55)]~~.

~~[(e)]~~ (d) "Trust business" does not include the following means of holding money, assets, or other property:

- (i) money held in a client trust account by an attorney authorized to practice law in this state;
- (ii) money held in connection with the purchase or sale of real estate by a person licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- (iii) money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the ~~Utah~~ Insurance Department to act as an escrow agent in this state;
- (iv) money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;
- (v) money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including money

- 402 held by an escrow agent for payment of taxes or insurance;
- 403 (vi) money and other assets held in trust on an occasional or isolated basis by a
- 404 person who does not represent that the person is engaged in the trust business in
- 405 Utah;
- 406 (vii) money or other assets found by a court to be held in an implied, resulting, or
- 407 constructive trust;
- 408 (viii) money or other assets held by a court appointed conservator, guardian, receiver,
- 409 trustee, or other fiduciary if:
- 410 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to
- 411 the court in the same manner as a personal representative under Title 75,
- 412 Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66,
- 413 Utah Rules of Civil Procedure; and
- 414 (B) the conservator, trustee, or other fiduciary is a certified public accountant or
- 415 has qualified for and received a designation as a certified financial planner,
- 416 chartered financial consultant, certified financial analyst, or similar designation
- 417 suitable to the court, that evidences the conservator's, trustee's, or other
- 418 fiduciary's professional competence to manage financial matters;
- 419 (ix) money or other assets held by a credit services organization operating in
- 420 compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 421 (x) money, securities, or other assets held in a customer account in connection with
- 422 the purchase or sale of securities by a regulated securities broker, dealer, or
- 423 transfer agent; or
- 424 (xi) money, assets, and other property held in a business trust for the benefit of
- 425 holders of certificates of beneficial interest if the fiduciary activities of the
- 426 business trust are merely incidental to conducting business in the business trust
- 427 form.
- 428 ~~[(d)]~~ (e) "Trust company" means an institution authorized to engage in the trust business
- 429 under this chapter. Only the following may be a trust company:
- 430 (i) a Utah depository institution or its wholly owned subsidiary;
- 431 (ii) an out-of-state depository institution authorized to engage in business as a
- 432 depository institution in Utah or its wholly owned subsidiary;
- 433 (iii) a corporation, including a credit union service organization, owned entirely by
- 434 one or more federally insured depository institutions as defined in Subsection
- 435 7-1-103(8);

(iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and

(v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

(2) Only a trust company may engage in the trust business in this state.

(3) The requirements of this chapter do not apply to:

(a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;

(b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or

(c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Section 2. Section **7-5-6** is amended to read:

**7-5-6 . Confidentiality of communications and writings concerning trust --**

**Actions to protect property or authorized under probate laws not precluded.**

Any trust company exercising the powers and performing the duties described in this chapter shall keep inviolate all communications and writings made to or by that trust company relating to the existence, condition, management or administration of any agency or fiduciary account confided to it and no creditor or stockholder of any such trust company shall be entitled to disclosure or knowledge of any such communication or writing, except that the directors, president, vice president, manager, treasurer, and trust officers, and any employees assigned to work on the trust business, and the attorney or auditor employed by it shall be entitled to knowledge of any such communication or writing and except that in any suit or proceeding relating to the existence, condition, management or administration of the account, the court in which the suit is pending may require disclosure of any such communication or writing. A trust company is not, however, precluded from filing an action in court to protect trust account property or as authorized under [~~Title 75, Utah Uniform Probate Code~~] Title 75B, Trusts.

Section 3. Section **7-5-7** is amended to read:

**7-5-7 . Management and investment of trust money.**

- (1) Money received or held by a trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and may not be held uninvested any longer than is reasonably necessary.
- (2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, money held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court [~~of competent~~] with jurisdiction, it shall make and account for the investments according to [~~Title 75, Utah Uniform Probate Code~~] Title 75B, Trusts, unless the underlying instrument provides otherwise.
- (3)(a) Money received or held as agent or fiduciary by any trust company which is also a depository institution, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the trust company shall deliver to the trust department or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating such a fiduciary or managing agency account expressly provides that money may be deposited to the commercial or savings department of the trust company, then the money may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company that deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.
- (b) Money received or held as agent or fiduciary by a trust company, whether for investment or distribution, may be deposited in an affiliated depository institution. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the depository

institution shall deliver to the trust company or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating the fiduciary or managing agency account expressly permits money to be deposited in the affiliated depository institution, the money may be so deposited without setting aside collateral securities as required under this section and deposits in the event of insolvency of the depository institution shall be treated as other general deposits are treated. A trust company that deposits trust money in an affiliated depository institution is liable for interest on the deposits only at the rates, if any, paid by the depository institution on deposits of like kind.

- (4) In carrying out all aspects of its trust business, a trust company shall have all the powers, privileges, and duties as set forth in Sections ~~[75-7-813 and 75-7-814]~~ 75B-2-813 and 75B-2-814 with respect to trustees, whether or not the trust company is acting as a trustee as defined in ~~[Title 75, Utah Uniform Probate Code]~~ Section 75B-1-101.
- (5) Nothing in this section may alter, amend, or limit the powers of a trust company acting in a fiduciary capacity as specified in the particular instrument or order creating the fiduciary relationship.

Section 4. Section **7-5-10** is amended to read:

**7-5-10 . Lending trust funds to trust company, officer, director, or employee as felony.**

- (1) Unless expressly permitted in the instrument creating a trust account or by a person authorized to give that permission or by a court order as permitted in Section ~~[75-7-802, no trust company shall]~~ 75B-2-802, a trust company may not lend to itself or to any officer or director or employee of the trust company any funds held in any trust account under the powers conferred in this chapter.
- (2) Any officer, director or employee making such a loan, or to whom such a loan is made, is guilty of a third degree felony.

Section 5. Section **7-5-11** is amended to read:

**7-5-11 . Self-dealing with trust property -- Own stock as trust property -- Policies for dealing with trust securities.**

- (1) Except as provided in Section 7-5-7, in ~~[Title 75, Utah Uniform Probate Code]~~ Title 75B, Trusts, or as authorized under the instrument creating the relationship, a trust company may not invest funds held as an agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust company or any of its directors, officers or employees, nor shall a trust company sell property held as an agent or fiduciary to the



company or to any of its directors, officers, or employees.

- (2) A trust company may retain and vote stock of the trust company or of any of its affiliates received by it as assets of any trust account or in any other fiduciary relationship of which it is appointed agent or fiduciary, unless the instrument creating the relationship otherwise provides.
- (3) Every trust company shall adopt written policies and procedures regarding decisions or recommendations to purchase or sell any security to facilitate compliance with federal and state securities laws. These policies and procedures, in particular, shall prohibit the trust company from using material inside information in connection with any decision or recommendation to purchase or sell any security.

Section 6. Section **8-4-2** is amended to read:

**8-4-2 . Endowment care cemetery trust funds -- Deposits in endowment fund --  
Reports -- Penalties for failure to file -- Investment of trust fund money -- Attestation.**

- (1) An endowment care cemetery shall establish an endowment care trust fund [~~pursuant to Title 75, Chapter 7, Utah Uniform Trust Code~~] in accordance with Title 75B, Chapter 2, Uniform Trust Code.

(a) Any newly established endowment care cemetery or existing cemetery converting to an [-]endowment care cemetery shall deposit a minimum of \$25,000 in the endowment care trust fund.

(b) Each endowment care cemetery shall deposit in the endowment care trust fund for each plot space sold or disposed of a minimum of:

- (i) \$1.50 a square foot for each grave;
- (ii) \$15 for each niche; and
- (iii) \$60 for each crypt.

- (2)(a) An endowment care cemetery shall collect endowment care funds only pursuant to a written contract of sale signed by the endowment care cemetery and the purchaser.

(b) The contract of sale shall specify the terms of the endowment care trust consistent with this section and the terms of payment.

(c) If requested by the purchaser, a copy of the endowment care trust shall be provided to the purchaser.

- (3)(a) Each endowment care cemetery shall prepare an annual written report for the benefit of its trustor lot holders.

(b) The report shall contain:

- (i) information determined to be reasonable and necessary to show compliance with

- the provisions of this chapter;
- (ii) the number and square feet of grave space;
- (iii) the number of crypts and niches sold or disposed of under endowment care during a specific period; and
- (iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts deposited in endowment care funds for crypts, niches, and grave space during a specific period, set forth on the accrual basis as determined by the cemetery authority.
- (c) An officer of the endowment care cemetery authority shall verify the report.
- (d) The report shall be on file in the principal office of the endowment care cemetery and shall be made available upon request.
- (e) The report shall be completed by the 15th day of the third month following the end of the endowment care cemetery's fiscal year.
- (4) An officer, director, partner, proprietor, or other person having control of the records of an endowment care cemetery shall provide the reports and records necessary to comply with the provisions of this chapter.
- (5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:
- (a) deposit funds collected as endowment care funds into the endowment care trust within 30 days of receipt of the funds; or
- (b) prepare the report required by Subsection (3).
- (6) Endowment care funds may be invested separately or together. The investment income shall be divided between the funds in the proportion that each contributed to the invested amount.
- (7) Endowment care funds shall be invested in accordance with Section 31A-18-105 and [ ~~Title 75, Chapter 7, Utah Uniform Trust Code~~ ] Title 75B, Chapter 2, Uniform Trust Code.
- (8)(a) An endowment care cemetery shall place endowment care funds with an independent trustee appointed by the endowment care cemetery.
- (b) A trustee may be independent even if it has common ownership with the cemetery.
- (c) The independent trustee shall be a depository institution, as defined by Section 7-1-103, or an insurer, as defined in Section 31A-1-301.
- (9)(a) The trustee shall submit to the endowment care cemetery an annual independent attestation of the endowment care trust funds.
- (b) The attestation shall state:
- (i) the total amount of the general and special endowment care funds invested by law;

- (ii) the amount of cash on hand not invested;
- (iii) the location, description, and character of the investments in which the special endowment care funds are invested;
- (iv) the value of any securities held in the endowment care fund; and
- (v) the actual financial condition of the funds.

(10)(a) A trustee may not receive compensation for services and expenses, including audits, in excess of 5% of the income derived from an endowment care fund in any year.

(b) If there are insufficient funds from the income derived from the endowment care trust fund to pay for the attestation of the endowment care funds, the endowment care cemetery shall pay amounts due from funds other than the endowment care trust fund or income derived from that fund.

(11) The income from an endowment care fund shall be used for the care, maintenance, and embellishment of the cemetery as determined by the endowment care cemetery, and to pay for administering the fund.

Section 7. Section **26B-3-1008** is amended to read:

**26B-3-1008 . Statute of limitations -- Survival of right of action -- Insurance policy not to limit time allowed for recovery.**

(1)(a) Subject to Subsection (6), action commenced by the department under this part against a health insurance entity shall be commenced within:

- (i) subject to Subsection (7), six years after the day on which the department submits the claim for recovery or payment for the health care item or service upon which the action is based; or
- (ii) six months after the date of the last payment for medical assistance, whichever is later.

(b) An action against any other third party, the recipient, or anyone to whom the proceeds are payable shall be commenced within:

- (i) four years after the date of the injury or onset of the illness; or
- (ii) six months after the date of the last payment for medical assistance, whichever is later.

(2) The death of the recipient does not abate any right of action established by this part.

(3)(a) No insurance policy issued or renewed after June 1, 1981, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than 24 months from the date

the provider furnishes services or goods to the recipient.

(b) No insurance policy issued or renewed after April 30, 2007, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than that described in Subsection (1)(a).

(4) The provisions of this section do not apply to Section 26B-3-1013 or Sections 26B-3-1015 through 26B-3-1023.

(5) The provisions of this section supersede any other sections regarding the time limit in which an action shall be commenced, including Section ~~[75-7-509]~~ 75B-2-509.

(6)(a) Subsection (1)(a) extends the statute of limitations on a cause of action described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

(b) Subsection (1)(a) does not revive a cause of action that was time-barred on or before April 30, 2007.

(7) An action described in Subsection (1)(a) may not be commenced if the claim for recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after the day on which the health care item or service upon which the claim is based was provided.

Section 8. Section **26B-3-1013** is amended to read:

**26B-3-1013 . Estate and trust recovery.**

(1)(a) Except as provided in Subsection (1)(b), upon a recipient's death, the department may recover from the recipient's recovery estate and any trust, in which the recipient is the grantor and a beneficiary, medical assistance correctly provided for the benefit of the recipient when the recipient was 55 years old or older.

(b) The department may not make an adjustment or a recovery under Subsection (1)(a):

(i) while the deceased recipient's spouse is still living; or

(ii) if the deceased recipient has a surviving child who is:

(A) under 21 years old; or

(B) blind or disabled, as defined in the state plan.

(2)(a) The amount of medical assistance correctly provided for the benefit of a recipient and recoverable under this section is a lien against the deceased recipient's recovery estate or any trust when the recipient is the grantor and a beneficiary.

(b) The lien holds the same priority as reasonable and necessary medical expenses of the last illness as provided in Section 75-3-805.

(3)(a) For a lien described in Subsection (2), the department shall provide notice in

674 accordance with Section 38-12-102.

675 (b) Before final distribution, the department shall perfect the lien as follows:

676 (i) for an estate, by presenting the lien to the estate's personal representative in  
677 accordance with Section 75-3-804; and

678 (ii) for a trust, by presenting the lien to the trustee in accordance with Section [  
679 ~~75-7-510~~] 75B-2-510.

680 (c) The department may file an amended lien before the entry of the final order to close  
681 the estate or trust.

682 (4) Claims against a deceased recipient's inter vivos trust shall be presented in accordance  
683 with Sections [~~75-7-509 and 75-7-510~~] 75B-2-509 and 75B-2-510.

684 (5) Any trust provision that denies recovery for medical assistance is void at the time of its  
685 making.

686 (6) Nothing in this section affects the right of the department to recover Medicaid  
687 assistance before a recipient's death under Section 26B-3-1003 or 26B-3-1014.

688 (7) A lien imposed under this section is of indefinite duration.

689 Section 9. Section **49-11-303** is amended to read:

690 **49-11-303 . Fund investment standard -- Prudent investor rule.**

691 The fund shall be invested in accordance with the prudent investor rule established in [  
692 Title ~~75~~, Chapter 7, Part 9, Utah Uniform Prudent Investor Act] Title 75B, Chapter 2, Part 9,  
693 Uniform Prudent Investor Act.

694 Section 10. Section **51-7-14** is amended to read:

695 **51-7-14 . Prudent investor rule for management of investments -- Proxy voting --**  
696 **Sale of security or investment for less than cost -- State treasurer access.**

697 (1) Subject to Subsection (2), a person selecting investments authorized by Sections 51-7-11  
698 and 51-7-13 shall:

699 (a) select investments not for speculation but for investment; and

700 (b) consider:

701 (i) the probable safety of the capital;

702 (ii) the probable benefits to be derived;

703 (iii) the probable duration for which that investment may be made;

704 (iv) the investment objectives specified in Section 51-7-17; and

705 (v) the investment portfolio as a whole.

706 (2) A public treasurer shall:

707 (a) invest public funds in accordance with the prudent investor rule established in [Title

~~75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act]~~ Title 75B, Chapter 2, Part 9, Uniform Prudent Investor Act;

(b) make public fund investment decisions with the sole purpose of maximizing the risk-adjusted return on the investments; and

(c) to the extent practicable:

(i)(A) retain the right to vote investor proxies; or

(B) if the investments are commingled with another investor's funds, request the right to vote investor proxies; and

(ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive benefit of beneficiaries.

(3) A public treasurer may sell or otherwise dispose of, at less than cost, any security or investment in which public funds under the public treasurer's jurisdiction have been invested if that sale or other disposition tends to maximize the benefits that may be derived from the changed investment.

(4)(a) A public treasurer shall make proxy voting records available to the state treasurer upon the state treasurer's request.

(b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the originating public treasurer.

Section 11. Section **53B-8a-107** is amended to read:

**53B-8a-107 . Program, administrative, and endowment funds -- Investment and payments from funds -- Proxy voting -- State treasurer access.**

(1) The plan shall segregate money received by the plan into three funds, the program fund, the administrative fund, and the endowment fund.

(2) The board shall:

(a) invest the plan in a manner that is consistent with the prudent investor rule for

trustees established in [~~Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act]~~

Title 75B, Chapter 2, Part 9, Uniform Prudent Investor Act;

(b) in accordance with the board's fiduciary responsibilities, make investment decisions with the sole purpose of maximizing the risk-adjusted return on the investments; and

(c) to the extent practicable:

(i)(A) retain the right to vote investor proxies; or

(B) if the investments are commingled with another investor's funds, request the right to vote investor proxies; and

(ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the

- 742 exclusive benefit of beneficiaries.
- 743 (3) Transfers may be made from the program fund to the administrative fund to pay  
744 operating costs:
- 745 (a) associated with administering the plan and as required under Sections 53B-8a-103  
746 through 53B-8a-105; and
- 747 (b) as included in the budget approved by the board.
- 748 (4)(a) All money paid by account owners in connection with account agreements shall  
749 be deposited as received into separate accounts within the program fund which shall  
750 be invested and accounted for separately.
- 751 (b) Money accrued by account owners in the program fund may be used for:
- 752 (i) payments to any institution of higher education;
- 753 (ii) payments to the account owner or beneficiary;
- 754 (iii) transfers to another 529 plan; or
- 755 (iv) other expenditures or transfers made in accordance with the account agreement.
- 756 (5)(a) All money received by the plan from the proceeds of gifts and other endowments  
757 for the purposes of the plan shall be:
- 758 (i) deposited, according to the nature of the donation, as received into the endowment  
759 fund or the administrative fund; and
- 760 (ii) invested and accounted for separately.
- 761 (b) Any gifts, grants, or donations made by any governmental unit or any person, firm,  
762 partnership, or corporation to the plan for deposit to the endowment fund or the  
763 administrative fund is a grant, gift, or donation to the state for the accomplishment of  
764 a valid public eleemosynary, charitable, and educational purpose and is not included  
765 in the income of the donor for Utah tax purposes.
- 766 (c) The endowment fund or the administrative fund may be used to enhance the savings  
767 of low income account owners investing in the plan, for scholarships, or for other  
768 college savings incentive programs as approved by the board.
- 769 (d) Transfers may be made between the endowment fund and the administrative fund  
770 upon approval by the board.
- 771 (e) Endowment fund earnings not accruing to a beneficiary under an account agreement,  
772 not transferred to the administrative fund, or not otherwise approved by the board for  
773 expenditure, shall be reinvested in the endowment fund.
- 774 (6) Subsection (2) does not prohibit the board from offering individual account owners a  
775 variety of voluntary investment options that have different risk profiles and investment

objectives.

(7)(a) The board shall make proxy voting records available to the state treasurer upon the state treasurer's request.

(b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the board.

Section 12. Section **58-9-703** is amended to read:

**58-9-703 . Trust agreement.**

(1) Each trust established by a funeral service establishment shall be administered in accordance with a trust agreement conforming with:

(a) the requirements of this chapter;

(b) rules adopted with respect to this chapter;

(c) the provisions of [~~Title 75, Chapter 7, Utah Uniform Trust Code~~] Title 75B, Chapter 2, Uniform Trust Code; and

(d) all other state and federal laws applicable to trusts and trust agreements.

(2) Each trust agreement shall require that the funeral service establishment maintain a copy of the trust agreement until five years after all of its obligations under the trust agreement have been executed or transferred.

(3) Each trust agreement shall require that the trustee:

(a) separately account for each contract; and

(b) separately record payments with respect to each contract made into the corpus of the trust.

(4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon:

(a) the death of the beneficiary;

(b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or

(c) revocation of the contract by the beneficiary or buyer.

Section 13. Section **59-10-103** is amended to read:

**59-10-103 . Definitions.**

(1) As used in this chapter:

(a)(i) "Adjusted gross income":

(A) for a resident or nonresident individual, means the same as that term is defined in Section 62, Internal Revenue Code; or

(B) for a resident or nonresident estate or trust, is as calculated in Section 67(e),



- 810 Internal Revenue Code.
- 811 (ii) "Adjusted gross income" does not include:
- 812 (A) income received from a loan forgiven in accordance with 15 U.S.C. Sec.
- 813 636(a)-(36), to the extent that a deduction for the expenditures paid with the
- 814 loan is disallowed, or a similar paycheck protection loan that is authorized by
- 815 the federal government, provided in response to COVID-19, forgiven if the
- 816 borrower meets the expenditure requirements, and exempt from federal income
- 817 tax, to the extent that a deduction for the expenditures paid with the loan is
- 818 disallowed; or
- 819 (B) an amount that an individual receives in accordance with Section 6428,
- 820 Internal Revenue Code, or an amount that an individual receives that is
- 821 authorized by the federal government as a tax credit for the 2020 tax year,
- 822 provided in response to COVID-19, paid in advance of the filing of the
- 823 individual's 2020 federal income tax return, and exempt from federal income
- 824 tax.
- 825 (b) "Corporation" includes:
- 826 (i) an association;
- 827 (ii) a joint stock company; and
- 828 (iii) an insurance company.
- 829 (c) "COVID-19" means:
- 830 (i) the severe acute respiratory syndrome coronavirus 2; or
- 831 (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.
- 832 (d) "Distributable net income" means the same as that term is defined in Section 643,
- 833 Internal Revenue Code.
- 834 (e) "Employee" means the same as that term is defined in Section 59-10-401.
- 835 (f) "Employer" means the same as that term is defined in Section 59-10-401.
- 836 (g) "Federal taxable income":
- 837 (i) for a resident or nonresident individual, means taxable income as defined by
- 838 Section 63, Internal Revenue Code; or
- 839 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
- 840 (b), Internal Revenue Code.
- 841 (h) "Fiduciary" means:
- 842 (i) a guardian;
- 843 (ii) a trustee;

- 844 (iii) an executor;  
845 (iv) an administrator;  
846 (v) a receiver;  
847 (vi) a conservator; or  
848 (vii) any person acting in any fiduciary capacity for any individual.
- 849 (i) "Guaranteed annuity interest" means the same as that term is defined in 26 C.F.R.  
850 Sec. 1.170A-6(c)(2).
- 851 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the  
852 homesteaded land that was held to have been diminished from the Uintah and Ouray  
853 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 854 (k) "Individual" means a natural person and includes aliens and minors.
- 855 (l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all  
856 or part of the trust without the consent of a person who has a substantial beneficial  
857 interest in the trust and the interest would be adversely affected by the exercise of the  
858 settlor's power to revoke or terminate all or part of the trust.
- 859 (m) "Military service" means the same as that term is defined in Pub. L. No. 108-189,  
860 Sec. 101.
- 861 (n) "Nonresident individual" means an individual who is not a resident of this state.
- 862 (o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a  
863 resident estate or trust.
- 864 (p)(i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
865 unincorporated organization:  
866 (A) through or by means of which any business, financial operation, or venture is  
867 carried on; and  
868 (B) that is not, within the meaning of this chapter, a trust, an estate, or a  
869 corporation.
- 870 (ii) "Partnership" does not include any organization not included under the definition  
871 of "partnership" in Section 761, Internal Revenue Code.
- 872 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or  
873 organization described in Subsection (1)(p)(i).
- 874 (q) "Pass-through entity" means the same as that term is defined in Section 59-10-1402.
- 875 (r) "Pass-through entity taxpayer" means the same as that term is defined in Section  
876 59-10-1402.
- 877 (s) "Qualified nongrantor charitable lead trust" means a trust:

- 878 (i) that is irrevocable;
- 879 (ii) that has a trust term measured by:
- 880 (A) a fixed term of years; or
- 881 (B) the life of a person living on the day on which the trust is created;
- 882 (iii) under which:
- 883 (A) a portion of the value of the trust assets is distributed during the trust term:
- 884 (I) to an organization described in Section 170(c), Internal Revenue Code; and
- 885 (II) as a guaranteed annuity interest or a unitrust interest; and
- 886 (B) assets remaining in the trust at the termination of the trust term are distributed
- 887 to a beneficiary:
- 888 (I) designated in the trust; and
- 889 (II) that is not an organization described in Section 170(c), Internal Revenue
- 890 Code;
- 891 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
- 892 Code; and
- 893 (v) under which the grantor of the trust is not treated as the owner of any portion of
- 894 the trust for federal income tax purposes.
- 895 (t) "Resident individual" means an individual who is domiciled in this state for any
- 896 period of time during the taxable year, but only for the duration of the period during
- 897 which the individual is domiciled in this state.
- 898 (u) "Resident estate" or "resident trust" means the same as that term is defined in Section [
- 899 75-7-103] 75B-2-103.
- 900 (v) "Service member" means the same as that term is defined in Pub. L. No. 108-189,
- 901 Sec. 101.
- 902 (w) "State income tax percentage for a nonresident estate or trust" means a percentage
- 903 equal to a nonresident estate's or trust's state taxable income for the taxable year
- 904 divided by the nonresident estate's or trust's total adjusted gross income for that
- 905 taxable year after making the adjustments required by:
- 906 (i) Section 59-10-202;
- 907 (ii) Section 59-10-207;
- 908 (iii) Section 59-10-209.1; or
- 909 (iv) Section 59-10-210.
- 910 (x) "State income tax percentage for a nonresident individual" means a percentage equal
- 911 to a nonresident individual's state taxable income for the taxable year divided by the

912 difference between:

913 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross  
914 income for that taxable year, after making the:

915 (A) additions and subtractions required by Section 59-10-114; and

916 (B) adjustments required by Section 59-10-115; and

917 (ii) if the nonresident individual described in Subsection (1)(x)(i) is a service  
918 member, the compensation the service member receives for military service if the  
919 service member is serving in compliance with military orders.

920 (y) "State income tax percentage for a part-year resident individual" means, for a taxable  
921 year, a fraction:

922 (i) the numerator of which is the sum of:

923 (A) subject to Section 59-10-1404.5, for the time period during the taxable year  
924 that the part-year resident individual is a resident, the part-year resident  
925 individual's total adjusted gross income for that time period, after making the:

926 (I) additions and subtractions required by Section 59-10-114; and

927 (II) adjustments required by Section 59-10-115; and

928 (B) for the time period during the taxable year that the part-year resident  
929 individual is a nonresident, an amount calculated by:

930 (I) determining the part-year resident individual's adjusted gross income for  
931 that time period, after making the:

932 (Aa) additions and subtractions required by Section 59-10-114; and

933 (Bb) adjustments required by Section 59-10-115; and

934 (II) calculating the portion of the amount determined under Subsection

935 (1)(y)(i)(B)(I) that is derived from Utah sources in accordance with Section  
936 59-10-117; and

937 (ii) the denominator of which is the difference between:

938 (A) the part-year resident individual's total adjusted gross income for that taxable  
939 year, after making the:

940 (I) additions and subtractions required by Section 59-10-114; and

941 (II) adjustments required by Section 59-10-115; and

942 (B) if the part-year resident individual is a service member, any compensation the  
943 service member receives for military service during the portion of the taxable  
944 year that the service member is a nonresident if the service member is serving  
945 in compliance with military orders.

- 946 (z) "Taxable income" or "state taxable income":  
947 (i) subject to Section 59-10-1404.5, for a resident individual, means the resident  
948 individual's adjusted gross income after making the:  
949 (A) additions and subtractions required by Section 59-10-114; and  
950 (B) adjustments required by Section 59-10-115;  
951 (ii) for a nonresident individual, is an amount calculated by:  
952 (A) determining the nonresident individual's adjusted gross income for the taxable  
953 year, after making the:  
954 (I) additions and subtractions required by Section 59-10-114; and  
955 (II) adjustments required by Section 59-10-115; and  
956 (B) calculating the portion of the amount determined under Subsection  
957 (1)(z)(ii)(A) that is derived from Utah sources in accordance with Section  
958 59-10-117;  
959 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and  
960 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.  
961 (aa) "Taxpayer" means any of the following that has income subject in whole or part to  
962 the tax imposed by this chapter:  
963 (i) an individual;  
964 (ii) an estate, a trust, or a beneficiary of an estate or a trust that is not a pass-through  
965 entity or a pass-through entity taxpayer;  
966 (iii) a pass-through entity; or  
967 (iv) a pass-through entity taxpayer.  
968 (bb) "Trust term" means a time period:  
969 (i) beginning on the day on which a qualified nongrantor charitable lead trust is  
970 created; and  
971 (ii) ending on the day on which the qualified nongrantor charitable lead trust  
972 described in Subsection (1)(bb)(i) terminates.  
973 (cc) "Uintah and Ouray Reservation" means the lands recognized as being included  
974 within the Uintah and Ouray Reservation in:  
975 (i) Hagen v. Utah, 510 U.S. 399 (1994); and  
976 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).  
977 (dd) "Unadjusted income" means an amount equal to the difference between:  
978 (i) the total income required to be reported by a resident or nonresident estate or trust  
979 on the resident or nonresident estate's or trust's federal income tax return for

- 980 estates and trusts for the taxable year; and
- 981 (ii) the sum of the following:
- 982 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:
- 983 (I) for administering the resident or nonresident estate or trust; and
- 984 (II) that the resident or nonresident estate or trust deducts as allowed on the
- 985 resident or nonresident estate's or trust's federal income tax return for estates
- 986 and trusts for the taxable year;
- 987 (B) the income distribution deduction that a resident or nonresident estate or trust
- 988 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the
- 989 resident or nonresident estate's or trust's federal income tax return for estates
- 990 and trusts for the taxable year;
- 991 (C) the amount that a resident or nonresident estate or trust deducts as a deduction
- 992 for estate tax or generation skipping transfer tax under Section 691(c), Internal
- 993 Revenue Code, as allowed on the resident or nonresident estate's or trust's
- 994 federal income tax return for estates and trusts for the taxable year; and
- 995 (D) the amount that a resident or nonresident estate or trust deducts as a personal
- 996 exemption under Section 642(b), Internal Revenue Code, as allowed on the
- 997 resident or nonresident estate's or trust's federal income tax return for estates
- 998 and trusts for the taxable year.
- 999 (ee) "Unitrust interest" means the same as that term is defined in 26 C.F.R. Sec.
- 1000 1.170A-6(c)(2).
- 1001 (ff) "Ute tribal member" means an individual who is enrolled as a member of the Ute
- 1002 Indian Tribe of the Uintah and Ouray Reservation.
- 1003 (gg) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- 1004 (hh) "Wages" means the same as that term is defined in Section 59-10-401.
- 1005 (2)(a) Any term used in this chapter has the same meaning as when used in comparable
- 1006 context in the laws of the United States relating to federal income taxes unless a
- 1007 different meaning is clearly required.
- 1008 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
- 1009 mean the Internal Revenue Code or other provisions of the laws of the United States
- 1010 relating to federal income taxes that are in effect for the taxable year.
- 1011 (c) Any reference to a specific section of the Internal Revenue Code or other provision
- 1012 of the laws of the United States relating to federal income taxes shall include any
- 1013 corresponding or comparable provisions of the Internal Revenue Code as amended,

redesignated, or reenacted.

