

# SB0100S01 compared with SB0100

{Omitted text} shows text that was in SB0100 but was omitted in SB0100S01

inserted text shows text that was not in SB0100 but was inserted into SB0100S01

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## 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; {and}
- ▶

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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;

20     ▸ 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

16     ▸ makes technical and conforming changes.

### 24 Money Appropriated in this Bill:

25     None

26     This bill provides coordination clauses.

### 29 AMENDS:

30     **7-5-1** , as last amended by Laws of Utah 2013, Chapter 364 , as last amended by Laws of Utah 2013, Chapter 364

31     **7-5-6** , as last amended by Laws of Utah 2014, Chapter 189 , as last amended by Laws of Utah 2014, Chapter 189

32     **7-5-7** , as last amended by Laws of Utah 2014, Chapters 97, 189 , as last amended by Laws of Utah 2014, Chapters 97, 189

33     **7-5-10** , as last amended by Laws of Utah 2004, Chapter 89 , as last amended by Laws of Utah 2004, Chapter 89

34     **7-5-11** , as last amended by Laws of Utah 2014, Chapter 189 , as last amended by Laws of Utah 2014, Chapter 189

35     **8-4-2** , as last amended by Laws of Utah 2010, Chapter 324 , as last amended by Laws of Utah 2010, Chapter 324

36     **26B-3-1008** , as renumbered and amended by Laws of Utah 2023, Chapter 306 , as renumbered and amended by Laws of Utah 2023, Chapter 306

37     **26B-3-1013** , as renumbered and amended by Laws of Utah 2023, Chapter 306 , as renumbered and amended by Laws of Utah 2023, Chapter 306

38     **49-11-303** , as last amended by Laws of Utah 2005, Chapter 116 , as last amended by Laws of Utah 2005, Chapter 116

39     **51-7-14** , as last amended by Laws of Utah 2023, Chapter 242 , as last amended by Laws of Utah 2023, Chapter 242

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- 40 **53B-8a-107** , as last amended by Laws of Utah 2023, Chapter 242 , as last amended by Laws of  
Utah 2023, Chapter 242
- 41 **58-9-703** , as last amended by Laws of Utah 2007, Chapter 144 , as last amended by Laws of Utah  
2007, Chapter 144
- 42 **59-10-103** , as last amended by Laws of Utah 2023, Chapter 44 , as last amended by Laws of Utah  
2023, Chapter 44
- 43 **75-1-102** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 44 **75-1-103** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 45 **75-1-104** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 46 **75-1-105** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 47 **75-1-106** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 48 **75-1-201** , as last amended by Laws of Utah 2024, Chapter 364 , as last amended by Laws of Utah  
2024, Chapter 364
- 49 **75-1-301** , as last amended by Laws of Utah 1992, Chapter 30 , as last amended by Laws of Utah  
1992, Chapter 30
- 50 **75-1-303** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 51 **75-1-304** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 52 **75-1-305** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 53 **75-1-309** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150
- 54 **75-1-310** , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975,  
Chapter 150

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- 75-1-311 , as last amended by Laws of Utah 1977, Chapter 194 , as last amended by Laws of Utah 1977, Chapter 194
- 56 75-1-404 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 57 75-2-803 , as last amended by Laws of Utah 2024, Chapter 153 , as last amended by Laws of Utah 2024, Chapter 153
- 58 75-2-1209 , as last amended by Laws of Utah 2004, Chapter 89 , as last amended by Laws of Utah 2004, Chapter 89
- 59 **75-2-1402 , as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 1 , as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 1**
- 
- 60 75-3-101 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 61 75-3-105 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 62 75-3-303 , as last amended by Laws of Utah 2013, Chapter 364 , as last amended by Laws of Utah 2013, Chapter 364
- 63 75-3-308 , as last amended by Laws of Utah 1998, Chapter 39 , as last amended by Laws of Utah 1998, Chapter 39
- 64 75-3-504 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 65 75-3-608 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 66 75-3-616 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 67 75-3-703 , as last amended by Laws of Utah 2004, Chapter 89 , as last amended by Laws of Utah 2004, Chapter 89
- 68 75-3-704 , as last amended by Laws of Utah 1988, Chapter 110 , as last amended by Laws of Utah 1988, Chapter 110
- 69 75-3-710 , as last amended by Laws of Utah 1983, Chapter 226 , as last amended by Laws of Utah 1983, Chapter 226
- 70

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- 75-3-714 , as last amended by Laws of Utah 1992, Chapter 30 , as last amended by Laws of Utah 1992, Chapter 30
- 71 75-3-913 , as last amended by Laws of Utah 2004, Chapter 89 , as last amended by Laws of Utah 2004, Chapter 89
- 72 75-3-915 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 73 75-3-916 , as last amended by Laws of Utah 1983, Chapter 226 , as last amended by Laws of Utah 1983, Chapter 226
- 74 75-3-1008 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 75 75-5-303 , as last amended by Laws of Utah 2024, Chapter 113 , as last amended by Laws of Utah 2024, Chapter 113
- 76 75-5-412 , as enacted by Laws of Utah 1975, Chapter 150 , as enacted by Laws of Utah 1975, Chapter 150
- 77 75-5-416 , as last amended by Laws of Utah 2014, Chapter 142 , as last amended by Laws of Utah 2014, Chapter 142
- 78 75-5-417 , as last amended by Laws of Utah 2022, Chapter 358 , as last amended by Laws of Utah 2022, Chapter 358
- 79 **75-5b-102 , as enacted by Laws of Utah 2008, Chapter 253 , as enacted by Laws of Utah 2008, Chapter 253**
- 
- 80 75-6-201 , as last amended by Laws of Utah 1986, Chapter 158 , as last amended by Laws of Utah 1986, Chapter 158
- 81 **75A-1-101 , as enacted by Laws of Utah 2024, Chapter 364 , as enacted by Laws of Utah 2024, Chapter 364**
- 
- 82 75A-1-201 , as renumbered and amended by Laws of Utah 2024, Chapter 364 , 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 , 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 , as renumbered and amended by Laws of Utah 2024, Chapter 364

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75A-3-101 , as renumbered and amended by Laws of Utah 2024, Chapter 364 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , 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 , as renumbered and amended by Laws of Utah 2024, Chapter 364

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

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

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

101 **75B-1-302** , as renumbered and amended by Laws of Utah 2024, Chapter 364 , 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 , as last amended by Laws of Utah 2021, Chapter 260

103 ENACTS:

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

105 **75B-3-101** , Utah Code Annotated 1953 , 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 150) ,  
(Renumbered from 75-8-101, as enacted by Laws of Utah 1975, Chapter 150)

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

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

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

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

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

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

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

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

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

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- 129 **75B-2-111** , (Renumbered from 75-7-111, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-111, as enacted by Laws of Utah 2004, Chapter 89)
- 131 **75B-2-112** , (Renumbered from 75-7-112, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-112, as enacted by Laws of Utah 2004, Chapter 89)
- 133 **75B-2-113** , (Renumbered from 75-7-1201, as enacted by Laws of Utah 2004, Forth Special  
Session, Chapters 1, 1) , (Renumbered from 75-7-1201, as enacted by Laws of Utah 2004, Forth  
Special Session, Chapters 1, 1)
- 135 **75B-2-201** , (Renumbered from 75-7-201, as last amended by Laws of Utah 2003, Second Special  
Session, Chapters 3, 3) , (Renumbered from 75-7-201, as last amended by Laws of Utah 2003,  
Second Special Session, Chapters 3, 3)
- 137 **75B-2-202** , (Renumbered from 75-7-202, as last amended by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-202, as last amended by Laws of Utah 2004, Chapter 89)
- 139 **75B-2-203** , (Renumbered from 75-7-203, as last amended by Laws of Utah 2024, Chapter 158) ,  
(Renumbered from 75-7-203, as last amended by Laws of Utah 2024, Chapter 158)
- 141 **75B-2-204** , (Renumbered from 75-7-204, as last amended by Laws of Utah 2003, Second Special  
Session, Chapters 3, 3) , (Renumbered from 75-7-204, as last amended by Laws of Utah 2003,  
Second Special Session, Chapters 3, 3)
- 143 **75B-2-205** , (Renumbered from 75-7-205, as last amended by Laws of Utah 2024, Chapter 158) ,  
(Renumbered from 75-7-205, as last amended by Laws of Utah 2024, Chapter 158)
- 145 **75B-2-301** , (Renumbered from 75-7-301, as last amended by Laws of Utah 2024, Chapter 364) ,  
(Renumbered from 75-7-301, as last amended by Laws of Utah 2024, Chapter 364)
- 147 **75B-2-302** , (Renumbered from 75-7-302, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-302, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89)
- 149 **75B-2-303** , (Renumbered from 75-7-303, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-303, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89)
- 151 **75B-2-304** , (Renumbered from 75-7-304, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-304, as repealed and reenacted by Laws of Utah 2004,  
Chapter 89)



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- 75B-2-305** , (Renumbered from 75-7-305, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-305, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 153 **75B-2-401** , (Renumbered from 75-7-401, as last amended by Laws of Utah 2009, Chapter 278) , (Renumbered from 75-7-401, as last amended by Laws of Utah 2009, Chapter 278)
- 155 **75B-2-402** , (Renumbered from 75-7-402, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-402, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 157 **75B-2-403** , (Renumbered from 75-7-403, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-403, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 159 **75B-2-404** , (Renumbered from 75-7-404, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-404, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 161 **75B-2-405** , (Renumbered from 75-7-405, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-405, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 163 **75B-2-406** , (Renumbered from 75-7-406, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-406, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 165 **75B-2-407** , (Renumbered from 75-7-407, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-407, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 167 **75B-2-408** , (Renumbered from 75-7-408, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-408, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 169 **75B-2-409** , (Renumbered from 75-7-409, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-409, as repealed and reenacted by Laws of Utah 2004, Chapter 89)

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- 173 **75B-2-410** , (Renumbered from 75-7-410, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-410, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 175 **75B-2-411** , (Renumbered from 75-7-411, as repealed and reenacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-411, as repealed and reenacted by Laws of Utah 2004, Chapter 89)
- 177 **75B-2-412** , (Renumbered from 75-7-412, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-412, as enacted by Laws of Utah 2004, Chapter 89)
- 179 **75B-2-413** , (Renumbered from 75-7-413, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-413, as enacted by Laws of Utah 2004, Chapter 89)
- 181 **75B-2-414** , (Renumbered from 75-7-414, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-414, as enacted by Laws of Utah 2004, Chapter 89)
- 183 **75B-2-415** , (Renumbered from 75-7-415, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-415, as enacted by Laws of Utah 2004, Chapter 89)
- 185 **75B-2-416** , (Renumbered from 75-7-416, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-416, as enacted by Laws of Utah 2004, Chapter 89)
- 187 **75B-2-417** , (Renumbered from 75-7-417, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-417, as enacted by Laws of Utah 2004, Chapter 89)
- 189 **75B-2-501** , (Renumbered from 75-7-501, as last amended by Laws of Utah 2024, Chapter 364) , (Renumbered from 75-7-501, as last amended by Laws of Utah 2024, Chapter 364)
- 191 **75B-2-502** , (Renumbered from 75-7-502, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-502, as enacted by Laws of Utah 2004, Chapter 89)
- 193 **75B-2-503** , (Renumbered from 75-7-503, as last amended by Laws of Utah 2021, Chapter 260) , (Renumbered from 75-7-503, as last amended by Laws of Utah 2021, Chapter 260)
- 195 **75B-2-504** , (Renumbered from 75-7-504, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-504, as enacted by Laws of Utah 2004, Chapter 89)
- 197 **75B-2-505** , (Renumbered from 75-7-505, as last amended by Laws of Utah 2024, Chapter 364) , (Renumbered from 75-7-505, as last amended by Laws of Utah 2024, Chapter 364)
- 199 **75B-2-506** , (Renumbered from 75-7-506, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-506, as enacted by Laws of Utah 2004, Chapter 89)

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- 201 **75B-2-507** , (Renumbered from 75-7-507, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-507, as enacted by Laws of Utah 2004, Chapter 89)
- 203 **75B-2-508** , (Renumbered from 75-7-508, as last amended by Laws of Utah 2023, Chapter 330) ,  
(Renumbered from 75-7-508, as last amended by Laws of Utah 2023, Chapter 330)
- 205 **75B-2-509** , (Renumbered from 75-7-509, as last amended by Laws of Utah 2023, Chapter 330) ,  
(Renumbered from 75-7-509, as last amended by Laws of Utah 2023, Chapter 330)
- 207 **75B-2-510** , (Renumbered from 75-7-510, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-510, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 209 **75B-2-511** , (Renumbered from 75-7-511, as last amended by Laws of Utah 2023, Chapter 330) ,  
(Renumbered from 75-7-511, as last amended by Laws of Utah 2023, Chapter 330)
- 211 **75B-2-512** , (Renumbered from 75-7-512, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-512, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 213 **75B-2-513** , (Renumbered from 75-7-513, as last amended by Laws of Utah 2004, Chapter 282 and  
renumbered and amended by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-513, as last  
amended by Laws of Utah 2004, Chapter 282 and renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 215 **75B-2-514** , (Renumbered from 75-7-514, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-514, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 217 **75B-2-515** , (Renumbered from 75-7-515, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-515, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 219 **75B-2-516** , (Renumbered from 75-7-516, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-516, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)
- 221 **75B-2-517** , (Renumbered from 75-7-517, as renumbered and amended by Laws of Utah 2004,  
Chapter 89) , (Renumbered from 75-7-517, as renumbered and amended by Laws of Utah 2004,  
Chapter 89)