Section 14. Section **75-1-102** is amended to read:

**75-1-102 . Purposes -- Rule of construction.**

- (1) This [eode] title shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this [eode] title are:
  - (a) [Fø] to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
  - (b) [Fø] to discover and make effective the intent of a decedent in distribution of [his] the decedent's property;
  - (c) [Fø] to promote a speedy and efficient system for administering the estate of the decedent and making distribution to [his] the decedent's successors;
  - (d) [Fø] to facilitate use and enforcement of certain trusts; and
  - (e) [Fø] to make uniform the law among the various jurisdictions.

Section 15. Section **75-1-103** is amended to read:

**75-1-103 . Supplementary general principles of law applicable.**

Unless displaced by the particular provisions of this [eode] title, the principles of law and equity supplement [its provisions] the provisions of this title.

Section 16. Section **75-1-104** is amended to read:

**75-1-104 . Severability.**

If any provision of this [eode] title or the application [thereof] of this title to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of [the code which] this title that can be given effect without the invalid provision or application, and to this end the provisions of this [eode] title are declared to be severable.

Section 17. Section **75-1-105** is amended to read:

**75-1-105 . Construction against implied repeal.**

This [eode] title is a general act intended as a unified coverage of [its] the title's subject matter, and no part of [it] this title shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Section 18. Section **75-1-106** is amended to read:

**75-1-106 . Effect of fraud and evasion.**

- (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this [eode] title or if fraud is used to avoid or circumvent the provisions or purposes of this [eode] title, 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.

(2) Any proceeding must be commenced within three years after the discovery of the fraud,  
but no proceeding may be brought against one not a perpetrator of the fraud later than  
five years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during [  
his] the decedent's lifetime which affects the succession of [his] the decedent's estate.

Section 19. Section **75-1-111**, which is renumbered from Section 75-8-101 is renumbered  
and amended to read:

**[75-8-101] 75-1-111 . Time of taking effect -- Provisions for transition.**

(1) This [eode] title takes effect on July 1, 1977.

(2) Except as [~~provided elsewhere in this code, on the effective date of this code~~] otherwise  
provided by this title:

(a) [~~This code~~] this title applies to any wills of decedents dying [~~thereafter.~~] on or after  
July 1, 1977;

(b) [~~The code~~] the title applies to any proceedings in court [~~then pending or thereafter  
commenced~~] that are pending or commenced on or after July 1, 1977, regardless of  
the time of the death of decedent except to the extent that in the opinion of the court  
the former procedure should be made applicable in a particular case in the interest of  
justice or because of infeasibility of application of the procedure of this [eode:] title;

(c) [~~Every~~] every personal representative including a person administering an estate of a  
minor or incompetent holding an appointment on [~~that date~~] July 1, 1977, continues to  
hold the appointment but has only the powers conferred by this [eode] title and is  
subject to the duties imposed with respect to any act occurring or done [~~thereafter.~~] on  
or after July 1, 1977;

(d)(i) [~~An~~] an act done before [~~the effective date~~] July 1, 1977, in any proceeding and  
any accrued right is not impaired by this [eode:] title; and

(ii) [~~If~~] if a right is acquired, extinguished or barred upon the expiration of a  
prescribed period of time which has commenced to run by the provisions of any  
statute before [~~the effective date~~] July 1, 1977, the provisions shall remain in force  
with respect to that right[-] ; and

(e) [~~Any~~] any rule of construction or presumption provided in this [eode] title applies to  
instruments executed and multiple-party accounts opened before [~~the effective date~~]  
July 1, 1977, unless there is a clear indication of a contrary intent.



Section 20. Section **75-1-201** is amended to read:

**75-1-201 . Title definitions.**

As used in this title:

- (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.
- (2) "Application" means a written request to the registrar for an order of informal probate or appointment under Chapter 3, Part 3, Informal Probate and Appointment Proceedings.
- (3)(a) "Beneficiary," as it relates to trust beneficiaries, includes:
  - (i) a person who has any present or future interest, vested or contingent; and
  - (ii) the owner of an interest by assignment or other transfer.
- (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to enforce the trust.
- (c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a beneficiary of:
  - (i) an insurance or annuity policy;
  - (ii) an account with POD designation;
  - (iii) a security registered in beneficiary form (TOD);
  - (iv) a pension, profit-sharing, retirement, or similar benefit plan; or
  - (v) other nonprobate transfer at death.
- (d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument, includes:
  - (i) 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
  - (ii) a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- (4) "Beneficiary designation" means 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.
- (5)(a) "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved.
- (b) "Child" does not include an individual who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

- (6)(a) "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.
- (b) "Claims" 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) "Community property with a right of survivorship" means joint tenants with the right of survivorship.
- (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
- (9) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.
- (10) "Descendant" means all of an individual's 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 title.
- (11) "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.
- (12) "Devisee" means any person designated in a will to receive a devise. For the purposes of Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.
- (13) "Disability" means cause for a protective order as described by Section 75-5-401.
- (14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a 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.
- (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

- 1150 (16) "Exempt property" means that property of a decedent's estate which is described in  
1151 Section 75-2-403.
- 1152 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 1153 (18) "Foreign personal representative" means a personal representative of another  
1154 jurisdiction.
- 1155 (19) "Formal proceedings" means proceedings conducted before a judge with notice to  
1156 interested persons.
- 1157 (20) "General personal representative" does not include a special administrator.
- 1158 (21) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account  
1159 with POD designation, security registered in beneficiary form (TOD), pension,  
1160 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a  
1161 power of appointment or a power of attorney, or a dispositive, appointive, or nominative  
1162 instrument of any similar type.
- 1163 ~~[(22)(a) "Guardian" means a person who has qualified as a guardian of a minor or~~  
1164 ~~incapacitated person pursuant to testamentary or court appointment, or by written~~  
1165 ~~instrument as provided in Section 75-5-202.5.]~~
- 1166 ~~[(b) "Guardian" does not include a person who is merely a guardian ad litem.]~~
- 1167 (22)(a) "Guardian" means a person appointed by the court to make decisions with  
1168 respect to the personal affairs of an individual.
- 1169 (b) "Guardian" includes a coguardian.
- 1170 (c) "Guardian" does not include a guardian ad litem.
- 1171 (23) "Heirs," except as controlled by Section 75-2-711, means persons, including the  
1172 surviving spouse and state, who are entitled under the statutes of intestate succession to  
1173 the property of a decedent.
- 1174 (24) "Incapacitated" means a judicial determination after proof by clear and convincing  
1175 evidence that an adult's ability to do the following is impaired to the extent that the  
1176 individual lacks the ability, even with appropriate technological assistance, to meet the  
1177 essential requirements for financial protection or physical health, safety, or self-care:
- 1178 (a) receive and evaluate information;
- 1179 (b) make and communicate decisions; or
- 1180 (c) provide for necessities such as food, shelter, clothing, health care, or safety.
- 1181 (25) "Incapacity" means incapacitated.
- 1182 (26) "Informal proceedings" mean a proceeding conducted without notice to interested  
1183 persons by an officer of the court acting as a registrar for probate of a will or

1184 appointment of a personal representative.

1185 (27)(a) "Interested person" includes heirs, devisees, children, spouses, creditors,  
1186 beneficiaries, and any others having a property right in or claim against a trust estate  
1187 or the estate of a decedent, ward, or protected person. The meaning of interested  
1188 person as it relates to particular persons may vary from time to time and is  
1189 determined according to the particular purposes of, and matter involved in, any  
1190 proceeding.

1191 (b) "Interested person" includes persons having priority for appointment as personal  
1192 representative, other fiduciaries representing interested persons, a settlor of a trust, if  
1193 living, or the settlor's legal representative, if any, if the settlor is living but  
1194 incapacitated.

1195 (28) "Issue" means a descendant of an individual.

1196 (29)(a) "Joint tenants with the right of survivorship" includes coowners of property held  
1197 under circumstances that entitle one or more to the whole of the property on the death  
1198 of the other.

1199 (b) "Joint tenants with the right of survivorship" does not include forms of coownership  
1200 registration in which the underlying ownership of each party is in proportion to that  
1201 party's contribution.

1202 (30) "Lease" includes an oil, gas, or other mineral lease.

1203 (31) "Letters" includes letters testamentary, letters of guardianship, letters of  
1204 administration, and letters of conservatorship.

1205 (32) "Minor" means ~~[a person]~~ an individual who is under 18 years old.

1206 (33) "Minor protected person" means a minor for whom a conservator has been appointed  
1207 because of minority.

1208 (34) "Minor ward" means a minor for whom a guardian has been appointed solely because  
1209 of minority.

1210 (35) "Mortgage" means any conveyance, agreement, or arrangement in which property is  
1211 used as security.

1212 (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at  
1213 the time of the decedent's death.

1214 [~~(37) "Organization" includes a corporation, limited liability company, business trust,  
1215 estate, trust, partnership, joint venture, association, government or governmental  
1216 subdivision or agency, or any other legal or commercial entity.~~]

1217 (37) "Organization" means an association, a business trust, a corporation, a partnership, a

government or governmental subdivision, agency, or instrumentality, an estate, a limited liability company, a joint venture, a trust, or any other legal or commercial entity.

(38)(a) "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 title by intestate succession from the child whose relationship is in question.

(b) "Parent" does not include any person who is only a stepparent, foster parent, or grandparent.

(39) "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.

(40) "Person" means an individual or an organization.

~~[(41) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.]~~

(41) "Personal representative" means an executor, an administrator, a successor personal representative, a special administrator, or a person who performs substantially the same function under the law governing the person's status.

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

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

~~[(44) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.]~~

(44) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest in anything that may be the subject of ownership.

(45) "Protected person" means a person for whom a conservator has been appointed.

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

(47) "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.

(48) "Registrar" means the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

(49) "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, and, 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.

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

(51) "Settlor" means the same as that term is defined in Section 75B-1-101.

~~[(51)]~~ (52) "Sign" means, with present intent to authenticate or adopt a record other than a will that is not an electronic will as defined in Section 75-2-1402:

(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.

~~[(52)]~~ (53) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

~~[(53)]~~ (54) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

~~[(54)]~~ (55) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~[(55)]~~ (56) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

~~[(56)]~~ (57) "Supervised administration" means the proceedings described in Chapter 3, Part 5, Supervised Administration.

~~[(57)]~~ (58)(a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death Security Registration Act, that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702.

(b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

~~[(58)]~~ (59) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~[(59)]~~ (60) "Testator" includes an individual of either sex.

~~[(60)(a)]~~ "Trust" includes:]

- 1286           ~~[(i) a health savings account, as defined in Section 223 of the Internal Revenue Code;]~~  
1287           ~~[(ii) an express trust, private or charitable, with additions thereto, wherever and~~  
1288           ~~however created; or]~~  
1289           ~~[(iii) a trust created or determined by judgment or decree under which the trust is to~~  
1290           ~~be administered in the manner of an express trust.]~~  
1291       ~~[(b) "Trust" does not include:]~~  
1292           ~~[(i) a constructive trust;]~~  
1293           ~~[(ii) a resulting trust;]~~  
1294           ~~[(iii) a conservatorship;]~~  
1295           ~~[(iv) a personal representative;]~~  
1296           ~~[(v) a trust account as defined in Chapter 6, Nonprobate Transfers;]~~  
1297           ~~[(vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To~~  
1298           ~~Minors Act;]~~  
1299           ~~[(vii) a business trust providing for certificates to be issued to beneficiaries;]~~  
1300           ~~[(viii) a common trust fund;]~~  
1301           ~~[(ix) a voting trust;]~~  
1302           ~~[(x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;]~~  
1303           ~~[(xi) a security arrangement;]~~  
1304           ~~[(xii) a liquidation trust;]~~  
1305           ~~[(xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,~~  
1306           ~~wages, profits, pensions, or employee benefits of any kind; or]~~  
1307           ~~[(xiv) any arrangement under which a person is nominee or escrowee for another.]~~  
1308       ~~[(61) "Trustee" includes an original, additional, and successor trustee, and cotrustee,~~  
1309       ~~whether or not appointed or confirmed by the court.]~~  
1310       ~~(61) "Trust" means the same as that term is defined in Section 75B-1-101.~~  
1311       ~~(62) "Trustee" means the same as that term is defined in Section 75B-1-101.~~  
1312       ~~[(62)] (63) "Ward" means [a person] an individual for whom a guardian has been appointed.~~  
1313       ~~[(63) "Will" includes codicil and any testamentary instrument which merely appoints an~~  
1314       ~~executor, revokes or revises another will, nominates a guardian, or expressly excludes or~~  
1315       ~~limits the right of an individual or class to succeed to property of the decedent passing~~  
1316       ~~by intestate succession.]~~  
1317       ~~(64)(a) "Will" means a writing or other record:~~  
1318           ~~(i) by which an individual directs the disposition of the individual's estate upon the~~  
1319           ~~individual's death; and~~

(ii) only effective upon the death of the individual.

(b) "Will" includes a writing or the other record described in Subsection (64)(a) that is:

(i) a codicil; or

(ii) an instrument that merely:

(A) appoints a personal representative;

(B) nominates a guardian for a minor or an individual who is incapacitated;

(C) revokes or revises a prior writing or other record described in Subsection (64)(a); or

(D) expressly limits or excludes the right of an individual or class to succeed to property by interstate succession.

Section 21. Section **75-1-301** is amended to read:

**75-1-301 . Territorial application.**

Except as otherwise provided in this [eode] title, this [eode] title applies to:

- (1) [The] the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;
- (2) [The] 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] incapacitated persons and minors in this state;
- (4) [Survivorship] survivorship and related accounts in this state; and
- (5) [Trusts] trusts subject to administration in this state.

Section 22. Section **75-1-303** is amended to read:

**75-1-303 . Venue -- Multiple proceedings -- Transfer -- Orders and hearings.**

- (1) Where a proceeding under this [eode] title 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.
- (2)(a) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state[;] :
  - (i) the court in which the proceeding was first commenced shall continue to hear the matter[; and the other courts] ; and
  - (ii) the other court shall hold the matter in abeyance until the question of venue is decided[; and if] .
- (b) If the ruling court determines that venue is properly in another court, [it] the ruling court shall transfer the proceeding to the other court.
- (3) 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.

(4)(a) The ~~[judge of the]~~ court in which any proceeding under this ~~[code]~~ title is pending may make any order relating to the proceeding in chambers at any place in ~~[his]~~ the court's district, and the order shall have the same force and effect as if made by the court sitting in the proper county.

(b) The hearing of any matter requiring notice shall be had at the time and place appointed or at the time to which the same may be postponed, except that where there is no contest or where all the parties consent, the hearing may be had at any place within the judicial district in which the matter is pending.

Section 23. Section **75-1-304** is amended to read:

**75-1-304 . Practice in court.**

Unless specifically provided to the contrary in this ~~[code]~~ title or unless inconsistent with ~~[its]~~ this title's provisions, the ~~[rules of civil procedure]~~ Utah Rules of Civil Procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this ~~[code]~~ title.

Section 24. Section **75-1-305** is amended to read:

**75-1-305 . Records and certified copies.**

(1) The clerk of the 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]~~ title, including petitions and applications, demands for notices or bonds, 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.

(2) 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.

(3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal.

(4) Certificates relating to letters must show the date of appointment.

Section 25. Section **75-1-309** is amended to read:

**75-1-309 . Oath or affirmation on filed documents.**

(1) Except as otherwise specifically provided in this ~~[code]~~ title 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] .

(2) Penalties for perjury may follow deliberate falsification therein.

Section 26. Section **75-1-310** is amended to read:

**75-1-310 . Costs -- In discretion of court.**

When not otherwise prescribed in this [eode, the court, or the Supreme Court on appeal from the court, may, in its-] title, the court, or an appellate court on appeal from the court, may in the court's discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate as justice may require.

Section 27. Section **75-1-311** is amended to read:

**75-1-311 . Consent to jurisdiction.**

(1) By submitting an application for informal probate or appointment or a petition for formal probate, adjudication of intestacy, or appointment the applicant or petitioner subjects himself to the jurisdiction of the court in all matters arising under this [eode] title.

(2) Notice of any proceeding sought to be maintained against the applicant or petitioner pursuant to his submission to jurisdiction shall be delivered to him or mailed to him by ordinary first-class mail at his address as it is known to the moving party or as listed in the application or petition or as thereafter reported to the court.

Section 28. Section **75-1-404** is amended to read:

**75-1-404 . Publication in newspapers.**

(1) Newspapers shall publish all notices of proceedings under [the eode] this title under the heading "Probate, Guardianship, Conservator and Trust Notices. Consult clerk of the court or the respective signers for further information." [These notices]

(2) The notices under Subsection (1) shall be published as often during the prescribed period as the paper is regularly issued, unless otherwise provided by law or directed by the court, and as far as possible in one column in the alphabetical order of the surnames of decedents, wards, incapacitated persons, and creators of trusts.

Section 29. Section **75-2-803** is amended to read:

**75-2-803 . Definitions -- Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations -- Petition -- Forfeiture -- Revocation.**

(1) As used in this section:

(a) "Conviction" means the same as that term is defined in Section 77-38b-102.

- 1422 (b) "Decedent" means a deceased individual.
- 1423 (c) "Disposition or appointment of property" includes a transfer of an item of property or
- 1424 any other benefit to a beneficiary designated in a governing instrument.
- 1425 (d)(i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means
- 1426 any felony homicide offense described in Title 76, Chapter 5, Offenses Against
- 1427 the Individual, for which the elements are established by a preponderance of the
- 1428 evidence and by applying the same principles of culpability and defenses
- 1429 described in Title 76, Utah Criminal Code.
- 1430 (ii) "Disqualifying homicide" does not include an offense for:
- 1431 (A) automobile homicide, as described in Section 76-5-207; and
- 1432 (B) automobile homicide involving using a handheld wireless communication
- 1433 device while driving, as described in Section 76-5-207.5.
- 1434 (e) "Governing instrument" means a governing instrument executed by the decedent.
- 1435 (f) "Killer" means an individual who commits a disqualifying homicide.
- 1436 (g) "Revocable" means a disposition, appointment, provision, or nomination under
- 1437 which the decedent, at the time of or immediately before death, was alone
- 1438 empowered, by law or under the governing instrument, to cancel the designation in
- 1439 favor of the killer regardless of whether at the time or immediately before death:
- 1440 (i) the decedent was empowered to designate the decedent in place of the decedent's
- 1441 killer; or
- 1442 (ii) the decedent had the capacity to exercise the power.
- 1443 (2)(a) An individual who commits a disqualifying homicide of the decedent forfeits all
- 1444 benefits under this chapter with respect to the decedent's estate, including an intestate
- 1445 share, an elective share, an omitted spouse's or child's share, a homestead allowance,
- 1446 exempt property, and a family allowance.
- 1447 (b) If the decedent died intestate, the decedent's intestate estate passes as if the killer
- 1448 disclaimed the killer's intestate share.
- 1449 (3) The killing of the decedent by means of a disqualifying homicide:
- 1450 (a) revokes any revocable:
- 1451 (i) disposition or appointment of property made by the decedent to the killer in a
- 1452 governing instrument;
- 1453 (ii) provision in a governing instrument conferring a general or nongeneral power of
- 1454 appointment on the killer; and
- 1455 (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

(b) 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, transforming the interests of the decedent and killer into tenancies in common.

(4) A severance under Subsection (3)(b) 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 location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) 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.

(6) A wrongful acquisition of property or interest by one who kills another under circumstances not covered by this section shall be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7)(a) An interested person may petition the court to determine whether an individual has committed a disqualifying homicide of the decedent.

(b) An individual has committed a disqualifying homicide of the decedent for purposes of this section if:

(i) unless the court finds that disinheritance would create a manifest injustice, the court finds that, by a preponderance of the evidence, the individual has committed a disqualifying homicide of the decedent; or

(ii) the court finds that a judgment of conviction has been entered against the individual for a disqualifying homicide of the decedent and all direct appeals for the judgment have been exhausted.

(8)(a) Before a court determines whether an individual committed a disqualifying homicide of the decedent under Subsection (7), the decedent's estate may petition the court to:

(i) enter a temporary restraining order, an injunction, or a temporary restraining order and an injunction, to preserve the property or assets of the killer or the killer's estate;

(ii) require the execution of a trustee's bond under Section [75-7-702] 75B-2-702 for

- 1490 the killer's estate;
- 1491 (iii) establish a constructive trust on any property or assets of the killer or the killer's
- 1492 estate that is effective from the time the killer's act caused the death of the
- 1493 decedent; or
- 1494 (iv) take any other action necessary to preserve the property or assets of the killer or
- 1495 the killer's estate:
- 1496 (A) until a court makes a determination under Subsection (7); or
- 1497 (B) for the payment of all damages and judgments for conduct resulting in the
- 1498 disqualifying homicide of the decedent.
- 1499 (b) Upon a petition for a temporary restraining order or an injunction under Subsection
- 1500 (8)(a)(i), a court may enter a temporary restraining order against an owner's property
- 1501 in accordance with Rule 65A of the Utah Rules of Civil Procedure, without notice or
- 1502 opportunity of a hearing, if the court determines that:
- 1503 (i) there is a substantial likelihood that the property is, or will be, necessary to satisfy
- 1504 a judgment or damages owed by the killer for conduct resulting in the
- 1505 disqualifying homicide of the decedent; and
- 1506 (ii) notice of the hearing would likely result in the property being:
- 1507 (A) sold, distributed, destroyed, or removed; and
- 1508 (B) unavailable to satisfy a judgment or damages owed by the killer for conduct
- 1509 resulting in the disqualifying homicide of the decedent.
- 1510 (9)(a)(i) A payor or other third party is not liable for having made a payment or
- 1511 transferred an item of property or any other benefit to a beneficiary designated in a
- 1512 governing instrument affected by a disqualifying homicide, or for having taken
- 1513 any other action in good faith reliance on the validity of the governing instrument,
- 1514 upon request and satisfactory proof of the decedent's death, before the payor or
- 1515 other third party received written notice of a claimed forfeiture or revocation
- 1516 under this section.
- 1517 (ii) A payor or other third party is liable for a payment made or other action taken
- 1518 after the payor or other third party received written notice of a claimed forfeiture
- 1519 or revocation under this section.
- 1520 (b)(i) Written notice of a claimed forfeiture or revocation under Subsection (9)(a)
- 1521 shall be mailed to the payor's or other third party's main office or home by
- 1522 registered or certified mail, return receipt requested, or served upon the payor or
- 1523 other third party in the same manner as a summons in a civil action.

- 1524 (ii) Upon receipt of written notice of a claimed forfeiture or revocation under this  
1525 section, a payor or other third party may pay any amount owed or transfer or  
1526 deposit any item of property held by the payor or third party to or with:  
1527 (A) the court having jurisdiction of the probate proceedings relating to the  
1528 decedent's estate; or  
1529 (B) if no proceedings have been commenced, the court having jurisdiction of  
1530 probate proceedings relating to the decedent's estates located in the county of  
1531 the decedent's residence.
- 1532 (iii) The court shall hold the funds or item of property and, upon the court's  
1533 determination under this section, shall order disbursement in accordance with the  
1534 determination.
- 1535 (iv) Payments, transfers, or deposits made to or with the court discharge the payor or  
1536 other third party from all claims for the value of amounts paid to or items of  
1537 property transferred to or deposited with the court.
- 1538 (10)(a) A person who purchases property for value and without notice, or who receives a  
1539 payment or other item of property in partial or full satisfaction of a legally  
1540 enforceable obligation, is:
- 1541 (i) not obligated under this section to return the payment, item of property, or benefit;  
1542 and
- 1543 (ii) not liable under this section for the amount of the payment or the value of the  
1544 item of property or benefit.
- 1545 (b) Notwithstanding Subsection (10)(a), a person who, not for value, receives a payment,  
1546 item of property, or any other benefit to which the person is not entitled under this  
1547 section is:
- 1548 (i) obligated to return the payment, item of property, or benefit to the person who is  
1549 entitled to the payment, property, or benefit under this section; and
- 1550 (ii) personally liable for the amount of the payment or the value of the item of  
1551 property or benefit to the person who is entitled to the payment, property, or  
1552 benefit under this section.
- 1553 (c) If this section or any part of this section is preempted by federal law with respect to a  
1554 payment, an item of property, or any other benefit covered by this section, a person  
1555 who, not for value, receives the payment, item of property, or any other benefit to  
1556 which the person is not entitled under this section is:
- 1557 (i) obligated to return the payment, item of property, or benefit to the person who

would have been entitled to the payment, property, or benefit if this section or part were not preempted; and

- (ii) 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 the payment, property, or benefit if this section or part were not preempted.

Section 30. Section **75-2-1209** is amended to read:

**75-2-1209 . Real estate conveyed to a trust under the Statutory Rule Against Perpetuities.**

On or after the effective date, when title to real property is granted to the trustee of a trust governed by Title 75, Chapter 2, Part 12, Statutory Rule Against Perpetuities, the terms of the trust, provisions regarding the appointment of successor trustees, and the names and addresses of successor trustees must be disclosed in accordance with Section [75-7-816] 75B-2-816.

Section 31. Section **75-2-1402** is amended to read:

**75-2-1402 . Definitions.**

As used in this part:

- (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.
- (3) "Electronic will" means a will executed electronically in compliance with Subsection 75-2-1405(1).
- (4) "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.
- (5) "Sign" means, with present intent to authenticate or adopt a record:
  - (a) to execute or adopt a tangible symbol; or
  - (b) to affix to or logically associate with the record an electronic symbol or process.
- (6)(a) "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.
  - (b) "State" includes a federally recognized Indian tribe.
- ~~[(7) "Will" includes a 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.]

Section 32. Section **75-3-101** is amended to read:

**75-3-101 . Devolution of estate at death -- Restrictions.**

- (1) 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] title to facilitate the prompt settlement of estates.
- (2) Upon the death of a person his real and personal property devolves to 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, rights of creditors, elective share of the surviving spouse, and administration.

Section 33. Section **75-3-105** is amended to read:

**75-3-105 . Proceedings affecting devolution and administration -- Jurisdiction of subject matter.**

- (1)(a) Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this chapter and may petition the court for orders in formal proceedings within the court's jurisdiction, including, but not limited to those described in this chapter.
- (b) The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with Section 75-1-401.
- (c) Persons notified are bound though less than all interested persons may have been given notice.
- (2) For purposes of this [code] title, formal proceedings involving administration and distribution of decedent's estates shall include proceedings to determine the heirs of a decedent and proceedings to construe a duly probated will of a decedent, whether or not the estate of the decedent is being, or previously has been, administered or distributed.

Section 34. Section **75-3-303** is amended to read:

**75-3-303 . Informal probate -- Proof and findings required.**

- (1) In an informal proceeding for original probate of a will, the registrar shall determine



whether:

- (a) the application is complete;
- (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
- (c) the applicant appears from the application to be an interested person~~[-as defined in Subsection 75-1-201(24)]~~;
- (d) on the basis of the statements in the application, venue is proper;
- (e) an original, duly executed and apparently unrevoked will was presented to the court for electronic storage and electronic filing and is now in the possession of the applicant or the applicant's attorney, or is in the registrar's possession;
- (f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and
- (g) it appears from the application that the time limit for original probate has not expired.

- (2) 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 (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.
- (3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 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.
- (4) 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.
- (5) 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 (1) 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.

Section 35. Section **75-3-308** is amended to read:

**75-3-308 . Informal appointment proceedings -- Proof and findings required.**

- (1) In informal appointment proceedings, the registrar shall determine whether:
- (a) the application for informal appointment of a personal representative is complete;
  - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
  - (c) the applicant appears from the application to be an interested person~~[-as defined in Subsection 75-1-201(24)]~~;
  - (d) on the basis of the statements in the application, venue is proper;
  - (e) 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;
  - (f) any notice required by Section 75-3-204 has been given; and
  - (g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.
- (2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Subsection 75-3-610(3) 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.

Section 36. Section **75-3-504** is amended to read:

**75-3-504 . Powers of personal representative.**

- (1) 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]~~ title, but he shall not exercise his power to make any distribution of the estate without prior order of the court.
- (2) 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.

Section 37. Section **75-3-608** is amended to read:

**75-3-608 . Termination of appointment -- General.**

- (1) Termination of appointment of a personal representative occurs as indicated in Sections 75-3-609 through 75-3-612.
- (2) Termination ends the right and power pertaining to the office of personal representative

as conferred by this [eode] title 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.

(3) 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.

(4) 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.

Section 38. Section **75-3-616** is amended to read:

**75-3-616 . Special administrator -- Appointed informally -- Powers and duties.**

(1) A special administrator appointed by the registrar in informal proceedings pursuant to Subsection 75-3-614(1)(a) 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] the special administrator's qualification.

(2) The special administrator has the power of a personal representative under the [eode] title necessary to perform his duties.

Section 39. Section **75-3-703** is amended to read:

**75-3-703 . General duties -- Relation and liability to persons interested in estate --**

**Standing to sue.**

(1)(a) A personal representative is a fiduciary who shall observe the standard of care applicable to trustees as described by Section [75-7-902] 75B-2-902.

(b) 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 [eode] title and as expeditiously and efficiently as is consistent with the best interests of the estate. [He]

(c) A personal representative shall use the authority conferred upon [him] the personal representative by this [eode] title, the terms of the will, if any, and any order in proceedings to which [he] the personal representative is party for the best interests of successors to the estate.

(2)(a) A personal representative [~~shall not~~] may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time.

(b) Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to [its terms] the terms of the will.

(c) 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.

(d) 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 [eode] title.

(3) 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] the decedent's death has the same standing to sue and be sued in the courts of this state and courts of any other jurisdiction as [his] the decedent had immediately prior to death.

Section 40. Section **75-3-704** is amended to read:

**75-3-704 . 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 may invoke the jurisdiction of the court in proceedings authorized by this [eode] title to resolve questions concerning the estate or its administration.

Section 41. Section **75-3-710** is amended to read:

**75-3-710 . Powers of personal representatives -- In general.**

(1) 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.

(2) This power may be exercised without notice, hearing, or order of court, unless otherwise specifically provided by this [eode] title.

Section 42. Section **75-3-714** is amended to read:

**75-3-714 . Transactions authorized for personal representatives -- Exceptions.**

Except as restricted or otherwise provided by this [eode] title, by the will or by an order in a formal proceeding and subject to the priorities stated in Section 75-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those

1762 in which the representative is personally interested or which are otherwise improper for  
1763 trust investment;

1764 (2) receive assets from fiduciaries, or other sources;

1765 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as  
1766 obligations of the estate, as he may determine under the circumstances. In performing  
1767 enforceable contracts by the decedent to convey or lease land, the personal  
1768 representative, among other possible courses of action, may:

1769 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining  
1770 due or the purchaser's note for the sum remaining due secured by a mortgage or deed  
1771 of trust on the land; or

1772 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance  
1773 with the escrow agreement, be paid to the successors of the decedent, as designated  
1774 in the escrow agreement;

1775 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges  
1776 constituted binding obligations of the decedent or were properly presented as claims, if  
1777 in the judgment of the personal representative the decedent would have wanted the  
1778 pledges completed under the circumstances;

1779 (5) if funds are not needed to meet debts and expenses currently payable and are not  
1780 immediately distributable, deposit or invest liquid assets of the estate, including money  
1781 received from the sale of other assets, in federally insured interest-bearing accounts,  
1782 readily marketable secured loan arrangements, or other prudent investments which  
1783 would be reasonable for use by trustees generally;

1784 (6) acquire or dispose of an asset, including land in this or another state, for cash or on  
1785 credit, at public or private sale; and manage, develop, improve, exchange, partition,  
1786 change the character of, or abandon an estate asset;

1787 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures,  
1788 demolish any improvements, or raze existing or erect new party walls or buildings;

1789 (8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats  
1790 and adjust boundaries; adjust differences in valuation on exchange or partition by giving  
1791 or receiving considerations; or dedicate easements to public use without consideration;

1792 (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase  
1793 or renew, for a term within or extending beyond the period of administration;

1794 (10) enter into a lease or arrangement for exploration and removal of minerals or other  
1795 natural resources or enter into a pooling or unitization agreement;

- 1796 (11) abandon property when, in the opinion of the personal representative, it is valueless, is  
1797 so encumbered, or is in condition that it is of no benefit to the estate;
- 1798 (12) vote stocks or other securities in person or by general or limited proxy;
- 1799 (13) pay calls, assessments, and other sums chargeable or accruing against or on account of  
1800 securities, unless barred by the provisions relating to claims;
- 1801 (14) hold a security in the name of a nominee or in other form without disclosure of the  
1802 interest of the estate but the personal representative is liable for any act of the nominee  
1803 in connection with the security so held;
- 1804 (15) insure the assets of the estate against damage, loss, and liability and himself against  
1805 liability as to third persons;
- 1806 (16) borrow money with or without security to be repaid from the estate assets or otherwise;  
1807 and advance money for the protection of the estate;
- 1808 (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew,  
1809 or in any manner modify the terms of any obligation owing to the estate. If the personal  
1810 representative holds a mortgage, pledge, or other lien upon property of another person,  
1811 he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets  
1812 from the owner thereof in satisfaction of the indebtedness secured by lien;
- 1813 (18) pay taxes, assessments, compensation of the personal representative, and other  
1814 expenses incident to the administration of the estate;
- 1815 (19) sell or exercise stock subscription or conversion rights; and consent, directly or  
1816 through a committee or other agent, to the reorganization, consolidation, merger,  
1817 dissolution, or liquidation of a corporation or other business enterprise;
- 1818 (20) allocate items of income or expense to either estate income or principal, as permitted  
1819 or provided by law;
- 1820 (21) employ persons, including attorneys, auditors, investment advisers, or agents, even if  
1821 they are associated with the personal representative, to advise or assist the personal  
1822 representative in the performance of his administrative duties; act without independent  
1823 investigation upon their recommendations; and instead of acting personally, employ one  
1824 or more agents to perform any act of administration, whether or not discretionary;
- 1825 (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the  
1826 estate and of the personal representative in the performance of his duties;
- 1827 (23) sell, mortgage, or lease any real or personal property of the estate or any interest in it  
1828 for cash, credit, or for part cash and part credit, and with or without security for unpaid  
1829 balances;

- (24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
- (a) in the same business form for a period of not more than four 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;
- (b) 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
- (c) 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;
- (25) incorporate any business or venture in which the decedent was engaged at the time of his death;
- (26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
- (27) satisfy and settle claims and distribute the estate as provided in this [eode] title.
- Section 43. Section **75-3-913** is amended to read:
- 75-3-913 . Distributions to trustee.**
- (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which [it] the trust is to be administered provides for registration and that the trustee inform the qualified beneficiaries [~~as provided in Section 75-7-811~~] as described in Section 75B-2-811.
- (2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may:
- (a) [-]petition the appropriate court to require that the trustee post bond if [he] the trustee apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves[~~; and he may~~] ; and
- (b) withhold distribution until the court has acted.
- (3) No inference of negligence on the part of the personal representative shall be drawn from [his] the personal representative's failure to exercise the authority conferred by Subsections (1) and (2).

Section 44. Section **75-3-915** is amended to read:

**75-3-915 . Distribution to person under disability.**

A personal representative may discharge [his] the personal representative's obligation to

distribute to any person under legal disability by distributing to [his] the person's conservator, or any other person authorized by this [eode] title or otherwise to give a valid receipt and discharge for the distribution.

Section 45. Section **75-3-916** is amended to read:

**75-3-916 . Apportionment of estate taxes.**

(1) As used in this section:

- (a) "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;
- (b) "Fiduciary" means personal representative, executor, administrator of any description, or trustee;
- (c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- (d) "Person interested in the estate" means any person, including a personal representative, conservator, guardian, or trustee entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest in property included in the decedent's taxable estate;
- (e) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and
- (f) "Tax" means the federal estate tax and the inheritance, estate, or other death tax payable to this state and interest and penalties imposed in addition to the tax but specifically does not include the federal generation skipping transfer tax.

(2)(a) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate.

(b) The apportionment shall 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.

(c) The values used in determining the tax shall be used for that purpose.

(d) If the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this [eode] title, the method described in the will or other dispositive instrument controls.

(3)(a) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county in which the decedent was domiciled at death shall determine the



1898 apportionment of the tax upon the petition of the person required to pay the tax.

1899 (b) If the court finds that it is inequitable to apportion interest and penalties in the  
1900 manner provided in Subsection (2), because of special circumstances, it may direct  
1901 the apportionment in the manner it finds equitable.

1902 (c)(i) The expenses reasonably incurred by any fiduciary and by other persons  
1903 interested in the estate concerning the determination of the amount and  
1904 apportionment of the tax shall be apportioned as provided in Subsection (2) and  
1905 charged and collected as a part of the tax apportioned.

1906 (ii) If the court finds it is inequitable to apportion the expenses as provided in  
1907 Subsection (2), it may direct the apportionment equitably.

1908 (d) If the court finds that the assessment of penalties and interest assessed in relation to  
1909 the tax is due to delay caused by the negligence of the fiduciary, the court may charge  
1910 the fiduciary with the amount of the assessed penalties and interest.

1911 (e) In any suit or judicial proceeding to recover from any person interested in the estate  
1912 the amount of the tax apportioned to the person in accordance with this [eode] title,  
1913 the determination of the court in this regard is prima facie correct.

1914 (4)(a)(i) The fiduciary or other person required to pay the tax may withhold from any  
1915 property of the decedent in his possession and distributable to any person  
1916 interested in the estate, the amount of tax attributable to his interest.

1917 (ii) If the property in possession of the fiduciary or other person required to pay the  
1918 tax and distributable to any person interested in the estate is insufficient to satisfy  
1919 the proportionate amount of the tax determined to be due from the person, the  
1920 fiduciary or other person required to pay the tax may recover the deficiency from  
1921 the person interested in the estate.

1922 (iii) If the property is not in the possession of the fiduciary or other person required to  
1923 pay the tax, the fiduciary or the other person required to pay the tax may recover  
1924 from any person interested in the estate the amount of the tax apportioned to the  
1925 person in accordance with this section.

1926 (b) If property held by the fiduciary or other person required to pay the tax is distributed  
1927 prior to final apportionment of the tax, the fiduciary or other person may require the  
1928 distributee to provide a bond or other security for the apportionment liability in the  
1929 form and amount prescribed by the fiduciary, with the approval of the court having  
1930 jurisdiction of the administration of the estate.

1931 (5)(a) In making an apportionment, allowances shall be made for any exemptions

granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(b)(i) 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 that relationship or receiving the gift.

(ii) When 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.

(c) Any deduction for property previously taxed and any credit for 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.

(d) Any credit for inheritance, succession, or estate taxes or taxes of this nature in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment of the tax to the extent that, or in proportion as, the credit reduces the tax.

(e)(i) To the extent that property passing to or in trust for a surviving spouse or child or any charitable, public, or similar gift or bequest does not constitute 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 shall not be included in the computation provided for in Subsection (2), and to that extent no apportionment shall be made against the property.

(ii) This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) [~~of the Internal Revenue Code of 1954 of the United States~~] , Internal Revenue Code, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6)(a) 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.

(b) 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.

(7)(a) Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months

next following final determination of the tax.

(b) A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three 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 fiduciary 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 paid from the residuary estate.

(c) To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8)(a) Subject to this section, a fiduciary acting in another state or a person required to pay the tax who is 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 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.

(b) 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.

(c) The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

(9) This section does not apply to the apportionment of expenses incurred in connection with the determination of the amount and apportionment of the taxes due on account of the death of decedents dying prior to July 1, 1983.

Section 46. Section **75-3-1008** is amended to read:

**75-3-1008 . Subsequent administration.**

(1) 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.

(2) If a new appointment is made, unless the court orders otherwise, the provisions of this [

code] title apply as appropriate[;] but no claim previously barred may be asserted in the subsequent administration.

Section 47. Section **75-5-303** is amended to read:

**75-5-303 . Procedure for court appointment of a guardian of an incapacitated person.**

- (1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.
- (2)(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
- (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.
- (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
- (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
  - (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
  - (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or
  - (c) upon an express finding of good cause, the court orders otherwise.
- (4) The person alleged to be incapacitated may be examined by a physician or physician assistant appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.

- (5)(a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.
- (b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:
- (i) fourth stage Alzheimer's Disease;
  - (ii) extended comatosis; or
  - (iii)(A) an intellectual disability; and  
(B) an intelligence quotient score under 25.
- (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.
- (d) Counsel for the person alleged to be incapacitated~~[, as defined in Subsection 75-1-201(22),]~~ is not required if:
- (i) the person is the biological or adopted child of the petitioner;
  - (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
  - (iii) the person appears in court with the petitioner;
  - (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
  - (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);
  - (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
  - (vii) the court appoints a visitor under Subsection (4).
- Section 48. Section **75-5-412** is amended to read:
- 75-5-412 . Terms and requirements of bonds.**
- (1) The following requirements and provisions apply to any bond required under Section

75-5-411:

- (a) [~~Unless~~] unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;
- (b)(i) [~~By~~] 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[~~;~~] ; and
- (ii) [~~Notice~~] notice of the 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;
- (c) [~~On~~] 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; and
- (d) [~~The~~] 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.
- (2) No 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 under this [~~code~~] title.

Section 49. Section **75-5-416** is amended to read:

**75-5-416 . Petitions for orders subsequent to appointment.**

- (1) 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:
- (a) requiring bond or security or additional bond or security, or reducing bond;
- (b) requiring an accounting for the administration of the conservatorship estate;
- (c) directing distribution;
- (d) removing the conservator and appointing a temporary or successor conservator; or
- (e) granting other appropriate relief, including any relief available under [~~Title 75, Chapter 7, Utah Uniform Trust Code~~] Title 75B, Chapter 2, Uniform Trust Code, if the protected person is a grantor, settlor, trustor, or beneficiary of a trust.
- (2) A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.
- (3) Upon notice and hearing the court may give appropriate instructions or make any appropriate order.

Section 50. Section **75-5-417** is amended to read:

**75-5-417 . General duty of conservator.**

- (1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section [75-7-902] 75B-2-902.
- (2)(a) For all estates in excess of \$50,000 excluding the residence owned by the ward, the conservator shall send a report with a full accounting to the court on an annual basis.
- (b) For estates less than \$50,000 excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court.
- (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:
- (i) all assets at the beginning and end of the reporting year;
  - (ii) any income received during the year;
  - (iii) any disbursements for the support of the ward;
  - (iv) any investments or trusts that are held for the ward's benefit;
  - (v) any expenditures or fees charged to the ward's estate; and
  - (vi) any other expenses incurred by the ward's estate.
- (d) The Judicial Council shall approve the forms for the accounting reports described in Subsections (2)(a) and (b).
- (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and approved by the court.
- (3)(a) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court.
- (b) A report under Subsection (3)(a) shall be examined and approved by the court.
- (4) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection 75-5-301.5(2)(t).
- (5)(a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:
- (i) makes a substantial misstatement on filings of any required annual reports;
  - (ii) is guilty of gross impropriety in handling the property of the ward; or
  - (iii) willfully fails to file the report required by this section.
- (b) The court may also order restitution of funds misappropriated from the estate of a ward.
- (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be

2136           paid by the estate.

- 2137       (6) These provisions and penalties governing annual reports do not apply if the conservator  
2138       is the parent of the ward.

2139           Section 51. Section **75-5b-102** is amended to read:

2140           **75-5b-102 . Definitions.**

2141       [In] As used in this chapter:

- 2142       (1) "Adult" means an individual who has attained 18 years of age.
- 2143       (2) "Conservator" means a person appointed by the court to administer the property of an  
2144       adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of  
2145       Property of Persons Under Disability and Minors.
- 2146       (3) "Emergency" means circumstances that likely will result in substantial harm to a  
2147       respondent's health, safety, or welfare, and in which the appointment of a guardian is  
2148       necessary because no other person has authority to and is willing to act on the  
2149       respondent's behalf.
- 2150       ~~[(4) "Guardian" means a person appointed by the court to make decisions regarding the~~  
2151       ~~person of an adult, including a person appointed under Title 75, Chapter 5, Part 3,~~  
2152       ~~Guardians of Incapacitated Persons.]~~
- 2153       ~~[(5)]~~ (4) "Guardianship order" means an order appointing a guardian.
- 2154       ~~[(6)]~~ (5) "Guardianship proceeding" means a proceeding in which an order for the  
2155       appointment of a guardian is sought or has been issued.
- 2156       ~~[(7)]~~ (6) "Home state" means the state in which the respondent was physically present for at  
2157       least six consecutive months immediately before the filing of a petition for the  
2158       appointment of a guardian or protective order. A period of temporary absence counts as  
2159       part of the six-month period.
- 2160       ~~[(8)]~~ (7) "Incapacitated person" means an adult for whom a guardian has been appointed.
- 2161       ~~[(9)]~~ (8) "Party" means the respondent, petitioner, guardian, conservator, or any other person  
2162       allowed by the court to participate in a guardianship or protective proceeding.
- 2163       ~~[(10)]~~ (9) "Person," except in the terms "incapacitated person" or "protected person," means  
2164       an individual, corporation, business trust, estate, trust, partnership, limited liability  
2165       company, association, joint venture, government or governmental subdivision, agency or  
2166       instrumentality, public corporation, or any other legal or commercial entity.
- 2167       ~~[(11)]~~ (10) "Protected person" means an adult for whom a protective order has been made.
- 2168       ~~[(12)]~~ (11) "Protective order" means an order appointing a conservator or another court  
2169       order related to management of an adult's property.



2170 [(13)] (12) "Protective proceeding" means a judicial proceeding in which a protective order  
2171 is sought or has been issued.

2172 [(14)] (13) "Record" means information that is inscribed on a tangible medium or that is  
2173 stored in an electronic or other medium and is retrievable in perceivable form.

2174 [(15)] (14) "Respondent" means an adult for whom a protective order or the appointment of  
2175 a guardian is sought.

2176 [(16)] (15) "Significant-connection state" means a state, other than the home state, with  
2177 which a respondent has a significant connection other than mere physical presence and  
2178 in which substantial evidence concerning the respondent is available.

2179 [(17)] (16) "State" means a state of the United States, the District of Columbia, Puerto Rico,  
2180 the United States Virgin Islands, a federally recognized Indian tribe, or any territory or  
2181 insular possession subject to the jurisdiction of the United States.

2182 Section 52. Section **75-6-201** is amended to read:

2183 **75-6-201 . Provisions for payment or transfer at death.**

2184 (1) Any of the following provisions in an insurance policy, contract of employment, bond,  
2185 mortgage, promissory note, deposit agreement, pension plan, trust agreement,  
2186 conveyance, or any other written instrument effective as a contract, gift, conveyance, or  
2187 trust are considered nontestamentary, and this [eode] title does not invalidate the  
2188 instrument or any provision:

2189 (a) that money or other benefits previously due to, controlled, or owned by a decedent  
2190 shall be paid after his death to a person designated by the decedent in either the  
2191 instrument or a separate writing, including a will, executed at the same time as the  
2192 instrument or subsequently;

2193 (b) that any money due or to become due under the instrument shall cease to be payable  
2194 in event of the death of the promisee or the promisor before payment or demand; or

2195 (c) that any property which is the subject of the instrument shall pass to a person  
2196 designated by the decedent in either the instrument or a separate writing, including a  
2197 will, executed at the same time as the instrument or subsequently.

2198 (2) Nothing in this section limits the rights of creditors under other laws of this state.

2199 (3)(a) Any provision in a lease of a safety deposit repository to the effect that two or  
2200 more persons shall have access to the repository, that purports to create a joint  
2201 tenancy in the repository or in the contents of the repository, or that purports to vest  
2202 ownership of the contents of the repository in the surviving lessee is ineffective to  
2203 create joint ownership of the contents of the repository or to transfer ownership at

death of one of the lessees to the survivor.

(b) Ownership of the contents of the repository and devolution of title to these contents is determined according to rules of law without regard to the lease provisions.

(c) The contents of the repository may be delivered on request to any person who has access to the repository by the terms of the lease agreement without liability on the part of the financial institution or other person where the repository is located.

(4) Any motor vehicle, trailer, semitrailer, or boat registration in the names of two or more individuals shall be deemed to be held in joint tenancy with right of survivorship unless otherwise indicated.

Section 53. Section **75A-1-101** is amended to read:

**75A-1-101 . Definitions for title.**

[Reserved.] As used in this title:

(1) "Conservator" means the same as that term is defined in Section 75-1-201.

(2) "Descendant" means the same as that term is defined in Section 75-1-201.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Estate" means, except as provided in Section 75A-5-102, the same as that term is defined in Section 75-1-201.

(5) "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable fiduciary standards.

(6) "Guardian" means the same as that term is defined in Section 75-1-201.

(7) "Person" means the same as that term is defined in Section 75-1-201.

(8) "Personal representative" means the same as that term is defined in Section 75-1-201.

(9) "Property" means the same as that term is defined in Section 75-1-201.

(10) "Record" means the same as that term is defined in Section 75-1-201.

(11) "Sign" means the same as that term is defined in Section 75-1-201.

(12) "State" means the same as that term is defined in Section 75-1-201.

(13) "Trust" means, except as provided in Section 75A-5-102, the same as that term is defined in Section 75B-1-101.

(14) "Will" means the same as that term is defined in Section 75-1-201.

Section 54. Section **75A-1-201** is amended to read:

**75A-1-201 . Definitions for part.**

As used in this part:

(1) "Fiduciary" means:

- 2238 (a) a trustee under any trust, expressed, implied, resulting or constructive;  
2239 (b) an executor;  
2240 (c) an administrator;  
2241 (d) a guardian;  
2242 (e) a conservator;  
2243 (f) a curator;  
2244 (g) a receiver;  
2245 (h) a trustee in bankruptcy;  
2246 (i) an assignee for the benefit of creditors;  
2247 (j) a partner;  
2248 (k) an agent;  
2249 (l) an officer of a corporation, public or private;  
2250 (m) a public officer; or  
2251 ~~[(nn)]~~ (n) any other person acting in a fiduciary capacity for any person, trust, or estate.  
2252 ~~[(2) "Good faith" means something is in fact done honestly regardless of whether it is done~~  
2253 ~~negligently or not.]~~  
2254 ~~[(3)]~~ (2) "Principal" means a person to whom a fiduciary owes an obligation.  
2255 Section 55. Section **75A-2-102** is amended to read:  
2256 **75A-2-102 . Definitions for chapter.**  
2257 As used in this chapter:  
2258 (1)(a) "Agent" means a person granted authority to act for a principal under a power of  
2259 attorney, whether denominated an agent, attorney-in-fact, or otherwise.  
2260 (b) "Agent" includes an original agent, coagent, successor agent, and person to which an  
2261 agent's authority is delegated.  
2262 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.  
2263 (3) "Beneficiary designation" means the same as that term is defined in Section 75-1-201.  
2264 (4) "Child" means the same as that term is defined in Section 75-1-201.  
2265 (5) "Claims" means the same as that term is defined in Section 75-1-201.  
2266 ~~[(6) "Conservator" means the same as that term is defined in Section 75-1-201.]~~  
2267 ~~[(7) "Descendant" means the same as that term is defined in Section 75-1-201.]~~  
2268 ~~[(8)]~~ (6) "Durable," with respect to a power of attorney, means not terminated by the  
2269 principal's incapacity.  
2270 ~~[(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,~~  
2271 ~~optical, electromagnetic, or similar capabilities.]~~

- 2272 ~~[(10) "Estate" means the same as that term is defined in Section 75-1-201.]~~  
2273 ~~[(11)] (7) "Fiduciary" means the same as that term is defined in Section 75-1-201.~~  
2274 ~~[(12) "Good faith" means honesty in fact.]~~  
2275 ~~[(13) "Guardian" means the same as that term is defined in Section 75-1-201.]~~  
2276 ~~[(14)] (8) "Incapacity" means the inability of an individual to manage property or business~~  
2277 ~~affairs because the individual:~~  
2278 ~~(a) has an impairment in the ability to receive and evaluate information or make or~~  
2279 ~~communicate decisions even with the use of technological assistance; or~~  
2280 ~~(b) is:~~  
2281 ~~(i) missing;~~  
2282 ~~(ii) detained, including incarcerated in a penal system; or~~  
2283 ~~(iii) outside the United States and unable to return.~~  
2284 ~~[(15)] (9) "Lease" means the same as that term is defined in Section 75-1-201.~~  
2285 ~~[(16)] (10) "Mortgage" means the same as that term is defined in Section 75-1-201.~~  
2286 ~~[(17)] (11) "Organization" means the same as that term is defined in Section 75-1-201.~~  
2287 ~~[(18) "Person" means an individual, corporation, business trust, estate, trust, partnership,~~  
2288 ~~limited liability company, association, joint venture, public corporation, government or~~  
2289 ~~governmental subdivision, agency, or instrumentality, or any other legal or commercial~~  
2290 ~~entity.]~~  
2291 ~~[(19) "Personal representative" means the same as that term is defined in Section 75-1-201.]~~  
2292 ~~[(20)] (12) "Power of attorney" means a writing or other record that grants authority to an~~  
2293 ~~agent to act in the place of the principal, whether or not the term power of attorney is~~  
2294 ~~used.~~  
2295 ~~[(21)] (13)(a) "Presently exercisable general power of appointment," with respect to~~  
2296 ~~property or a property interest subject to a power of appointment, means power~~  
2297 ~~exercisable at the time in question to vest absolute ownership in the principal~~  
2298 ~~individually, the principal's estate, the principal's creditors, or the creditors of the~~  
2299 ~~principal's estate.~~  
2300 ~~(b) "Presently exercisable general power of appointment" includes a power of~~  
2301 ~~appointment not exercisable until the occurrence of a specified event, the satisfaction~~  
2302 ~~of an ascertainable standard, or the passage of a specified period only after the~~  
2303 ~~occurrence of the specified event, the satisfaction of the ascertainable standard, or the~~  
2304 ~~passage of the specified period.~~  
2305 ~~(c) "Presently exercisable general power of appointment" does not include a power~~

- 2306 exercisable in a fiduciary capacity or only by will.
- 2307 [(22)] (14) "Principal" means an individual who grants authority to an agent in a power of  
2308 attorney.
- 2309 [(23) "Property" means anything that may be the subject of ownership, whether real or  
2310 personal, or legal or equitable, or any interest or right therein.]
- 2311 [(24) "Record" means information that is inscribed on a tangible medium or that is stored in  
2312 an electronic or other medium and is retrievable in perceivable form.]
- 2313 [(25)] (15) "Security" means the same as that term is defined in Section 75-1-201.
- 2314 [(26) "Sign" means, with present intent to authenticate or adopt a record:]
- 2315 [(a) to execute or adopt a tangible symbol; or]
- 2316 [(b) to attach to or logically associate with the record an electronic sound, symbol, or  
2317 process.]
- 2318 [(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
2319 United States Virgin Islands, or any territory or insular possession subject to the  
2320 jurisdiction of the United States.]
- 2321 [(28)] (16)(a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types  
2322 of securities and financial instruments, whether held directly, indirectly, or in any  
2323 other manner.
- 2324 (b) "Stocks and bonds" does not include commodity futures contracts and call or put  
2325 options on stocks or stock indexes.
- 2326 [(29) "Trust" means the same as that term is defined in Section 75-1-201.]
- 2327 [(30)] (17) "Trustee" means the same as that term is defined in Section [75-1-201] 75B-1-101.
- 2328 [(31) "Will" means the same as that term is defined in Section 75-1-201.]
- 2329 Section 56. Section **75A-2-120** is amended to read:
- 2330 **75A-2-120 . Liability for refusal to accept acknowledged power of attorney.**
- 2331 (1) As used in this section, "acknowledged" means the same as that term is defined in  
2332 Section 75A-2-119.
- 2333 (2) Except as otherwise provided in Subsection (3):
- 2334 (a) a person shall either accept an acknowledged power of attorney or request a  
2335 certification, a translation, or an opinion of counsel under Subsection 75A-2-119(4)  
2336 no later than seven business days after presentation of the power of attorney for  
2337 acceptance;
- 2338 (b) if a person requests a certification, a translation, or an opinion of counsel under  
2339 Subsection 75A-2-119(4), the person shall accept the power of attorney no later than

five business days after receipt of the certification, translation, or opinion of counsel;  
and

(c) a person may not require an additional or different form of power of attorney for  
authority granted in the power of attorney presented.

(3) A person is not required to accept an acknowledged power of attorney if:

(a) the person is not otherwise required to engage in a transaction with the principal in  
the same circumstances;

(b) engaging in a transaction with the agent or the principal in the same circumstances  
would be inconsistent with federal law;

(c) the person has actual knowledge of the termination of the agent's authority or of the  
power of attorney before exercise of the power;

(d) a request for a certification, a translation, or an opinion of counsel under Subsection  
75A-2-119(4) is refused;

(e) the person in good faith believes that the power is not valid or that the agent does not  
have the authority to perform the act requested, whether or not a certification, a  
translation, or an opinion of counsel under Subsection 75A-2-119(4) has been  
requested or provided; or

(f) the person makes, or has actual knowledge that another person has made, a report to  
the Division of Aging and Adult Services stating a good faith belief that the principal  
may be subject to physical or financial abuse, neglect, exploitation, or abandonment  
by the agent or a person acting for or with the agent.

(4) A person that refuses in violation of this section to accept an acknowledged power of  
attorney is subject to:

(a) a court order mandating acceptance of the power of attorney; and

(b) liability for reasonable attorney fees and costs incurred in any action or proceeding  
that confirms the validity of the power of attorney or mandates acceptance of the  
power of attorney.

(5) Court proceedings under this section shall be conducted ~~[pursuant to the terms in the  
Uniform Probate Code]~~ in accordance with the provisions of Title 75, Utah Uniform  
Probate Code, governing venue and procedures.

Section 57. Section **75A-3-101** is amended to read:

**75A-3-101 . Definitions for chapter.**

As used in this chapter:

(1) "Adult" means an individual who is:

- 2374 (a) at least 18 years old; or  
2375 (b) an emancipated minor.
- 2376 (2) "Advance health care directive":  
2377 (a) includes:  
2378 (i) a designation of an agent to make health care decisions for an adult when the adult  
2379 cannot make or communicate health care decisions; or  
2380 (ii) an expression of preferences about health care decisions;
- 2381 (b) may take one of the following forms:  
2382 (i) a written document, voluntarily executed by an adult in accordance with the  
2383 requirements of this chapter; or  
2384 (ii) a witnessed oral statement, made in accordance with the requirements of this  
2385 chapter; and  
2386 (c) does not include an order for life sustaining treatment.
- 2387 (3) "Agent" means an adult designated in an advance health care directive to make health  
2388 care decisions for the declarant.
- 2389 (4) "APRN" means an individual who is:  
2390 (a) certified or licensed as an advance practice registered nurse under Subsection  
2391 58-31b-301(2)(e);  
2392 (b) an independent practitioner; and  
2393 (c) acting within the scope of practice for that individual, as provided by law, rule, and  
2394 specialized certification and training in that individual's area of practice.
- 2395 (5) "Best interest" means that the benefits to the individual resulting from a treatment  
2396 outweigh the burdens to the individual resulting from the treatment, taking into account:  
2397 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the  
2398 individual;  
2399 (b) the degree of physical pain or discomfort caused to the individual by the treatment or  
2400 the withholding or withdrawal of treatment;  
2401 (c) the degree to which the individual's medical condition, the treatment, or the  
2402 withholding or withdrawal of treatment, result in a severe and continuing impairment  
2403 of the dignity of the individual by subjecting the individual to humiliation and  
2404 dependency;  
2405 (d) the effect of the treatment on the life expectancy of the individual;  
2406 (e) the prognosis of the individual for recovery with and without the treatment;  
2407 (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal

2408 of treatment; and

2409 (g) the religious beliefs and basic values of the individual receiving treatment, to the

2410 extent these may assist the decision maker in determining the best interest.

2411 (6) "Capacity to appoint an agent" means that the adult understands the consequences of

2412 appointing a particular individual as agent.

2413 ~~[(7) "Child" means the same as that term is defined in Section 75-1-201.]~~

2414 ~~[(8)]~~ (7) "Declarant" means an adult who has completed and signed or directed the signing

2415 of an advance health care directive.

2416 ~~[(9)]~~ (8) "Default surrogate" means the adult who may make decisions for an individual

2417 when either:

2418 (a) an agent or guardian has not been appointed; or

2419 (b) an agent is not able, available, or willing to make decisions for an adult.

2420 ~~[(10)]~~ (9) "Emergency medical services provider" means a person that is licensed,

2421 designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.

2422 ~~[(11) "Estate" means the same as that term is defined in Section 75-1-201.]~~

2423 ~~[(12)]~~ (10) "Generally accepted health care standards":

2424 (a) is defined only for the purpose of:

2425 (i) this chapter and does not define the standard of care for any other purpose under

2426 Utah law; and

2427 (ii) enabling health care providers to interpret the statutory form set forth in Section

2428 75A-3-303; and

2429 (b) means the standard of care that justifies a provider in declining to provide life

2430 sustaining care because the proposed life sustaining care:

2431 (i) will not prevent or reduce the deterioration in the health or functional status of an

2432 individual;

2433 (ii) will not prevent the impending death of an individual; or

2434 (iii) will impose more burden on the individual than any expected benefit to the

2435 individual.

2436 ~~[(13) "Guardian" means the same as that term is defined in Section 75-1-201.]~~

2437 ~~[(14)]~~ (11) "Health care" means any care, treatment, service, or procedure to improve,

2438 maintain, diagnose, or otherwise affect an individual's physical or mental condition.