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- 75B-2-518** , (Renumbered from 75-7-518, as renumbered and amended by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-518, as renumbered and amended by Laws of Utah 2004, Chapter 89)
- 223 **75B-2-519** , (Renumbered from 75-7-519, as renumbered and amended by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-519, as renumbered and amended by Laws of Utah 2004, Chapter 89)
- 225 **75B-2-601** , (Renumbered from 75-7-604, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-604, as enacted by Laws of Utah 2004, Chapter 89)
- 227 **75B-2-602** , (Renumbered from 75-7-605, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-605, as enacted by Laws of Utah 2004, Chapter 89)
- 229 **75B-2-603** , (Renumbered from 75-7-606, as last amended by Laws of Utah 2019, Chapter 153) , (Renumbered from 75-7-606, as last amended by Laws of Utah 2019, Chapter 153)
- 231 **75B-2-604** , (Renumbered from 75-7-607, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-607, as enacted by Laws of Utah 2004, Chapter 89)
- 233 **75B-2-701** , (Renumbered from 75-7-701, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-701, as enacted by Laws of Utah 2004, Chapter 89)
- 235 **75B-2-702** , (Renumbered from 75-7-702, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-702, as enacted by Laws of Utah 2004, Chapter 89)
- 237 **75B-2-703** , (Renumbered from 75-7-703, as last amended by Laws of Utah 2019, Chapter 153) , (Renumbered from 75-7-703, as last amended by Laws of Utah 2019, Chapter 153)
- 239 **75B-2-704** , (Renumbered from 75-7-704, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-704, as enacted by Laws of Utah 2004, Chapter 89)
- 241 **75B-2-705** , (Renumbered from 75-7-705, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-705, as enacted by Laws of Utah 2004, Chapter 89)
- 243 **75B-2-706** , (Renumbered from 75-7-706, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-706, as enacted by Laws of Utah 2004, Chapter 89)
- 245 **75B-2-707** , (Renumbered from 75-7-707, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-707, as enacted by Laws of Utah 2004, Chapter 89)
- 247 **75B-2-708** , (Renumbered from 75-7-708, as enacted by Laws of Utah 2004, Chapter 89) , (Renumbered from 75-7-708, as enacted by Laws of Utah 2004, Chapter 89)
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- 251 **75B-2-709** , (Renumbered from 75-7-709, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-709, as enacted by Laws of Utah 2004, Chapter 89)
- 253 **75B-2-801** , (Renumbered from 75-7-801, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-801, as enacted by Laws of Utah 2004, Chapter 89)
- 255 **75B-2-802** , (Renumbered from 75-7-802, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-802, as enacted by Laws of Utah 2004, Chapter 89)
- 257 **75B-2-803** , (Renumbered from 75-7-803, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-803, as enacted by Laws of Utah 2004, Chapter 89)
- 259 **75B-2-804** , (Renumbered from 75-7-804, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-804, as enacted by Laws of Utah 2004, Chapter 89)
- 261 **75B-2-805** , (Renumbered from 75-7-805, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-805, as enacted by Laws of Utah 2004, Chapter 89)
- 263 **75B-2-806** , (Renumbered from 75-7-806, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-806, as enacted by Laws of Utah 2004, Chapter 89)
- 265 **75B-2-807** , (Renumbered from 75-7-807, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-807, as enacted by Laws of Utah 2004, Chapter 89)
- 267 **75B-2-808** , (Renumbered from 75-7-808, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-808, as enacted by Laws of Utah 2004, Chapter 89)
- 269 **75B-2-809** , (Renumbered from 75-7-809, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-809, as enacted by Laws of Utah 2004, Chapter 89)
- 271 **75B-2-810** , (Renumbered from 75-7-810, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-810, as enacted by Laws of Utah 2004, Chapter 89)
- 273 **75B-2-811** , (Renumbered from 75-7-811, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-811, as enacted by Laws of Utah 2004, Chapter 89)
- 275 **75B-2-812** , (Renumbered from 75-7-812, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-812, as enacted by Laws of Utah 2004, Chapter 89)
- 277 **75B-2-813** , (Renumbered from 75-7-813, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-813, as enacted by Laws of Utah 2004, Chapter 89)
- 279 **75B-2-814** , (Renumbered from 75-7-814, as last amended by Laws of Utah 2024, Chapter 364) ,  
(Renumbered from 75-7-814, as last amended by Laws of Utah 2024, Chapter 364)

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- 281 **75B-2-815** , (Renumbered from 75-7-815, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-815, as enacted by Laws of Utah 2004, Chapter 89)
- 283 **75B-2-816** , (Renumbered from 75-7-816, as last amended by Laws of Utah 2024, Chapter 364) ,  
(Renumbered from 75-7-816, as last amended by Laws of Utah 2024, Chapter 364)
- 285 **75B-2-817** , (Renumbered from 75-7-817, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-817, as enacted by Laws of Utah 2004, Chapter 89)
- 287 **75B-2-901** , (Renumbered from 75-7-901, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-901, as enacted by Laws of Utah 2004, Chapter 89)
- 289 **75B-2-902** , (Renumbered from 75-7-902, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-902, as enacted by Laws of Utah 2004, Chapter 89)
- 291 **75B-2-903** , (Renumbered from 75-7-903, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-903, as enacted by Laws of Utah 2004, Chapter 89)
- 293 **75B-2-904** , (Renumbered from 75-7-904, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-904, as enacted by Laws of Utah 2004, Chapter 89)
- 295 **75B-2-905** , (Renumbered from 75-7-905, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-905, as enacted by Laws of Utah 2004, Chapter 89)
- 297 **75B-2-906** , (Renumbered from 75-7-906, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-906, as enacted by Laws of Utah 2004, Chapter 89)
- 299 **75B-2-907** , (Renumbered from 75-7-907, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-907, as enacted by Laws of Utah 2004, Chapter 89)
- 301 **75B-2-1001** , (Renumbered from 75-7-1001, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1001, as enacted by Laws of Utah 2004, Chapter 89)
- 303 **75B-2-1002** , (Renumbered from 75-7-1002, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1002, as enacted by Laws of Utah 2004, Chapter 89)
- 305 **75B-2-1003** , (Renumbered from 75-7-1003, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1003, as enacted by Laws of Utah 2004, Chapter 89)
- 307 **75B-2-1004** , (Renumbered from 75-7-1004, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1004, as enacted by Laws of Utah 2004, Chapter 89)
- 309 **75B-2-1005** , (Renumbered from 75-7-1005, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1005, as enacted by Laws of Utah 2004, Chapter 89)

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- 311 **75B-2-1006** , (Renumbered from 75-7-1006, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1006, as enacted by Laws of Utah 2004, Chapter 89)
- 313 **75B-2-1007** , (Renumbered from 75-7-1007, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1007, as enacted by Laws of Utah 2004, Chapter 89)
- 315 **75B-2-1008** , (Renumbered from 75-7-1008, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1008, as enacted by Laws of Utah 2004, Chapter 89)
- 317 **75B-2-1009** , (Renumbered from 75-7-1009, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1009, as enacted by Laws of Utah 2004, Chapter 89)
- 319 **75B-2-1010** , (Renumbered from 75-7-1010, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1010, as enacted by Laws of Utah 2004, Chapter 89)
- 321 **75B-2-1011** , (Renumbered from 75-7-1011, as last amended by Laws of Utah 2018, Chapter 281) ,  
(Renumbered from 75-7-1011, as last amended by Laws of Utah 2018, Chapter 281)
- 323 **75B-2-1012** , (Renumbered from 75-7-1012, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1012, as enacted by Laws of Utah 2004, Chapter 89)
- 325 **75B-2-1013** , (Renumbered from 75-7-1013, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1013, as enacted by Laws of Utah 2004, Chapter 89)
- 327 **75B-2-1101** , (Renumbered from 75-7-1101, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1101, as enacted by Laws of Utah 2004, Chapter 89)
- 329 **75B-2-1102** , (Renumbered from 75-7-1102, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1102, as enacted by Laws of Utah 2004, Chapter 89)
- 331 **75B-2-1103** , (Renumbered from 75-7-1103, as enacted by Laws of Utah 2004, Chapter 89) ,  
(Renumbered from 75-7-1103, as enacted by Laws of Utah 2004, Chapter 89)
- 333 **75B-3-102** , (Renumbered from 75-12-102, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-102, as enacted by Laws of Utah 2019, Chapter 153)
- 335 **75B-3-103** , (Renumbered from 75-12-103, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-103, as enacted by Laws of Utah 2019, Chapter 153)
- 337 **75B-3-104** , (Renumbered from 75-12-104, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-104, as enacted by Laws of Utah 2019, Chapter 153)
- 339 **75B-3-105** , (Renumbered from 75-12-105, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-105, as enacted by Laws of Utah 2019, Chapter 153)

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- 341 **75B-3-106** , (Renumbered from 75-12-106, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-106, as enacted by Laws of Utah 2019, Chapter 153)
- 343 **75B-3-107** , (Renumbered from 75-12-107, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-107, as enacted by Laws of Utah 2019, Chapter 153)
- 345 **75B-3-108** , (Renumbered from 75-12-108, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-108, as enacted by Laws of Utah 2019, Chapter 153)
- 347 **75B-3-109** , (Renumbered from 75-12-109, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-109, as enacted by Laws of Utah 2019, Chapter 153)
- 349 **75B-3-110** , (Renumbered from 75-12-110, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-110, as enacted by Laws of Utah 2019, Chapter 153)
- 351 **75B-3-111** , (Renumbered from 75-12-111, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-111, as enacted by Laws of Utah 2019, Chapter 153)
- 353 **75B-3-112** , (Renumbered from 75-12-112, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-112, as enacted by Laws of Utah 2019, Chapter 153)
- 355 **75B-3-113** , (Renumbered from 75-12-113, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-113, as enacted by Laws of Utah 2019, Chapter 153)
- 357 **75B-3-114** , (Renumbered from 75-12-114, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-114, as enacted by Laws of Utah 2019, Chapter 153)
- 359 **75B-3-115** , (Renumbered from 75-12-115, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-115, as enacted by Laws of Utah 2019, Chapter 153)
- 361 **75B-3-116** , (Renumbered from 75-12-116, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-116, as enacted by Laws of Utah 2019, Chapter 153)
- 363 **75B-3-117** , (Renumbered from 75-12-117, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-117, as enacted by Laws of Utah 2019, Chapter 153)
- 365 **75B-3-118** , (Renumbered from 75-12-118, as enacted by Laws of Utah 2019, Chapter 153) ,  
(Renumbered from 75-12-118, as enacted by Laws of Utah 2019, Chapter 153)
- 365 REPEALS:
- 366 **75-7-101** , as repealed and reenacted by Laws of Utah 2004, Chapter 89 , as repealed and reenacted  
by Laws of Utah 2004, Chapter 89
- 367 **75-12-101** , as enacted by Laws of Utah 2019, Chapter 153 , as enacted by Laws of Utah 2019,  
Chapter 153



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368 **Utah Code Sections affected by Coordination Clause:**

369 **7-5-1** , as last amended by Laws of Utah 2013, Chapter 364 , as last amended by Laws of Utah  
2013, Chapter 364

370

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

373 Section 1. Section **7-5-1** is amended to read:

374 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

361 (1) As used in this chapter:

362 (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.

366 (b) "Trust" means the same as that term is defined in Section {~~75B-2-103~~} 75B-1-101.

367 ~~(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)]~~.

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

375 (i) money held in a client trust account by an attorney authorized to practice law in this state;

377 (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;

380 (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;

383 (iv) money held by a homeowners' association or similar organization to pay maintenance and other  
related costs for commonly owned property;

385 (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 held by an escrow agent for payment of taxes or insurance;

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- (vi) money and other assets held in trust on an occasional or isolated basis by a person who does not represent that the person is engaged in the trust business in Utah;
- 392 (vii) money or other assets found by a court to be held in an implied, resulting, or constructive trust;
- 394 (viii) money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:
- 396 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure; and
- 400 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;
- 405 (ix) money or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 407 (x) money, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or
- 410 (xi) money, assets, and other property held in a business trust for the benefit of holders of certificates of beneficial interest if the fiduciary activities of the business trust are merely incidental to conducting business in the business trust form.
- 414 [~~(d)~~] (e) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:
- 416 (i) a Utah depository institution or its wholly owned subsidiary;
- 417 (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;
- 419 (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);
- 422 (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
- 425 (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.
- 427 (2) Only a trust company may engage in the trust business in this state.

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- 428 (3) The requirements of this chapter do not apply to:
- 429 (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;
- 432 (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
- 437 (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

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

454 **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.

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

470 **7-5-7. Management and investment of trust money.**

- 457 (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

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instrument creating the account and may not be held uninvested any longer than is reasonably necessary.

- 461 (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.
- 470 (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.
- 486 (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

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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.

499 (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-2-103} 75B-1-101.

503 (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.

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

521 **7-5-10. Lending trust funds to trust company, officer, director, or employee as felony.**

509 (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.

514 (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.

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

531 **7-5-11. Self-dealing with trust property -- Own stock as trust property -- Policies for dealing with trust securities.**

519 (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.

525 (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.

529 (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

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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.

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

549 **8-4-2. Endowment care cemetery trust funds -- Deposits in endowment fund -- Reports --**  
**Penalties for failure to file -- Investment of trust fund money -- Attestation.**

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

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

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

545 (i) \$1.50 a square foot for each grave;

546 (ii) \$15 for each niche; and

547 (iii) \$60 for each crypt.

548 (2)

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

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

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

554 (3)

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

557 (b) The report shall contain:

558 (i) information determined to be reasonable and necessary to show compliance with the provisions of  
559 this chapter;

560 (ii) the number and square feet of grave space;

561 (iii) the number of crypts and niches sold or disposed of under endowment care during a specific period;  
562 and

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- (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.
- 567 (c) An officer of the endowment care cemetery authority shall verify the report.
- 568 (d) The report shall be on file in the principal office of the endowment care cemetery and shall be made available upon request.
- 570 (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.
- 572 (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.
- 575 (5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:
- 576 (a) deposit funds collected as endowment care funds into the endowment care trust within 30 days of receipt of the funds; or
- 578 (b) prepare the report required by Subsection (3).
- 579 (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.
- 582 (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.
- 584 (8)
- . (a) An endowment care cemetery shall place endowment care funds with an independent trustee appointed by the endowment care cemetery.
- 586 (b) A trustee may be independent even if it has common ownership with the cemetery.
- 587 (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.
- 589 (9)
- . (a) The trustee shall submit to the endowment care cemetery an annual independent attestation of the endowment care trust funds.
- 591 (b) The attestation shall state:
- 592 (i) the total amount of the general and special endowment care funds invested by law;
- 593 (ii) the amount of cash on hand not invested;

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- 594 (iii) the location, description, and character of the investments in which the special endowment care  
funds are invested;
- 596 (iv) the value of any securities held in the endowment care fund; and
- 597 (v) the actual financial condition of the funds.
- 598 (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.
- 601 (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.
- 605 (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.
- 621 Section 7. Section **26B-3-1008** is amended to read:
- 622 **26B-3-1008. Statute of limitations -- Survival of right of action -- Insurance policy not to  
limit time allowed for recovery.**
- 611 (1)
- . (a) Subject to Subsection (6), action commenced by the department under this part against a health  
insurance entity shall be commenced within:
- 613 (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
- 616 (ii) six months after the date of the last payment for medical assistance, whichever is later.
- 618 (b) An action against any other third party, the recipient, or anyone to whom the proceeds are payable  
shall be commenced within:
- 620 (i) four years after the date of the injury or onset of the illness; or
- 621 (ii) six months after the date of the last payment for medical assistance, whichever is later.
- 623 (2) The death of the recipient does not abate any right of action established by this part.
- 624 (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.



## SB0100 compared with SB0100S01

- 628 (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).
- 632 (4) The provisions of this section do not apply to Section 26B-3-1013 or Sections 26B-3-1015 through  
26B-3-1023.
- 634 (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.
- 636 (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.
- 638 (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or before April 30, 2007.
- 640 (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.
- 657 Section 8. Section **26B-3-1013** is amended to read:
- 658 **26B-3-1013. Estate and trust recovery.**
- 646 (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.
- 650 (b) The department may not make an adjustment or a recovery under Subsection (1)(a):
- 651 (i) while the deceased recipient's spouse is still living; or
- 652 (ii) if the deceased recipient has a surviving child who is:
- 653 (A) under 21 years old; or
- 654 (B) blind or disabled, as defined in the state plan.
- 655 (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.