2439 ~~[(15)]~~ (12)(a) "Health care decision"[:]

2440 ~~[(a)]~~ means a decision about an adult's health care made by, or on behalf of, an adult,

2441 that is communicated to a health care provider[:]



- 2442 (b) "Health care decision" includes:
- 2443 (i) selection and discharge of a health care provider and a health care facility;
- 2444 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
- 2445 and orders not to resuscitate; and
- 2446 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
- 2447 all other forms of health care~~[; and]~~ .
- 2448 (c) "Health care decision" does not include decisions about an adult's financial affairs or
- 2449 social interactions other than as indirectly affected by the health care decision.
- 2450 ~~[(16)]~~ (13) "Health care decision making capacity" means an adult's ability to make an
- 2451 informed decision about receiving or refusing health care, including:
- 2452 (a) the ability to understand the nature, extent, or probable consequences of health status
- 2453 and health care alternatives;
- 2454 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
- 2455 alternatives of accepting or rejecting health care; and
- 2456 (c) the ability to communicate a decision.
- 2457 ~~[(17)]~~ (14) "Health care facility" means:
- 2458 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility
- 2459 Licensing and Inspection; and
- 2460 (b) private offices of physicians, dentists, and other health care providers licensed to
- 2461 provide health care under Title 58, Occupations and Professions.
- 2462 ~~[(18)]~~ (15) "Health care provider" means the same as that term is defined in Section
- 2463 78B-3-403, except that "health care provider" does not include an emergency medical
- 2464 services provider.
- 2465 ~~[(19)]~~ (16) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 2466 ~~[(20)]~~ (17) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 2467 ~~[(21)]~~ (18)(a) "Life sustaining care" means any medical intervention, including
- 2468 procedures, administration of medication, or use of a medical device, that maintains
- 2469 life by sustaining, restoring, or supplanting a vital function.
- 2470 (b) "Life sustaining care" does not include care provided for the purpose of keeping an
- 2471 individual comfortable.
- 2472 ~~[(22)]~~ (19) "Minor" means an individual who:
- 2473 (a) is under 18 years old; and
- 2474 (b) is not an emancipated minor.
- 2475 ~~[(23)]~~ (20) "Order for life sustaining treatment" means an order related to life sustaining

2476 treatment, on a form designated by the Department of Health and Human Services under  
2477 Section ~~[75-3-106]~~ 75A-3-106, that gives direction to health care providers, health care  
2478 facilities, and emergency medical services providers regarding the specific health care  
2479 decisions of the individual to whom the order relates.

2480 ~~[(24)]~~ (21) "Parent" means the same as that term is defined in Section 75-1-201.

2481 ~~[(25) "Personal representative" means the same as that term is defined in Section 75-1-201.]~~

2482 ~~[(26)]~~ (22) "Physician" means a physician and surgeon or osteopathic surgeon licensed  
2483 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic  
2484 Medical Practice Act.

2485 ~~[(27)]~~ (23) "Physician assistant" means an individual licensed as a physician assistant under  
2486 Title 58, Chapter 70a, Utah Physician Assistant Act.

2487 ~~[(28)]~~ (24) "Reasonably available" means:

- 2488 (a) readily able to be contacted without undue effort; and  
2489 (b) willing and able to act in a timely manner considering the urgency of the  
2490 circumstances.

2491 ~~[(29) "State" means the same as that term is defined in Section 75-1-201.]~~

2492 ~~[(30)]~~ (25) "Substituted judgment" means the standard to be applied by a surrogate when  
2493 making a health care decision for an adult who previously had the capacity to make  
2494 health care decisions, which requires the surrogate to consider:

- 2495 (a) specific preferences expressed by the adult:  
2496 (i) when the adult had the capacity to make health care decisions; and  
2497 (ii) at the time the decision is being made;  
2498 (b) the surrogate's understanding of the adult's health care preferences;  
2499 (c) the surrogate's understanding of what the adult would have wanted under the  
2500 circumstances; and  
2501 (d) to the extent that the preferences described in Subsections ~~[(30)(a)]~~ (25)(a) through (c)  
2502 are unknown, the best interest of the adult.

2503 ~~[(31)]~~ (26) "Surrogate" means a health care decision maker who is:

- 2504 (a) an appointed agent;  
2505 (b) a default surrogate under the provisions of Section 75A-3-203; or  
2506 (c) a guardian.

2507 ~~[(32) "Trust" means the same as that term is defined in Section 75-1-201.]~~

2508 ~~[(33) "Will" means the same as that term is defined in Section 75-1-201.]~~

2509 Section 58. Section **75A-4-102** is amended to read:

2510           **75A-4-102 . Definitions for chapter.**

2511           As used in this chapter:

- 2512           (1) "Appointee" means a person to which a powerholder makes an appointment of  
2513           appointive property.
- 2514           (2) "Appointive property" means the property or property interest subject to a power of  
2515           appointment.
- 2516           (3)(a) "Blanket-exercise clause" means a clause in an instrument that exercises a power  
2517           of appointment and is not a specific-exercise clause.
- 2518           (b) "Blanket-exercise clause" includes a clause that:
- 2519               (i) expressly uses the words "any power" in exercising any power of appointment the  
2520               powerholder has;
- 2521               (ii) expressly uses the words "any property" in appointing any property over which  
2522               the powerholder has a power of appointment; or
- 2523               (iii) disposes of all property subject to disposition by the powerholder.
- 2524           ~~[(4) "Descendant" means the same as that term is defined in Section 75-1-201.]~~
- 2525           ~~[(5)] (4) "Donor" means a person that creates a power of appointment.~~
- 2526           ~~[(6) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 2527           ~~[(7)] (5) "Exclusionary power of appointment" means a power of appointment exercisable in~~  
2528           favor of any one or more of the permissible appointees to the exclusion of the other  
2529           permissible appointees.
- 2530           ~~[(8)] (6) "General power of appointment" means a power of appointment exercisable in~~  
2531           favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a  
2532           creditor of the powerholder's estate.
- 2533           ~~[(9)] (7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.~~
- 2534           ~~[(10)] (8) "Impermissible appointee" means a person that is not a permissible appointee.~~
- 2535           ~~[(11)] (9) "Instrument" means a record.~~
- 2536           ~~[(12)] (10)(a) "Nongeneral power of appointment" means a power of appointment that is~~  
2537           not a general power of appointment.
- 2538           (b) "Nongeneral power of appointment" includes a special power of appointment, a  
2539           limited power of appointment, or similar terminology that is used in an instrument  
2540           creating a power that does not grant powers making it a general power of  
2541           appointment.
- 2542           ~~[(13)] (11) "Permissible appointee" means a person in whose favor a powerholder may~~  
2543           exercise a power of appointment.

- 2544 ~~[(14) "Person" means an individual, estate, trust, business or nonprofit entity, public~~  
2545 ~~corporation, government or governmental subdivision, agency, instrumentality, or other~~  
2546 ~~legal entity.]~~
- 2547 ~~[(15)]~~ (12) "Powerholder" means a person in whom a donor creates a power of appointment.  
2548 ~~[(16)]~~ (13)(a) "Power of appointment" means a power that enables a powerholder acting  
2549 in a nonfiduciary capacity to designate a recipient of an interest in, or another power  
2550 of appointment over, the appointive property.  
2551 (b) "Power of appointment" does not include a power of attorney.
- 2552 ~~[(17)]~~ (14)(a) "Presently exercisable power of appointment" means a power of  
2553 appointment exercisable by the powerholder at a relevant time.  
2554 (b) "Presently exercisable power of appointment" includes a power of appointment not  
2555 exercisable until the occurrence of a specified event, the satisfaction of an  
2556 ascertainable standard, or the passage of a specified time only after:  
2557 (i) the occurrence of the specified event;  
2558 (ii) the satisfaction of the ascertainable standard; or  
2559 (iii) the passage of the specified time.  
2560 (c) "Presently exercisable power of appointment" does not include a power exercisable  
2561 only at the powerholder's death.
- 2562 ~~[(18) "Property" means the same as that term is defined in Section 75-1-201.]~~
- 2563 ~~[(19) "Record" means information that is inscribed on a tangible medium or that is stored in~~  
2564 ~~an electronic or other medium and is retrievable in perceivable form.]~~
- 2565 ~~[(20)]~~ (15) "Specific-exercise clause" means a clause in an instrument that specifically refers  
2566 to and exercises a particular power of appointment.
- 2567 ~~[(21)]~~ (16) "Taker in default of appointment" means a person that takes all or part of the  
2568 appointive property to the extent the powerholder does not effectively exercise the  
2569 power of appointment.
- 2570 ~~[(22)]~~ (17) "Terms of the instrument" means the manifestation of the intent of the maker of  
2571 the instrument regarding the instrument's provisions as expressed in the instrument or as  
2572 may be established by other evidence that would be admissible in a legal proceeding.
- 2573 ~~[(23) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 2574 ~~[(24) "Will" means the same as that term is defined in Section 75-1-201.]~~
- 2575 Section 59. Section **75A-4-302** is amended to read:  
2576 **75A-4-302 . Intent to exercise -- Determining intent from residuary clause.**  
2577 (1) As used in this section[?],

2578       ~~[(a) "Residuary"]~~ "residuary clause" does not include a residuary clause containing a  
2579       blanket-exercise clause or a specific-exercise clause.

2580       ~~[(b) "Will" includes a codicil and a testamentary instrument that revises another will.]~~

2581       (2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's  
2582       revocable trust, manifests the powerholder's intent to exercise a power of appointment  
2583       only if:

2584       (a) the terms of the instrument containing the residuary clause do not manifest a contrary  
2585       intent;

2586       (b) the power is a general power exercisable in favor of the powerholder's estate;

2587       (c) there is no gift-in-default clause or the clause is ineffective; and

2588       (d) the powerholder did not release the power.

2589       Section 60. Section **75A-5-102** is amended to read:

2590       **75A-5-102 . Definitions for chapter.**

2591       As used in this chapter:

2592       (1)(a) "Accounting period" means a calendar year, unless a fiduciary selects another  
2593       period of 12 calendar months or approximately 12 calendar months.

2594       (b) "Accounting period" includes a part of a calendar year or another period of 12  
2595       calendar months or approximately 12 calendar months that begins when an income  
2596       interest begins or ends when an income interest ends.

2597       (2)(a) "Asset-backed security" means a security that is serviced primarily by the cash  
2598       flows of a discrete pool of fixed or revolving receivables or other financial assets that  
2599       by the financial assets' terms convert into cash within a finite time.

2600       (b) "Asset-backed security" includes rights or other assets that ensure the servicing or  
2601       timely distribution of proceeds to the holder of the asset-backed security.

2602       (c) "Asset-backed security" does not include an asset to which Section 75A-5-401,  
2603       75A-5-409, or 75A-5-414 applies.

2604       (3) "Beneficiary" includes:

2605       (a) for a trust:

2606           (i) a current beneficiary, including a current income beneficiary and a beneficiary that  
2607           may receive only principal;

2608           (ii) a remainder beneficiary; and

2609           (iii) any other successor beneficiary;

2610       (b) for an estate, an heir and devisee; and

2611       (c) for a life estate or term interest, a person that holds a life estate, term interest, or

remainder, or other interest following a life estate or term interest.

(4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life estate or other term interest described in Subsection 75A-5-103(2).

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, even if the fiduciary also may distribute principal to the beneficiary.

(6)(a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

(b) "Distribute," "distributed," and "distributee" have corresponding meanings.

(7)(a) "Estate" means a decedent's estate.

(b) "Estate" includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes:

(a) a trustee, trust director as defined in Section ~~[75-12-102]~~ 75B-3-102, personal representative, life tenant, holder of a term interest, and person acting under a delegation from a fiduciary;

(b) a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal; and

(c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the trust and applicable law.

(9)(a) "Income" means money or other property a fiduciary receives as current return from principal.

(b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a principal asset to the extent provided in Part 4, Allocation of Receipts.

(10)(a) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion.

(b) "Income interest" includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(a) for a trust:

(i) a qualified beneficiary as determined under Section ~~[75-7-103]~~ 75B-2-103;

(ii) a settlor of the trust; or

(iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) for an estate, a beneficiary;

(c) a spouse, parent, brother, sister, or issue of an individual described in Subsection (11)(a) or (b);

(d) a corporation, partnership, limited liability company, or other entity in which persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

(e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13)(a) "Net income" means:

(i) the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the accounting period, other than distributions, allocated to income under the terms of the trust and this chapter; and

(ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount determined under Part 3, Unitrust.

(b) "Net income" includes an adjustment from principal to income under Section 75A-5-203.

(c) "Net income" does not include an adjustment from income to principal under Section 75A-5-203.

~~[(14) "Person" means:]~~

~~[(a) an individual;]~~

~~[(b) an estate;]~~

~~[(c) a trust;]~~

~~[(d) a business or nonprofit entity;]~~

~~[(e) a public corporation, government or governmental subdivision, agency, or instrumentality; or]~~

~~[(f) any other legal entity.]~~

~~[(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.]~~

~~[(16)]~~ (14) "Principal" means property held in trust for distribution to, production of income

for, or use by a current or successor beneficiary.

~~[(17)]~~ "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.]

~~[(18)]~~ (15) "Settlor" means the same as that term is defined in Section ~~[75-7-103]~~ 75B-1-101.

~~[(19)]~~ (16) "Special tax benefit" means:

- (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code because of the qualification of an income interest in the trust as a present interest in property;
- (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code;
- (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;
- (d) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was irrevocable on September 25, 1985, if there is any possibility that:
  - (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
  - (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust; or
- (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of the trust which is less than one, if there is any possibility that:
  - (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
  - (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust.

~~[(20)]~~ (17) "Successive interest" means the interest of a successor beneficiary.

~~[(21)]~~ (18) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

~~[(22)]~~ (19) "Terms of a trust" means:

- (a) except as otherwise provided in Subsection ~~[(22)(b);]~~ (19)(b), the manifestation of the settlor's intent regarding a trust's provisions as:
  - (i) expressed in the trust instrument; or



- (ii) established by other evidence that would be admissible in a judicial proceeding;
- (b) the trust's provisions as established, determined, or amended by:
- (i) a trustee or trust director in accordance with applicable law;
- (ii) a court order; or
- (iii) a nonjudicial settlement agreement under Section ~~[75-7-110]~~ 75B-2-110;
- (c) for an estate, a will; or
- (d) for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.

~~[(23)]~~ (20)(a) "Trust" includes:

- (i) an express trust, private or charitable, with additions to the trust, wherever and however created; and
- (ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- (b) "Trust" does not include:
- (i) a constructive trust;
- (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or
- (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

~~[(24)]~~ (21)(a) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.

- (b) "Trustee" includes an original, additional, or successor trustee, whether appointed or confirmed by a court.

~~[(25)(a) "Will" means any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property effective at the individual's death.]~~

~~[(b) "Will" includes a codicil or other amendment to a testamentary instrument.]~~

Section 61. Section **75A-5-202** is amended to read:

**75A-5-202 . Judicial review of exercise of discretionary power -- Request for instruction.**

- (1) In this section, "fiduciary decision" means:

- 2748 (a) a fiduciary's allocation between income and principal or other determination  
2749 regarding income and principal required or authorized by the terms of the trust or this  
2750 chapter;
- 2751 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income  
2752 and principal granted by the terms of the trust or this chapter, including the power to:  
2753 (i) adjust under Section 75A-5-203;  
2754 (ii) convert an income trust to a unitrust under Subsection 75A-5-303(1)(a);  
2755 (iii) change the percentage or method used to calculate a unitrust amount under  
2756 Subsection 75A-5-303(1)(b); or  
2757 (iv) convert a unitrust to an income trust under Subsection 75A-5-303(1)(c); or  
2758 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- 2759 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court  
2760 determines that the fiduciary decision was an abuse of the fiduciary's discretion.
- 2761 (3)(a) If the court determines that a fiduciary decision was an abuse of the fiduciary's  
2762 discretion, the court may order a remedy authorized by law, including a remedy  
2763 authorized in Section ~~[75-7-1001]~~ 75B-2-1001.
- 2764 (b) To place the beneficiaries in the positions that the beneficiaries would have occupied  
2765 if there had not been an abuse of the fiduciary's discretion, the court may order:  
2766 (i) the fiduciary to exercise or refrain from exercising the power to adjust under  
2767 Section 75A-5-203;  
2768 (ii) the fiduciary to exercise or refrain from exercising the power to:  
2769 (A) convert an income trust to a unitrust under Subsection 75A-5-303(1)(a);  
2770 (B) change the percentage or method used to calculate a unitrust amount under  
2771 Subsection 75A-5-303(1)(b); or  
2772 (C) convert a unitrust to an income trust under Subsection 75A-5-303(1)(c);  
2773 (iii) the fiduciary to distribute an amount to a beneficiary;  
2774 (iv) a beneficiary to return some or all of a distribution; or  
2775 (v) the fiduciary to withhold an amount from one or more future distributions to a  
2776 beneficiary.
- 2777 (4)(a) On petition by a fiduciary for instruction, the court may determine whether a  
2778 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.
- 2779 (b) A beneficiary that opposes the proposed decision has the burden to establish that the  
2780 proposed decision will result in an abuse of the fiduciary's discretion if the petition:  
2781 (i) describes the proposed decision;

- (ii) contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies; and
- (iii) explains how the beneficiary will be affected by the proposed decision.

Section 62. Section **75A-5-203** is amended to read:

**75A-5-203 . Fiduciary's power to adjust.**

- (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.
- (2) This section does not create a duty to exercise or consider the power to adjust under Subsection (1) or to inform a beneficiary about the applicability of this section.
- (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under Subsection (1) is not liable to a person affected by the exercise or failure to exercise.
- (4) In deciding whether and to what extent to exercise the power to adjust under Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including the relevant factors in Subsection 75A-5-201(5) and the application of Subsection 75A-5-401(9), Section 75A-5-408, and Section 75A-5-413.
- (5) A fiduciary may not exercise the power to make an adjustment under Subsection (1) or the power to make a determination that an allocation is insubstantial under Section 75A-5-408 if:
- (a) the adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;
  - (b) the adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;
  - (c) the adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;
  - (d) possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;
  - (e) possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax

- 2816 purposes;
- 2817 (f) possessing or exercising the power would cause an individual to be treated as making
- 2818 a gift for federal gift tax purposes;
- 2819 (g) the fiduciary is not an independent person;
- 2820 (h) the trust is irrevocable and provides for income to be paid to the settlor and
- 2821 possessing or exercising the power would cause the adjusted principal or income to
- 2822 be considered an available resource or available income under a public-benefit
- 2823 program; or
- 2824 (i) the trust is a unitrust under Part 3, Unitrust.
- 2825 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:
- 2826 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise the
- 2827 power to adjust, unless the exercise of the power to adjust by the remaining
- 2828 co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other
- 2829 than this chapter; or
- 2830 (b)(i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:
- 2831 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may
- 2832 appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;
- 2833 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed
- 2834 co-fiduciary may exercise the power to adjust under Subsection (1); and
- 2835 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.
- 2836 (ii)(A) If the appointment of a co-fiduciary is not permitted by the terms of the
- 2837 trust or by a provision of law outside this chapter, a fiduciary may not appoint
- 2838 a co-fiduciary.
- 2839 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the
- 2840 terms of the trust or by a provision of law outside this chapter, the co-fiduciary
- 2841 may not exercise the power to adjust under Subsection (1).
- 2842 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
- 2843 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of
- 2844 the power to adjust will or may:
- 2845 (a) cause a result described in Subsections (5)(a) through (f) or (h); or
- 2846 (b) deprive the trust of a tax benefit or impose a tax burden not described in Subsections
- 2847 (5)(a) through (f).
- 2848 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to
- 2849 adjust under Subsection (1):

- (a) must be in a record;
- (b) applies to the entire power to adjust, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:
- (i) from income to principal;
  - (ii) from principal to income;
  - (iii) for specified property; or
  - (iv) in specified circumstances;
- (c) for a delegation, may be modified by a redelegation under this subsection by the co-fiduciary to which the delegation is made; and
- (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust that deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under Subsection (1).

(10) The exercise of the power to adjust under Subsection (1) in any accounting period may apply to the current accounting period, the immediately preceding accounting period, and one or more subsequent accounting periods.

(11) A description of the exercise of the power to adjust under Subsection (1) shall be:

- (a) included in a report, if any, sent to beneficiaries under Subsection ~~[75-7-811(3)]~~ 75B-2-811(3); or
- (b) communicated at least annually to the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ 75B-2-103(8).

Section 63. Section **75A-5-303** is amended to read:

**75A-5-303 . Authority of fiduciary.**

(1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:

- (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:
  - (i) that, in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and
  - (ii) the percentage and method used to calculate the unitrust amount;
- (b) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the

- unitrust amount; or
- (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this part rather than a unitrust amount.
- (2) A fiduciary may take an action under Subsection (1) if:
- (a) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;
- (b) the fiduciary sends a notice in a record, in the manner required by Section 75A-5-304, describing and proposing to take the action;
- (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the trust which is:
- (i) if an individual, living; or
- (ii) if not an individual, in existence;
- (d) at least one member of each class of the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ 75B-2-103(8) receiving the notice under Subsection (2)(b) is:
- (i) if an individual, legally competent;
- (ii) if not an individual, in existence; or
- (iii) represented in the manner provided in Subsection 75A-5-304(2); and
- (e) the fiduciary does not receive, by the date specified in the notice under Subsection 75A-5-304(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a person to which the notice under Subsection (2)(b) is sent.
- (3)(a) If a fiduciary receives, not later than the date stated in the notice under Subsection 75A-5-304(4)(e), an objection in a record described in Subsection 75A-5-304(4)(d) to a proposed action, the fiduciary or a beneficiary may request that the court:
- (i) require the fiduciary to take the proposed action;
- (ii) require the fiduciary to take the proposed action with modifications; or
- (iii) prevent the proposed action.
- (b) A person described in Subsection 75A-5-304(1) may oppose the proposed action in the proceeding under Subsection (3)(a), regardless of whether the person:
- (i) consented under Subsection 75A-5-304(3); or
- (ii) objected under Subsection 75A-5-304(4)(d).
- (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify each person described in

Subsection 75A-5-304(1) in a record of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized by Subsection (1), or whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including the relevant factors in Subsection 75A-5-201(5).

(7) For a reason described in Subsection 75A-5-203(7), and in the manner described in Subsection 75A-5-203(8), a fiduciary may:

(a) release or delegate the power to convert an income trust to a unitrust under Subsection (1)(a);

(b) change the percentage or method used to calculate a unitrust amount under Subsection (1)(b); or

(c) convert a unitrust to an income trust under Subsection (1)(c).

Section 64. Section **75A-5-304** is amended to read:

**75A-5-304 . Notice.**

(1) A fiduciary shall send a notice required by Subsection 75A-5-303(2)(b) in a manner authorized under Section ~~[75-7-109]~~ 75B-2-109 to:

(a) the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ 75B-2-103(8);

(b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust Act, as trust director of the trust; and

(c) each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in Subsection (1)(b), to the extent the power is exercisable when the person that exercises the power is not then serving as trustee or is a person described in Subsection (1)(b).

(2) The representation provisions of ~~[Sections 75-7-301 through 75-7-305]~~ Title 75B, Chapter 2, Part 3, Representation, apply to notice under this section.

(3)(a) A person may consent in a record at any time to action proposed under Subsection 75A-5-303(2)(b).

(b) If a person required to receive a notice under Subsection (1) consents under

- 2952 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the  
2953 person the notice.
- 2954 (4) A notice required by Subsection 75A-5-303(2)(b) shall include:
- 2955 (a) the action proposed under Subsection 75A-5-303(2)(b);
- 2956 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted  
2957 under Subsection 75A-5-303(1)(a);
- 2958 (c) for a change in the percentage or method used to calculate the unitrust amount, a  
2959 copy of the unitrust policy or amendment or replacement of the unitrust policy  
2960 adopted under Subsection 75A-5-303(1)(b);
- 2961 (d) a statement that the person to which the notice is sent may object to the proposed  
2962 action by stating in a record the basis for the objection and sending or delivering the  
2963 record to the fiduciary;
- 2964 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),  
2965 which shall be at least 30 days after the date the notice is sent;
- 2966 (f) the date on which the action is proposed to be taken and the date on which the action  
2967 is proposed to take effect;
- 2968 (g) the name and contact information of the fiduciary; and
- 2969 (h) the name and contact information of a person that may be contacted for additional  
2970 information.

2971 Section 65. Section **75A-6-102** is amended to read:

2972 **75A-6-102 . Definitions for chapter.**

2973 As used in this chapter:

- 2974 (1) "Account" means an arrangement under a terms of service agreement in which a  
2975 custodian carries, maintains, processes, receives, or stores a digital asset of the user or  
2976 provides goods or services to the user.
- 2977 [~~(2) "Agent" means an attorney in fact granted authority under a durable or nondurable~~  
2978 ~~power of attorney.]~~
- 2979 (2) "Agent" means the same as that term is defined in Section 75A-2-102.
- 2980 (3) "Carries" means engages in the transmission of an electronic communication.
- 2981 (4) "Catalogue of electronic communications" means information that identifies each  
2982 person with which a user has had an electronic communication, the time and date of the  
2983 communication, and the electronic address of the person.
- 2984 [~~(5)(a) "Conservator" means a person appointed by a court to manage the estate of a~~  
2985 ~~living individual.]~~



2986        ~~[(b) "Conservator" includes a limited conservator.]~~

2987        ~~[(6)] (5) "Content of an electronic communication" means information concerning the~~  
2988        substance or meaning of the communication that:

2989        (a) has been sent or received by a user;

2990        (b) is in electronic storage by a custodian providing an electronic communication service  
2991        to the public or is carried or maintained by a custodian providing a remote computing  
2992        service to the public; and

2993        (c) is not readily accessible to the public.

2994        ~~[(7)] (6) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial~~  
2995        Administration.

2996        ~~[(8)] (7) "Custodian" means a person that carries, maintains, processes, receives, or stores a~~  
2997        digital asset of a user.

2998        ~~[(9)] (8) "Designated recipient" means a person chosen by a user using an online tool to~~  
2999        administer digital assets of the user.

3000        ~~[(10)] (9)(a) "Digital asset" means an electronic record in which an individual has a right~~  
3001        or interest.

3002        (b) "Digital asset" does not include an underlying asset or liability unless the asset or  
3003        liability is itself an electronic record.

3004        ~~[(11) "Electronic" means relating to technology having electrical, digital, magnetic,~~  
3005        wireless, optical, electromagnetic, or similar capabilities.]

3006        ~~[(12)] (10) "Electronic communication" has the same meaning as the definition in 18 U.S.C.~~  
3007        Sec. 2510(12).

3008        ~~[(13)] (11) "Electronic communication service" means a custodian that provides to a user the~~  
3009        ability to send or receive an electronic communication.

3010        ~~[(14) "Estate" means the same as that term is defined in Section 75-1-201.]~~

3011        ~~[(15)] (12) "Fiduciary" means an original, additional, or successor personal representative,~~  
3012        conservator, guardian, agent, or trustee.

3013        ~~[(16)(a) "Guardian" means a person appointed by a court to manage the affairs of a~~  
3014        living individual.]

3015        ~~[(b) "Guardian" includes a limited guardian.]~~

3016        ~~[(17)] (13) "Information" means data, text, images, videos, sounds, codes, computer~~  
3017        programs, software, databases, or the like.

3018        ~~[(18)] (14) "Online tool" means an electronic service provided by a custodian that allows the~~  
3019        user, in an agreement distinct from the terms of service agreement between the custodian

and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

~~[(19) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.]~~

~~[(20) "Personal representative" means an executor, administrator, special administrator as defined in Section 75-1-201, or person that performs substantially the same function under the law of this state other than this chapter.]~~

~~[(21) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.]~~

~~[(22) "Principal" means an individual who grants authority to an agent in a power of attorney.]~~

(15) "Power of attorney" means the same as that term is defined in Section 75A-2-102.

(16) "Principal" means the same as that term is defined in Section 75A-2-102.

~~[(23)]~~ (17)(a) "Protected person" means an individual for whom a conservator or guardian has been appointed.

(b) "Protected person" includes an individual for whom an application for the appointment of a conservator or guardian is pending.

~~[(24) "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.]~~

~~[(25)]~~ (18) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Sec. 2510(14).

~~[(26)]~~ (19) "Successor personal representative" means the same as that term is defined in Section 75-1-201.

~~[(27)]~~ (20) "Terms of service agreement" means an agreement that controls the relationship between a user and a custodian.

~~[(28) "Trust" means the same as that term is defined in Section 75-1-201.]~~

~~[(29)]~~ (21)(a) "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another.

(b) "Trustee" includes a successor trustee.

~~[(30)]~~ (22) "User" means a person that has an account with a custodian.

~~[(31) "Will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.]~~

Section 66. Section **75A-6-112** is amended to read:

**75A-6-112 . Disclosure of contents of electronic communications held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under Section [ ~~75-7-1013~~] 75B-2-1013 that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
  - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
  - (b) evidence linking the account to the trust.

Section 67. Section **75A-6-113** is amended to read:

**75A-6-113 . Disclosure of other digital assets held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under Section [ ~~75-7-1013~~] 75B-2-1013;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
  - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 68. Section **75A-7-102** is amended to read:

**75A-7-102 . Definitions for chapter.**

As used in this chapter:

- (1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.
- (2) "Claim of beneficial interest" includes:
  - (a) a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person in his behalf; and
  - (b) a claim that the transfer would be in breach of fiduciary duties.
- (3) "Corporation" means a private or public corporation, association or trust issuing a security.
- (4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.
- ~~[(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.]~~
- ~~[(6)]~~ (5) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.
- ~~[(7)]~~ (6) "Transfer" means a change on the books of a corporation in the registered ownership of a security.
- ~~[(8)]~~ (7) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

Section 69. Section **75A-8-102** is amended to read:

**CHAPTER 8. UNIFORM TRANSFERS TO MINORS ACT**

**75A-8-102 . Definitions for chapter.**

As used in this chapter:

- (1) "Adult" means an individual who is 21 years old or older.
- (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.
- (3) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

3122 (4) "Broker" means a person lawfully engaged in the business of effecting transactions in  
3123 securities or commodities for the person's own account or for the accounts of others.  
3124 ~~[(5) "Conservator" means a person appointed or qualified by a court to act as general,~~  
3125 ~~limited, or temporary guardian of a minor's property or a person legally authorized to~~  
3126 ~~perform substantially the same functions.]~~  
3127 ~~[(6)]~~ (5) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial  
3128 Administration.  
3129 ~~[(7)]~~ (6) "Custodial property" means:  
3130 (a) any interest in property transferred to a custodian under this chapter; and  
3131 (b) the income from and proceeds of that interest in property.  
3132 ~~[(8)]~~ (7) "Custodian" means a person so designated under Section 75A-8-110 or a successor  
3133 or substitute custodian designated under Section 75A-8-119.  
3134 ~~[(9) "Estate" means the same as that term is defined in Section 75-1-201.]~~  
3135 ~~[(10)]~~ (8) "Fiduciary" means the same as that term is defined in Section 75-1-201.  
3136 ~~[(11)]~~ (9) "Financial institution" means a bank, trust company, savings institution, or credit  
3137 union, chartered and supervised under state or federal law.  
3138 ~~[(12) "Guardian" means the same as that term is defined in Section 75-1-201.]~~  
3139 ~~[(13)]~~ (10) "Incapacitated" means the same as that term is defined in Section 75-1-201.  
3140 ~~[(14)]~~ (11) "Incapacity" means the same as that term is defined in Section 75-1-201.  
3141 ~~[(15)]~~ (12) "Interested person" means the same as that term is defined in Section 75-1-201.  
3142 ~~[(16)]~~ (13) "Legal representative" means an individual's personal representative or  
3143 conservator.  
3144 ~~[(17)]~~ (14) "Member of the minor's family" means the minor's parent, stepparent, spouse,  
3145 grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by  
3146 adoption.  
3147 ~~[(18)]~~ (15) "Minor" means an individual who is under 21 years old.  
3148 ~~[(19)]~~ (16) "Parent" means the same as that term is defined in Section 75-1-201.  
3149 ~~[(20)]~~ (17) "Payor" means the same as that term is defined in Section 75-1-201.  
3150 ~~[(21) "Person" means an individual, corporation, organization as defined in Section~~  
3151 ~~75-1-201, or other legal entity.]~~  
3152 ~~[(22) "Personal representative" means an executor, administrator, successor personal~~  
3153 ~~representative as defined in Section 75-1-201, or special administrator as defined in~~  
3154 ~~Section 75-1-201, of a decedent's estate or a person legally authorized to perform~~  
3155 ~~substantially the same functions.]~~

- 3156     ~~[(23)]~~ (18) "Petition" means the same as that term is defined in Section 75-1-201.
- 3157     ~~[(24)]~~ "Property" means the same as that term is defined in Section 75-1-201.]
- 3158     ~~[(25)]~~ "Record" means the same as that term is defined in Section 75-1-201.]
- 3159     ~~[(26)]~~ (19) "Security" means the same as that term is defined in Section 75-1-201.
- 3160     ~~[(27)]~~ "State" includes any state of the United States, the district of Columbia, the
- 3161         Commonwealth of Puerto Rico, and any territory or possession subject to the legislative
- 3162         authority of the United States.]
- 3163     ~~[(28)]~~ (20) "Testator" means the same as that term is defined in Section 75-1-201.
- 3164     ~~[(29)]~~ (21) "Transfer" means a transaction that creates custodial property under Section [
- 3165         ~~75A-8-109]~~ 75A-8-110.
- 3166     ~~[(30)]~~ (22) "Transferor" means a person who makes a transfer under this chapter.
- 3167     ~~[(31)]~~ "Trust" means the same as that term is defined in Section 75-1-201.]
- 3168     ~~[(32)]~~ (23) "Trust company" means a financial institution, corporation, or other legal entity,
- 3169         authorized to exercise general trust powers.
- 3170     ~~[(33)]~~ (24) "Trustee" means the same as that term is defined in Section 75-1-201.
- 3171     ~~[(34)]~~ "Will" means the same as that term is defined in Section 75-1-201.]
- 3172         Section 70. Section **75B-1-101** is amended to read:
- 3173         **75B-1-101 . Definitions for title.**
- 3174         ~~[Reserved.]~~ As used in this title:
- 3175     (1) "Agent" means the same as that term is defined in Section 75-1-201.
- 3176     (2) "Beneficiary" means a person that:
- 3177         (a) has a present or future beneficial interest in a trust, vested or contingent; or
- 3178         (b) in a capacity other than that of trustee, holds a power of appointment over trust
- 3179         property.
- 3180     (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose
- 3181         described in Subsection 75B-2-405(1).
- 3182     (4) "Child" means, except as provided in Sections 75B-2-503 and 75B-2-504, the same as
- 3183         that term is defined in Section 75-1-201.
- 3184     (5) "Claims" means the same as that term is defined in Section 75-1-201.
- 3185     (6) "Conservator" means the same as that term is defined in Section 75-1-201.
- 3186     (7) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial
- 3187         Administration.
- 3188     (8) "Descendant" means the same as that term is defined in Section 75-1-201.
- 3189     (9) "Devise" means the same as that term is defined in Section 75-1-201.

- 3190     (10) "Distributee" means the same as that term is defined in Section 75-1-201.
- 3191     (11) "Estate" means the same as that term is defined in Section 75-1-201.
- 3192     (12) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 3193     (13) "Governing instrument" means the same as that term is defined in Section 75-1-201.
- 3194     (14) "Guardian" means the same as that term is defined in Section 75-1-201.
- 3195     (15) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 3196     (16) "Income" means the same as that term is defined in Section 75A-5-102.
- 3197     (17) "Interested person" means, except as provided in Section 75B-2-110, the same as that  
3198         term is defined in Section 75-1-102.
- 3199     (18) "Lease" means the same as that term is defined in Section 75-1-201.
- 3200     (19) "Minor" means an individual who is younger than 18 years old.
- 3201     (20) "Mortgage" means the same as that term is defined in Section 75-1-201.
- 3202     (21) "Organization" means the same as that term is defined in Section 75-1-201.
- 3203     (22) "Parent" means the same as that term is defined in Section 75-1-201.
- 3204     (23) "Person" means the same as that term is defined in Section 75-1-201.
- 3205     (24) "Personal representative" means the same as that term is defined in Section 75-1-201.
- 3206     (25) "Petition" means the same as that term is defined in Section 75-1-201.
- 3207     (26) "Power of appointment" means the same as that term is defined in Section 75A-4-102.
- 3208     (27) "Principal" means the same as that term is defined in Section 75A-5-102.
- 3209     (28) "Property" means the same as that term is defined in Section 75-1-201.
- 3210     (29) "Protected person" means the same as that term is defined in Section 75-1-201.
- 3211     (30) "Record" means the same as that term is defined in Section 75-1-201.
- 3212     (31) "Security" means the same as that term is defined in Section 75-1-201.
- 3213     (32)(a) "Settlor" means a person, including a testator, who creates, or contributes  
3214         property to, a trust.
- 3215         (b) If more than one person creates or contributes property to a trust, each person is a  
3216             settlor of the portion of the trust property attributable to that person's contribution  
3217             except to the extent another person has the power to revoke or withdraw that portion.
- 3218     (33) "Sign" means the same as that term is defined in Section 75-1-201.
- 3219     (34) "State" means the same as that term is defined in Section 75-1-201.
- 3220     (35) "Successor" means a person, other than a creditor, that is entitled to property of a  
3221         decedent under the decedent's will or Title 75, Utah Uniform Probate Code.
- 3222     (36) "Testator" means the same as that term is defined in Section 75-1-201.
- 3223     (37)(a) "Trust" means:

- 3224 (i) a health savings account, as defined in Section 223 of the Internal Revenue Code;  
 3225 (ii) an express trust, private or charitable, with additions thereto, wherever and  
 3226 however created; or  
 3227 (iii) a trust created or determined by judgment or decree under which the trust is to be  
 3228 administered in the manner of an express trust.
- 3229 (b) "Trust" does not include:
- 3230 (i) a constructive trust;  
 3231 (ii) a resulting trust;  
 3232 (iii) a conservatorship;  
 3233 (iv) a personal representative;  
 3234 (v) a trust account as defined in Title 75, Chapter 6, Nonprobate Transfers;  
 3235 (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To  
 3236 Minors Act;  
 3237 (vii) a business trust providing for certificates to be issued to beneficiaries;  
 3238 (viii) a common trust fund;  
 3239 (ix) a voting trust;  
 3240 (x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;  
 3241 (xi) a security arrangement;  
 3242 (xii) a liquidation trust;  
 3243 (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries,  
 3244 wages, profits, pensions, or employee benefits of any kind; or  
 3245 (xiv) any arrangement under which a person is nominee or escrowee for another  
 3246 person.
- 3247 (38) "Trustee" means an original, additional, and successor trustee, and cotrustee, whether  
 3248 or not appointed or confirmed by the court.
- 3249 (39) "Trust instrument" means an instrument executed by the settlor that contains terms of  
 3250 the trust, including any amendments thereto.
- 3251 (40) "Ward" means the same as that term is defined in Section 75-1-201.
- 3252 (41) "Will" means the same as that term is defined in Section 75-1-201.
- 3253 Section 71. Section **75B-1-201** is amended to read:
- 3254 **75B-1-201 . Definitions for part.**
- 3255 As used in this part[ : ],
- 3256 [(1) ~~"Income" means the same as that term is defined in Section 75A-5-101-]~~
- 3257 [(2) ~~"Principal" means the same as that term is defined in Section 75A-5-101-]~~



3258      [~~(3)~~] "~~Retirement~~" "retirement trust" means a trust:

3259            [(a)] (1) created by an employer as part of a pension, stock bonus, disability, death benefit,  
3260            profit sharing, retirement, or similar plan primarily for the benefit of an employee or the  
3261            employee's family, appointee, or beneficiary;

3262            [~~(b)~~] (2) to which contributions are made by the employer or employee; and

3263            [(e)] (3) that is created for the purpose of distributing principal or income to the employee or  
3264            the employee's family, appointee, or beneficiary.

3265            Section 72. Section **75B-1-301** is amended to read:

3266            **75B-1-301 . Definitions for part.**

3267            As used in this part:

3268            (1) "Creditor" means:

3269            (a) a creditor or other claimant of the settlor existing when the trust is created; or

3270            (b) a person who subsequently becomes a creditor, including whether or not reduced to  
3271            judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
3272            undisputed, legal, equitable, secured, or unsecured:

3273            (i) holding or seeking to enforce a judgment entered by a court or other body having  
3274            adjudicative authority; or

3275            (ii) with a right to payment.

3276            (2) "Domestic support obligation" means:

3277            (a) a child support judgment or order;

3278            (b) a spousal support judgment or order; or

3279            (c) an unsatisfied claim arising from a property division in a divorce proceeding.

3280            (3) "Insolvent" means:

3281            (a) having generally ceased to pay debts in the ordinary course of business other than as  
3282            a result of a bona fide dispute;

3283            (b) being unable to pay debts as they become due; or

3284            (c) being insolvent within the meaning of federal bankruptcy law.

3285            (4) "Paid and delivered" does not include the settlor's use or occupancy of real property or  
3286            personal property owned by the trust if the use or occupancy is in accordance with the  
3287            trustee's discretionary authority under the trust instrument.

3288            (5) "Personal property" includes intangible and tangible personal property.

3289            [~~(6) "Property" means real property, personal property, and interests in real or personal~~  
3290            ~~property.~~]

3291            [~~(7) "Settlor" means a person who transfers property in trust.~~]

[~~(8)~~] (6) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

[~~(9)~~ "Trust" means the same as that term is defined in Section 75-1-201.]

Section 73. Section **75B-1-302** is amended to read:

**75B-1-302 . Asset protection trust.**

- (1) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (3) are satisfied, a creditor of the settlor may not:
  - (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;
  - (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or
  - (c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.
- (2) Notwithstanding Subsection (1), nothing in this section:
  - (a) prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary; or
  - (b) nullifies or impairs a security interest that was granted by a settlor or a trustee with respect to property that is transferred to the trust.
- (3)(a) In order for Subsection (1) to apply, the conditions in this Subsection (3) shall be satisfied.
  - (b) Where this Subsection (3) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (3).
  - (c) An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.
  - (d) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.
  - (e) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.
  - (f)(i) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary.

- 3326 (ii) The provision shall be considered to be a restriction on the transfer of the settlor's  
3327 beneficial interest in the trust that is enforceable under applicable nonbankruptcy  
3328 law within the meaning of 11 U.S.C. Sec. 541(c)(2).
- 3329 (g) The settlor may not have the ability under the trust instrument, without the consent of  
3330 a person who has a substantial beneficial interest in the trust, which interest would be  
3331 adversely affected by the exercise of the power held by the settlor:
- 3332 (i) to revoke, amend, or terminate all or any part of the trust; or  
3333 (ii) to withdraw any property from the trust, except that the settlor, without the  
3334 approval or consent of any person, may be given the power, under the trust  
3335 agreement, to substitute assets of substantially equivalent value.
- 3336 (h) The trust instrument may not provide for any mandatory distributions of either  
3337 income or principal to the settlor, as beneficiary, except as provided in Subsection  
3338 (5)(g).
- 3339 (i)(i) The trust instrument shall require that, at least 30 days before paying and  
3340 delivering any distribution to the settlor, as beneficiary, the trustee notify in  
3341 writing every person who has a domestic support obligation against the settlor.
- 3342 (ii) The trust instrument shall require that the notice state the date the distribution will  
3343 be paid and delivered and the amount of the distribution.
- 3344 (j) At the time that the settlor transfers any assets to the trust, the settlor may not be in  
3345 default of making a payment due under a domestic support obligation.
- 3346 (k) A transfer of assets to the trust may not render the settlor insolvent.
- 3347 (l) At the time the settlor transfers any assets to the trust, the settlor may not intend to  
3348 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A  
3349 settlor's expressed intention to protect trust assets from the settlor's potential future  
3350 creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.
- 3351 (m) Assets transferred to the trust may not be derived from unlawful activities.
- 3352 [~~(nn)~~] (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn  
3353 affidavit stating that at the time of the transfer of the assets to the trust:
- 3354 (i) the settlor has full right, title, and authority to transfer the assets to the trust;  
3355 (ii) the transfer of the assets to the trust will not render the settlor insolvent;  
3356 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by  
3357 transferring the assets to the trust;
- 3358 (iv) there is no pending or threatened court action against the settlor, except for a  
3359 court action identified by the settlor on an attachment to the affidavit;

- 3360 (v) the settlor is not involved in an administrative proceeding that is reasonably  
3361 expected to have a material adverse effect on the financial condition of the settlor,  
3362 except an administrative proceeding identified on an attachment to the affidavit;  
3363 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a  
3364 domestic support obligation;  
3365 (vii) the settlor does not contemplate filing for relief under the provisions of United  
3366 States Code, Title 11, Bankruptcy; and  
3367 (viii) the assets being transferred to the trust were not derived from unlawful  
3368 activities.
- 3369 (4) Failure to satisfy the requirements of Subsection (3) shall result in the consequences  
3370 described in this Subsection (4).
- 3371 (a) If any requirement of Subsections (3)(b) through (g) is not satisfied, none of the  
3372 property held in the trust will at any time have the benefit of the protections described  
3373 in Subsection (1).
- 3374 (b) If the trustee does not send the notice required under Subsection [~~(3)(g);~~] (3)(i) the  
3375 court may authorize any person with a domestic support obligation against the settlor  
3376 to whom notice was not sent to attach the distribution or future distributions, but the  
3377 person may not:
- 3378 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the  
3379 trust or the settlor's beneficial interest in the trust; or
- 3380 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.
- 3381 (c) If any requirement described in Subsections (3)(i) through (l) is not satisfied, the  
3382 property transferred to the trust that does not satisfy the requirement may not have  
3383 the benefit of the protections described in Subsection (1).
- 3384 (d) If the requirement described in Subsection (3)(h) is not satisfied, the property  
3385 transferred to the trust that does not satisfy the requirement does not have the benefit  
3386 of the protections described in Subsection (1) with respect to any person with a  
3387 domestic support obligation.
- 3388 (e) A creditor of the settlor has the burden of proving that the requirement in Subsection  
3389 (3)(i) or (j) is not satisfied by clear and convincing evidence.
- 3390 (5) The provisions of Subsection (1) may apply to a trust even if:
- 3391 (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor  
3392 may not determine whether a discretionary distribution will be made;
- 3393 (b) the settlor participates in a determination regarding whether a discretionary

distribution is made to the settlor by:

(i) requesting a distribution from the trust;

(ii) consulting with the trustees regarding whether a discretionary distribution will be made;

(iii) exercising a right to consent to or veto the distribution under a power described in Subsection (5)(e);

(iv) signing documentation in the settlor's capacity as a cotrustee that implements a distribution when the other trustees use discretionary power to independently authorize a distribution; or

(v) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation.

(c) the settlor has the authority under the terms of the trust instrument to appoint a nonsubordinate advisor or a trust protector who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

(d) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;

(e) the trust instrument gives the settlor the power to consent to or veto a distribution from the trust;

(f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;

(g) the trust instrument gives the settlor the right to receive the following types of distributions:

(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

(ii) principal, subject to an ascertainable standard set forth in the trust;

(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. Sec. 664;

(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. Sec. 643(b);

(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying regulations;

- 3428 (vi) income or principal from a grantor retained annuity trust or grantor retained  
3429 unitrust that is allowed under 26 U.S.C. Sec. 2702; and
- 3430 (vii) income from a trust intended to qualify for the federal estate tax or gift tax  
3431 marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- 3432 (h) the trust instrument authorizes the settlor to use real or personal property owned by  
3433 the trust; or
- 3434 (i) with respect to the property held in the trust, the settlor may:
- 3435 (i) give a personal guarantee on a debt or obligation secured by the property;
- 3436 (ii) make payments, directly or indirectly, on a debt or obligation secured by the  
3437 property;
- 3438 (iii) pay property taxes, casualty and liability insurance premiums, homeowner  
3439 association dues, maintenance expenses, or other similar expenses on the property;  
3440 or
- 3441 (iv) pay income tax on income attributable to the portion of property held in the trust,  
3442 of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671  
3443 through 678, which payments will not be considered additional transfers to the  
3444 trust for purposes of this section.
- 3445 (6)(a) If a trust instrument contains the provisions described in Subsections (3)(b)  
3446 through (g), the transfer restrictions prevent a creditor or other person from asserting  
3447 any cause of action or claim for relief against a trustee of the trust or against others  
3448 involved in the counseling, drafting, preparation, execution, or funding of the trust  
3449 for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding  
3450 and abetting a fraudulent conveyance or another voidable transfer, participation in the  
3451 trust transaction, or similar cause of action or claim for relief.
- 3452 (b) For purposes of this Subsection (6), counseling, drafting, preparation, execution, or  
3453 funding of the trust includes the preparation and funding of a limited partnership, a  
3454 limited liability company, or other entity if interests in the entity are subsequently  
3455 transferred to the trust.
- 3456 (c) The creditor and other person prevented from asserting a cause of action or claim for  
3457 relief may assert a cause of action against, and are limited to recourse against, only:
- 3458 (i) the trust and the trust assets; and
- 3459 (ii) the settlor, to the extent otherwise allowed in this section.
- 3460 (7)(a) A cause of action or claim for relief under Subsection (3)(i) or (j) is a cause of  
3461 action or claim for relief under Section 25-6-202 or 25-6-203.

- (b) Except as provided in Subsection (7)(a), a cause of action or claim for relief under this section is not a cause of action or claim for relief under Sections 25-6-101 through 25-6-407.
- (c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a fraudulent conveyance or other voidable transfer of a settlor's assets under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:
- (i) the later of two years after the transfer is made, or one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:
    - (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or
    - (B) files another action, other than an action alleging a fraudulent conveyance or other voidable transfer against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this Subsection (7)(c) is filed within two years after the transfer; or
  - (ii)(A) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that the creditor is required to bring the creditor's cause of action or claim for relief against the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or
  - (B) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, or is published on a public legal notice website as defined in Section 45-1-101, which notice shall state the name of the settlor or the settlor's representative, the address of the settlor or the settlor's representative, the name of the trustee or the trustee's representative, the address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets.

- (8)(a) The notice required in Subsection (7)(c)(ii)(B) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to bring a cause of action or claim for relief within 120 days from the first publication of the notice or be forever barred.
- (b) Failure to give the notice required in Subsection (7)(c)(ii) to a creditor does not prevent the shortening of the limitations period under Subsection (7)(c)(ii) with respect to another creditor who properly received notice by mail or publication.
- (9)(a) A trust is subject to this section if it is governed by Utah law, as provided in Section ~~[75-7-107]~~ 75B-2-107, and if it otherwise meets the requirements of this section.
- (b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.
- (10)(a) With respect to a trust that is subject to this section, a claim brought by a creditor of a beneficiary who is not the settlor is subject to ~~[Section 75-7-501 et. seq]~~ Chapter 2, Part 5, Spendthrift and Discretionary Trusts.
- (b) With respect to an irrevocable trust that is not subject to this section, a claim brought by a creditor of a beneficiary who is the settlor is subject to the provisions of Subsection ~~[75-7-505(2)]~~ 75B-2-505(2).
- (11) If a provision in this section conflicts with a provision in Sections 25-6-101 through 25-6-407, the provision of this section shall supersede the conflicting provision in Sections 25-6-101 through 25-6-407.
- (12) Nothing in this section alters rights vested or created under this section before May 14, 2019.

Section 74. Section **75B-2-101** is enacted to read:

## **CHAPTER 2. UNIFORM TRUST CODE**

### **Part 1. General Provisions**

**75B-2-101 . Reserved.**

Reserved.

Section 75. Section **75B-2-102**, which is renumbered from Section 75-7-102 is renumbered and amended to read:

**[75-7-102] 75B-2-102 . Scope.**

This chapter applies to ~~[trusts as defined in Section 75-1-201]~~ a trust.

Section 76. Section **75B-2-103**, which is renumbered from Section 75-7-103 is renumbered



and amended to read:

**[75-7-103] 75B-2-103 . Definitions for chapter.**

~~[(1) In]~~ As used in this chapter:

~~[(a)]~~ (1) "Action," with respect to an act of a trustee, includes a failure to act.

~~[(b)]~~ "Beneficiary" means a person that:

~~[(i)]~~ has a present or future beneficial interest in a trust, vested or contingent; or

~~[(ii)]~~ in a capacity other than that of trustee, holds a power of appointment over trust property.]

~~[(c)]~~ (2) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Subsection ~~[75-7-405(1)]~~ 75B-2-405(1).

~~[(d)]~~ (3) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~[(e)]~~ (4) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

~~[(f)]~~ (5) "Jurisdiction," with respect to a geographic area, includes a state or country.

~~[(g)]~~ (6) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

(7) "Proceeding" means the same as that term is defined in Section 75-1-201.

~~[(h)]~~ (8) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

~~[(i)]~~ (a) is a current distributee or permissible distributee of trust income or principal; or

~~[(ii)]~~ (b) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~[(i)]~~ (9) "Resident estate" or "resident trust" means:

~~[(i)]~~ (a) an estate of a decedent who at death was domiciled in this state;

~~[(ii)]~~ (b) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at ~~[his]~~ the time of the decedent's death was domiciled in this state; or

~~[(iii)]~~ (c) a trust administered in this state.

~~[(j)]~~ (10) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

~~[(k)]~~ "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's

contribution except to the extent another person has the power to revoke or withdraw that portion.]

~~[(t)]~~ (11) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer or encumbrance of a beneficiary's interest.

~~[(m)]~~ (12) "Terms of a trust" means:

~~[(i)]~~ (a) except as otherwise provided in Subsection ~~[(1)(m)(ii)]~~ (12)(b), the manifestation of the settlor's intent regarding a trust's provisions as:

~~[(A)]~~ (i) expressed in the trust instrument; or

~~[(B)]~~ (ii) established by other evidence that would be admissible in a judicial proceeding; or

~~[(ii)]~~ (b) the trust's provisions as established, determined, or amended by:

~~[(A)]~~ (i) a trustee or trust director in accordance with the applicable law;

~~[(B)]~~ (ii) court order; or

~~[(C)]~~ (iii) a nonjudicial settlement agreement under Section ~~[75-7-110]~~ 75B-2-110.

~~[(n)]~~ "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.]

~~[(2)]~~ Terms not specifically defined in this section have the meanings provided in Section ~~75-1-201.~~

Section 77. Section **75B-2-104**, which is renumbered from Section 75-7-104 is renumbered and amended to read:

**~~[75-7-104]~~ 75B-2-104 . Knowledge.**

(1) Subject to Subsection (2), a person has knowledge of a fact if the person:

(a) has actual knowledge of ~~[it]~~ the fact;

(b) has received a notice or notification of ~~[it]~~ the fact; or

(c) from all the facts and circumstances known to the person at the time in question, has reason to know ~~[it]~~ the fact.

~~(2)(a)~~ An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence.

~~(b)~~ An organization exercises reasonable diligence if ~~[it]~~ the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines.

3597 (c) Reasonable diligence does not require an employee of the organization to  
3598 communicate information unless the communication is part of the individual's regular  
3599 duties or the individual knows a matter involving the trust would be materially  
3600 affected by the information.

3601 Section 78. Section **75B-2-105**, which is renumbered from Section 75-7-105 is renumbered  
3602 and amended to read:

3603 **[75-7-105] 75B-2-105 . Default and mandatory rules.**

- 3604 (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties  
3605 and powers of a trustee, relations among trustees, and the rights and interests of a  
3606 beneficiary.
- 3607 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any  
3608 provision of this chapter except:
- 3609 (a) the requirements for creating a trust;
  - 3610 (b) subject to Sections ~~[75-12-109, 75-12-111, and 75-12-112]~~ 75B-3-109, 75B-3-111,  
3611 and 75B-3-112, the duty of a trustee to act in good faith and in accordance with the  
3612 purposes of the trust;
  - 3613 (c) the requirement that a trust and the terms of the trust be for the benefit of the trust's  
3614 beneficiaries;
  - 3615 (d) the power of the court to modify or terminate a trust under Sections ~~[75-7-410~~  
3616 ~~through 75-7-416]~~ 75B-2-410 through 75B-2-416;
  - 3617 (e) the effect of a spendthrift provision, ~~[Section 75B-1-302]~~ an asset protection trust  
3618 described in Chapter 1, Part 3, Asset Protection Trust, and the rights of certain  
3619 creditors and assignees to reach a trust as provided in Part 5, ~~[Creditor's Claims--]~~  
3620 Spendthrift and Discretionary Trusts;
  - 3621 (f) the power of the court under Section ~~[75-7-702]~~ 75B-2-702 to require, dispense with,  
3622 or modify or terminate a bond;
  - 3623 (g) the effect of an exculpatory term under Section ~~[75-7-1008]~~ 75B-2-1008;
  - 3624 (h) the rights under Sections ~~[75-7-1010 through 75-7-1013]~~ 75B-2-1010 through  
3625 75B-2-1013 of a person other than a trustee or beneficiary;
  - 3626 (i) periods of limitation for commencing a judicial proceeding; and
  - 3627 (j) the jurisdiction and venue requirements for an action involving a trust as described in  
3628 Sections ~~[75-7-203 and 75-7-205]~~ 75B-2-203 and 75B-2-205.

3629 Section 79. Section **75B-2-106**, which is renumbered from Section 75-7-106 is renumbered  
3630 and amended to read:

**[75-7-106] 75B-2-106 . Common law of trusts -- Principles of equity.**

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or laws of this state.

Section 80. Section **75B-2-107**, which is renumbered from Section 75-7-107 is renumbered and amended to read:

**[75-7-107] 75B-2-107 . Governing law.**

(1) As used in this section:

(a) "Foreign trust" means a trust that is created in another state or country and valid in the state or country in which the trust is created.

(b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.

(2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.

(3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.

(4) A trust shall be considered to be administered in this state if:

(a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or

(b) the place of business where the fiduciary transacts a major portion of [its] the fiduciary's administration of the trust is in this state.

(5) If a foreign trust is administered in this state as provided in this section, the following provisions are effective and enforceable under the laws of this state:

(a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section 75B-1-302;

(b) a provision that allows the trust to be perpetual; or

(c) a provision that is not expressly prohibited by the law of this state.

(6) A foreign trust that moves [its] the foreign trust's administration to this state is valid whether or not the trust complied with the laws of this state at the time of the trust's creation or after the trust's creation.

(7) Unless otherwise designated in the trust instrument, a trust is administered in this state if [it] the trust meets the requirements of Subsection (4).

Section 81. Section **75B-2-108**, which is renumbered from Section 75-7-108 is renumbered

and amended to read:

**[75-7-108] 75B-2-108 . Principal place of administration.**

- (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the terms of a trust designating the principal place of administration are valid and controlling if:
  - (a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
  - (b) all or part of the administration occurs in the designated jurisdiction.
- (2) A trustee is under a continuing duty to administer the trust at a place appropriate to ~~[its]~~ the trust's purposes, ~~[its]~~ the trust's administration, and the interests of the beneficiaries.
- (3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
- (4)(a) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer.
  - (b) The notice of proposed transfer must include:
    - ~~[(a)]~~ (i) the name of the jurisdiction to which the principal place of administration is to be transferred;
    - ~~[(b)]~~ (ii) the address and telephone number at the new location at which the trustee can be contacted;
    - ~~[(c)]~~ (iii) an explanation of the reasons for the proposed transfer;
    - ~~[(d)]~~ (iv) the date on which the proposed transfer is anticipated to occur; and
    - ~~[(e)]~~ (v) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.
- (5) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.
- (6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed ~~[pursuant to Section 75-7-704]~~ in accordance with Section 75B-2-704.

Section 82. Section **75B-2-109**, which is renumbered from Section 75-7-109 is renumbered and amended to read:

**[75-7-109] 75B-2-109 . Methods and waiver of notice.**

- (1)(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.
- (b) Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.
- (2) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.
- (3) Notice of a judicial proceeding must be given ~~[as provided in the applicable rules of civil procedure]~~ in accordance with the Utah Rules of Civil Procedure.

Section 83. Section **75B-2-110**, which is renumbered from Section 75-7-110 is renumbered and amended to read:

**[75-7-110] 75B-2-110 . Nonjudicial settlement agreements.**

- (1) ~~[For purposes of]~~ As used in this section, ~~["interested persons" means persons]~~ "interested person" means a person whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
- (2) Except as otherwise provided in Subsection (3), ~~[interested persons]~~ an interested person may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.
- (3) A nonjudicial settlement agreement is valid only to the extent ~~[it]~~ that the nonjudicial settlement agreement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.
- (4) Matters that may be resolved by a nonjudicial settlement agreement include:
- (a) the interpretation or construction of the terms of the trust;
  - (b) the approval of a trustee's report or accounting;
  - (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
  - (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;
  - (e) transfer of a trust's principal place of administration; and

(f) liability of a trustee for an action relating to the trust.

- (5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Part 3, Representation, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Section 84. Section **75B-2-111**, which is renumbered from Section 75-7-111 is renumbered and amended to read:

**[75-7-111] 75B-2-111 . Rules of construction.**

The rules of construction that apply to the interpretation of and disposition of property by will or other governing instrument[~~, as defined in Section 75-1-201,~~] also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

Section 85. Section **75B-2-112**, which is renumbered from Section 75-7-112 is renumbered and amended to read:

**[75-7-112] 75B-2-112 . Penalty provisions.**

A provision in a trust instrument purporting to penalize a beneficiary by charging the beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting the proceedings.

Section 86. Section **75B-2-113**, which is renumbered from Section 75-7-1201 is renumbered and amended to read:

**[75-7-1201] 75B-2-113 . Foreign trustees.**

- (1) A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if [it] the foreign corporate trustee maintains the principal place of administration of any trust within the state.
- (2) A foreign corporate cotrustee is not required to qualify in this state solely because [its] the other foreign corporate cotrustee maintains the principal place of administration in this state.
- (3) Unless otherwise doing business in this state, local qualification by a foreign corporate trustee is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation if the state of the principal place of business of the foreign corporate trustee provides substantially similar provisions applicable to trustees from this state.
- (4) Local qualification by a foreign trustee other than a corporation is not required in order

for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state or maintain litigation.