658

## SB0100 compared with SB0100S01

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

660 (3)

(a) For a lien described in Subsection (2), the department shall provide notice in accordance with Section 38-12-102.

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

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

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

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

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

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

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

675 (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.**

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, 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 -- Sale of security or investment for less than cost -- State treasurer access.**

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

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

687 (b) consider:

688 (i) the probable safety of the capital;

689 (ii) the probable benefits to be derived;

## SB0100 compared with SB0100S01

- 690 (iii) the probable duration for which that investment may be made;
- 691 (iv) the investment objectives specified in Section 51-7-17; and
- 692 (v) the investment portfolio as a whole.
- 693 (2) A public treasurer shall:
- 694 (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;
- 697 (b) make public fund investment decisions with the sole purpose of maximizing the risk-adjusted return on the investments; and
- 699 (c) to the extent practicable:
- 700 (i)
- . (A) retain the right to vote investor proxies; or
- 701 (B) if the investments are commingled with another investor's funds, request the right to vote investor proxies; and
- 703 (ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive benefit of beneficiaries.
- 705 (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.
- 709 (4)
- . (a) A public treasurer shall make proxy voting records available to the state treasurer upon the state treasurer's request.
- 711 (b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the originating public treasurer.
- 726 Section 11. Section **53B-8a-107** is amended to read:
- 727 **53B-8a-107. Program, administrative, and endowment funds -- Investment and payments from funds -- Proxy voting -- State treasurer access.**
- 716 (1) The plan shall segregate money received by the plan into three funds, the program fund, the administrative fund, and the endowment fund.
- 718 (2) The board shall:
- 719

## SB0100 compared with SB0100S01

- (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;
- 722 (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
- 724 (c) to the extent practicable:
- 725 (i)
- . (A) retain the right to vote investor proxies; or
- 726 (B) if the investments are commingled with another investor's funds, request the right to vote investor  
proxies; and
- 728 (ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive benefit of  
beneficiaries.
- 730 (3) Transfers may be made from the program fund to the administrative fund to pay operating costs:
- 732 (a) associated with administering the plan and as required under Sections 53B-8a-103 through  
53B-8a-105; and
- 734 (b) as included in the budget approved by the board.
- 735 (4)
- . (a) All money paid by account owners in connection with account agreements shall be deposited as  
received into separate accounts within the program fund which shall be invested and accounted for  
separately.
- 738 (b) Money accrued by account owners in the program fund may be used for:
- 739 (i) payments to any institution of higher education;
- 740 (ii) payments to the account owner or beneficiary;
- 741 (iii) transfers to another 529 plan; or
- 742 (iv) other expenditures or transfers made in accordance with the account agreement.
- 743 (5)
- . (a) All money received by the plan from the proceeds of gifts and other endowments for the purposes of  
the plan shall be:
- 745 (i) deposited, according to the nature of the donation, as received into the endowment fund or the  
administrative fund; and
- 747 (ii) invested and accounted for separately.

## SB0100 compared with SB0100S01

- 748 (b) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership,  
or corporation to the plan for deposit to the endowment fund or the administrative fund is a grant,  
gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and  
educational purpose and is not included in the income of the donor for Utah tax purposes.
- 753 (c) The endowment fund or the administrative fund may be used to enhance the savings of low income  
account owners investing in the plan, for scholarships, or for other college savings incentive  
programs as approved by the board.
- 756 (d) Transfers may be made between the endowment fund and the administrative fund upon approval by  
the board.
- 758 (e) Endowment fund earnings not accruing to a beneficiary under an account agreement, not transferred  
to the administrative fund, or not otherwise approved by the board for expenditure, shall be  
reinvested in the endowment fund.
- 761 (6) Subsection (2) does not prohibit the board from offering individual account owners a variety of  
voluntary investment options that have different risk profiles and investment objectives.
- 764 (7)
- . (a) The board shall make proxy voting records available to the state treasurer upon the state treasurer's  
request.
- 766 (b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the  
board.
- 781 Section 12. Section **58-9-703** is amended to read:
- 782 **58-9-703. Trust agreement.**
- 770 (1) Each trust established by a funeral service establishment shall be administered in accordance with a  
trust agreement conforming with:
- 772 (a) the requirements of this chapter;
- 773 (b) rules adopted with respect to this chapter;
- 774 (c) the provisions of [~~Title 75, Chapter 7, Utah Uniform Trust Code~~] Title 75B, Chapter 2, Uniform  
Trust Code; and
- 776 (d) all other state and federal laws applicable to trusts and trust agreements.
- 777 (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.

## SB0100 compared with SB0100S01

- 780 (3) Each trust agreement shall require that the trustee:  
781 (a) separately account for each contract; and  
782 (b) separately record payments with respect to each contract made into the corpus of the trust.
- 784 (4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions  
of this chapter upon:  
786 (a) the death of the beneficiary;  
787 (b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or  
789 (c) revocation of the contract by the beneficiary or buyer.
- 803 Section 13. Section **59-10-103** is amended to read:  
804 **59-10-103. Definitions.**
- 792 (1) As used in this chapter:  
793 (a)  
. (i) "Adjusted gross income":  
794 (A) for a resident or nonresident individual, means the same as that term is defined in Section 62,  
Internal Revenue Code; or  
796 (B) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue  
Code.
- 798 (ii) "Adjusted gross income" does not include:  
799 (A) income received from a loan forgiven in accordance with 15 U.S.C. Sec. 636(a)[-](36), to the  
extent that a deduction for the expenditures paid with the loan is disallowed, or a similar paycheck  
protection loan that is authorized by the federal government, provided in response to COVID-19,  
forgiven if the borrower meets the expenditure requirements, and exempt from federal income tax,  
to the extent that a deduction for the expenditures paid with the loan is disallowed; or  
806 (B) an amount that an individual receives in accordance with Section 6428, Internal Revenue Code, or  
an amount that an individual receives that is authorized by the federal government as a tax credit  
for the 2020 tax year, provided in response to COVID-19, paid in advance of the filing of the  
individual's 2020 federal income tax return, and exempt from federal income tax.
- 812 (b) "Corporation" includes:  
813 (i) an association;  
814 (ii) a joint stock company; and  
815 (iii) an insurance company.

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- 816 (c) "COVID-19" means:
- 817 (i) the severe acute respiratory syndrome coronavirus 2; or
- 818 (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.
- 819 (d) "Distributable net income" means the same as that term is defined in Section 643, Internal Revenue Code.
- 821 (e) "Employee" means the same as that term is defined in Section 59-10-401.
- 822 (f) "Employer" means the same as that term is defined in Section 59-10-401.
- 823 (g) "Federal taxable income":
- 824 (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
- 826 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and (b), Internal Revenue Code.
- 828 (h) "Fiduciary" means:
- 829 (i) a guardian;
- 830 (ii) a trustee;
- 831 (iii) an executor;
- 832 (iv) an administrator;
- 833 (v) a receiver;
- 834 (vi) a conservator; or
- 835 (vii) any person acting in any fiduciary capacity for any individual.
- 836 (i) "Guaranteed annuity interest" means the same as that term is defined in 26 C.F.R. Sec. 1.170A-6(c) (2).
- 838 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 841 (k) "Individual" means a natural person and includes aliens and minors.
- 842 (l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust.
- 846 (m) "Military service" means the same as that term is defined in Pub. L. No. 108-189, Sec. 101.

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- 848 (n) "Nonresident individual" means an individual who is not a resident of this state.
- 849 (o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.
- 851 (p)
- . (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:
- 853 (A) through or by means of which any business, financial operation, or venture is carried on; and
- 855 (B) that is not, within the meaning of this chapter, a trust, an estate, or a corporation.
- 857 (ii) "Partnership" does not include any organization not included under the definition of "partnership" in Section 761, Internal Revenue Code.
- 859 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(p)(i).
- 861 (q) "Pass-through entity" means the same as that term is defined in Section 59-10-1402.
- 862 (r) "Pass-through entity taxpayer" means the same as that term is defined in Section 59-10-1402.
- 864 (s) "Qualified nongrantor charitable lead trust" means a trust:
- 865 (i) that is irrevocable;
- 866 (ii) that has a trust term measured by:
- 867 (A) a fixed term of years; or
- 868 (B) the life of a person living on the day on which the trust is created;
- 869 (iii) under which:
- 870 (A) a portion of the value of the trust assets is distributed during the trust term:
- 871 (I) to an organization described in Section 170(c), Internal Revenue Code; and
- 872 (II) as a guaranteed annuity interest or a unitrust interest; and
- 873 (B) assets remaining in the trust at the termination of the trust term are distributed to a beneficiary:
- 875 (I) designated in the trust; and
- 876 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
- 878 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue Code; and
- 880 (v) under which the grantor of the trust is not treated as the owner of any portion of the trust for federal income tax purposes.
- 882 (t) "Resident individual" means an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state.



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- 885 (u) "Resident estate" or "resident trust" means the same as that term is defined in Section  
[75-7-103] 75B-2-103.
- 887 (v) " Service member" means the same as that term is defined in Pub. L. No. 108-189, Sec. 101.
- 889 (w) "State income tax percentage for a nonresident estate or trust" means a percentage equal to a  
nonresident estate's or trust's state taxable income for the taxable year divided by the nonresident  
estate's or trust's total adjusted gross income for that taxable year after making the adjustments  
required by:
- 893 (i) Section 59-10-202;
- 894 (ii) Section 59-10-207;
- 895 (iii) Section 59-10-209.1; or
- 896 (iv) Section 59-10-210.
- 897 (x) "State income tax percentage for a nonresident individual" means a percentage equal to a  
nonresident individual's state taxable income for the taxable year divided by the difference between:
- 900 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross income for that  
taxable year, after making the:
- 902 (A) additions and subtractions required by Section 59-10-114; and
- 903 (B) adjustments required by Section 59-10-115; and
- 904 (ii) if the nonresident individual described in Subsection (1)(x)(i) is a service member, the  
compensation the service member receives for military service if the service member is serving in  
compliance with military orders.
- 907 (y) "State income tax percentage for a part-year resident individual" means, for a taxable year, a  
fraction:
- 909 (i) the numerator of which is the sum of:
- 910 (A) subject to Section 59-10-1404.5, for the time period during the taxable year that the part-year  
resident individual is a resident, the part-year resident individual's total adjusted gross income for  
that time period, after making the:
- 913 (I) additions and subtractions required by Section 59-10-114; and
- 914 (II) adjustments required by Section 59-10-115; and
- 915 (B) for the time period during the taxable year that the part-year resident individual is a nonresident, an  
amount calculated by:
- 917

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- (I) determining the part-year resident individual's adjusted gross income for that time period, after making the:
  - 919 (Aa) additions and subtractions required by Section 59-10-114; and
  - 920 (Bb) adjustments required by Section 59-10-115; and
  - 921 (II) calculating the portion of the amount determined under Subsection (1)(y)(i)(B)(I) that is derived from Utah sources in accordance with Section 59-10-117; and
  - 924 (ii) the denominator of which is the difference between:
    - 925 (A) the part-year resident individual's total adjusted gross income for that taxable year, after making the:
      - 927 (I) additions and subtractions required by Section 59-10-114; and
      - 928 (II) adjustments required by Section 59-10-115; and
      - 929 (B) if the part-year resident individual is a service member, any compensation the service member receives for military service during the portion of the taxable year that the service member is a nonresident if the service member is serving in compliance with military orders.
    - 933 (z) "Taxable income" or "state taxable income":
      - 934 (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
        - 936 (A) additions and subtractions required by Section 59-10-114; and
        - 937 (B) adjustments required by Section 59-10-115;
      - 938 (ii) for a nonresident individual, is an amount calculated by:
        - 939 (A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:
          - 941 (I) additions and subtractions required by Section 59-10-114; and
          - 942 (II) adjustments required by Section 59-10-115; and
          - 943 (B) calculating the portion of the amount determined under Subsection (1)(z)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;
        - 946 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
        - 947 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.
      - 948 (aa) "Taxpayer" means any of the following that has income subject in whole or part to the tax imposed by this chapter:
        - 950 (i) an individual;

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- 951 (ii) an estate, a trust, or a beneficiary of an estate or a trust that is not a pass-through entity or a pass-through entity taxpayer;
- 953 (iii) a pass-through entity; or
- 954 (iv) a pass-through entity taxpayer.
- 955 (bb) "Trust term" means a time period:
- 956 (i) beginning on the day on which a qualified nongrantor charitable lead trust is created; and
- 958 (ii) ending on the day on which the qualified nongrantor charitable lead trust described in Subsection (1)(bb)(i) terminates.
- 960 (cc) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:
- 962 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- 963 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 964 (dd) "Unadjusted income" means an amount equal to the difference between:
- 965 (i) the total income required to be reported by a resident or nonresident estate or trust on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and
- 968 (ii) the sum of the following:
- 969 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:
- 970 (I) for administering the resident or nonresident estate or trust; and
- 971 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;
- 974 (B) the income distribution deduction that a resident or nonresident estate or trust deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;
- 978 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and
- 982 (D) the amount that a resident or nonresident estate or trust deducts as a personal exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year.
- 986 (ee) "Unitrust interest" means the same as that term is defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

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- 988 (ff) "Ute tribal member" means an individual who is enrolled as a member of the Ute Indian Tribe of  
the Uintah and Ouray Reservation.
- 990 (gg) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- 991 (hh) "Wages" means the same as that term is defined in Section 59-10-401.
- 992 (2)
- . (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws  
of the United States relating to federal income taxes unless a different meaning is clearly required.
- 995 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the  
Internal Revenue Code or other provisions of the laws of the United States relating to federal  
income taxes that are in effect for the taxable year.
- 998 (c) Any reference to a specific section of the Internal Revenue Code or other provision of the laws of  
the United States relating to federal income taxes shall include any corresponding or comparable  
provisions of the Internal Revenue Code as amended, redesignated, or reenacted.

1015 Section 14. Section **75-1-102** is amended to read:

1016 **75-1-102. Purposes -- Rule of construction.**

- 1004 (1) This [eode] title shall be liberally construed and applied to promote its underlying purposes and  
policies.
- 1006 (2) The underlying purposes and policies of this [eode] title are:
- 1007 (a) [Fø] to simplify and clarify the law concerning the affairs of decedents, missing persons, protected  
persons, minors, and incapacitated persons;
- 1009 (b) [Fø] to discover and make effective the intent of a decedent in distribution of [his] the decedent's  
property;
- 1011 (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;
- 1013 (d) [Fø] to facilitate use and enforcement of certain trusts; and
- 1014 (e) [Fø] to make uniform the law among the various jurisdictions.

1028 Section 15. Section **75-1-103** is amended to read:

1029 **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.