- (5) Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

Section 87. Section **75B-2-201**, which is renumbered from Section 75-7-201 is renumbered and amended to read:

## **Part 2. Jurisdiction and Venue for Trusts**

### **[75-7-201] 75B-2-201 . Court -- Exclusive jurisdiction of trusts.**

- (1)(a) The court has exclusive jurisdiction ~~[of proceedings initiated by interested parties]~~ over proceedings initiated by an interested party concerning the internal affairs of trusts.

- (b) ~~[Proceedings which may be maintained under this section are those concerning]~~ An interested party may bring proceedings under Subsection (1)(a) concerning:

- (i) the administration and distribution of trusts;
- (ii) the declaration of rights; and
- (iii) the determination of other matters involving trustees and beneficiaries of trusts.

- (c) ~~[These include, but are not limited to proceedings]~~ A proceeding under Subsection (1) includes a proceeding to:

- (i) appoint or remove a trustee;
- (ii) review a trustee's fees;
- (iii) review and settle interim or final accounts;
- (iv) ascertain beneficiaries;
- (v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments;
- (vi) instruct trustees;
- (vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; ~~[and]~~ or
- (viii) order transfer of administration of the trust to another state upon appropriate conditions as may be determined by the court or accept transfer of administration of a trust from another state to this state upon such conditions as may be imposed by the supervising court of the other state, unless the court in this state determines that these conditions are incompatible with its own rules and procedures.

- (2)(a) A proceeding under this section does not result in continuing supervision by the court over the administration of the trust.



(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

Section 88. Section **75B-2-202**, which is renumbered from Section 75-7-202 is renumbered and amended to read:

**[75-7-202] 75B-2-202 . Effect of administration in this state -- Consent to jurisdiction.**

(1) The trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust if [-]the trustee acts as trustee of a trust administered in this state.

(2)(a) To the extent of the beneficial interests in a trust administered in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(3) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection [75-7-107(4)] **75B-2-107(4)**.

Section 89. Section **75B-2-203**, which is renumbered from Section 75-7-203 is renumbered and amended to read:

**[75-7-203] 75B-2-203 . Jurisdiction over an action involving a trust.**

(1) A court of this state has jurisdiction as described in Title 78A, Judiciary and Judicial Administration, over an action involving a trust.

(2) This section does not preclude judicial or nonjudicial alternative dispute resolution.

Section 90. Section **75B-2-204**, which is renumbered from Section 75-7-204 is renumbered and amended to read:

**[75-7-204] 75B-2-204 . Trust proceedings -- Dismissal of matters relating to foreign trusts.**

- (1) The court may not, over the objection of a party, entertain proceedings under Section [75-7-201] 75B-2-201 involving a trust [which] that:
- (a) is under the continuing supervision of a foreign court;
  - (b) is registered in another state; or
  - (c) has a fiduciary which transacts a major portion of its trust administration in another state.
- (2) Notwithstanding Subsection (1), the court may entertain a proceeding regarding any matter involving a trust if:
- (a) all appropriate parties could not be bound by litigation in the courts of the other state;
  - or
  - (b) the interests of justice would be seriously impaired.
- (3) The court may condition a stay or dismissal of a proceeding on the consent of any party to the jurisdiction of the courts of another state, or the court may grant a continuance or enter any other appropriate order.

Section 91. Section **75B-2-205**, which is renumbered from Section 75-7-205 is renumbered and amended to read:

**[75-7-205] 75B-2-205 . Venue for an action involving a trust.**

- (1) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, and except as provided in Subsection (2), a person shall bring an action involving a trust~~[-if the action is brought in the district court,]~~ in:
- (a) the county in which the trust's principal place of administration is or will be located;
  - or
  - (b) if the trust is created by a will and the estate is not yet closed, the county in which the decedent's estate is being administered.
- (2) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, and if a trust has no trustee, a person shall bring an action for the appointment of a trustee~~[-if the action is brought in the district court,]~~ in:
- (a) a county of this state in which a beneficiary resides;
  - (b) a county in which any trust property is located; or
  - (c) if the trust is created by a will, the county in which the decedent's estate was or is being administered.
- (3) This section does not apply to an action brought in the Business and Chancery Court.

Section 92. Section **75B-2-301**, which is renumbered from Section 75-7-301 is renumbered and amended to read:

**Part 3. Representation****[75-7-301] 75B-2-301 . Basic effect.**

- (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.
- (2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.
- (3) Except as otherwise provided in [~~Sections 75-7-411 and 75B-1-302~~] Section 75B-2-411 and Chapter 1, Part 3, Asset Protection Trust, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 93. Section **75B-2-302**, which is renumbered from Section 75-7-302 is renumbered and amended to read:

**[75-7-302] 75B-2-302 . Representation by holder of general testamentary power of appointment.**

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Section 94. Section **75B-2-303**, which is renumbered from Section 75-7-303 is renumbered and amended to read:

**[75-7-303] 75B-2-303 . Representation by fiduciaries and parents.**

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- (1) a conservator may represent and bind the protected person whose estate the conservator controls;
- (2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;
- (3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) a trustee may represent and bind the beneficiaries of the trust;
- (5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- (6) a parent may represent and bind the parent's minor or unborn child if a conservator or

guardian for the child has not been appointed.

Section 95. Section **75B-2-304**, which is renumbered from Section 75-7-304 is renumbered and amended to read:

**[75-7-304] 75B-2-304 . Representation by person having substantially identical interest.**

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Section 96. Section **75B-2-305**, which is renumbered from Section 75-7-305 is renumbered and amended to read:

**[75-7-305] 75B-2-305 . Appointment of guardian ad litem or other representative.**

(1)(a) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or protected person, or unborn individual, or a person whose identity or location is unknown.

(b) A guardian ad litem or other representative may be appointed to represent several persons or interests.

(2) A guardian ad litem or other representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a guardian ad litem or other representative may consider general benefit accruing to the living members of the individual's family.

Section 97. Section **75B-2-401**, which is renumbered from Section 75-7-401 is renumbered and amended to read:

#### **Part 4. Creation, Validity, Modification, and Termination of a Trust**

**[75-7-401] 75B-2-401 . Methods of creating trust.**

(1) A trust may be created by:

(a) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(b) declaration by the owner of property that the owner holds identifiable property as trustee; or

(c) exercise of a power of appointment in favor of a trustee.

(2)(a) A health savings account is established on the first day an individual is covered by a high deductible health plan, as defined in Section 223 of the Internal Revenue Code.

(b) The health savings account shall be opened with a trustee or custodian within the time prescribed by law, without extensions, for filing a federal income tax return for that year.

(c) A health savings account is established regardless of a transfer of cash or other property to the account and, unless required by the trustee or custodian, it is not necessary for any party to sign a health savings account trust or custodial agreement regarding the health savings account.

Section 98. Section **75B-2-402**, which is renumbered from Section 75-7-402 is renumbered and amended to read:

**[75-7-402] 75B-2-402 . Requirements for creation.**

(1) A trust is created only if:

(a) the settlor has capacity to create a trust, which standard of capacity shall be the same as for a person to create a will;

(b) the settlor indicates an intention to create the trust or a statute, judgment, or decree authorizes the creation of a trust;

(c) the trust has a definite beneficiary or is:

(i) a charitable trust;

(ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

(iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

(d) the trustee has duties to perform; and

(e) the same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Section 99. Section **75B-2-403**, which is renumbered from Section 75-7-403 is renumbered and amended to read:

**[75-7-403] 75B-2-403 . Trusts created in other jurisdictions.**

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

Section 100. Section **75B-2-404**, which is renumbered from Section 75-7-404 is renumbered and amended to read:

**[75-7-404] 75B-2-404 . Trust purposes.**

- (1) A trust may be created only to the extent [its] the trust's purposes are lawful, not contrary to public policy, and possible to achieve.
- (2) A trust and [its] the trust's terms must be for the benefit of [its] the trust's beneficiaries.

Section 101. Section **75B-2-405**, which is renumbered from Section 75-7-405 is renumbered and amended to read:

**[75-7-405] 75B-2-405 . Charitable purposes -- Enforcement.**

- (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
- (2)(a) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select one or more charitable purposes or beneficiaries.
- (b) The selection must be consistent with the settlor's intention to the extent [it] intent can be ascertained.
- (3) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Section 102. Section **75B-2-406**, which is renumbered from Section 75-7-406 is renumbered and amended to read:

**[75-7-406] 75B-2-406 . Creation of trust induced by fraud, duress, or undue influence.**

A trust is void to the extent [its] the trust's creation was induced by fraud, duress, or undue influence.

Section 103. Section **75B-2-407**, which is renumbered from Section 75-7-407 is renumbered and amended to read:

**[75-7-407] 75B-2-407 . Evidence of oral trust.**

Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and [its] the trust's terms may be established only by clear and convincing evidence.

Section 104. Section **75B-2-408**, which is renumbered from Section 75-7-408 is renumbered and amended to read:

**[75-7-408] 75B-2-408 . Trust for care of animal.**

A trust may be created to provide for the care of a pet or animal as provided in Section 75-2-1001.

Section 105. Section **75B-2-409**, which is renumbered from Section 75-7-409 is renumbered and amended to read:

**[75-7-409] 75B-2-409 . Noncharitable trust without ascertainable beneficiary.**

A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee as provided in Section 75-2-1001.

Section 106. Section **75B-2-410**, which is renumbered from Section 75-7-410 is renumbered and amended to read:

**[75-7-410] 75B-2-410 . Modification or termination of trust -- Proceedings for approval or disapproval.**

(1) In addition to the methods of termination prescribed by Sections [75-7-411 through 75-7-414] 75B-2-411 through 78B-2-414, a trust terminates to the extent the trust is revoked or expires pursuant to [its] the trust's terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(2)(a) A proceeding to approve or disapprove a proposed modification or termination under Sections [75-7-411 through 75-7-416] 75B-2-411 through 78B-2-416, or trust combination or division under Section [75-7-417] 75B-2-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section [75-7-411] 75B-2-411 may be commenced by the settlor.

(b) The settlor of a charitable trust may maintain a proceeding to modify the trust under Section [75-7-413] 75B-2-413.

Section 107. Section **75B-2-411**, which is renumbered from Section 75-7-411 is renumbered and amended to read:

**[75-7-411] 75B-2-411 . Modification or termination of noncharitable irrevocable**

**trust by consent.**

(1)(a) A noncharitable, irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust.

(b) A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust, by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized, or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(2)(a) A noncharitable, irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) A noncharitable, irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries.

(5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under Subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

(a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) the interests of a beneficiary who does not consent will be adequately protected.

Section 108. Section **75B-2-412**, which is renumbered from Section 75-7-412 is renumbered and amended to read:

**[75-7-412] 75B-2-412 . Modification or termination because of unanticipated circumstances or inability to administer trust effectively.**

(1)(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust.

(b) To the extent practicable, the modification must be made in accordance with the



4073 settlor's probable intention.

- 4074 (2) The court may modify the administrative terms of a trust if continuation of the trust on [  
4075 its] the trust's existing terms would be impracticable or wasteful or impair the trust's  
4076 administration.
- 4077 (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
4078 property as directed by the court or otherwise in a manner consistent with the purposes  
4079 of the trust.

4080 Section 109. Section **75B-2-413**, which is renumbered from Section 75-7-413 is renumbered  
4081 and amended to read:

4082 **[75-7-413] 75B-2-413 . Cy pres.**

- 4083 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose  
4084 becomes unlawful, impracticable, impossible to achieve, or wasteful:
- 4085 (a) the trust does not fail, in whole or in part;
- 4086 (b) the trust property does not revert to the settlor or the settlor's successors in interest;  
4087 and
- 4088 (c) the court may apply cy pres to modify or terminate the trust by directing that the trust  
4089 property be applied or distributed, in whole or in part, in a manner consistent with the  
4090 settlor's charitable purposes.
- 4091 (2) A provision in the terms of a charitable trust that would result in distribution of the trust  
4092 property to a noncharitable beneficiary prevails over the power of the court under  
4093 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the  
4094 provision takes effect:
- 4095 (a) the trust property is to revert to the settlor and the settlor is still living; or  
4096 (b) fewer than 21 years have elapsed since the date of the trust's creation.

4097 Section 110. Section **75B-2-414**, which is renumbered from Section 75-7-414 is renumbered  
4098 and amended to read:

4099 **[75-7-414] 75B-2-414 . Modification or termination of uneconomic trust.**

- 4100 (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust  
4101 property having a total value less than \$100,000 may terminate the trust if the trustee  
4102 concludes that the value of the trust property is insufficient to justify the cost of  
4103 administration.
- 4104 (2) The court may modify or terminate a trust or remove the trustee and appoint a different  
4105 trustee if it determines that the value of the trust property is insufficient to justify the  
4106 cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) This section does not apply to an easement for conservation or preservation.

Section 111. Section **75B-2-415**, which is renumbered from Section 75-7-415 is renumbered and amended to read:

**[75-7-415] 75B-2-415 . Reformation to correct mistakes.**

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.

Section 112. Section **75B-2-416**, which is renumbered from Section 75-7-416 is renumbered and amended to read:

**[75-7-416] 75B-2-416 . Modification to achieve settlor's tax objectives.**

(1) To achieve the settlor's tax objectives, the court may modify the terms of a trust in order to achieve the settlor's tax objectives.

(2) The court may provide that the modification has retroactive effect.

Section 113. Section **75B-2-417**, which is renumbered from Section 75-7-417 is renumbered and amended to read:

**[75-7-417] 75B-2-417 . Combination and division of trusts.**

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts[-] if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Section 114. Section **75B-2-501**, which is renumbered from Section 75-7-501 is renumbered and amended to read:

**Part 5. Spendthrift and Discretionary Trusts**

**[75-7-501] 75B-2-501 . Rights of beneficiary's creditor or assignee.**

(1) To the extent a beneficiary's interest is not protected by a spendthrift provision or Section 75B-1-302, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means.

(2) The court may limit the award to relief as is appropriate under the circumstances.

Section 115. Section **75B-2-502**, which is renumbered from Section 75-7-502 is renumbered and amended to read:

**[75-7-502] 75B-2-502 . Spendthrift provisions for beneficiaries other than the**

4141 **settlor.**

- 4142 (1) A spendthrift provision for a beneficiary other than the settlor is valid only if [it] the  
4143 spendthrift provision restrains both voluntary and involuntary transfer of a beneficiary's  
4144 interest, even if the beneficiary is the trustee or cotrustee of the trust.
- 4145 (2) A term of a trust providing that the interest of a beneficiary other than the settlor is held  
4146 subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both  
4147 voluntary and involuntary transfer of the beneficiary's interest.
- 4148 (3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift  
4149 provision and, except as otherwise provided in this part, a creditor or assignee of the  
4150 beneficiary may not reach the interest or a distribution by the trustee before its receipt by  
4151 the beneficiary.

4152 Section 116. Section **75B-2-503**, which is renumbered from Section 75-7-503 is renumbered  
4153 and amended to read:

4154 **[75-7-503] 75B-2-503 . Exceptions to spendthrift provision.**

- 4155 (1) As used in this section:
- 4156 (a) "Child" includes any person for whom an order or judgment for child support has  
4157 been entered in this or another state.
- 4158 (b) "Civil accounts receivable" means the same as that term is defined in Section  
4159 77-32b-102.
- 4160 (c) [~~"Civil restitution of judgment"~~] "Civil judgment of restitution" means the same as  
4161 that term is defined in Section 77-32b-102.
- 4162 (d) "Restitution" means the same as that term is defined in Section 77-38b-102.
- 4163 (e) "Victim" means the same as that term is defined in Section 77-38b-102.
- 4164 (2) Even if a trust contains a spendthrift provision, the following persons may obtain an  
4165 order from a court that attaches present or future distributions to the beneficiary:
- 4166 (a) a beneficiary's child who has a judgment or court order against the beneficiary for  
4167 support or maintenance;
- 4168 (b) a judgment creditor who has provided services for the protection of a beneficiary's  
4169 interest in the trust;
- 4170 (c) a victim who has a judgment requiring the beneficiary to pay restitution in  
4171 accordance with Title 77, Chapter 38b, Crime Victims Restitution Act, or similar  
4172 provision in another state; or
- 4173 (d) the Office of State Debt Collection, created in Section 63A-3-502, for collecting  
4174 payment on a civil accounts receivable or a civil judgment of restitution.

- (3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Section 117. Section **75B-2-504**, which is renumbered from Section 75-7-504 is renumbered and amended to read:

**[75-7-504] 75B-2-504 . Discretionary trusts -- Effect of standard.**

- (1) ~~[In]~~ As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.
- (2) Except as otherwise provided in Subsection (3), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:
- (a) the discretion is expressed in the form of a standard of distribution; or
  - (b) the trustee has abused the discretion.
- (3) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
- (a) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and
  - (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
- (4) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

Section 118. Section **75B-2-505**, which is renumbered from Section 75-7-505 is renumbered and amended to read:

**[75-7-505] 75B-2-505 . Creditor's claim against settlor.**

Regardless of whether the terms of a trust contain a spendthrift provision, the following rules apply:

- (1)(a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors.
- (b) If a revocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

- 4209 (2)(a) With respect to an irrevocable trust other than an irrevocable trust that meets the  
4210 requirements of [~~Section 75B-1-302~~] Chapter 1, Part 3, Asset Protection Trust, a  
4211 creditor or assignee of the settlor may reach the maximum amount that can be  
4212 distributed to or for the settlor's benefit.
- 4213 (b) With respect to an irrevocable trust that has more than one settlor, other than an  
4214 irrevocable trust that meets the requirements of [~~Section 75B-1-302~~] Chapter 1, Part  
4215 3, Asset Protection Trust, the amount a creditor or assignee of a particular settlor may  
4216 reach may not exceed the settlor's interest in the portion of the trust attributable to  
4217 that settlor's contribution.
- 4218 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the  
4219 creditor's claim from an irrevocable trust solely because the trustee may make a  
4220 discretionary distribution reimbursing the settlor for income tax liability of the settlor  
4221 attributable to the income of the irrevocable trust, when the distribution is:
- 4222 (i) subject to the discretion of a trustee who is not the settlor;  
4223 (ii) subject to the consent of an advisor who is not the settlor; or  
4224 (iii) at the direction of an advisor who is not the settlor.
- 4225 (3) After the death of a settlor, and subject to the settlor's right to direct the source from  
4226 which liabilities will be paid, the property of a trust that was revocable at the settlor's  
4227 death, but not property received by the trust as a result of the death of the settlor which  
4228 is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the  
4229 settlor's creditors, costs of administration of the settlor's estate, the expenses of the  
4230 settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse  
4231 and children to the extent the settlor's probate estate is inadequate to satisfy those claims,  
4232 costs, expenses, and allowances.

4233 Section 119. Section **75B-2-506**, which is renumbered from Section 75-7-506 is renumbered  
4234 and amended to read:

4235 **[~~75-7-506~~] 75B-2-506 . Overdue distribution.**

4236 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
4237 beneficiary may reach a mandatory distribution of income or principal, including a distribution  
4238 upon termination of the trust, if the trustee has not made the distribution to the beneficiary  
4239 within a reasonable time after the required distribution date.

4240 Section 120. Section **75B-2-507**, which is renumbered from Section 75-7-507 is renumbered  
4241 and amended to read:

4242 **[~~75-7-507~~] 75B-2-507 . Personal obligations of trustee.**

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Section 121. Section **75B-2-508**, which is renumbered from Section 75-7-508 is renumbered and amended to read:

**[75-7-508] 75B-2-508 . Notice to creditors.**

(1)(a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:

- (i) once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death; and
- (ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (1)(a) shall:

- (i) provide the trustee's name and address; and
- (ii) notify creditors:
  - (A) of the deceased settlor; and
  - (B) to present their claims within three months after the date of the first

publication of the notice or be forever barred from presenting the claim.

(2)(a) A trustee shall give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present the creditor's claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred.

(b) Written notice shall be the notice described in Subsection (1) or a similar notice.

(3)(a) If the deceased settlor received medical assistance, as defined in Section 26B-3-1001, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of Health and Human Services, to present any claim under Section 26B-3-1013 within 60 days from the mailing or other delivery of notice, whichever is later, or be forever barred.

(b) If the trustee does not mail notice to the director of the Office of Recovery Services on behalf of the [department] Department of Health and Human Services in accordance with Subsection (3)(a), the [department] Department of Health and Human Services shall have one year from the death of the settlor to present [its] the Department of Health and Human Services' claim.

(4) The trustee is not liable to any creditor or to any successor of the deceased settlor for

giving or failing to give notice under this section.

- (5) The notice to creditors shall be valid against any creditor of the trust and also against any creditor of the estate of the deceased settlor.

Section 122. Section **75B-2-509**, which is renumbered from Section 75-7-509 is renumbered and amended to read:

**[75-7-509] 75B-2-509 . Limitations on presentation of claims.**

- (1) All claims against a deceased settlor which arose before the death of the deceased settlor, 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 other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:

- (a) one year after the settlor's death; or
- (b) the time provided by Subsection [75-7-508(2)] 75B-2-508(2) or (3) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection [75-7-508(1)] 75B-2-508(1) for all claims barred by publication.

- (2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.

- (3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:

- (a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or
- (b) any other claim within the later of three months after [it] the claim arises, or the time specified in Subsection (1).

- (4) Nothing in this section affects or prevents:

- (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;
- (b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which [he] the deceased settlor or trustee is protected by liability insurance;
- (c) collection of compensation for services rendered and reimbursement for expenses

advanced by the trustee or by the attorney or accountant for the trustee of the trust estate; or

- (d) the right to recover medical assistance provided to the settlor under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery.

Section 123. Section **75B-2-510**, which is renumbered from Section 75-7-510 is renumbered and amended to read:

**[75-7-510] 75B-2-510 . Manner of presentation of claims.**

- (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be presented as follows:

(a)(i) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(ii) The claim is considered presented upon the receipt of the written statement of claim by the trustee or the trustee's attorney of record.

(iii) If a claim is not yet due, the date when [it] the claim will become due shall be stated.

(iv) If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated.

(v) If the claim is secured, the security shall be described.

(vi) 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.

- (b)(i) The claimant may commence a proceeding against the trustee in any court where the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased settlor's estate or the trust estate, but the commencement of the proceeding must occur within the time limited for presenting the claim.

(ii) No presentation of claim is required in regard to matters claimed in proceedings against the deceased settlor which were pending at the time of the deceased settlor's death.

- (2)(a) If a claim is presented under Subsection (1)(a), ~~[no proceeding thereon may]~~ a proceeding may not be commenced more than 60 days after the trustee has mailed a notice of disallowance~~[; but,]~~ .

(b) Notwithstanding Subsection (2)(a), in the case of a claim which is not presently due or which is contingent or unliquidated, the trustee may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition, may order an extension of



4345 the 60-day period, ~~[but in no event may]~~ except that the extension may not run beyond  
4346 the applicable statute of limitations.

4347 Section 124. Section **75B-2-511**, which is renumbered from Section 75-7-511 is renumbered  
4348 and amended to read:

4349 **[75-7-511] 75B-2-511 . Classification of claims.**

4350 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to  
4351 pay all claims in full, the trustee shall make payment in the following order:

4352 (a) reasonable funeral expenses;

4353 (b) costs and expenses of administration;

4354 (c) debts and taxes with preference under federal law;

4355 (d) reasonable and necessary medical and hospital expenses of the last illness of the  
4356 deceased settlor, including compensation of persons attending the deceased settlor,  
4357 and medical assistance if Section 26B-3-1013 applies;

4358 (e) debts and taxes with preference under other laws of this state; and

4359 (f) all other claims.

4360 (2) No preference shall be given in the payment of any claim over any other claim of the  
4361 same class~~[-and a]~~ .

4362 (3) A claim due and payable shall not be entitled to a preference over claims not due.

4363 Section 125. Section **75B-2-512**, which is renumbered from Section 75-7-512 is renumbered  
4364 and amended to read:

4365 **[75-7-512] 75B-2-512 . Allowance of claims.**

4366 (1)(a) As to claims presented in the manner described in Section ~~[75-7-510]~~ 75B-2-510

4367 and within the time limit prescribed in Section ~~[75-7-509]~~ 75B-2-509, the trustee may  
4368 mail a notice to any claimant stating that the claim has been allowed or disallowed.

4369 (b) If, after allowing or disallowing a claim, the trustee changes the decision concerning  
4370 the claim, the trustee shall notify the claimant.

4371 (c) The trustee may not change a disallowance of a claim after the time for the claimant  
4372 to file a petition for allowance or to commence a proceeding on the claim has expired  
4373 and the claim has been barred.

4374 (d) If the notice of disallowance warns the claimant of the impending bar, a claim which  
4375 is disallowed in whole or in part by the trustee is barred so far as not allowed, unless  
4376 the claimant seeks a court-ordered allowance by filing a petition for allowance in the  
4377 court or by commencing a proceeding against the trustee not later than 60 days after  
4378 the mailing of the notice of disallowance or partial allowance.

(e) If the trustee fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.

(2)(a) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the court may order any claim presented to the trustee or trustee's attorney in a timely manner and not barred by Subsection (1) to be allowed in whole or in part.

(b) Notice of this proceeding shall be given to the claimant, the trustee, and those other persons interested in the trust estate as the court may direct by order at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against the trustee to enforce a claim against a deceased settlor's estate is a court-ordered allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against a trustee, allowed claims bear interest at the legal rate for the period commencing six months after the deceased settlor's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Section 126. Section **75B-2-513**, which is renumbered from Section 75-7-513 is renumbered and amended to read:

**[75-7-513] 75B-2-513 . Payment of claims.**

(1)(a) Upon the expiration of the earliest of the time limitations provided in Section [75-7-509] 75B-2-509 for the presentation of claims, the trustee shall pay the claims allowed against the deceased settlor's estate in the order of priority prescribed, after making provision for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(b) By petition to the court in a proceeding for that purpose, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the trustee to pay the claim to the extent that funds of the deceased settlor's estate or trust estate are available for the payment.

(2) The trustee at any time may pay any just claim that has not been barred, with or without formal presentation, but the trustee shall be personally liable to any other claimant whose claim is allowed and who is injured by the payment if:

(a) the payment was made before the expiration of the time limit stated in Subsection (1) and the trustee failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the trustee, in a way that deprived the injured claimant of his priority.

Section 127. Section **75B-2-514**, which is renumbered from Section 75-7-514 is renumbered and amended to read:

**[75-7-514] 75B-2-514 . Secured claims.**

Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders [his] the creditor's security[:], but otherwise payment shall be based upon one of the following:

- (1) if the creditor exhausts [his] the creditor's security before receiving payment, unless precluded by another provision of the law, upon the amount of the claim allowed less the fair value of the security; or
- (2) if the creditor does not have the right to exhaust [his] the creditor's security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting [it] the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise, or litigation.

Section 128. Section **75B-2-515**, which is renumbered from Section 75-7-515 is renumbered and amended to read:

**[75-7-515] 75B-2-515 . Claims not due and contingent or unliquidated claims.**

- (1) 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 trust estate, and if the claim has been allowed or established by a proceeding, [it] the claim shall be paid in the same manner as presently due and absolute claims of the same class.
- (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special proceeding for that purpose, the court, may provide for payment as follows:
  - (a) if the claimant consents, [he] the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; or
  - (b) 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 beneficiary, or otherwise.

Section 129. Section **75B-2-516**, which is renumbered from Section 75-7-516 is renumbered and amended to read:

**[75-7-516] 75B-2-516 . Counterclaims.**

- (1)(a) In allowing a claim, the trustee may deduct any counterclaim which the deceased

4447 settlor's estate has against the claimant.

4448 (b) In determining a claim against a deceased settlor's estate, a court shall reduce the  
4449 amount allowed by the amount of any counterclaims and, if the counterclaims exceed  
4450 the claim, render a judgment against the claimant in the amount of the excess.

4451 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that  
4452 upon which the claim is based.

4453 (3) A counterclaim may give rise to relief exceeding in amount or different in kind from  
4454 that sought in the claim.

4455 Section 130. Section **75B-2-517**, which is renumbered from Section 75-7-517 is renumbered  
4456 and amended to read:

4457 **[75-7-517] 75B-2-517 . Execution and levies prohibited.**

4458 (1) No execution may issue upon nor may any levy be made against any property of the  
4459 deceased settlor's estate under any judgment against a deceased settlor or a trustee.

4460 (2) This section may not be construed to prevent the enforcement of mortgages, pledges, or  
4461 liens upon real or personal property in an appropriate proceeding.

4462 Section 131. Section **75B-2-518**, which is renumbered from Section 75-7-518 is renumbered  
4463 and amended to read:

4464 **[75-7-518] 75B-2-518 . Compromise of claims.**

4465 When a claim against a deceased settlor's estate has been presented in any manner, the  
4466 trustee may, if [it] the claim appears in the best interest of the deceased settlor's estate,  
4467 compromise the claim, whether due or not due, absolute or contingent, liquidated or  
4468 unliquidated.

4469 Section 132. Section **75B-2-519**, which is renumbered from Section 75-7-519 is renumbered  
4470 and amended to read:

4471 **[75-7-519] 75B-2-519 . Encumbered assets.**

4472 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien,  
4473 or other security interest, the trustee may pay the encumbrance or any part thereof,  
4474 renew or extend any obligation secured by the encumbrance, or convey or transfer the  
4475 assets to the creditor in satisfaction of [his] the creditor's lien, in whole or in part,  
4476 whether or not the holder of the encumbrance has presented a claim, if it appears to be in  
4477 the best interest of the deceased settlor's estate.

4478 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the  
4479 encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of  
4480 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered

assets, provides otherwise.

Section 133. Section **75B-2-601**, which is renumbered from Section 75-7-604 is renumbered and amended to read:

**Part 6. Revocable Trust**

**[75-7-604] 75B-2-601 . Capacity of settlor of revocable trust.**

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Section 134. Section **75B-2-602**, which is renumbered from Section 75-7-605 is renumbered and amended to read:

**[75-7-605] 75B-2-602 . Revocation or amendment of revocable trust.**

(1)(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

(b) This Subsection (1) does not apply to a trust created under an instrument executed before May 1, 2004.

(2) If a revocable trust is created or funded by more than one settlor:

(a) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) The settlor may revoke or amend a revocable trust:

(a) by substantially complying with a method provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(ii) any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent

expressly authorized by the terms of the trust or the power.

- (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.
- (7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Section 135. Section **75B-2-603**, which is renumbered from Section 75-7-606 is renumbered and amended to read:

**[75-7-606] 75B-2-603 . Settlor's powers -- Powers of withdrawal.**

- (1)(a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust.
- (b) To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or a person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.
- (2) To the extent a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
- (3) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.
- (4) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Section 136. Section **75B-2-604**, which is renumbered from Section 75-7-607 is renumbered and amended to read:

**[75-7-607] 75B-2-604 . Limitation on action contesting validity of revocable trust -- Distribution of trust property.**

- (1) A person shall commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:
- (a) three years after the settlor's death; or
- (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of

- 4549 the time allowed for commencing a proceeding.
- 4550 (2)(a) Upon the death of the settlor of a trust that was revocable at the settlor's death, the
- 4551 trustee may proceed to distribute the trust property in accordance with the terms of
- 4552 the trust.
- 4553 (b) The trustee is not subject to liability for doing so unless:
- 4554 [(a)] (i) the trustee knows of a pending judicial proceeding contesting the validity of
- 4555 the trust; or
- 4556 [(b)] (ii) a potential contestant has notified the trustee of a possible judicial
- 4557 proceeding to contest the trust and a judicial proceeding is commenced within 60
- 4558 days after the contestant sent the notification.
- 4559 (3)(a) With respect to a potential contest, the trustee is only liable for actions taken two
- 4560 or more business days after the trustee has actual receipt of written notice from a
- 4561 potential contestant.
- 4562 (b) The written notice shall include the name of the settlor or of the trust, the name of
- 4563 the potential contestant, and a description of the basis for the potential contest.
- 4564 (c) The written notice shall be mailed to the trustee at the principal place of
- 4565 administration of the trust by registered or certified mail, return receipt requested, or
- 4566 served upon the trustee in the same manner as a summons in a civil action.
- 4567 (d) Any other form or service of notice is not sufficient to impose liability on the trustee
- 4568 for actions taken pursuant to the terms of the trust.
- 4569 (4) A beneficiary of a trust that is determined to have been invalid is liable to return any
- 4570 distribution received.

4571 Section 137. Section **75B-2-701**, which is renumbered from Section 75-7-701 is renumbered

4572 and amended to read:

4573 **Part 7. Office of Trustee**

4574 **[75-7-701] 75B-2-701 . Accepting or declining trusteeship.**

- 4575 (1) Except as otherwise provided in Subsection (3), a person designated as trustee accepts
- 4576 the trusteeship:
- 4577 (a) by substantially complying with a method of acceptance provided in the terms of the
- 4578 trust; or
- 4579 (b) if the terms of the trust do not provide a method or the method provided in the terms
- 4580 is not expressly made exclusive, by accepting delivery of the trust property,
- 4581 exercising powers or performing duties as trustee, or otherwise indicating acceptance
- 4582 of the trusteeship.

(2)(a) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship.

(b) A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(b) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Section 138. Section **75B-2-702**, which is renumbered from Section 75-7-702 is renumbered and amended to read:

**[75-7-702] 75B-2-702 . Trustee's bond.**

(1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2)(a) The court may specify the amount of a bond, [its] the bond's liabilities, and whether sureties are necessary.

(b) The court may modify or terminate a bond at any time.

(3)(a) A regulated financial service institution qualified to do trust business in this state need not give bond, unless required by the terms of the trust.

(b) The cost of any bond shall be borne by the trust.

(4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

Section 139. Section **75B-2-703**, which is renumbered from Section 75-7-703 is renumbered and amended to read:

**[75-7-703] 75B-2-703 . Cotrustees.**

(1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(3) Subject to Section [75-12-112] 75B-3-112, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness,



disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses to act after reasonable notice, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5)(a) A trustee may not delegate to a cotrustee the performance of a function the settlor intended the trustees to perform jointly as determined from the terms of the trust.

(b) If one of the cotrustees is a regulated financial service institution qualified to do trust business in this state and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the regulated financial service institution of the performance of trust investment functions shall be presumed to be in accordance with the settlor's intent unless the terms of the trust specifically provide otherwise.

(c) Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(6) Except as otherwise provided in Subsection (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Subject to Section [75-12-112] 75B-3-112, each trustee shall exercise reasonable care to:

- (a) prevent a cotrustee from committing a serious breach of trust; and
- (b) compel a cotrustee to redress a serious breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Section 140. Section **75B-2-704**, which is renumbered from Section 75-7-704 is renumbered and amended to read:

**[75-7-704] 75B-2-704 . Vacancy in trusteeship -- Appointment of successor.**

(1) A vacancy in a trusteeship occurs if:

- (a) a person designated as trustee rejects the trusteeship;
- (b) a person designated as trustee cannot be identified or does not exist;
- (c) a trustee resigns;
- (d) a trustee is disqualified or removed;
- (e) a trustee dies; or
- (f) a guardian or conservator is appointed for an individual serving as trustee, unless otherwise provided in the trust.

(2)(a) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled.

4651 (b) A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

4652 (3) A vacancy in a trusteeship required to be filled must be filled in the following order of  
4653 priority:

4654 (a) by a person designated in the terms of the trust to act as successor trustee;

4655 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

4656 (c) by a person appointed by the court.

4657 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled  
4658 in the following order of priority:

4659 (a) by a person designated in the terms of the trust to act as successor trustee;

4660 (b) by a person selected by the charitable organizations expressly designated to receive  
4661 distributions under the terms of the trust if the attorney general concurs in the  
4662 selection; or

4663 (c) by a person appointed by the court.

4664 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may  
4665 appoint an additional trustee or special fiduciary whenever the court considers the  
4666 appointment necessary for the administration of the trust.

4667 Section 141. Section **75B-2-705**, which is renumbered from Section 75-7-705 is renumbered  
4668 and amended to read:

4669 **[75-7-705] 75B-2-705 . Resignation of trustee.**

4670 (1) A trustee may resign:

4671 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and  
4672 all cotrustees; or

4673 (b) with the approval of the court.

4674 (2) In approving a resignation, the court may issue orders and impose conditions reasonably  
4675 necessary for the protection of the trust property.

4676 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or  
4677 omissions of the trustee is not discharged or affected by the trustee's resignation.

4678 Section 142. Section **75B-2-706**, which is renumbered from Section 75-7-706 is renumbered  
4679 and amended to read:

4680 **[75-7-706] 75B-2-706 . Removal of trustee.**

4681 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a  
4682 trustee, or a trustee may be removed by the court on [its] the court's own initiative.

4683 (2) The court may remove a trustee if:

4684 (a) the trustee has committed a serious breach of trust;

(b) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(d) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under Subsection [ ~~75-7-1001(2)~~ 75B-2-1001(2) necessary to protect the trust property or the interests of the beneficiaries.

Section 143. Section **75B-2-707**, which is renumbered from Section 75-7-707 is renumbered and amended to read:

**[~~75-7-707~~] 75B-2-707 . Delivery of property by former trustee.**

(1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to ~~[it]~~ the trust property.

Section 144. Section **75B-2-708**, which is renumbered from Section 75-7-708 is renumbered and amended to read:

**[~~75-7-708~~] 75B-2-708 . Compensation of trustee.**

If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

Section 145. Section **75B-2-709**, which is renumbered from Section 75-7-709 is renumbered and amended to read:

**[~~75-7-709~~] 75B-2-709 . Reimbursement of expenses.**

(1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(a) expenses that were properly incurred in the administration of the trust; and

(b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

- (2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Section 146. Section **75B-2-801**, which is renumbered from Section 75-7-801 is renumbered and amended to read:

#### **Part 8. Duties and Power of Trustee**

##### **[75-7-801] 75B-2-801 . Duty to administer trust.**

Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with [its] the trust's terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

Section 147. Section **75B-2-802**, which is renumbered from Section 75-7-802 is renumbered and amended to read:

##### **[75-7-802] 75B-2-802 . Duty of loyalty.**

- (1) A trustee shall administer the trust solely in the interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided in Section ~~[75-7-1012]~~ 75B-2-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:
- (a) the transaction was authorized by the terms of the trust;
  - (b) the transaction was approved by the court;
  - (c) the beneficiary did not commence a judicial proceeding within the time allowed by Section ~~[75-7-1005]~~ 75B-2-1005;
  - (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section ~~[75-7-1009]~~ 75B-2-1009; or
  - (e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
- (3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if [it] the sale, encumbrance, or other transaction is entered into by the trustee with:
- (a) the trustee's spouse;

- 4753 (b) the trustee's descendants, siblings, parents, or ~~[their spouses]~~ the spouses of the  
4754 trustee's descendants, siblings, or parents;
- 4755 (c) an agent of the trustee, including but not limited to an attorney, accountant, or  
4756 financial advisor; or
- 4757 (d) a corporation or other person or enterprise in which the trustee, or a person that owns  
4758 a significant interest in the trustee, has an interest that might affect the trustee's best  
4759 judgment.
- 4760 (4) A transaction between a trustee and a beneficiary that does not concern trust property  
4761 but that occurs during the existence of the trust or while the trustee retains significant  
4762 influence over the beneficiary and from which the trustee obtains an advantage is  
4763 voidable by the beneficiary unless the trustee establishes that the transaction was fair to  
4764 the beneficiary.
- 4765 (5) A transaction not concerning trust property in which the trustee engages in the trustee's  
4766 individual capacity involves a conflict between personal and fiduciary interests if the  
4767 transaction concerns an opportunity properly belonging to the trust.
- 4768 (6)(a) An investment by a trustee in securities of an investment company or investment  
4769 trust to which the trustee, or its affiliate, provides services in a capacity other than as  
4770 trustee is not presumed to be affected by a conflict between personal and fiduciary  
4771 interests if the investment complies with the prudent investor rule of Section [  
4772 ~~75-7-901~~] 75B-2-901.
- 4773 (b) The trustee may be compensated by the investment company or investment trust for  
4774 providing those services out of fees charged to the trust.
- 4775 (7)(a) In voting shares of stock or in exercising powers of control over similar interests  
4776 in other forms of enterprise, the trustee shall act in the best interests of the  
4777 beneficiaries.
- 4778 (b) If the trust is the sole owner of a corporation or other form of enterprise, the trustee  
4779 shall elect or appoint directors or other managers who will manage the corporation or  
4780 enterprise in the best interests of the beneficiaries.
- 4781 (8) This section does not preclude the following actions by the trustee:
- 4782 (a) an agreement between the trustee and a beneficiary relating to the appointment or  
4783 compensation of the trustee;
- 4784 (b) payment of reasonable compensation to the trustee;
- 4785 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or  
4786 guardianship of which the trustee is a fiduciary or in which a beneficiary has an

- 4787 interest;
- 4788 (d) a deposit of trust money in a regulated financial service institution operated by the
- 4789 trustee;
- 4790 (e) an advance by the trustee of money for the protection of the trust;
- 4791 (f) collecting, holding, and retaining trust assets received from a trustor until, in the
- 4792 judgment of the trustee, disposition of the assets should be made, even though the
- 4793 assets include an asset in which the trustee is personally interested;
- 4794 (g) acquiring an undivided interest in a trust asset in which the trustee, in any trust
- 4795 capacity, holds an undivided interest;
- 4796 (h) borrowing money to be repaid from the trust assets or otherwise;
- 4797 (i) advancing money to be repaid from the assets or otherwise;
- 4798 (j) employing [~~persons, including attorneys, auditors, investment advisers, or agents~~] a
- 4799 person, including an attorney, an auditor, an investment adviser, or an agent, even if [
- 4800 ~~they are~~] the person is associated with the trustee:
- 4801 (i) to advise or assist the trustee in the performance of the trustee's administrative
- 4802 duties or perform any act of administration, whether or not discretionary; or
- 4803 (ii) to act without independent investigation upon [~~their~~] the person's
- 4804 recommendations;
- 4805 (k) if a governing instrument or order requires or authorizes investment in United States
- 4806 government obligations, investing in those obligations, either directly or in the form
- 4807 of securities or other interests, in any open-end or closed-end management type
- 4808 investment company or investment trust registered under the provisions of the
- 4809 Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:
- 4810 (i) the portfolio of the investment company or investment trust is limited to United
- 4811 States government obligations, and repurchase agreements are fully collateralized
- 4812 by United States government obligations; and
- 4813 (ii) the investment company or investment trust takes delivery of the collateral for
- 4814 any repurchase agreement either directly or through an authorized custodian.
- 4815 (9) The court may appoint a special fiduciary to make a decision with respect to any
- 4816 proposed transaction that might violate this section if entered into by the trustee.
- 4817 Section 148. Section **75B-2-803**, which is renumbered from Section 75-7-803 is renumbered
- 4818 and amended to read:
- 4819 **[75-7-803] 75B-2-803 . Impartiality.**
- 4820 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,

managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Section 149. Section **75B-2-804**, which is renumbered from Section 75-7-804 is renumbered and amended to read:

**[75-7-804] 75B-2-804 . Prudent administration.**

(1) A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust.

(2) In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

Section 150. Section **75B-2-805**, which is renumbered from Section 75-7-805 is renumbered and amended to read:

**[75-7-805] 75B-2-805 . Costs of administration.**

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

Section 151. Section **75B-2-806**, which is renumbered from Section 75-7-806 is renumbered and amended to read:

**[75-7-806] 75B-2-806 . Trustee's skills.**

A trustee who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Section 152. Section **75B-2-807**, which is renumbered from Section 75-7-807 is renumbered and amended to read:

**[75-7-807] 75B-2-807 . Control and protection of trust property.**

A trustee shall take reasonable steps to take control of and protect the trust property.

Section 153. Section **75B-2-808**, which is renumbered from Section 75-7-808 is renumbered and amended to read:

**[75-7-808] 75B-2-808 . Recordkeeping and identification of trust property.**

(1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Section 154. Section **75B-2-809**, which is renumbered from Section 75-7-809 is renumbered and amended to read:

**[75-7-809] 75B-2-809 . Enforcement and defense of claims.**

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Section 155. Section **75B-2-810**, which is renumbered from Section 75-7-810 is renumbered and amended to read:

**[75-7-810] 75B-2-810 . Collecting trust property.**

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee, unless the terms of the trust provide otherwise.

Section 156. Section **75B-2-811**, which is renumbered from Section 75-7-811 is renumbered and amended to read:

**[75-7-811] 75B-2-811 . Duty to inform and report.**

(1)(a) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for ~~[them]~~ the qualified beneficiaries to protect ~~[their]~~ the qualified beneficiaries' interests.

(b) Unless unreasonable under the circumstances, and unless otherwise provided by the terms of the trust a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(2) Except to the extent the terms of the trust provide otherwise, a trustee:

(a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

(b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in Subsection (3); and

(d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3)(a) A trustee shall send to the qualified beneficiaries who request it, at least annually



and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the amount of the trustee's compensation or a fee schedule or other writing showing how the trustee's compensation was determined, a listing of the trust assets and, if feasible, ~~[their]~~ the trust assets' respective market values.

(b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee, unless the terms of the trust provide otherwise.

(c) A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4)(a) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section.

(b) A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

Section 157. Section **75B-2-812**, which is renumbered from Section 75-7-812 is renumbered and amended to read:

**[75-7-812] 75B-2-812 . Discretionary powers -- Tax savings.**

(1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that ~~[a rule in]~~ a requirement described in this section does not apply:

(a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 1, 2004; and

(b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(3)(a) A power whose exercise is limited or prohibited by Subsection (2) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited.

(b) If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(4) Subsection (2) does not apply to:

(a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on May 1, 2004, was previously allowed;

(b) any trust during any period that the trust may be revoked or amended by [its] the trust's settlor; or

(c) a trust if contributions to the trust qualify for the annual exclusion under Subsection 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.

Section 158. Section **75B-2-813**, which is renumbered from Section 75-7-813 is renumbered and amended to read:

**[75-7-813] 75B-2-813 . General powers of trustee.**

(1) A trustee, without authorization by the court, may exercise:

(a) powers conferred by the terms of the trust; or

(b) except as limited by the terms of the trust:

(i) all powers over the trust property [~~which~~] that an unmarried competent owner has over individually owned property;

(ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(iii) any other powers conferred by this chapter.

(2) The exercise of a power is subject to the fiduciary duties prescribed by this part.

Section 159. Section **75B-2-814**, which is renumbered from Section 75-7-814 is renumbered and amended to read:

**[75-7-814] 75B-2-814 . Specific powers of trustee.**

(1) Without limiting the authority conferred by Section [~~75-7-813~~] 75B-2-813, a trustee may:

(a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(b) acquire or sell property, for cash or on credit, at public or private sale;

(c) exchange, partition, or otherwise change the character of trust property;

(d) deposit trust money in an account in a regulated financial service institution;

(e) borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of [its] the financial institution's affiliates, and mortgage or pledge trust property for a period within or extending

- 4957 beyond the duration of the trust;
- 4958 (f) with respect to an interest in a proprietorship, partnership, limited liability company,  
4959 business trust, corporation, or other form of business or enterprise, continue the  
4960 business or other enterprise and take any action that may be taken by shareholders,  
4961 members, or property owners, including merging, dissolving, or otherwise changing  
4962 the form of business organization or contributing additional capital;
- 4963 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,  
4964 including the right to:
- 4965 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or  
4966 continue a voting trust agreement;
- 4967 (ii) hold a security in the name of a nominee or in other form without disclosure of  
4968 the trust so that title may pass by delivery;
- 4969 (iii) pay calls, assessments, and other sums chargeable or accruing against the  
4970 securities, and sell or exercise stock subscription or conversion rights; and
- 4971 (iv) deposit the securities with a depositary or other regulated financial service  
4972 institution;
- 4973 (h) with respect to an interest in real property, construct, or make ordinary or  
4974 extraordinary repairs to, alterations to, or improvements in, buildings or other  
4975 structures, demolish improvements, raze existing or erect new party walls or  
4976 buildings, subdivide or develop land, dedicate land to public use or grant public or  
4977 private easements, and make or vacate plats and adjust boundaries;
- 4978 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other  
4979 arrangement for exploration and removal of natural resources, with or without the  
4980 option to purchase or renew, for a period within or extending beyond the duration of  
4981 the trust;
- 4982 (j) grant an option involving a sale, lease, or other disposition of trust property or  
4983 acquire an option for the acquisition of property, including an option exercisable  
4984 beyond the duration of the trust, and exercise an option so acquired;
- 4985 (k) insure the property of the trust against damage or loss and insure the trustee, the  
4986 trustee's agents, and beneficiaries against liability arising from the administration of  
4987 the trust;
- 4988 (l) abandon or decline to administer property of no value or of insufficient value to  
4989 justify its collection or continued administration;
- 4990 (m) with respect to possible liability for violation of environmental law:

- 4991 (i) inspect or investigate property the trustee holds or has been asked to hold, or  
4992 property owned or operated by an organization in which the trustee holds or has  
4993 been asked to hold an interest, for the purpose of determining the application of  
4994 environmental law with respect to the property;
- 4995 (ii) take action to prevent, abate, or otherwise remedy any actual or potential  
4996 violation of any environmental law affecting property held directly or indirectly  
4997 by the trustee, whether taken before or after the assertion of a claim or the  
4998 initiation of governmental enforcement;
- 4999 (iii) decline to accept property into trust or disclaim any power with respect to  
5000 property that is or may be burdened with liability for violation of environmental  
5001 law;
- 5002 (iv) compromise claims against the trust which may be asserted for an alleged  
5003 violation of environmental law; and
- 5004 (v) pay the expense of any inspection, review, abatement, or remedial action to  
5005 comply with environmental law;
- 5006 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole  
5007 or in part, a claim belonging to the trust;
- 5008 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of  
5009 the trust, and other expenses incurred in the administration of the trust;
- 5010 (p) exercise elections with respect to federal, state, and local taxes;
- 5011 (q) select a mode of payment under any employee benefit or retirement plan, annuity, or  
5012 life insurance payable to the trustee, exercise rights thereunder, including exercise of  
5013 the right to indemnification for expenses and against liabilities, and take appropriate  
5014 action to collect the proceeds;
- 5015 (r) make loans out of trust property, including loans to a beneficiary on terms and  
5016 conditions the trustee considers to be fair and reasonable under the circumstances,  
5017 and the trustee has a lien on future distributions for repayment of those loans;
- 5018 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 5019 (t) appoint a trustee to act in another jurisdiction with respect to trust property located in  
5020 the other jurisdiction, confer upon the appointed trustee all of the powers and duties  
5021 of the appointing trustee, require that the appointed trustee furnish security, and  
5022 remove any trustee so appointed;
- 5023 (u) pay an amount distributable to a beneficiary who is under a legal disability or who  
5024 the trustee reasonably believes is incapacitated, by paying ~~it~~ the amount directly to

- 5025 the beneficiary or applying it for the beneficiary's benefit, or by:
- 5026 (i) paying [it] the amount to the beneficiary's conservator or, if the beneficiary does
- 5027 not have a conservator, the beneficiary's guardian;
- 5028 (ii) paying [it] the amount to the beneficiary's custodian under Title 75A, Chapter 8,
- 5029 Uniform Transfers to Minors Act;
- 5030 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial
- 5031 trustee, paying [it] the amount to an adult relative or other person having legal or
- 5032 physical care or custody of the beneficiary, to be expended on the beneficiary's
- 5033 behalf; or
- 5034 (iv) managing [it] the amount as a separate fund on the beneficiary's behalf, subject to
- 5035 the beneficiary's continuing right to withdraw the distribution;
- 5036 (v) on distribution of trust property or the division or termination of a trust, make
- 5037 distributions in divided or undivided interests, allocate particular assets in
- 5038 proportionate or disproportionate shares, value the trust property for those purposes,
- 5039 and adjust for resulting differences in valuation;
- 5040 (w) resolve a dispute concerning the interpretation of the trust or its administration by
- 5041 mediation, arbitration, or other procedure for alternative dispute resolution;
- 5042 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
- 5043 protect trust property and the trustee in the performance of the trustee's duties;
- 5044 (y) sign and deliver contracts and other instruments that are useful to achieve or
- 5045 facilitate the exercise of the trustee's powers; and
- 5046 (z) on termination of the trust, exercise the powers appropriate to finalize the
- 5047 administration of the trust and distribute the trust property to the persons entitled to [it]
- 5048 the trust.
- 5049 (2) A trustee may delegate investment and management functions that a prudent trustee of
- 5050 comparable skills could properly delegate under the circumstances.
- 5051 (a) The trustee shall exercise reasonable care, skill, and caution in:
- 5052 (i) selecting the agent;
- 5053 (ii) establishing the scope and terms of the delegation consistent with the purposes of
- 5054 the trust; and
- 5055 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
- 5056 compliance with the terms of the delegation.
- 5057 (b) In performing a delegated function, an agent has a duty to the trust to exercise
- 5058 reasonable care to comply with the terms of the delegation.

5059 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to  
5060 the beneficiaries or to the trust for the decisions or actions of the agent to whom the  
5061 function was delegated.

5062 (3)(a) The trustee may exercise the powers set forth in this section and in the trust either  
5063 in the name of the trust or in the name of the trustee as trustee, specifically including  
5064 the right to take title, to encumber or convey assets, including real property, in the  
5065 name of the trust.

5066 (b) This Subsection (3) applies to a trustee's exercise of trust powers.

5067 (c) After May 11, 2010, for recording purposes, the name of the trustee, the address of  
5068 the trustee, and the name and date of the trust, shall be included on all recorded  
5069 documents affecting real property to which the trust is a party in interest.

5070 Section 160. Section **75B-2-815**, which is renumbered from Section 75-7-815 is renumbered  
5071 and amended to read:

5072 **[75-7-815] 75B-2-815 . Distribution upon termination.**

5073 (1)(a) Upon termination or partial termination of a trust, the trustee may send to the  
5074 beneficiaries a proposal for distribution.

5075 (b) The right of any beneficiary to object to the proposed distribution terminates if the  
5076 beneficiary does not notify the trustee of an objection within 30 days after the  
5077 proposal was sent but only if the proposal informed the beneficiary of the right to  
5078 object and of the time allowed for objection.

5079 (2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee  
5080 shall proceed expeditiously to distribute the trust property to the persons entitled to [it]  
5081 the trust property, subject to the right of the trustee to retain a reasonable reserve for the  
5082 payment of debts, expenses, and taxes.

5083 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the  
5084 extent:

5085 (a) [it] the release was induced by improper conduct of the trustee; or

5086 (b) the beneficiary, at the time of the release, did not know or had no reason to know of  
5087 the beneficiary's rights or of the material facts relating to the breach.

5088 Section 161. Section **75B-2-816**, which is renumbered from Section 75-7-816 is renumbered  
5089 and amended to read:

5090 **[75-7-816] 75B-2-816 . Recitals when title to real property is in trust -- Failure.**

5091 (1) When title to real property is granted to a person as trustee, the terms of the trust may be  
5092 given either:

- 5093 (a) in the deed of transfer; or  
5094 (b) in an instrument signed by the grantor and recorded in the same office as the grant to  
5095 the trustee.

5096 (2) If the terms of the trust are not made public as required in Subsection (1), a conveyance  
5097 from the trustee is absolute in favor of purchasers for value who take the property  
5098 without notice of the terms of the trust.

5099 (3) The terms of the trust recited in the deed of transfer or the instrument recorded under  
5100 Subsection (1)(b) shall include:

- 5101 (a) the name of the trustee;  
5102 (b) the address of the trustee; and  
5103 (c) the name and date of the trust.

5104 (4) Any real property titled in a trust [~~which~~] that has a restriction on transfer described in  
5105 Section 75B-1-302 shall include in the title the words "asset protection trust."

5106 Section 162. Section **75B-2-817**, which is renumbered from Section 75-7-817 is renumbered  
5107 and amended to read:

5108 **[75-7-817] 75B-2-817 . Marital deduction formulas -- Trusts.**

5109 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust  
5110 executed before September 13, 1981, contains a formula expressly providing that the  
5111 decedent's spouse is to receive the maximum amount of property qualifying for the  
5112 marital deduction allowable by federal law, this formula shall be construed as referring  
5113 to the unlimited marital deduction allowable by federal law as amended by Section  
5114 403(a) of the Economic Recovery Tax Act of 1981.

5115 (2) The intention of a trustor as expressed in the trust shall control the legal effect of any  
5116 dispositions made by it for purposes of construing Subsection (1), and the rule of  
5117 construction of Subsection (1) shall apply unless a contrary intention is indicated by the  
5118 trust.

5119 Section 163. Section **75B-2-901**, which is renumbered from Section 75-7-901 is renumbered  
5120 and amended to read:

5121 **Part 9. Uniform Prudent Investor Act**

5122 **[75-7-901] 75B-2-901 . Prudent investor rule.**

5123 (1)(a) Except as otherwise provided in Subsection (2), a trustee who invests and  
5124 manages trust assets owes a duty to the beneficiaries of the trust to comply with the  
5125 prudent investor rule [~~set forth~~] described in this chapter.

5126 (b) If a trustee is named on the basis of a trustee's representations of special skills or

5127 expertise, the trustee has a duty to use those special skills or expertise.

5128 (2)(a) The prudent investor rule is a default rule and may be expanded, restricted,  
5129 eliminated, or otherwise altered by the provisions of a trust.

5130 (b) A trustee is not liable to a beneficiary to the extent that the trustee acted in  
5131 reasonable reliance on the provisions of the trust.

5132 Section 164. Section **75B-2-902**, which is renumbered from Section 75-7-902 is renumbered  
5133 and amended to read:

5134 **[75-7-902] 75B-2-902 . Standard of care -- Portfolio strategy -- Risk and return**  
5135 **objectives.**

5136 (1)(a) A trustee shall invest and manage trust assets as a prudent investor would, by  
5137 considering the purposes, terms, distribution requirements, and other circumstances  
5138 of the trust.

5139 (b) In satisfying this standard, the trustee shall exercise reasonable care, skill, and  
5140 caution.

5141 (2) A trustee's investment and management decisions respecting individual assets must be  
5142 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part  
5143 of an overall investment strategy having risk and return objectives reasonably suited to  
5144 the trust.

5145 (3) Among circumstances that a trustee shall consider in investing and managing trust  
5146 assets are the following which may be relevant to the trust or [its] the trust's beneficiaries:

5147 (a) general economic conditions;

5148 (b) the possible effect of inflation or deflation;

5149 (c) the expected tax consequences of investment decisions or strategies;

5150 (d) the role that each investment or course of action plays within the overall trust  
5151 portfolio, which may include financial assets, interests in closely held enterprises,  
5152 tangible and intangible personal property, and real property;

5153 (e) the expected total return from income and the appreciation of capital;

5154 (f) other resources of the beneficiaries;

5155 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital;  
5156 and

5157 (h) an asset's special relationship or special value, if any, to the purposes of the trust or  
5158 to one or more of the beneficiaries.

5159 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and  
5160 management of trust assets.



(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

Section 165. Section **75B-2-903**, which is renumbered from Section 75-7-903 is renumbered and amended to read:

**[75-7-903] 75B-2-903 . Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Section 166. Section **75B-2-904**, which is renumbered from Section 75-7-904 is renumbered and amended to read:

**[75-7-904] 75B-2-904 . Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Section 167. Section **75B-2-905**, which is renumbered from Section 75-7-905 is renumbered and amended to read:

**[75-7-905] 75B-2-905 . Reviewing compliance.**

- (1) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.
- (2) This section does not require a specific outcome in investing.

Section 168. Section **75B-2-906**, which is renumbered from Section 75-7-906 is renumbered and amended to read:

**[75-7-906] 75B-2-906 . Investment direction.**

- (1) ~~[For purposes of]~~ As used in this section, "investment direction" means a direction that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (2) to do any of the following with respect to an investment:

- (a) retention;
- (b) purchase;
- (c) sale;
- (d) exchange;
- (e) tender; or
- (f) any other transaction affecting ownership in the investment.

- (2)(a) During the time period that a trust is revocable, the trustee may follow any investment direction of the settlor, including an investment direction that:
- (i) is manifestly contrary to the terms of the trust; or
  - (ii) seriously breaches a fiduciary duty to the beneficiaries.
- (b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).
- (3) If the terms of a trust authorize a person to give investment direction to the trustee, the person authorized to give investment direction:
- (a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;
  - (b) is required to act in good faith with regard to:
    - (i) the purposes of the trust; and
    - (ii) the interests of the beneficiaries; and
  - (c) is liable for any loss that results from breach of the fiduciary duty only with respect to an investment direction that the person gives to the trustee.
- (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for any loss that results from following an investment direction if:
- (a) the terms of a trust authorizes a person to give the investment direction to the trustee; and
  - (b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).
- (5) If the terms of a trust require another person's approval or consent to an investment decision of the trustee:
- (a) the person from whom approval or consent is required:
    - (i) is presumptively a fiduciary;
    - (ii) is required to act in good faith with regard to:
      - (A) the purposes of the trust; and
      - (B) the interests of the beneficiaries; and
    - (iii) is liable for any loss that results from breach of the fiduciary duty; and
  - (b) except in cases of willful misconduct or gross negligence, the trustee is not liable for any loss resulting from any act not taken as a result of the person's failure to respond to a request for approval or consent.