1032 Section 16. Section **75-1-104** is amended to read:

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- 1033        **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.
- 1038        Section 17. Section **75-1-105** is amended to read:
- 1039        **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.
- 1043        Section 18. Section **75-1-106** is amended to read:
- 1044        **75-1-106. Effect of fraud and evasion.**
- 1032        (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.
- 1037        (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.
- 1040        (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.
- 1055        Section 19. Section **75-1-111** is renumbered and amended to read:
- 1057        ~~[75-8-101]~~**75-1-111. Time of taking effect -- Provisions for transition.**
- 1045        (1) This [eode] title takes effect on July 1, 1977.
- 1046        (2) Except as [~~provided elsewhere in this code, on the effective date of this code~~] otherwise provided by this title:
- 1048        (a) [~~This code~~] this title applies to any wills of decedents dying [~~thereafter.~~] on or after July 1, 1977;
- 1050        (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

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in a particular case in the interest of justice or because of infeasibility of application of the procedure of this ~~[code:]~~ title;

- 1055 (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 ~~[code]~~ title and is subject to the duties imposed with respect to any act occurring or done ~~[thereafter:]~~ on or after July 1, 1977;
- 1060 (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 ~~[code:]~~ title; and
- 1062 (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
- 1066 (e) ~~[Any]~~ any rule of construction or presumption provided in this ~~[code]~~ 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.

1082 Section 20. Section **75-1-201** is amended to read:

1083 **75-1-201. Title definitions.**

As used in this title:

- 1072 (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.
- 1075 (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.
- 1077 (3)
- . (a) "Beneficiary," as it relates to trust beneficiaries, includes:
- 1078 (i) a person who has any present or future interest, vested or contingent; and
- 1079 (ii) the owner of an interest by assignment or other transfer.
- 1080 (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to enforce the trust.
- 1082 (c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a beneficiary of:
- 1084 (i) an insurance or annuity policy;
- 1085 (ii) an account with POD designation;

## SB0100 compared with SB0100S01

- 1086 (iii) a security registered in beneficiary form (TOD);
- 1087 (iv) a pension, profit-sharing, retirement, or similar benefit plan; or
- 1088 (v) other nonprobate transfer at death.
- 1089 (d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument, includes:
- 1091 (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
- 1093 (ii) a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- 1095 (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.
- 1099 (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.
- 1101 (b) "Child" does not include an individual who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 1103 (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.
- 1108 (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.
- 1111 (7) "Community property with a right of survivorship" means joint tenants with the right of survivorship.
- 1113 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
- 1115 (9) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

1117

## SB0100 compared with SB0100S01

- (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.
- 1120 (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.
- 1122 (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.
- 1126 (13) "Disability" means cause for a protective order as described by Section 75-5-401.
- 1127 (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.
- 1134 (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.
- 1137 (16) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.
- 1139 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 1140 (18) "Foreign personal representative" means a personal representative of another jurisdiction.
- 1142 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
- 1144 (20) "General personal representative" does not include a special administrator.
- 1145 (21) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
- 1150 (22)



## SB0100 compared with SB0100S01

- . (a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5.]
- 1153 [(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 respect to the personal affairs of an individual.
- 1169 (b) "Guardian" includes a coguardian.
- 1170 (c) "Guardian" does not include a guardian ad litem.
- 1154 (23) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.
- 1157 (24) "Incapacitated" means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
- 1161 (a) receive and evaluate information;  
1162 (b) make and communicate decisions; or  
1163 (c) provide for necessities such as food, shelter, clothing, health care, or safety.
- 1164 (25) "Incapacity" means incapacitated.
- 1165 (26) "Informal proceedings" mean a proceeding conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.
- 1168 (27)
- . (a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.
- 1174 (b) "Interested person" includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated.

## SB0100 compared with SB0100S01

- 1178 (28) "Issue" means a descendant of an individual.
- 1179 (29)
- . (a) "Joint tenants with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other.
- 1182 (b) "Joint tenants with the right of survivorship" does not include forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- 1185 (30) "Lease" includes an oil, gas, or other mineral lease.
- 1186 (31) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- 1188 (32) "Minor" means ~~[a person]~~ an individual who is under 18 years old.
- 1189 (33) "Minor protected person" means a minor for whom a conservator has been appointed because of minority.
- 1191 (34) "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.
- 1193 (35) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
- 1195 (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.
- 1197 [~~(37) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.~~]
- 1200 (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.
- 1203 (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.
- 1206 (b) "Parent" does not include any person who is only a stepparent, foster parent, or grandparent.
- 1208 (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.

## SB0100 compared with SB0100S01

- 1211 (40) "Person" means an individual or an organization.
- 1212 [~~(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.~~]
- 1215 (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.
- 1218 (42) "Petition" means a written request to the court for an order after notice.
- 1219 (43) "Proceeding" includes action at law and suit in equity.
- 1220 [~~(44) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.~~]
- 1222 (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.
- 1225 (45) "Protected person" means a person for whom a conservator has been appointed.
- 1226 (46) "Protective proceeding" means a proceeding described in Section 75-5-401.
- 1227 (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.
- 1229 (48) "Registrar" means the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.
- 1231 (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.
- 1238 (50) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- 1257 (51) "Settlor" means the same as that term is defined in Section 75B-1-101.
- 1240 [~~(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:
- 1242 (a) to execute or adopt a tangible symbol; or

## SB0100 compared with SB0100S01

- 1243 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.
- 1245 ~~[(52)]~~ (53) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.
- 1247 ~~[(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.
- 1251 ~~[(54)]~~ (55) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- 1254 ~~[(55)]~~ (56) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
- 1256 ~~[(56)]~~ (57) "Supervised administration" means the proceedings described in Chapter 3, Part 5, Supervised Administration.
- 1258 ~~[(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.
- 1262 (b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and "surviving."
- 1264 ~~[(58)]~~ (59) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 1265 ~~[(59)]~~ (60) "Testator" includes an individual of either sex.
- 1266 ~~[(60)]~~
- . (a) "Trust" includes:]
- 1267 [(i) ~~a health savings account, as defined in Section 223 of the Internal Revenue Code;~~]
- 1268 [(ii) ~~an express trust, private or charitable, with additions thereto, wherever and however created;~~  
or]
- 1270 [(iii) ~~a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.—~~]
- 1272 [(b) "Trust" does not include:]
- 1273 [(i) ~~a constructive trust;~~]
- 1274 [(ii) ~~a resulting trust;~~]
- 1275 [(iii) ~~a conservatorship;~~]

## SB0100 compared with SB0100S01

- 1276 [(iv) a personal representative;]  
1277 [(v) a trust account as defined in Chapter 6, Nonprobate Transfers;]  
1278 [(vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors Act;]  
1279 [(vii) a business trust providing for certificates to be issued to beneficiaries;]  
1280 [(viii) a common trust fund;]  
1281 [(ix) a voting trust;]  
1282 [(x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;]  
1283 [(xi) a security arrangement;]  
1284 [(xii) a liquidation trust;]  
1285 [(xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or]  
1287 [(xiv) any arrangement under which a person is nominee or escrowee for another.]  
1288 [(61) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.]  
1290 ~~{(60)}~~ (61) "Trust" means the same as that term is defined in Section ~~{75B-2-103}~~ 75B-1-101.  
1291 ~~{(61)}~~ (62) "Trustee" means the same as that term is defined in Section ~~{75B-2-103}~~ 75B-1-101.  
1292 ~~{(62)}~~ (63) "Ward" means ~~[a person]~~ an individual for whom a guardian has been appointed.  
1293 ~~{(63)}~~ (63) "Will" ~~{ }~~ means ~~codicil and any testamentary instrument { }~~ codicil and any testamentary instrument ~~{ }~~ which ~~{ } 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.]  
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 individual's death; and  
1320 (ii) only effective upon the death of the individual.  
1321 (b) "Will" includes a writing or the other record described in Subsection (64)(a) that is:  
1322 (i) a codicil; or  
1323 (ii) an instrument that merely:  
1324 (A) appoints a personal representative;  
1325 (B) nominates a guardian for a minor or an individual who is incapacitated;

## SB0100 compared with SB0100S01

- 1326 (C) revokes or revises a prior writing or other record described in Subsection (64)(a); or  
1328 (D) expressly limits or excludes the right of an individual or class to succeed to property by interstate succession.

1330 Section 21. Section **75-1-301** is amended to read:

1331 **75-1-301. Territorial application.**

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

- 1300 (1) [~~The~~] the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;
- 1302 (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;
- 1304 (3) [~~Incapacitated~~] incapacitated persons and minors in this state;
- 1305 (4) [~~Survivorship~~] survivorship and related accounts in this state; and
- 1306 (5) [~~Trusts~~] trusts subject to administration in this state.

1340 Section 22. Section **75-1-303** is amended to read:

1341 **75-1-303. Venue -- Multiple proceedings -- Transfer -- Orders and hearings.**

- 1309 (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.
- 1312 (2)
- . (a) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state[;] :
- 1314 (i) the court in which the proceeding was first commenced shall continue to hear the matter[; and the other courts] ; and
- 1316 (ii) the other court shall hold the matter in abeyance until the question of venue is decided[; and if] .
- 1318 (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.
- 1320 (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.
- 1323 (4)
- . (a) The [~~judge of the~~] court in which any proceeding under this [eode] 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.

## SB0100 compared with SB0100S01

1327 (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.

1364 Section 23. Section **75-1-304** is amended to read:

1365 **75-1-304. Practice in court.**

Unless specifically provided to the contrary in this [eode] 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 [eode] title.

1370 Section 24. Section **75-1-305** is amended to read:

1371 **75-1-305. Records and certified copies.**

1339 (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 [eode] 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.

1345 (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.

1348 (3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal.

1350 (4) Certificates relating to letters must show the date of appointment.

1384 Section 25. Section **75-1-309** is amended to read:

1385 **75-1-309. Oath or affirmation on filed documents.**

1353 (1) Except as otherwise specifically provided in this [eode] 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] .

1358 (2) Penalties for perjury may follow deliberate falsification therein.

1392 Section 26. Section **75-1-310** is amended to read:

1393 **75-1-310. Costs -- In discretion of court.**

## SB0100 compared with SB0100S01

When not otherwise prescribed in this ~~[code, 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.

1398 Section 27. Section **75-1-311** is amended to read:

1399 **75-1-311. Consent to jurisdiction.**

1367 (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 ~~[code]~~ title.

1370 (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.

1407 Section 28. Section **75-1-404** is amended to read:

1408 **75-1-404. Publication in newspapers.**

1376 (1) Newspapers shall publish all notices of proceedings under ~~[the code]~~ 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]~~

1379 (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.

1416 Section 29. Section **75-2-803** is amended to read:

1417 **75-2-803. Definitions -- Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations -- Petition -- Forfeiture -- Revocation.**

1387 (1) As used in this section:

1388 (a) "Conviction" means the same as that term is defined in Section 77-38b-102.

1389 (b) "Decedent" means a deceased individual.

1390 (c) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

1392 (d)



## SB0100 compared with SB0100S01

- . (i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means any felony homicide offense described in Title 76, Chapter 5, Offenses Against the Individual, for which the elements are established by a preponderance of the evidence and by applying the same principles of culpability and defenses described in Title 76, Utah Criminal Code.
- 1397 (ii) "Disqualifying homicide" does not include an offense for:
- 1398 (A) automobile homicide, as described in Section 76-5-207; and
- 1399 (B) automobile homicide involving using a handheld wireless communication device while driving, as described in Section 76-5-207.5.
- 1401 (e) "Governing instrument" means a governing instrument executed by the decedent.
- 1402 (f) "Killer" means an individual who commits a disqualifying homicide.
- 1403 (g) "Revocable" means a disposition, appointment, provision, or nomination under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer regardless of whether at the time or immediately before death:
  - 1407 (i) the decedent was empowered to designate the decedent in place of the decedent's killer; or
  - 1409 (ii) the decedent had the capacity to exercise the power.
- 1410 (2)
  - . (a) An individual who commits a disqualifying homicide of the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance.
  - 1414 (b) If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.
  - 1416 (3) The killing of the decedent by means of a disqualifying homicide:
    - 1417 (a) revokes any revocable:
      - 1418 (i) disposition or appointment of property made by the decedent to the killer in a governing instrument;
      - 1420 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and
      - 1422 (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
  - 1425

## SB0100 compared with SB0100S01

- (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.
- 1428 (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.
- 1434 (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.
- 1437 (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.
- 1440 (7)
- . (a) An interested person may petition the court to determine whether an individual has committed a disqualifying homicide of the decedent.
- 1442 (b) An individual has committed a disqualifying homicide of the decedent for purposes of this section if:
- 1444 (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
- 1447 (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.
- 1450 (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:
- 1453 (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;
- 1456 (ii) require the execution of a trustee's bond under Section ~~[75-7-702]~~ 75B-2-702 for the killer's estate;

## SB0100 compared with SB0100S01

- 1458 (iii) establish a constructive trust on any property or assets of the killer or the killer's estate that is effective from the time the killer's act caused the death of the decedent; or
- 1461 (iv) take any other action necessary to preserve the property or assets of the killer or the killer's estate:
- 1463 (A) until a court makes a determination under Subsection (7); or
- 1464 (B) for the payment of all damages and judgments for conduct resulting in the disqualifying homicide of the decedent.
- 1466 (b) Upon a petition for a temporary restraining order or an injunction under Subsection (8)(a)(i), a court may enter a temporary restraining order against an owner's property in accordance with Rule 65A of the Utah Rules of Civil Procedure, without notice or opportunity of a hearing, if the court determines that:
- 1470 (i) there is a substantial likelihood that the property is, or will be, necessary to satisfy a judgment or damages owed by the killer for conduct resulting in the disqualifying homicide of the decedent; and
- 1473 (ii) notice of the hearing would likely result in the property being:
- 1474 (A) sold, distributed, destroyed, or removed; and
- 1475 (B) unavailable to satisfy a judgment or damages owed by the killer for conduct resulting in the disqualifying homicide of the decedent.
- 1477 (9)
- . (a)
- . (i) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a disqualifying homicide, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section.
- 1484 (ii) A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.
- 1487 (b)
- . (i) Written notice of a claimed forfeiture or revocation under Subsection (9)(a) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt

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requested, or served upon the payor or other third party in the same manner as a summons in a civil action.

- 1491 (ii) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or  
other third party may pay any amount owed or transfer or deposit any item of property held by the  
payor or third party to or with:
- 1494 (A) the court having jurisdiction of the probate proceedings relating to the decedent's estate; or  
1496 (B) if no proceedings have been commenced, the court having jurisdiction of probate proceedings  
relating to the decedent's estates located in the county of the decedent's residence.
- 1499 (iii) The court shall hold the funds or item of property and, upon the court's determination under this  
section, shall order disbursement in accordance with the determination.
- 1502 (iv) Payments, transfers, or deposits made to or with the court discharge the payor or other third party  
from all claims for the value of amounts paid to or items of property transferred to or deposited with  
the court.
- 1505 (10)
- . (a) A person who purchases property for value and without notice, or who receives a payment or other  
item of property in partial or full satisfaction of a legally enforceable obligation, is:
- 1508 (i) not obligated under this section to return the payment, item of property, or benefit; and  
1510 (ii) not liable under this section for the amount of the payment or the value of the item of property  
or benefit.
- 1512 (b) Notwithstanding Subsection (10)(a), a person who, not for value, receives a payment, item of  
property, or any other benefit to which the person is not entitled under this section is:
- 1515 (i) obligated to return the payment, item of property, or benefit to the person who is entitled to the  
payment, property, or benefit under this section; and  
1517 (ii) personally liable for the amount of the payment or the value of the item of property or benefit to the  
person who is entitled to the payment, property, or benefit under this section.
- 1520 (c) If this section or any part of this section is preempted by federal law with respect to a payment, an  
item of property, or any other benefit covered by this section, a person who, not for value, receives  
the payment, item of property, or any other benefit to which the person is not entitled under this  
section is:
- 1524 (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

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1527 (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.

1563 Section 30. Section **75-2-1209** is amended to read:

1564 **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]

1570

75B-2-816.

1571 Section 31. Section **75-2-1402** is amended to read:

1572 **75-2-1402. Definitions.**

As used in this part:

1574 (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,  
electromagnetic, or similar capabilities.

1576 (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.

1579 (3) "Electronic will" means a will executed electronically in compliance with Subsection 75-2-1405(1).

1581 (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.

1583 (5) "Sign" means, with present intent to authenticate or adopt a record:

1584 (a) to execute or adopt a tangible symbol; or

1585 (b) to affix to or logically associate with the record an electronic symbol or process.

1586 (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.

1589 (b) "State" includes a federally recognized Indian tribe.

1590 [~~(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.~~]

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1594 Section 32. Section **75-3-101** is amended to read:

1595 **75-3-101. Devolution of estate at death -- Restrictions.**

1540 (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 [eode] title to facilitate the  
prompt settlement of estates.

1543 (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.

1607 Section 33. Section **75-3-105** is amended to read:

1608 **75-3-105. Proceedings affecting devolution and administration -- Jurisdiction of subject  
matter.**

1554 (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.

1558 (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.

1561 (c) Persons notified are bound though less than all interested persons may have been given notice.

1563 (2) For purposes of this [eode] 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.

1623 Section 34. Section **75-3-303** is amended to read:

1624 **75-3-303. Informal probate -- Proof and findings required.**

1569 (1) In an informal proceeding for original probate of a will, the registrar shall determine whether:

1571 (a) the application is complete;

1572

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- (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;
- 1574 (c) the applicant appears from the application to be an interested person[~~as defined in Subsection 75-1-201(24)~~];
- 1576 (d) on the basis of the statements in the application, venue is proper;
- 1577 (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;
- 1580 (f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and
- 1582 (g) it appears from the application that the time limit for original probate has not expired.
- 1583 (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.
- 1587 (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.
- 1593 (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.
- 1597 (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.
- 1658 Section 35. Section **75-3-308** is amended to read:
- 1659 **75-3-308. Informal appointment proceedings -- Proof and findings required.**
- 1604 (1) In informal appointment proceedings, the registrar shall determine whether:
- 1605 (a) the application for informal appointment of a personal representative is complete;

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- 1606 (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;
- 1608 (c) the applicant appears from the application to be an interested person~~[as defined in Subsection 75-1-201(24)]~~;
- 1610 (d) on the basis of the statements in the application, venue is proper;
- 1611 (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;
- 1614 (f) any notice required by Section 75-3-204 has been given; and
- 1615 (g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.
- 1617 (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.~~

1680 Section 36. Section **75-3-504** is amended to read:

1681 **75-3-504. Powers of personal representative.**

- 1626 (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 ~~[eode]~~ title, but he shall not exercise his power to make any distribution of the estate without prior order of the court.
- 1630 (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.

1689 Section 37. Section **75-3-608** is amended to read:

1690 **75-3-608. Termination of appointment -- General.**

- 1635 (1) Termination of appointment of a personal representative occurs as indicated in Sections 75-3-609 through 75-3-612.
- 1637 (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



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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.

1641 (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.

1644 (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.

1702 Section 38. Section **75-3-616** is amended to read:

1703 **75-3-616. Special administrator -- Appointed informally -- Powers and duties.**

1648 (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.

1652 (2) The special administrator has the power of a personal representative under the [eode] title necessary  
to perform his duties.

1710 Section 39. Section **75-3-703** is amended to read:

1711 **75-3-703. General duties -- Relation and liability to persons interested in estate -- Standing  
to sue.**

1657 (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.

1659 (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]

1663 (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.

1667 (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.

1669

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- (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.
- 1672 (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.
- 1678 (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.
- 1682 (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.

1742 Section 40. Section **75-3-704** is amended to read:

1743 **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.

1749 Section 41. Section **75-3-710** is amended to read:

1750 **75-3-710. Powers of personal representatives -- In general.**

- 1695 (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.
- 1698 (2) This power may be exercised without notice, hearing, or order of court, unless otherwise specifically provided by this ~~[eode]~~ title.

1756 Section 42. Section **75-3-714** is amended to read:

1757 **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

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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:

- 1705 (1) retain assets owned by the decedent pending distribution or liquidation including those in which the  
representative is personally interested or which are otherwise improper for trust investment;
- 1708 (2) receive assets from fiduciaries, or other sources;
- 1709 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations  
of the estate, as he may determine under the circumstances. In performing enforceable contracts by  
the decedent to convey or lease land, the personal representative, among other possible courses of  
action, may:
- 1713 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the  
purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
- 1716 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow  
agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- 1719 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted  
binding obligations of the decedent or were properly presented as claims, if in the judgment of  
the personal representative the decedent would have wanted the pledges completed under the  
circumstances;
- 1723 (5) if funds are not needed to meet debts and expenses currently payable and are not immediately  
distributable, deposit or invest liquid assets of the estate, including money received from the sale  
of other assets, in federally insured interest-bearing accounts, readily marketable secured loan  
arrangements, or other prudent investments which would be reasonable for use by trustees generally;
- 1728 (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public  
or private sale; and manage, develop, improve, exchange, partition, change the character of, or  
abandon an estate asset;
- 1731 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any  
improvements, or raze existing or erect new party walls or buildings;
- 1733 (8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and  
adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving  
considerations; or dedicate easements to public use without consideration;
- 1736 (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew,  
for a term within or extending beyond the period of administration;

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- 1738 (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- 1740 (11) abandon property when, in the opinion of the personal representative, it is valueless, is so encumbered, or is in condition that it is of no benefit to the estate;
- 1742 (12) vote stocks or other securities in person or by general or limited proxy;
- 1743 (13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
- 1745 (14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
- 1748 (15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;
- 1750 (16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
- 1752 (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
- 1757 (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
- 1759 (19) sell or exercise stock subscription or conversion rights; and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- 1762 (20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;
- 1764 (21) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

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- 1769 (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of  
the personal representative in the performance of his duties;
- 1771 (23) sell, mortgage, or lease any real or personal property of the estate or any interest in it for cash,  
credit, or for part cash and part credit, and with or without security for unpaid balances;
- 1774 (24) continue any unincorporated business or venture in which the decedent was engaged at the time of  
his death:
- 1776 (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;
- 1779 (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
- 1782 (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;
- 1785 (25) incorporate any business or venture in which the decedent was engaged at the time of his death;
- 1787 (26) provide for exoneration of the personal representative from personal liability in any contract  
entered into on behalf of the estate;
- 1789 (27) satisfy and settle claims and distribute the estate as provided in this [eode] title.
- 1846 Section 43. Section **75-3-913** is amended to read:
- 1847 **75-3-913. Distributions to trustee.**
- 1792 (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.
- 1796 (2) If the trust instrument does not excuse the trustee from giving bond, the personal representative  
may:
- 1798 (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
- 1801 (b) withhold distribution until the court has acted.
- 1802

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- (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).

1861 Section 44. Section **75-3-915** is amended to read:

1862 **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 ~~[code]~~ title or otherwise to give a valid receipt and discharge for the distribution.

1867 Section 45. Section **75-3-916** is amended to read:

1868 **75-3-916. Apportionment of estate taxes.**

1813 (1) As used in this section:

1814 (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;

1816 (b) "Fiduciary" means personal representative, executor, administrator of any description, or trustee;

1818 (c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

1821 (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;

1825 (e) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

1827 (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.

1830 (2)

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

1832 (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.

1835 (c) The values used in determining the tax shall be used for that purpose.

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- 1836 (d) If the decedent's will or other dispositive instrument directs a method of apportionment of tax  
different from the method described in this [eøðe] title, the method described in the will or other  
dispositive instrument controls.
- 1839 (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 apportionment of the tax upon the petition of  
the person required to pay the tax.
- 1843 (b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in  
Subsection (2), because of special circumstances, it may direct the apportionment in the manner it  
finds equitable.
- 1846 (c)
- . (i) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate  
concerning the determination of the amount and apportionment of the tax shall be apportioned as  
provided in Subsection (2) and charged and collected as a part of the tax apportioned.
- 1850 (ii) If the court finds it is inequitable to apportion the expenses as provided in Subsection (2), it may  
direct the apportionment equitably.
- 1852 (d) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to  
delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount  
of the assessed penalties and interest.
- 1855 (e) In any suit or judicial proceeding to recover from any person interested in the estate the amount of  
the tax apportioned to the person in accordance with this [eøðe] title, the determination of the court  
in this regard is prima facie correct.
- 1858 (4)
- . (a)
- . (i) The fiduciary or other person required to pay the tax may withhold from any property of the  
decedent in his possession and distributable to any person interested in the estate, the amount of  
tax attributable to his interest.
- 1861 (ii) If the property in possession of the fiduciary or other person required to pay the tax and  
distributable to any person interested in the estate is insufficient to satisfy the proportionate

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amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate.

- 1866 (iii) If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.
- 1870 (b) If property held by the fiduciary or other person required to pay the tax is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the court having jurisdiction of the administration of the estate.
- 1875 (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.
- 1878 (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.
- 1881 (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.
- 1884 (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.
- 1887 (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.
- 1891 (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.



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- 1897 (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.
- 1901 (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.
- 1904 (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.
- 1907 (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.
- 1911 (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.
- 1919 (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.
- 1922 (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.
- 1928 (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.
- 1931 (c) The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

## SB0100 compared with SB0100S01

- 1933 (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.
- 1992 Section 46. Section **75-3-1008** is amended to read:
- 1993 **75-3-1008. Subsequent administration.**
- 1938 (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.
- 1943 (2) If a new appointment is made, unless the court orders otherwise, the provisions of this [eode] title apply as appropriate[;] but no claim previously barred may be asserted in the subsequent administration.
- 2002 Section 47. Section **75-5-303** is amended to read:
- 2003 **75-5-303. Procedure for court appointment of a guardian of an incapacitated person.**
- 1949 (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.
- 1951 (2)
- . (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
- 1953 (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.
- 1957 (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.
- 1959 (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.
- 1964 (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
- 1966

## SB0100 compared with SB0100S01

- (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
- 1968 (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity;  
or
- 1970 (c) upon an express finding of good cause, the court orders otherwise.
- 1971 (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.
- 1978 (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.
- 1983 (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:
  - 1985 (i) fourth stage Alzheimer's Disease;
  - 1986 (ii) extended comatosis; or
  - 1987 (iii)
    - . (A) an intellectual disability; and
    - 1988 (B) an intelligence quotient score under 25.
- 1989 (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.
- 1994 (d) Counsel for the person alleged to be incapacitated[~~, as defined in Subsection 75-1-201(22),~~] is not required if:
  - 1996 (i) the person is the biological or adopted child of the petitioner;

## SB0100 compared with SB0100S01

- 1997 (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;
- 1999 (iii) the person appears in court with the petitioner;
- 2000 (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
- 2002 (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);
- 2006 (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
- 2008 (vii) the court appoints a visitor under Subsection (4).
- 2065 Section 48. Section **75-5-412** is amended to read:
- 2066 **75-5-412. Terms and requirements of bonds.**
- 2011 (1) The following requirements and provisions apply to any bond required under Section 75-5-411:
- 2013 (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;
- 2015 (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
- 2019 (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;
- 2022 (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
- 2025 (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.
- 2027 (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 [~~eode~~] title.
- 2086 Section 49. Section **75-5-416** is amended to read:
- 2087 **75-5-416. Petitions for orders subsequent to appointment.**
- 2032

## SB0100 compared with SB0100S01

- (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:
- 2034 (a) requiring bond or security or additional bond or security, or reducing bond;
- 2035 (b) requiring an accounting for the administration of the conservatorship estate;
- 2036 (c) directing distribution;
- 2037 (d) removing the conservator and appointing a temporary or successor conservator; or
- 2038 (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.
- 2041 (2) A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.
- 2043 (3) Upon notice and hearing the court may give appropriate instructions or make any appropriate order.
- 2101 Section 50. Section **75-5-417** is amended to read:
- 2102 **75-5-417. General duty of conservator.**
- 2047 (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.
- 2049 (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.
- 2052 (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.
- 2054 (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:
- 2055 (i) all assets at the beginning and end of the reporting year;
- 2056 (ii) any income received during the year;
- 2057 (iii) any disbursements for the support of the ward;
- 2058 (iv) any investments or trusts that are held for the ward's benefit;
- 2059 (v) any expenditures or fees charged to the ward's estate; and
- 2060 (vi) any other expenses incurred by the ward's estate.
- 2061 (d) The Judicial Council shall approve the forms for the accounting reports described in Subsections (2) (a) and (b).
- 2063

## SB0100 compared with SB0100S01

- (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and approved by the court.
- 2065 (3)
- (a) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court.
- 2067 (b) A report under Subsection (3)(a) shall be examined and approved by the court.
- 2068 (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).
- 2071 (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:
- 2074 (i) makes a substantial misstatement on filings of any required annual reports;
- 2075 (ii) is guilty of gross impropriety in handling the property of the ward; or
- 2076 (iii) willfully fails to file the report required by this section.
- 2077 (b) The court may also order restitution of funds misappropriated from the estate of a ward.
- 2079 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.
- 2081 (6) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

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

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

[H] 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 adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.
- 2146 (3) "Emergency" means circumstances that likely will result in substantial harm to a respondent's health, safety, or welfare, and in which the appointment of a guardian is necessary because no other person has authority to and is willing to act on the respondent's behalf.

2150

## SB0100 compared with SB0100S01

- [~~(4)~~ "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, 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 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 least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as 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 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 an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or 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 order related to management of an adult's property.
- 2170 [~~(13)~~ (12) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.
- 2172 [~~(14)~~ (13) "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.
- 2174 [~~(15)~~ (14) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.
- 2176 [~~(16)~~ (15) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and 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, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

## SB0100 compared with SB0100S01

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

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

2085 (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust are considered nontestamentary, and this [eode] title does not invalidate the instrument or any provision:

2090 (a) that money or other benefits previously due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

2094 (b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

2096 (c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

2099 (2) Nothing in this section limits the rights of creditors under other laws of this state.

2100 (3)

. (a) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor.

2106 (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.

2108 (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.

2111 (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.