Section 169. Section **75B-2-907**, which is renumbered from Section 75-7-907 is renumbered and amended to read:

5229 **[75-7-907] 75B-2-907 . Language invoking standard of chapter.**

5230 The following terms or comparable language in the provisions of a trust, unless  
5231 otherwise limited or modified, authorizes any investment or strategy permitted under this  
5232 chapter: "investments permissible by law for investment of trust funds," "legal investments,"  
5233 "authorized investments," "using the judgment and care under the circumstances then  
5234 prevailing that persons of prudence, discretion, and intelligence exercise in the management of  
5235 their own affairs, not in regard to speculation but in regard to the permanent disposition of  
5236 their funds, considering the probable income as well as the probable safety of their capital,"  
5237 "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

5238 Section 170. Section **75B-2-1001**, which is renumbered from Section 75-7-1001 is renumbered  
5239 and amended to read:

5240 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

5241 **[75-7-1001] 75B-2-1001 . Remedies for breach of trust.**

5242 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

5243 (2) To remedy a breach of trust that has occurred or may occur, the court may:

5244 (a) compel the trustee to perform the trustee's duties;

5245 (b) enjoin the trustee from committing a breach of trust;

5246 (c) compel the trustee to redress a breach of trust by paying money, restoring property,  
5247 or other means;

5248 (d) order a trustee to account;

5249 (e) appoint a special fiduciary to take possession of the trust property and administer the  
5250 trust;

5251 (f) suspend the trustee;

5252 (g) remove the trustee as provided in Section [75-7-706] 75B-2-706;

5253 (h) reduce or deny compensation to the trustee;

5254 (i) subject to Section [75-7-1012] 75B-2-1012, void an act of the trustee, impose a lien or  
5255 a constructive trust on trust property, or trace trust property wrongfully disposed of  
5256 and recover the property or [its] the property's proceeds; or

5257 (j) order any other appropriate relief.

5258 Section 171. Section **75B-2-1002**, which is renumbered from Section 75-7-1002 is renumbered  
5259 and amended to read:

5260 **[75-7-1002] 75B-2-1002 . Damages for breach of trust.**

5261 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the  
5262 greater of:

5263 (a) the amount required to restore the value of the trust property and trust distributions to  
5264 what [they] the beneficiaries would have been had the breach not occurred; or

5265 (b) the profit the trustee made by reason of the breach.

5266 (2)(a) Except as otherwise provided in this Subsection (2), if more than one trustee is  
5267 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution  
5268 from the other trustee or trustees.

5269 (b) A trustee is not entitled to contribution if the trustee was substantially more at fault  
5270 than another trustee or if the trustee committed the breach of trust in bad faith or with  
5271 reckless indifference to the purposes of the trust or the interests of the beneficiaries.

5272 (c) A trustee who received a benefit from the breach of trust is not entitled to  
5273 contribution from another trustee to the extent of the benefit received.

5274 Section 172. Section **75B-2-1003**, which is renumbered from Section 75-7-1003 is renumbered  
5275 and amended to read:

5276 **[75-7-1003] 75B-2-1003 . Damages in absence of breach.**

5277 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee  
5278 arising from the administration of the trust, even absent a breach of trust.

5279 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation  
5280 in the value of trust property or for not having made a profit.

5281 Section 173. Section **75B-2-1004**, which is renumbered from Section 75-7-1004 is renumbered  
5282 and amended to read:

5283 **[75-7-1004] 75B-2-1004 . Attorney's fees and costs.**

5284 (1) In a judicial proceeding involving the administration of a trust, the court may, as justice  
5285 and equity may require, award costs and expenses, including reasonable attorney's fees,  
5286 to any party, to be paid by another party or from the trust that is the subject of the  
5287 controversy.

5288 (2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or  
5289 not, the trustee is entitled to receive from the trust the necessary expenses and  
5290 disbursements, including reasonable attorney's fees, incurred.

5291 Section 174. Section **75B-2-1005**, which is renumbered from Section 75-7-1005 is renumbered  
5292 and amended to read:

5293 **[75-7-1005] 75B-2-1005 . Limitation of action against trustee.**

5294 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more  
5295 than six months after the date that the beneficiary or a person who may represent and  
5296 bind the beneficiary was sent a report that adequately disclosed the existence of a

5297 potential claim for breach of trust and informed the beneficiary of the time allowed for  
5298 commencing a proceeding.

5299 (2) A report adequately discloses the existence of a potential claim for breach of trust if [it]  
5300 the report provides sufficient information so that the beneficiary or representative knows  
5301 of the potential claim or should have inquired into [its] the claim's existence.

5302 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee  
5303 for breach of trust must be commenced within one year after the first to occur of:

5304 (a) the removal, resignation, or death of the trustee;

5305 (b) the termination of the beneficiary's interest in the trust; or

5306 (c) the termination of the trust.

5307 (4) This section does not preclude an action to recover for fraud or misrepresentation  
5308 related to the report.

5309 Section 175. Section **75B-2-1006**, which is renumbered from Section 75-7-1006 is renumbered  
5310 and amended to read:

5311 **[75-7-1006] 75B-2-1006 . Reliance on trust instrument.**

5312 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the  
5313 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach  
5314 resulted from the reliance.

5315 Section 176. Section **75B-2-1007**, which is renumbered from Section 75-7-1007 is renumbered  
5316 and amended to read:

5317 **[75-7-1007] 75B-2-1007 . Event affecting administration or distribution.**

5318 If the happening of an event, including marriage, divorce, performance of educational  
5319 requirements, or death, affects the administration or distribution of a trust, a trustee is not  
5320 liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

5321 Section 177. Section **75B-2-1008**, which is renumbered from Section 75-7-1008 is renumbered  
5322 and amended to read:

5323 **[75-7-1008] 75B-2-1008 . Exculpation of trustee.**

5324 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the  
5325 extent that [it] the term:

5326 (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless  
5327 indifference to the purposes of the trust or the interests of the beneficiaries; or

5328 (2) was inserted by the trustee or fiduciary without disclosure of its existence and contents.

5329 Section 178. Section **75B-2-1009**, which is renumbered from Section 75-7-1009 is renumbered  
5330 and amended to read:

**[75-7-1009] 75B-2-1009 . Beneficiary's consent, release, or ratification.**

A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Section 179. Section **75B-2-1010**, which is renumbered from Section 75-7-1010 is renumbered and amended to read:

**[75-7-1010] 75B-2-1010 . Limitation on personal liability of trustee.**

- (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.
- (2) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.
- (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.
- (4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.
- (5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory or investment committee, or in any other person or persons, including one or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.
- (6)(a) In the absence of actual knowledge or information which would cause a reasonable trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary.
- (b) The provisions of this section shall not be construed to limit the fiduciary liability of

5365 any trustee for [his] the trustee's own acts or omissions with respect to the trust estate.

5366 Section 180. Section **75B-2-1011**, which is renumbered from Section 75-7-1011 is renumbered  
5367 and amended to read:

5368 **[75-7-1011] 75B-2-1011 . Interest as general partner.**

5369 (1) Except as otherwise provided in Subsection (3) or unless personal liability is imposed in  
5370 the contract, a trustee who holds an interest as a general partner in a general or limited  
5371 partnership is not personally liable on a contract entered into by the partnership after the  
5372 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or  
5373 in a statement previously filed ~~[pursuant to]~~ in accordance with Title 48, Chapter 2e,  
5374 Utah Uniform Limited Partnership Act.

5375 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a  
5376 general partner is not personally liable for torts committed by the partnership or for  
5377 obligations arising from ownership or control of the interest unless the trustee is  
5378 personally at fault.

5379 (3) The immunity provided by this section does not apply if an interest in the partnership is  
5380 held by the trustee in a capacity other than that of trustee or is held by the trustee's  
5381 spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of  
5382 any of them.

5383 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
5384 personally liable for contracts and other obligations of the partnership as if the settlor  
5385 were a general partner.

5386 Section 181. Section **75B-2-1012**, which is renumbered from Section 75-7-1012 is renumbered  
5387 and amended to read:

5388 **[75-7-1012] 75B-2-1012 . Protection of person dealing with trustee.**

5389 (1) A person other than a beneficiary who in good faith assists a trustee, or who in good  
5390 faith and for value deals with a trustee, without knowledge that the trustee is exceeding  
5391 or improperly exercising the trustee's powers is protected from liability as if the trustee  
5392 properly exercised the power.

5393 (2) A person other than a beneficiary who in good faith deals with a trustee is not required  
5394 to inquire into the extent of the trustee's powers or the propriety of ~~[their]~~ the trustee's  
5395 exercise.

5396 (3) A person who in good faith delivers assets to a trustee need not ensure ~~[their]~~ the assets'  
5397 proper application.

5398 (4) A person other than a beneficiary who in good faith assists a former trustee, or who in

5399 good faith and for value deals with a former trustee, without knowledge that the  
5400 trusteeship has terminated is protected from liability as if the former trustee were still a  
5401 trustee.

- 5402 (5) Comparable protective provisions of other laws relating to commercial transactions or  
5403 transfer of securities by fiduciaries prevail over the protection provided by this section.

5404 Section 182. Section **75B-2-1013**, which is renumbered from Section 75-7-1013 is renumbered  
5405 and amended to read:

5406 **[75-7-1013] 75B-2-1013 . Certification of trust.**

- 5407 (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary,  
5408 the trustee may furnish to the person a certification of trust containing the following  
5409 information:

- 5410 (a) that the trust exists and the date the trust instrument was executed;  
5411 (b) the identity of the settlor;  
5412 (c) the identity and address of the currently acting trustee;  
5413 (d) the powers of the trustee in the pending transaction;  
5414 (e) the revocability or irrevocability of the trust and the identity of any person holding a  
5415 power to revoke the trust;  
5416 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less  
5417 than all are required in order to exercise powers of the trustee; and  
5418 (g) the name in which title to trust property may be taken.

- 5419 (2) A certification of trust may be signed or otherwise authenticated by any trustee.

- 5420 (3) A certification of trust must state that the trust has not been revoked, modified, or  
5421 amended in any manner that would cause the representations contained in the  
5422 certification of trust to be incorrect.

- 5423 (4) A certification of trust need not contain the dispositive terms of a trust.

- 5424 (5) A recipient of a certification of trust may require the trustee to furnish copies of those  
5425 excerpts from the original trust instrument and later amendments which designate the  
5426 trustee and confer upon the trustee the power to act in the pending transaction.

- 5427 (6)(a) A person who acts in reliance upon a certification of trust without knowledge that  
5428 the representations contained in it are incorrect is not liable to any person for acting  
5429 and may assume without inquiry the existence of the facts contained in the  
5430 certification.

- 5431 (b) Knowledge of the terms of the trust may not be inferred solely from the fact that a  
5432 copy of all or part of the trust instrument is held by the person relying upon the



5433 certification.

5434 (7) A person who in good faith enters into a transaction in reliance upon a certification of  
5435 trust may enforce the transaction against the trust property as if the representations  
5436 contained in the certification were correct.

5437 (8) A person making a demand for the trust instrument in addition to a certification of trust  
5438 or excerpts is liable for costs, expenses, attorney fees, and damages if the court  
5439 determines that the person did not act in good faith in demanding the trust instrument.

5440 (9) This section does not limit the right of a person to obtain a copy of the trust instrument  
5441 in a judicial proceeding concerning the trust.

5442 Section 183. Section **75B-2-1101**, which is renumbered from Section 75-7-1101 is renumbered  
5443 and amended to read:

5444 **Part 11. Applicability Provisions**

5445 **[75-7-1101] 75B-2-1101 . Uniformity of application and construction.**

5446 In applying and construing this chapter, consideration must be given to the need to  
5447 promote uniformity of the law with respect to [its] this chapter's subject matter among states  
5448 that enact [it] this chapter.

5449 Section 184. Section **75B-2-1102**, which is renumbered from Section 75-7-1102 is renumbered  
5450 and amended to read:

5451 **[75-7-1102] 75B-2-1102 . Electronic records and signatures.**

5452 The provisions of this chapter governing the legal effect, validity, or enforceability of  
5453 electronic records or electronic signatures, and of contracts formed or performed with the use  
5454 of such records or signatures, conform to the requirements of Section 102 of the Electronic  
5455 Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7002) and supersede,  
5456 modify, and limit the requirements of the Electronic Signatures in Global and National  
5457 Commerce Act.

5458 Section 185. Section **75B-2-1103**, which is renumbered from Section 75-7-1103 is renumbered  
5459 and amended to read:

5460 **[75-7-1103] 75B-2-1103 . Application to existing relationships.**

5461 (1) Except as otherwise provided, this chapter applies to:

5462 (a) all trusts created before, on, or after July 1, 2004;

5463 (b) all judicial proceedings concerning trusts commenced on or after July 1, 2004; and

5464 (c) judicial proceedings concerning trusts commenced before July 1, 2004, unless the  
5465 court finds that application of a particular provision of this chapter would  
5466 substantially interfere with the effective conduct of the judicial proceedings or

prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded section will apply.

- (2) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2004, unless there is a clear indication of a contrary intent in the terms of the trust.
- (3) An act done before July 1, 2004, is not affected by this chapter.
- (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2004, that statute continues to apply to the right even if [it] the right has been repealed or superseded.

Section 186. Section **75B-3-101** is enacted to read:

### **CHAPTER 3. UNIFORM DIRECTED TRUST ACT**

#### **75B-3-101 . Reserved.**

#### **Reserved.**

Section 187. Section **75B-3-102**, which is renumbered from Section 75-12-102 is renumbered and amended to read:

#### **[75-12-102] 75B-3-102 . Definitions.**

As used in this chapter:

- (1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on the director or trustee by the terms of the trust, this chapter, or the law of this state other than this chapter pertaining to trusts.
- (2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.
- (3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.
- ~~[(4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.]~~
- ~~[(5)]~~ (4)(a) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee.
- (b) "Power of direction" includes a power over the investment, management, or distribution of trust property or other matters of trust administration.
- (c) "Power of direction" does not include the powers described in Subsection [ ~~75-12-105(2)] 75B-3-105(2).~~
- ~~[(6) "Settlor" means the same as that term is defined in Section 75-7-103.]~~
- ~~[(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~~

5501 jurisdiction of the United States.]

5502 [(8)] (5) "Terms of a trust" means:

5503 (a) subject to Subsection [(8)(b)] (5)(b), the manifestation of the settlor's intent regarding  
5504 a trust's provisions as:

5505 (i) expressed in the trust instrument; or

5506 (ii) established by other evidence that would be admissible in a judicial proceeding; or

5507 (b) the trust's provisions as established, determined, or amended by:

5508 (i) a trustee or trust director in accordance with applicable law;

5509 (ii) a court order; or

5510 (iii) a nonjudicial settlement agreement under Section [75-7-110] 75B-2-110.

5511 [(9)] (6) "Trust director" means a person that is granted a power of direction by the terms of  
5512 a trust to the extent the power is exercisable while the person is not serving as a trustee,  
5513 regardless of whether:

5514 (a) the terms of the trust refer to the person as a trust director; or

5515 (b) the person is a beneficiary or settlor of the trust.

5516 [(10)] "Trustee" includes an original, additional, and successor trustee, and a cotrustee.]

5517 Section 188. Section **75B-3-103**, which is renumbered from Section 75-12-103 is renumbered  
5518 and amended to read:

5519 **[75-12-103] 75B-3-103 . Application -- Principal place of administration.**

5520 (1) This chapter applies to a trust, whenever created, that has the trust's principal place of  
5521 administration in this state, subject to the following rules:

5522 (a) if the trust was created before May 14, 2019, this chapter applies only to a decision  
5523 or action occurring on or after May 14, 2019; and

5524 (b) if the principal place of administration of the trust is changed to this state on or after  
5525 May 14, 2019, this chapter applies only to a decision or action occurring on or after  
5526 the date of the change.

5527 (2) Without precluding other means to establish a sufficient connection with the designated  
5528 jurisdiction in a directed trust, the terms of the trust that designate the principal place of  
5529 administration of the trust are valid and controlling if:

5530 (a) a trustee's principal place of business is located in, or a trustee is a resident of, the  
5531 designated jurisdiction;

5532 (b) a trust director's principal place of business is located in, or a trust director is a  
5533 resident of, the designated jurisdiction; or

5534 (c) all or part of the administration occurs in the designated jurisdiction.

Section 189. Section **75B-3-104**, which is renumbered from Section 75-12-104 is renumbered and amended to read:

**[75-12-104] 75B-3-104 . Common law and principles of equity.**

The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or the law of this state other than this chapter.

Section 190. Section **75B-3-105**, which is renumbered from Section 75-12-105 is renumbered and amended to read:

**[75-12-105] 75B-3-105 . Exclusions.**

- (1) As used in this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in, or another power of appointment over, trust property.
- (2) This chapter does not apply to:
  - (a) a power of appointment;
  - (b) a power to appoint or remove a trustee or trust director;
  - (c) a power of a settlor over a trust to the extent the settlor has a power to revoke the trust;
  - (d) a power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:
    - (i) the beneficiary; or
    - (ii) another beneficiary represented by the beneficiary under ~~[Sections 75-7-301 through 75-7-305]~~ Chapter 2, Part 3, Representation, with respect to the exercise or nonexercise of the power; or
  - (e) power over a trust if:
    - (i) the terms of the trust provide that the power is held in a nonfiduciary capacity; and
    - (ii) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code of 1986, as amended, and any related Internal Revenue Service regulations.
- (3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in, or power of appointment over, trust property that is exercisable while the person is not serving as trustee is a power of appointment and not a power of direction.

Section 191. Section **75B-3-106**, which is renumbered from Section 75-12-106 is renumbered and amended to read:

**[75-12-106] 75B-3-106 . Powers of trust director.**

(1) Subject to Section ~~[75-12-107]~~ 75B-3-107, the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of a trust provide otherwise:

- (a) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under Subsection (1); and
- (b) trust directors with joint powers shall act by majority decision.

Section 192. Section **75B-3-107**, which is renumbered from Section 75-12-107 is renumbered and amended to read:

**~~[75-12-107]~~ 75B-3-107 . Limitations on trust director.**

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under Subsection ~~[75-12-106(2)(a)]~~ 75B-3-106(2)(a) regarding:

- (1) a payback provision in the terms of a trust necessary to comply with the Medicaid reimbursement requirements in Section 1917 of the Social Security Act, 42 U.S.C. Sec. 1396p(d)(4)(A), as amended, and any related regulations; and
- (2) a charitable interest in the trust, including notice regarding the interest to the attorney general.

Section 193. Section **75B-3-108**, which is renumbered from Section 75-12-108 is renumbered and amended to read:

**~~[75-12-108]~~ 75B-3-108 . Duty and liability of trust director.**

(1) Subject to Subsection (2), with respect to a power of direction or further power under Subsection ~~[75-12-106(2)(a)]~~ 75B-3-106(2)(a):

- (a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:
  - (i) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or
  - (ii) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and
- (b) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this chapter to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the

director acts in that capacity, the director has no duty or liability under this chapter.

- (3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liability described in this section.

Section 194. Section **75B-3-109**, which is renumbered from Section 75-12-109 is renumbered and amended to read:

**[75-12-109] 75B-3-109 . Duty and liability of directed trustee.**

- (1) Subject to Subsection (2), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under Subsection [75-12-106(2)(a)] 75B-3-106(2)(a), and the trustee is not liable for the action.
- (2) A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under Subsection [75-12-106(2)(a)] 75B-3-106(2)(a) to the extent that by complying the trustee would engage in willful misconduct.
- (3) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:
- (a) the breach involved the trustee's or other director's willful misconduct;
  - (b) the release was induced by improper conduct of the trustee or other director in procuring the release; or
  - (c) at the time of the release, the director did not know the material facts relating to the breach.
- (4) A directed trustee that has reasonable doubt about the directed trustee's duty under this section may petition the court for instructions.
- (5) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Section 195. Section **75B-3-110**, which is renumbered from Section 75-12-110 is renumbered and amended to read:

**[75-12-110] 75B-3-110 . Duty to provide information to trust director or trustee.**

- (1) Subject to Section [75-12-111] 75B-3-111, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:
- (a) the powers or duties of the trustee; and
  - (b) the powers or duties of the director.
- (2) Subject to Section [75-12-111] 75B-3-111, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:
- (a) the powers or duties of the director; and
  - (b) the powers or duties of the trustee or other director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless, by acting, the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless, by acting, the trust director engages in willful misconduct.

Section 196. Section **75B-3-111**, which is renumbered from Section 75-12-111 is renumbered and amended to read:

**[75-12-111] 75B-3-111 . No duty to monitor, inform, or advise.**

(1) Unless the terms of a trust provide otherwise:

(a) a trustee does not have a duty to:

(i) monitor a trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(b) by taking an action described in Subsection (1)(a), a trustee does not assume the duty excluded under Subsection (1)(a).

(2) Unless the terms of a trust provide otherwise:

(a) a trust director does not have a duty to:

(i) monitor a trustee or another trust director; or

(ii) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(b) by taking an action described in Subsection (1)(a), a trust director does not assume the duty excluded under Subsection (1)(a).

Section 197. Section **75B-3-112**, which is renumbered from Section 75-12-112 is renumbered and amended to read:

**[75-12-112] 75B-3-112 . Application to cotrustee.**

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under Sections ~~[75-12-109 through 75-12-111]~~ 75B-3-109 through 75B-3-111.

Section 198. Section **75B-3-113**, which is renumbered from Section 75-12-113 is renumbered and amended to read:

**[75-12-113] 75B-3-113 . Limitation of action against trust director.**

- (1) An action against a trust director for a breach of trust must be commenced within the same limitation period as described in Section ~~[75-7-1005]~~ 75B-2-1005 for an action for a breach of trust against a trustee in a like position and under similar circumstances.
- (2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have as described in Section ~~[75-7-1005]~~ 75B-2-1005 in an action for a breach of trust against a trustee in a like position and under similar circumstances.

Section 199. Section **75B-3-114**, which is renumbered from Section 75-12-114 is renumbered and amended to read:

**[75-12-114] 75B-3-114 . Defenses in action against trust director.**

In an action against a trust director for a breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for a breach of trust against the trustee.

Section 200. Section **75B-3-115**, which is renumbered from Section 75-12-115 is renumbered and amended to read:

**[75-12-115] 75B-3-115 . Jurisdiction over trust director.**

- (1) By accepting appointment as a trust director of a trust subject to this chapter, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.
- (2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Section 201. Section **75B-3-116**, which is renumbered from Section 75-12-116 is renumbered and amended to read:

**[75-12-116] 75B-3-116 . Office of trust director.**

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) acceptance under Section ~~[75-7-701]~~ 75B-2-701;
- (2) giving of bond to secure performance under Section ~~[75-7-702]~~ 75B-2-702;
- (3) reasonable compensation under Section ~~[75-7-708]~~ 75B-2-708;
- (4) resignation under Section ~~[75-7-705]~~ 75B-2-705;
- (5) removal under Section ~~[75-7-706]~~ 75B-2-706; and
- (6) vacancy and appointment of successor under Section ~~[75-7-704]~~ 75B-2-704.

Section 202. Section **75B-3-117**, which is renumbered from Section 75-12-117 is renumbered



and amended to read:

**[75-12-117] 75B-3-117 . Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to [its] this chapter's subject matter among states that enact [it] this chapter.

Section 203. Section **75B-3-118**, which is renumbered from Section 75-12-118 is renumbered and amended to read:

**[75-12-118] 75B-3-118 . Electronic records and signatures.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 204. Section **78B-5-505** is amended to read:

**78B-5-505 . Property exempt from execution.**

(1)(a) An individual is entitled to exemption of the following property:

- (i) a burial plot for the individual and the individual's family;
- (ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;
- (iii) benefits that the individual or the individual's dependent have received or are entitled to receive from any source because of:
  - (A) disability;
  - (B) illness; or
  - (C) unemployment;
- (iv) benefits paid or payable for medical, surgical, or hospital care to the extent that the benefits are used by an individual or the individual's dependent to pay for that care;
- (v) veterans benefits;
- (vi) money or property received, and rights to receive money or property for child support;
- (vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;
- (viii)(A) one:
  - (I) clothes washer and dryer;

5739 (II) refrigerator;

5740 (III) freezer;

5741 (IV) stove;

5742 (V) microwave oven; and

5743 (VI) sewing machine;

5744 (B) all carpets in use;

5745 (C) provisions sufficient for 12 months actually provided for individual or family  
5746 use;

5747 (D) all wearing apparel of every individual and dependent, not including jewelry  
5748 or furs; and

5749 (E) all beds and bedding for every individual or dependent;

5750 (ix) except for works of art held by the debtor as part of a trade or business, works of  
5751 art:

5752 (A) depicting the debtor or the debtor and the debtor's resident family; or

5753 (B) produced by the debtor or the debtor and the debtor's resident family;

5754 (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a  
5755 result of bodily injury of the individual or of the wrongful death or bodily injury  
5756 of another individual of whom the individual was or is a dependent to the extent  
5757 that those proceeds are compensatory;

5758 (xi) the proceeds or benefits of any life insurance contracts or policies paid or  
5759 payable to the debtor or any trust of which the debtor is a beneficiary upon the  
5760 death of the spouse or children of the debtor, provided that the contract or policy  
5761 has been owned by the debtor for a continuous unexpired period of one year;

5762 (xii) the proceeds or benefits of any life insurance contracts or policies paid or  
5763 payable to the spouse or children of the debtor or any trust of which the spouse or  
5764 children are beneficiaries upon the death of the debtor, provided that the contract  
5765 or policy has been in existence for a continuous unexpired period of one year;

5766 (xiii) proceeds and avails of any unmatured life insurance contracts owned by the  
5767 debtor or any revocable grantor trust created by the debtor, excluding any  
5768 payments made on the contract during the one year immediately preceding a  
5769 creditor's levy or execution;

5770 (xiv) except as provided in Subsection (1)(b), and except for a judgment described in  
5771 Subsection [75-7-503(2)(e)] 75B-2-503(2)(c), any money or other assets held for  
5772 or payable to the individual as an owner, participant, or beneficiary from or an

5773 interest of the individual as an owner, participant, or beneficiary in a fund or  
5774 account, including an inherited fund or account, in a retirement plan or  
5775 arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b),  
5776 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code, including an  
5777 owner's, a participant's, or a beneficiary's interest that arises by inheritance,  
5778 designation, appointment, or otherwise;

5779 (xv) the interest of or any money or other assets payable to an alternate payee under a  
5780 qualified domestic relations order as those terms are defined in Section 414(p),  
5781 Internal Revenue Code;

5782 (xvi) unpaid earnings of the household of the filing individual due as of the date of  
5783 the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual  
5784 median family income for the household size of the filing individual as  
5785 determined by the Utah State Annual Median Family Income reported by the  
5786 United States Census Bureau and as adjusted based upon the Consumer Price  
5787 Index for All Urban Consumers for an individual whose unpaid earnings are paid  
5788 more often than once a month or, if unpaid earnings are not paid more often than  
5789 once a month, then in the amount of 1/12 of the Utah State annual median family  
5790 income for the household size of the individual as determined by the Utah State  
5791 Annual Median Family Income reported by the United States Census Bureau and  
5792 as adjusted based upon the Consumer Price Index for All Urban Consumers;

5793 (xvii) except for curio or relic firearms, as defined in Section 76-10-501, any three of  
5794 the following:

5795 (A) one handgun and ammunition for the handgun not exceeding 1,000 rounds;

5796 (B) one shotgun and ammunition for the shotgun not exceeding 1,000 rounds; and

5797 (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000  
5798 rounds; and

5799 (xviii) money, not exceeding \$200,000, in the aggregate, that an individual deposits,  
5800 more than 18 months before the day on which the individual files a petition for  
5801 bankruptcy or an action is filed by a creditor against the individual, as applicable,  
5802 in all tax-advantaged accounts for saving for higher education costs on behalf of a  
5803 particular individual that meets the requirements of Section 529, Internal Revenue  
5804 Code.

5805 (b)(i) Any money, asset, or other interest in a fund or account that is exempt from a  
5806 claim of a creditor of the owner, beneficiary, or participant under Subsection

5807 (1)(a)(xiv) does not cease to be exempt after the owner's, participant's, or  
5808 beneficiary's death by reason of a direct transfer or eligible rollover to an inherited  
5809 individual retirement account as defined in Section 408(d)(3), Internal Revenue  
5810 Code.

5811 (ii) Subsections (1)(a)(xiv) and (1)(b)(i) apply to all inherited individual retirement  
5812 accounts without regard to the date on which the account was created.

5813 (c)(i) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

5814 (A) an alternate payee under a qualified domestic relations order, as those terms  
5815 are defined in Section 414(p), Internal Revenue Code; or

5816 (B) amounts contributed or benefits accrued by or on behalf of a debtor within one  
5817 year before the debtor files for bankruptcy, except amounts directly rolled over  
5818 from other funds that are exempt from attachment under this section.

5819 (ii) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to the  
5820 secured creditor's interest in proceeds and avails of any matured or unmatured life  
5821 insurance contract assigned or pledged as collateral for repayment of a loan or  
5822 other legal obligation.

5823 (2)(a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans benefits,  
5824 as described in Subsection (1)(a)(v), may be garnished on behalf of a victim who is a  
5825 child if the person receiving the benefits has been convicted of a felony sex offense  
5826 against the victim and ordered by the sentencing court to pay restitution to the victim.

5827 (b) The exemption from execution under this Subsection (2) shall be reinstated upon  
5828 payment of the restitution in full.

5829 (3) The exemptions under this section do not limit items that may be claimed as exempt  
5830 under Section 78B-5-506.

5831 (4)(a) The exemptions described in Subsections (1)(a)(iii), (iv), (vi), (vii), (x), (xii), (xiii),  
5832 (xiv), (xv), (xvii), and (xviii) do not apply to a civil accounts receivable or a civil  
5833 judgment of restitution for an individual who is found in contempt under Section  
5834 78B-6-317.

5835 (b) Subsection (4)(a) does not apply to the benefits described in Subsection (1)(a)(iii) if  
5836 the individual's dependent received, or is entitled to receive, the benefits.

5837 Section 205. **Repealer.**

5838 This bill repeals:

5839 Section **75-7-101, Title.**

5840 Section **75-12-101, Title.**

5841           Section 206. **Effective Date.**

5842           This bill takes effect on May 7, 2025.

5843           Section 207. **Coordinating S.B. 100 with S.B. 134.**

5844           If S.B. 100, Estate Planning Recodification, and S.B. 134, Health-Care Decisions Act  
\_5845 Amendments, both pass and become law, the Legislature intends that, on January 1, 2026, the  
\_5846 following subsections enacted by S.B. 134 be deleted and the remaining subsections  
\_5847 renumbered accordingly:

\_5848           (1) Subsection 75A-9-101(7), defining the term, "Electronic";

\_5849           (2) Subsection 75A-9-101(10), defining the term, "Guardian";

\_5850           (3) Subsection 75A-9-101(19), defining the term, "Person";

\_5851           (4) Subsection 75A-9-101(24), defining the term, "Record";

\_5852           (5) Subsection 75A-9-101(26), defining the term, "Sign"; and

\_5853           (6) Subsection 75A-9-101(27), defining the term, "State".

5854           Section 208. **Coordinating S.B. 100 with H.B. 334.**

5855           If S.B. 100, Estate Planning Recodification, and H.B. 334, Guardianships and Supported  
\_5856 Decision-Making Agreements Amendments, both pass and become law, the Legislature  
\_5857 intends that, on May 7, 2025, the changes in H.B. 334 to Subsection 7-5-1(1)(b) not be made.