2213 Section 53. Section **75A-1-101** is amended to read:

2214 **75A-1-101. Definitions for title.**

[Reserved.] As used in this title:



## SB0100 compared with SB0100S01

- 2216 (1) "Conservator" means the same as that term is defined in Section 75-1-201.
- 2217 (2) "Descendant" means the same as that term is defined in Section 75-1-201.
- 2218 (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 2220 (4) "Estate" means, except as provided in Section 75A-5-102, the same as that term is defined in Section 75-1-201.
- 2222 (5) "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable fiduciary standards.
- 2224 (6) "Guardian" means the same as that term is defined in Section 75-1-201.
- 2225 (7) "Person" means the same as that term is defined in Section 75-1-201.
- 2226 (8) "Personal representative" means the same as that term is defined in Section 75-1-201.
- 2227 (9) "Property" means the same as that term is defined in Section 75-1-201.
- 2228 (10) "Record" means the same as that term is defined in Section 75-1-201.
- 2229 (11) "Sign" means the same as that term is defined in Section 75-1-201.
- 2230 (12) "State" means the same as that term is defined in Section 75-1-201.
- 2231 (13) "Trust" means, except as provided in Section 75A-5-102, the same as that term is defined in Section 75B-1-101.
- 2233 (14) "Will" means the same as that term is defined in Section 75-1-201.

2234 Section 54. Section **75A-1-201** is amended to read:

2235 **75A-1-201. Definitions for part.**

As used in this part:

- 2117 (1) "Fiduciary" means:
- 2118 (a) a trustee under any trust, expressed, implied, resulting or constructive;
- 2119 (b) an executor;
- 2120 (c) an administrator;
- 2121 (d) a guardian;
- 2122 (e) a conservator;
- 2123 (f) a curator;
- 2124 (g) a receiver;
- 2125 (h) a trustee in bankruptcy;
- 2126 (i) an assignee for the benefit of creditors;

## SB0100 compared with SB0100S01

- 2127 (j) a partner;
- 2128 (k) an agent;
- 2129 (l) an officer of a corporation, public or private;
- 2130 (m) a public officer; or
- 2131 ~~[(nn)]~~ (n) any other person acting in a fiduciary capacity for any person, trust, or estate.
- 2132 ~~[(2) "Good faith" means something is in fact done honestly regardless of whether it is done negligently or not.]~~
- 2134 ~~{(2)} "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable fiduciary standards.}~~
- 2136 ~~[(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.**
- As used in this chapter:
- 2140 (1)
- (a) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.
- 2142 (b) "Agent" includes an original agent, coagent, successor agent, and person to which an agent's authority is delegated.
- 2144 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.
- 2145 (3) "Beneficiary designation" means the same as that term is defined in Section 75-1-201.
- 2146 (4) "Child" means the same as that term is defined in Section 75-1-201.
- 2147 (5) "Claims" means the same as that term is defined in Section 75-1-201.
- 2148 ~~[(6) "Conservator" means the same as that term is defined in Section 75-1-201.]~~
- 2149 ~~[(7) "Descendant" means the same as that term is defined in Section 75-1-201.]~~
- 2150 ~~[(8)]~~ (6) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.
- 2152 ~~[(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.]~~
- 2154 ~~[(10) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 2155 ~~[(11)]~~ (7) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 2156 ~~[(12) "Good faith" means honesty in fact.]~~

## SB0100 compared with SB0100S01

- 2157 ~~{(12)}~~ "Good faith" means the same as that term is defined in Section 75A-1-201.
- 2158 ~~[(13) "Guardian" means the same as that term is defined in Section 75-1-201.]~~
- 2159 ~~[(14)]~~ (8) "Incapacity" means the inability of an individual to manage property or business affairs because the individual:
- 2161 (a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
- 2163 (b) is:
- 2164 (i) missing;
- 2165 (ii) detained, including incarcerated in a penal system; or
- 2166 (iii) outside the United States and unable to return.
- 2167 ~~[(15)]~~ (9) "Lease" means the same as that term is defined in Section 75-1-201.
- 2168 ~~[(16)]~~ (10) "Mortgage" means the same as that term is defined in Section 75-1-201.
- 2169 ~~[(17)]~~ (11) "Organization" means the same as that term is defined in Section 75-1-201.
- 2170 ~~[(18) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.]~~
- 2174 ~~{(18)}~~ "Person" means the same as that term is defined in Section 75-1-201.
- 2175 ~~[(19) "Personal representative" means the same as that term is defined in Section 75-1-201.]~~
- 2176 ~~[(20)]~~ (12) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.
- 2178 ~~[(21)]~~ (13)
- . (a) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate.
- 2182 (b) "Presently exercisable general power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.
- 2187 (c) "Presently exercisable general power of appointment" does not include a power exercisable in a fiduciary capacity or only by will.

## SB0100 compared with SB0100S01

- 2189 ~~[(22)]~~ (14) "Principal" means an individual who grants authority to an agent in a power of attorney.
- 2191 ~~[(23) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.]~~
- 2193 ~~[(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.]~~
- 2195 ~~{(23)}~~ {"Property" means the same as that term is defined in Section 75-1-201.}
- 2196 ~~{(24)}~~ "Record" means the same as that term is defined in Section 75-1-201.}
- 2197 ~~[(25)]~~ (15) "Security" means the same as that term is defined in Section 75-1-201.
- 2198 ~~[(26) "Sign" means, with present intent to authenticate or adopt a record:]~~
- 2199 ~~[(a) to execute or adopt a tangible symbol; or]~~
- 2200 ~~[(b) to attach to or logically associate with the record an electronic sound, symbol, or process.]~~
- 2201 ~~[(27) "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.]~~
- 2204 ~~{(26)}~~ {"Sign" means the same as that term is defined in Section 75-1-201.}
- 2205 ~~{(27)}~~ "State" means the same as that term is defined in Section 75-1-201.}
- 2206 ~~[(28)]~~ (16)
- . (a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner.
- 2209 (b) "Stocks and bonds" does not include commodity futures contracts and call or put options on stocks or stock indexes.
- 2211 ~~[(29) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 2212 ~~[(30)]~~ (17) "Trustee" means the same as that term is defined in Section ~~[75-1-201]~~ [75B-1-101].
- 2213 ~~[(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.**
- 2216 (1) As used in this section, "acknowledged" means the same as that term is defined in Section 75A-2-119.
- 2218 (2) Except as otherwise provided in Subsection (3):
- 2219 (a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under Subsection 75A-2-119(4) no later than seven business days after presentation of the power of attorney for acceptance;

## SB0100 compared with SB0100S01

- 2223 (b) if a person requests a certification, a translation, or an opinion of counsel under 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
- 2227 (c) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.
- 2229 (3) A person is not required to accept an acknowledged power of attorney if:
- 2230 (a) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- 2232 (b) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
- 2234 (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;
- 2236 (d) a request for a certification, a translation, or an opinion of counsel under Subsection 75A-2-119(4) is refused;
- 2238 (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
- 2242 (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.
- 2246 (4) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
- 2248 (a) a court order mandating acceptance of the power of attorney; and
- 2249 (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.
- 2252 (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.
- 2370 Section 57. Section **75A-3-101** is amended to read:
- 2371 **75A-3-101. Definitions for chapter.**

## SB0100 compared with SB0100S01

As used in this chapter:

- 2258 (1) "Adult" means an individual who is:
- 2259 (a) at least 18 years old; or
- 2260 (b) an emancipated minor.
- 2261 (2) "Advance health care directive":
- 2262 (a) includes:
- 2263 (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or
- 2265 (ii) an expression of preferences about health care decisions;
- 2266 (b) may take one of the following forms:
- 2267 (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or
- 2269 (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and
- 2271 (c) does not include an order for life sustaining treatment.
- 2272 (3) "Agent" means an adult designated in an advance health care directive to make health care decisions for the declarant.
- 2274 (4) "APRN" means an individual who is:
- 2275 (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(e);
- 2277 (b) an independent practitioner; and
- 2278 (c) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.
- 2280 (5) "Best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from the treatment, taking into account:
- 2282 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the individual;
- 2284 (b) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of treatment;
- 2286 (c) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to humiliation and dependency;
- 2290 (d) the effect of the treatment on the life expectancy of the individual;
- 2291 (e) the prognosis of the individual for recovery with and without the treatment;

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- 2292 (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment;  
and
- 2294 (g) the religious beliefs and basic values of the individual receiving treatment, to the extent these may assist the decision maker in determining the best interest.
- 2296 (6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular individual as agent.
- 2298 ~~[(7) "Child" means the same as that term is defined in Section 75-1-201.]~~
- 2299 ~~[(8)]~~ (7) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.
- 2301 ~~[(9)]~~ (8) "Default surrogate" means the adult who may make decisions for an individual when either:
- 2303 (a) an agent or guardian has not been appointed; or
- 2304 (b) an agent is not able, available, or willing to make decisions for an adult.
- 2305 ~~[(10)]~~ (9) "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.
- 2307 ~~[(11) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 2308 ~~[(12)]~~ (10) "Generally accepted health care standards":
- 2309 (a) is defined only for the purpose of:
- 2310 (i) this chapter and does not define the standard of care for any other purpose under Utah law; and
- 2312 (ii) enabling health care providers to interpret the statutory form set forth in Section 75A-3-303; and
- 2314 (b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:
- 2316 (i) will not prevent or reduce the deterioration in the health or functional status of an individual;
- 2318 (ii) will not prevent the impending death of an individual; or
- 2319 (iii) will impose more burden on the individual than any expected benefit to the individual.
- 2321 ~~[(13) "Guardian" means the same as that term is defined in Section 75-1-201.]~~
- 2322 ~~[(14)]~~ (11) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- 2324 ~~[(15)]~~ (12)
- . (a) "Health care decision"[;]
- 2325 [(a)] means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider[;] .

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- 2327 (b) "Health care decision" includes:
- 2328 (i) selection and discharge of a health care provider and a health care facility;
- 2329 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and
- 2331 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care~~[; and]~~ .
- 2333 (c) "Health care decision" does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision.
- 2335 ~~[(16)]~~ (13) "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including:
- 2337 (a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;
- 2339 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and
- 2341 (c) the ability to communicate a decision.
- 2342 ~~[(17)]~~ (14) "Health care facility" means:
- 2343 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and
- 2345 (b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.
- 2347 ~~[(18)]~~ (15) "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider.
- 2350 ~~[(19)]~~ (16) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 2351 ~~[(20)]~~ (17) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 2352 ~~[(21)]~~ (18)
- . (a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.
- 2355 (b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable.
- 2357 ~~[(22)]~~ (19) "Minor" means an individual who:



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- 2358 (a) is under 18 years old; and
- 2359 (b) is not an emancipated minor.
- 2360 ~~[(23)]~~ (20) "Order for life sustaining treatment" means an order related to life sustaining treatment, on a form designated by the Department of Health and Human Services under Section [75-3-106] 75A-3-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates.
- 2365 ~~[(24)]~~ (21) "Parent" means the same as that term is defined in Section 75-1-201.
- 2366 ~~[(25) "Personal representative" means the same as that term is defined in Section 75-1-201.]~~
- 2367 ~~[(26)]~~ (22) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.
- 2370 ~~[(27)]~~ (23) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
- 2372 ~~[(28)]~~ (24) "Reasonably available" means:
- 2373 (a) readily able to be contacted without undue effort; and
- 2374 (b) willing and able to act in a timely manner considering the urgency of the circumstances.
- 2376 ~~[(29) "State" means the same as that term is defined in Section 75-1-201.]~~
- 2377 ~~[(30)]~~ (25) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:
- 2380 (a) specific preferences expressed by the adult:
- 2381 (i) when the adult had the capacity to make health care decisions; and
- 2382 (ii) at the time the decision is being made;
- 2383 (b) the surrogate's understanding of the adult's health care preferences;
- 2384 (c) the surrogate's understanding of what the adult would have wanted under the circumstances; and
- 2386 (d) to the extent that the preferences described in Subsections ~~[(30)(a)]~~ (25)(a) through (c) are unknown, the best interest of the adult.
- 2388 ~~[(31)]~~ (26) "Surrogate" means a health care decision maker who is:
- 2389 (a) an appointed agent;
- 2390 (b) a default surrogate under the provisions of Section 75A-3-203; or
- 2391 (c) a guardian.

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- 2392 ~~[(32) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 2393 ~~[(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.**
- As used in this chapter:
- 2397 (1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.
- 2399 (2) "Appointive property" means the property or property interest subject to a power of appointment.
- 2401 (3)
- . (a) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause.
- 2403 (b) "Blanket-exercise clause" includes a clause that:
- 2404 (i) expressly uses the words "any power" in exercising any power of appointment the powerholder has;
- 2406 (ii) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
- 2408 (iii) disposes of all property subject to disposition by the powerholder.
- 2409 ~~[(4) "Descendant" means the same as that term is defined in Section 75-1-201.]~~
- 2410 ~~[(5)]~~ (4) "Donor" means a person that creates a power of appointment.
- 2411 ~~[(6) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 2412 ~~[(7)]~~ (5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.
- 2415 ~~[(8)]~~ (6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.
- 2418 ~~[(9)]~~ (7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
- 2419 ~~[(10)]~~ (8) "Impermissible appointee" means a person that is not a permissible appointee.
- 2420 ~~[(11)]~~ (9) "Instrument" means a record.
- 2421 ~~[(12)]~~ (10)
- . (a) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.
- 2423

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- (b) "Nongeneral power of appointment" includes a special power of appointment, a limited power of appointment, or similar terminology that is used in an instrument creating a power that does not grant powers making it a general power of appointment.
- 2427 ~~[(13)]~~ (11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.
- 2429 ~~[(14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.]~~
- 2432 ~~{(14)}~~ "Person" means the same as that term is defined in Section 75-1-201.
- 2433 ~~[(15)]~~ (12) "Powerholder" means a person in whom a donor creates a power of appointment.
- 2434 ~~[(16)]~~ (13)
- . (a) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of appointment over, the appointive property.
- 2437 (b) "Power of appointment" does not include a power of attorney.
- 2438 ~~[(17)]~~ (14)
- . (a) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at a relevant time.
- 2440 (b) "Presently exercisable power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:
- 2443 (i) the occurrence of the specified event;
- 2444 (ii) the satisfaction of the ascertainable standard; or
- 2445 (iii) the passage of the specified time.
- 2446 (c) "Presently exercisable power of appointment" does not include a power exercisable only at the powerholder's death.
- 2448 ~~[(18) "Property" means the same as that term is defined in Section 75-1-201.]~~
- 2449 ~~[(19) "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.]~~
- 2451 ~~{(19)}~~ "Record" means the same as that term is defined in Section 75-1-201.
- 2452 ~~[(20)]~~ (15) "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

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- 2454 ~~[(21)]~~ (16) "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.
- 2457 ~~[(22)]~~ (17) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.
- 2460 ~~[(23) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 2461 ~~[(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.**
- 2464 (1) As used in this section[;] ,
- 2465 [(a) "Residuary"] "residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.
- 2467 [(b) "Will" includes a codicil and a testamentary instrument that revises another will.]
- 2468 (2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:
- 2471 (a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;
- 2473 (b) the power is a general power exercisable in favor of the powerholder's estate;
- 2474 (c) there is no gift-in-default clause or the clause is ineffective; and
- 2475 (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.**
- As used in this chapter:
- 2479 (1)
- . (a) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months.
- 2481 (b) "Accounting period" includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months that begins when an income interest begins or ends when an income interest ends.
- 2484 (2)
- .

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- (a) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by the financial assets' terms convert into cash within a finite time.
- 2487 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security.
- 2489 (c) "Asset-backed security" does not include an asset to which Section 75A-5-401, 75A-5-409, or 75A-5-414 applies.
- 2491 (3) "Beneficiary" includes:
- 2492 (a) for a trust:
- 2493 (i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;
- 2495 (ii) a remainder beneficiary; and
- 2496 (iii) any other successor beneficiary;
- 2497 (b) for an estate, an heir and devisee; and
- 2498 (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.
- 2500 (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).
- 2502 (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.
- 2504 (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.
- 2508 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.
- 2509 (7)
- . (a) "Estate" means a decedent's estate.
- 2510 (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.
- 2512 (8) "Fiduciary" includes:
- 2513

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- (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;
- 2516 (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
- 2519 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the trust and applicable law.
- 2521 (9)
- . (a) "Income" means money or other property a fiduciary receives as current return from principal.
- 2523 (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.
- 2525 (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.
- 2528 (b) "Income interest" includes the right of a current beneficiary to use property held by a fiduciary.
- 2530 (11) "Independent person" means a person that is not:
- 2531 (a) for a trust:
- 2532 (i) a qualified beneficiary as determined under Section ~~[75-7-103]~~ 75B-2-103;
- 2533 (ii) a settlor of the trust; or
- 2534 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;
- 2536 (b) for an estate, a beneficiary;
- 2537 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection (11)(a) or (b);
- 2539 (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
- 2541 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).
- 2542 (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.
- 2544 (13)
- . (a) "Net income" means:
- 2545

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- (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
- 2549 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount determined under Part 3, Unitrust.
- 2551 (b) "Net income" includes an adjustment from principal to income under Section 75A-5-203.
- 2553 (c) "Net income" does not include an adjustment from income to principal under Section 75A-5-203.
- 2555 ~~[(14) "Person" means:]~~
- 2556 ~~[(a) an individual;]~~
- 2557 ~~[(b) an estate;]~~
- 2558 ~~[(c) a trust;]~~
- 2559 ~~[(d) a business or nonprofit entity;]~~
- 2560 ~~[(e) a public corporation, government or governmental subdivision, agency, or instrumentality; or]~~
- 2562 ~~[(f) any other legal entity.]~~
- 2563 ~~[(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.]~~
- 2566 ~~{(14)} {"Person" means the same as that term is defined in Section 75-1-201.}~~
- 2567 ~~{(15)} {"Personal representative" means the same as that term is defined in Section 75-1-201.}~~
- 2568 ~~[(16)]~~ (14) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.
- 2570 ~~[(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.]~~
- 2572 ~~{(17)} {"Property" means the same as that term is defined in Section 75-1-201.}~~
- 2573 ~~{(18)} {"Record" means the same as that term is defined in Section 75-1-201.}~~
- 2574 ~~[(18)]~~ ~~{(19)}~~ (15) "Settlor" means the same as that term is defined in Section [75-7-103] ~~{75B-2-103}~~ 75B-1-101.
- 2575 ~~[(19)]~~ ~~{(20)}~~ (16) "Special tax benefit" means:
- 2576 (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;
- 2579

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- (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;
- 2582 (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;
- 2585 (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:
- 2588 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
- 2590 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust; or
- 2592 (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:
- 2594 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
- 2596 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust.
- 2598 [(20)] ~~{(21)}~~ (17) "Successive interest" means the interest of a successor beneficiary.
- 2599 [(21)] ~~{(22)}~~ (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.
- 2601 [(22)] ~~{(23)}~~ (19) "Terms of a trust" means:
- 2602 (a) except as otherwise provided in Subsection [(22)(b);] ~~{(23)(b)}~~ (19)(b), the manifestation of the settlor's intent regarding a trust's provisions as:
- 2604 (i) expressed in the trust instrument; or
- 2605 (ii) established by other evidence that would be admissible in a judicial proceeding;
- 2606 (b) the trust's provisions as established, determined, or amended by:
- 2607 (i) a trustee or trust director in accordance with applicable law;
- 2608 (ii) a court order; or
- 2609 (iii) a nonjudicial settlement agreement under Section [75-7-110] 75B-2-110;



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- 2610 (c) for an estate, a will; or
- 2611 (d) for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.
- 2613 [(23)] {(24)} (20)
- . (a) "Trust" includes:
- 2614 (i) an express trust, private or charitable, with additions to the trust, wherever and however created;  
and
- 2616 (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.
- 2618 (b) "Trust" does not include:
- 2619 (i) a constructive trust;
- 2620 (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
- 2625 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.
- 2627 [(24)] {(25)} (21)
- . (a) "Trustee" means a person, other than a personal representative, that owns or holds property for the  
benefit of a beneficiary.
- 2629 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed or confirmed by a  
court.
- 2631 [(25)] {(26)}
- . (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.~~
- 2634 ~~[(b) "Will" includes a codicil or other amendment to a testamentary instrument.]~~
- 2744 Section 61. Section **75A-5-202** is amended to read:
- 2745 **75A-5-202. Judicial review of exercise of discretionary power -- Request for instruction.**
- 2638 (1) In this section, "fiduciary decision" means:
- 2639 (a) a fiduciary's allocation between income and principal or other determination regarding income and  
principal required or authorized by the terms of the trust or this chapter;
- 2642 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income and principal  
granted by the terms of the trust or this chapter, including the power to:

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- 2644 (i) adjust under Section 75A-5-203;
- 2645 (ii) convert an income trust to a unitrust under Subsection 75A-5-303(1)(a);
- 2646 (iii) change the percentage or method used to calculate a unitrust amount under Subsection  
75A-5-303(1)(b); or
- 2648 (iv) convert a unitrust to an income trust under Subsection 75A-5-303(1)(c); or
- 2649 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).
- 2650 (2) The court may not order a fiduciary to change a fiduciary decision, unless the court determines that  
the fiduciary decision was an abuse of the fiduciary's discretion.
- 2652 (3)
- . (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion,  
the court may order a remedy authorized by law, including a remedy authorized in Section  
~~[75-7-1001]~~ 75B-2-1001.
- 2655 (b) To place the beneficiaries in the positions that the beneficiaries would have occupied if there had not  
been an abuse of the fiduciary's discretion, the court may order:
- 2657 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section 75A-5-203;
- 2659 (ii) the fiduciary to exercise or refrain from exercising the power to:
- 2660 (A) convert an income trust to a unitrust under Subsection 75A-5-303(1)(a);
- 2661 (B) change the percentage or method used to calculate a unitrust amount under Subsection  
75A-5-303(1)(b); or
- 2663 (C) convert a unitrust to an income trust under Subsection 75A-5-303(1)(c);
- 2664 (iii) the fiduciary to distribute an amount to a beneficiary;
- 2665 (iv) a beneficiary to return some or all of a distribution; or
- 2666 (v) the fiduciary to withhold an amount from one or more future distributions to a beneficiary.
- 2668 (4)
- . (a) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary  
decision will result in an abuse of the fiduciary's discretion.
- 2670 (b) A beneficiary that opposes the proposed decision has the burden to establish that the proposed  
decision will result in an abuse of the fiduciary's discretion if the petition:
- 2672 (i) describes the proposed decision;
- 2673 (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

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- 2675 (iii) explains how the beneficiary will be affected by the proposed decision.
- 2785 Section 62. Section **75A-5-203** is amended to read:
- 2786 **75A-5-203. Fiduciary's power to adjust.**
- 2678 (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.
- 2682 (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.
- 2684 (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.
- 2686 (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.
- 2690 (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:
- 2693 (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;
- 2697 (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;
- 2700 (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;
- 2703 (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;
- 2705 (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 purposes;
- 2708 (f) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

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- 2710 (g) the fiduciary is not an independent person;
- 2711 (h) the trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or
- 2715 (i) the trust is a unitrust under Part 3, Unitrust.
- 2716 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:
- 2717 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise the power to adjust, unless the exercise of the power to adjust by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or
- 2721 (b)
- . (i) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply:
- 2722 (A) except as otherwise provided in Subsection (6)(b)(ii)(A), the fiduciary may appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply;
- 2724 (B) except as otherwise provided in Subsection (6)(b)(ii)(B), the appointed co-fiduciary may exercise the power to adjust under Subsection (1); and
- 2726 (C) the appointed co-fiduciary may be a special fiduciary with limited powers.
- 2727 (ii)
- . (A) If the appointment of a co-fiduciary is not permitted by the terms of the trust or by a provision of law outside this chapter, a fiduciary may not appoint a co-fiduciary.
- 2730 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the terms of the trust or by a provision of law outside this chapter, the co-fiduciary may not exercise the power to adjust under Subsection (1).
- 2733 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the power to adjust will or may:
- 2736 (a) cause a result described in Subsections (5)(a) through (f) or (h); or
- 2737 (b) deprive the trust of a tax benefit or impose a tax burden not described in Subsections (5)(a) through (f).
- 2739 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to adjust under Subsection (1):
- 2741 (a) must be in a record;
- 2742

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- (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:
- 2744 (i) from income to principal;
- 2745 (ii) from principal to income;
- 2746 (iii) for specified property; or
- 2747 (iv) in specified circumstances;
- 2748 (c) for a delegation, may be modified by a redelegation under this subsection by the co-fiduciary to which the delegation is made; and
- 2750 (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.
- 2753 (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).
- 2756 (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.
- 2759 (11) A description of the exercise of the power to adjust under Subsection (1) shall be:
- 2760 (a) included in a report, if any, sent to beneficiaries under Subsection [75-7-811(3)] 75B-2-811(3); or
- 2762 (b) communicated at least annually to the qualified beneficiaries determined under Subsection [75-7-103(1)(h)] {75B-2-103(32)} 75B-2-103(8).
- 2873 Section 63. Section **75A-5-303** is amended to read:
- 2874 **75A-5-303. Authority of fiduciary.**
- 2766 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6), may:
- 2767 (a) convert an income trust to a unitrust if the fiduciary adopts, in a record, a unitrust policy for the trust providing:
- 2769 (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
- 2771 (ii) the percentage and method used to calculate the unitrust amount;
- 2772

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- (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
- 2776 (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.
- 2779 (2) A fiduciary may take an action under Subsection (1) if:
- 2780 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;
- 2782 (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;
- 2784 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of the trust which is:
- 2786 (i) if an individual, living; or
- 2787 (ii) if not an individual, in existence;
- 2788 (d) at least one member of each class of the qualified beneficiaries determined under Subsection [75-7-103(1)(h)] {~~75B-2-103(32)~~} 75B-2-103(8) receiving the notice under Subsection (2)(b) is:
- 2791 (i) if an individual, legally competent;
- 2792 (ii) if not an individual, in existence; or
- 2793 (iii) represented in the manner provided in Subsection 75A-5-304(2); and
- 2794 (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.
- 2797 (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:
- 2800 (i) require the fiduciary to take the proposed action;
- 2801 (ii) require the fiduciary to take the proposed action with modifications; or
- 2802 (iii) prevent the proposed action.
- 2803 (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:
- 2805 (i) consented under Subsection 75A-5-304(3); or

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- 2806 (ii) objected under Subsection 75A-5-304(4)(d).
- 2807 (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.
- 2811 (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.
- 2815 (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).
- 2819 (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:
- 2821 (a) release or delegate the power to convert an income trust to a unitrust under Subsection (1)(a);
- 2823 (b) change the percentage or method used to calculate a unitrust amount under Subsection (1)(b); or
- 2825 (c) convert a unitrust to an income trust under Subsection (1)(c).
- 2935 Section 64. Section **75A-5-304** is amended to read:
- 2936 **75A-5-304. Notice.**
- 2828 (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:
- 2830 (a) the qualified beneficiaries determined under Subsection ~~[75-7-103(1)(h)]~~ {75B-2-103(32)} 75B-2-103(8);
- 2832 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust Act, as trust director of the trust; and
- 2834 (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).
- 2838 (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.
- 2840 (3)
- . (a) A person may consent in a record at any time to action proposed under Subsection 75A-5-303(2)(b).
- 2842

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- (b) If a person required to receive a notice under Subsection (1) consents under Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the person the notice.
- 2845 (4) A notice required by Subsection 75A-5-303(2)(b) shall include:
- 2846 (a) the action proposed under Subsection 75A-5-303(2)(b);
- 2847 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under Subsection 75A-5-303(1)(a);
- 2849 (c) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under Subsection 75A-5-303(1)(b);
- 2852 (d) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;
- 2855 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d), which shall be at least 30 days after the date the notice is sent;
- 2857 (f) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;
- 2859 (g) the name and contact information of the fiduciary; and
- 2860 (h) the name and contact information of a person that may be contacted for additional information.
- 2971 Section 65. Section **75A-6-102** is amended to read:
- 2972 **75A-6-102. Definitions for chapter.**
- As used in this chapter:
- 2865 (1) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- 2868 [~~(2) "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.~~]
- 2870 (2) "Agent" means the same as that term is defined in Section 75A-2-102.
- 2871 (3) "Carries" means engages in the transmission of an electronic communication.
- 2872 (4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- 2875 [~~(5)~~]



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- . (a) "Conservator" means a person appointed by a court to manage the estate of a living individual.]
- 2877 [(b) "Conservator" includes a limited conservator.]
- 2878 ~~{(5)}~~ ["Conservator" means the same as that term is defined in Section 75-1-201.](#)}]
- 2879 ~~[(6)]~~ (5) "Content of an electronic communication" means information concerning the substance or meaning of the communication that:
- 2881 (a) has been sent or received by a user;
- 2882 (b) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
- 2885 (c) is not readily accessible to the public.
- 2886 ~~[(7)]~~ (6) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
- 2888 ~~[(8)]~~ (7) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- 2890 ~~[(9)]~~ (8) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.
- 2892 ~~[(10)]~~ (9)
- . (a) "Digital asset" means an electronic record in which an individual has a right or interest.
- 2894 (b) "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- 2896 ~~[(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.]~~
- 2898 ~~{(11)}~~ ["Electronic" means the same as that term is defined in Section 75A-2-102.](#)}]
- 2899 ~~[(12)]~~ (10) "Electronic communication" has the same meaning as the definition in 18 U.S.C. Sec. 2510(12).
- 2901 ~~[(13)]~~ (11) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.
- 2903 ~~[(14) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 2904 ~~[(15)]~~ (12) "Fiduciary" means an original, additional, or successor personal representative, conservator, guardian, agent, or trustee.
- 2906 ~~[(16)~~
- . (a) "Guardian" means a person appointed by a court to manage the affairs of a living individual.]
- 2908 [(b) "Guardian" includes a limited guardian.]

## SB0100 compared with SB0100S01

- 2909 ~~{(16)}~~ "Guardian" means the same as that term is defined in Section 75-1-201.
- 2910 ~~[(17)]~~ (13) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- 2912 ~~[(18)]~~ (14) "Online tool" means an electronic service provided by a custodian that allows the 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.
- 2916 ~~[(19) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.]~~
- 2918 ~~[(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.]~~
- 2921 ~~[(21) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.]~~
- 2923 ~~[(22) "Principal" means an individual who grants authority to an agent in a power of attorney.]~~
- 2924 ~~{(19)}~~ (15) ~~{ "Person" }~~ "Power of attorney" means the same as that term is defined in Section 75-1-201 75A-2-102.
- 2925 ~~{(20)}~~ (16) ~~{ "Personal representative" }~~ "Principal" means the same as that term is defined in Section 75-1-201 75A-2-102.
- 2926 ~~{(21)}~~ { "Power of attorney" means the same as that term is defined in Section 75A-2-102. }
- 2927 ~~{(22)}~~ "Principal" means the same as that term is defined in Section 75A-2-102. }
- 2928 ~~[(23)]~~ (17)
- 2929 . (a) "Protected person" means an individual for whom a conservator or guardian has been appointed.
- 2930 (b) "Protected person" includes an individual for whom an application for the appointment of a conservator or guardian is pending.
- 2932 ~~[(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.]~~
- 2934 ~~{(24)}~~ "Record" means the same as that term is defined in Section 75-1-201.
- 2935 ~~[(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).
- 2938

## SB0100 compared with SB0100S01

- ~~[(26)]~~ (19) "Successor personal representative" means the same as that term is defined in Section 75-1-201.
- 2940 ~~[(27)]~~ (20) "Terms of service agreement" means an agreement that controls the relationship between a user and a custodian.
- 2942 ~~[(28) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 2943 ~~[(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.
- 2945 (b) "Trustee" includes a successor trustee.
- 2946 ~~[(30)]~~ (22) "User" means a person that has an account with a custodian.
- 2947 ~~{(31)}~~ "Will" means the same as that term is defined in Section 75-1-201.
- 2948 ~~[(31) "Will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.]~~
- 3053 Section 66. Section **75A-6-112** is amended to read:
- 3054 **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:
- 2958 (1) a written request for disclosure in physical or electronic form;
- 2959 (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;
- 2962 (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
- 2964 (4) if requested by the custodian:
- 2965 (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
- 2967 (b) evidence linking the account to the trust.

## SB0100 compared with SB0100S01

3071 Section 67. Section **75A-6-113** is amended to read:

3072 **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:

2977 (1) a written request for disclosure in physical or electronic form;

2978 (2) a certified copy of the trust instrument or a certification of the trust under Section  
[75-7-1013] 75B-2-1013;

2980 (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

2982 (4) if requested by the custodian:

2983 (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

2985 (b) evidence linking the account to the trust.

3089 Section 68. Section **75A-7-102** is amended to read:

3090 **75A-7-102. Definitions for chapter.**

As used in this chapter:

2989 (1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

2991 (2) "Claim of beneficial interest" includes:

2992 (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

2997 (b) a claim that the transfer would be in breach of fiduciary duties.

2998 (3) "Corporation" means a private or public corporation, association or trust issuing a security.

3000

## SB0100 compared with SB0100S01

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

3002 [~~(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.~~]

3005 ~~{(5) "Person" means the same as that term is defined in Section 75-1-201.}~~

3006 ~~[(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.~~

3008 ~~[(7)] (6) "Transfer" means a change on the books of a corporation in the registered ownership of a security.~~

3010 ~~[(8)] (7) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.~~

3115 Section 69. Section **75A-8-102** is amended to read:

3116 **CHAPTER 8. UNIFORM TRANSFERS TO MINORS ACT**

3117 **75A-8-102. Definitions for chapter.**

As used in this chapter:

3015 (1) "Adult" means an individual who is 21 years old or older.

3016 (2) "Beneficiary" means the same as that term is defined in Section 75-1-201.

3017 (3) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

3018 (4) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the accounts of others.

3020 [~~(5) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.~~]

3023 ~~{(5) "Conservator" means the same as that term is defined in Section 75-1-201.}~~

3024 ~~[(6)] (5) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.~~

3026 ~~[(7)] (6) "Custodial property" means:~~

3027 (a) any interest in property transferred to a custodian under this chapter; and

3028 (b) the income from and proceeds of that interest in property.

3029 ~~[(8)] (7) "Custodian" means a person so designated under Section 75A-8-110 or a successor or substitute custodian designated under Section 75A-8-119.~~

## SB0100 compared with SB0100S01

- 3031 ~~[(9) "Estate" means the same as that term is defined in Section 75-1-201.]~~
- 3032 ~~[(10)]~~ (8) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 3033 ~~[(11)]~~ (9) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- 3035 ~~[(12) "Guardian" means the same as that term is defined in Section 75-1-201.]~~
- 3036 ~~[(13)]~~ (10) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 3037 ~~[(14)]~~ (11) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 3038 ~~[(15)]~~ (12) "Interested person" means the same as that term is defined in Section 75-1-201.
- 3039 ~~[(16)]~~ (13) "Legal representative" means an individual's personal representative or conservator.
- 3040 ~~[(17)]~~ (14) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- 3043 ~~[(18)]~~ (15) "Minor" means an individual who is under 21 years old.
- 3044 ~~[(19)]~~ (16) "Parent" means the same as that term is defined in Section 75-1-201.
- 3045 ~~[(20)]~~ (17) "Payor" means the same as that term is defined in Section 75-1-201.
- 3046 ~~[(21) "Person" means an individual, corporation, organization as defined in Section 75-1-201, or other legal entity.]~~
- 3048 ~~[(22) "Personal representative" means an executor, administrator, successor personal representative as defined in Section 75-1-201, or special administrator as defined in Section 75-1-201, of a decedent's estate or a person legally authorized to perform substantially the same functions.]~~
- 3052 {(21)} {"["Person" means the same as that term is defined in Section 75-1-201.](#)}
- 3053 {(22)} {"["Personal representative" means the same as that term is defined in Section 75-1-201.](#)}
- 3054 ~~[(23)]~~ (18) "Petition" means the same as that term is defined in Section 75-1-201.
- 3055 ~~[(24) "Property" means the same as that term is defined in Section 75-1-201.]~~
- 3056 ~~[(25) "Record" means the same as that term is defined in Section 75-1-201.]~~
- 3057 ~~[(26)]~~ (19) "Security" means the same as that term is defined in Section 75-1-201.
- 3058 ~~[(27) "State" includes any state of the United States, the district of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.]~~
- 3061 {(27)} {"["State" means the same as that term is defined in Section 75-1-201.](#)}
- 3062 ~~[(28)]~~ (20) "Testator" means the same as that term is defined in Section 75-1-201.
- 3063 ~~[(29)]~~ (21) "Transfer" means a transaction that creates custodial property under Section ~~[75A-8-109]~~ [75A-8-110](#).

## SB0100 compared with SB0100S01

- 3065 ~~[(30)]~~ (22) "Transferor" means a person who makes a transfer under this chapter.
- 3066 ~~[(31) "Trust" means the same as that term is defined in Section 75-1-201.]~~
- 3067 ~~[(32)]~~ (23) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.
- 3069 ~~[(33)]~~ (24) "Trustee" means the same as that term is defined in Section 75-1-201.
- 3070 ~~[(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.**  
[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 property.
- 3180 (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose 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 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 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 term is defined in Section 75-1-102.

## SB0100 compared with SB0100S01

- 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 property to, a trust.
- 3215 (b) 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.
- 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 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 however created; or
- 3227 (iii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- 3229 (b) "Trust" does not include:



## SB0100 compared with SB0100S01

- 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 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, wages, profits, pensions, or employee benefits of any kind; or
- 3245 (xiv) any arrangement under which a person is nominee or escrowee for another person.
- 3247 (38) "Trustee" means an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.
- 3249 (39) "Trust instrument" means an instrument executed by the settlor that contains terms of 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.**
- As used in this part~~[(1)]~~,
- 3074 ~~[(1)]~~ "Income" means the same as that term is defined in Section-~~{ }~~ 75A-5-101~~{ }~~ 75A-5-102};
- 3075 ~~[(2)]~~ "Principal" means the same as that term is defined in Section-~~{ }~~ 75A-5-101~~{ }~~ 75A-5-102};
- 3076 ~~[(3)]~~ "Retirement" **retirement** trust" means a trust:
- 3077 ~~[(a)]~~ (1) created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement, or similar plan primarily for the benefit of an employee or the employee's family, appointee, or beneficiary;
- 3080 ~~[(b)]~~ (2) to which contributions are made by the employer or employee; and

## SB0100 compared with SB0100S01

3081 ~~[(e)]~~ (3) that is created for the purpose of distributing principal or income to the employee or 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.**

As used in this part:

3086 (1) "Creditor" means:

3087 (a) a creditor or other claimant of the settlor existing when the trust is created; or

3088 (b) a person who subsequently becomes a creditor, including whether or not reduced to judgment,  
liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,  
equitable, secured, or unsecured:

3091 (i) holding or seeking to enforce a judgment entered by a court or other body having adjudicative  
authority; or

3093 (ii) with a right to payment.

3094 (2) "Domestic support obligation" means:

3095 (a) a child support judgment or order;

3096 (b) a spousal support judgment or order; or

3097 (c) an unsatisfied claim arising from a property division in a divorce proceeding.

3098 (3) "Insolvent" means:

3099 (a) having generally ceased to pay debts in the ordinary course of business other than as a result of a  
bona fide dispute;

3101 (b) being unable to pay debts as they become due; or

3102 (c) being insolvent within the meaning of federal bankruptcy law.

3103 (4) "Paid and delivered" does not include the settlor's use or occupancy of real property or personal  
property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary  
authority under the trust instrument.

3106 (5) "Personal property" includes intangible and tangible personal property.

3107 ~~[(6) "Property" means real property, personal property, and interests in real or personal property.]~~

3109 ~~[(7) "Settlor" means a person who transfers property in trust.]~~

3110 ~~{(6)} {"Property" means the same as that term is defined in Section 75-1-201.}~~

3111 ~~{(7)} {"Settlor" means the same as that term is defined in Section 75B-2-103.}~~

3112

## SB0100 compared with SB0100S01

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

3114 ~~[(9) "Trust" means the same as that term is defined in Section 75-1-201.]~~

3115 ~~{(10) {"Trustee" means the same as that term is defined in Section 75B-2-103.}}~~

3295 Section 73. Section **75B-1-302** is amended to read:

3296 **75B-1-302. Asset protection trust.**

3118 (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:

3120 (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;

3122 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

3123 (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.

3126 (2) Notwithstanding Subsection (1), nothing in this section:

3127 (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

3129 (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.

3131 (3)

. (a) In order for Subsection (1) to apply, the conditions in this Subsection (3) shall be satisfied.

3133 (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).

3136 (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.

3139 (d) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.

3141 (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.

3144 (f)

## SB0100 compared with SB0100S01

- . (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.
- 3147 (ii) The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. Sec. 541(c)(2).
- 3150 (g) The settlor may not have the ability under the trust instrument, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor:
  - 3153 (i) to revoke, amend, or terminate all or any part of the trust; or
  - 3154 (ii) to withdraw any property from the trust, except that the settlor, without the approval or consent of any person, may be given the power, under the trust agreement, to substitute assets of substantially equivalent value.
- 3157 (h) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (5)(g).
- 3160 (i)
  - . (i) The trust instrument shall require that, at least 30 days before paying and delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a domestic support obligation against the settlor.
- 3163 (ii) The trust instrument shall require that the notice state the date the distribution will be paid and delivered and the amount of the distribution.
- 3165 (j) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under a domestic support obligation.
- 3167 (k) A transfer of assets to the trust may not render the settlor insolvent.
- 3168 (l) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.
- 3172 (m) Assets transferred to the trust may not be derived from unlawful activities.
- 3173 [~~(n)~~] (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn affidavit stating that at the time of the transfer of the assets to the trust:

## SB0100 compared with SB0100S01

- 3175 (i) the settlor has full right, title, and authority to transfer the assets to the trust;
- 3176 (ii) the transfer of the assets to the trust will not render the settlor insolvent;
- 3177 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;
- 3179 (iv) there is no pending or threatened court action against the settlor, except for a court action identified by the settlor on an attachment to the affidavit;
- 3181 (v) the settlor is not involved in an administrative proceeding that is reasonably expected to have a material adverse effect on the financial condition of the settlor, except an administrative proceeding identified on an attachment to the affidavit;
- 3184 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a domestic support obligation;
- 3186 (vii) the settlor does not contemplate filing for relief under the provisions of United States Code, Title 11, Bankruptcy; and
- 3188 (viii) the assets being transferred to the trust were not derived from unlawful activities.
- 3190 (4) Failure to satisfy the requirements of Subsection (3) shall result in the consequences described in this Subsection (4).
- 3192 (a) If any requirement of Subsections (3)(b) through (g) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (1).
- 3195 (b) If the trustee does not send the notice required under Subsection [~~(3)(g)~~], (3)(i) the court may authorize any person with a domestic support obligation against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:
- 3199 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or
- 3201 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.
- 3202 (c) If any requirement described in Subsections (3)(i) through (l) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (1).
- 3205 (d) If the requirement described in Subsection (3)(h) is not satisfied, the property transferred to the trust that does not satisfy the requirement does not have the benefit of the protections described in Subsection (1) with respect to any person with a domestic support obligation.
- 3209

## SB0100 compared with SB0100S01

- (e) A creditor of the settlor has the burden of proving that the requirement in Subsection (3)(i) or (j) is not satisfied by clear and convincing evidence.
- 3211 (5) The provisions of Subsection (1) may apply to a trust even if:
- 3212 (a) the settlor serves as a cotrustee or as an advisor to the trustee, except that the settlor may not determine whether a discretionary distribution will be made;
- 3214 (b) the settlor participates in a determination regarding whether a discretionary distribution is made to the settlor by:
- 3216 (i) requesting a distribution from the trust;
- 3217 (ii) consulting with the trustees regarding whether a discretionary distribution will be made;
- 3219 (iii) exercising a right to consent to or veto the distribution under a power described in Subsection (5) (e);
- 3221 (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
- 3224 (v) participating in an action authorizing a distribution if the other trustees can authorize the distribution without the settlor's participation.
- 3226 (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;
- 3229 (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;
- 3231 (e) the trust instrument gives the settlor the power to consent to or veto a distribution from the trust;
- 3233 (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;
- 3235 (g) the trust instrument gives the settlor the right to receive the following types of distributions:
- 3237 (i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;
- 3239 (ii) principal, subject to an ascertainable standard set forth in the trust;
- 3240 (iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. Sec. 664;
- 3242 (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);
- 3245

## SB0100 compared with SB0100S01

- (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;
- 3249 (vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. Sec. 2702; and
- 3251 (vii) income from a trust intended to qualify for the federal estate tax or gift tax marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 2523(f);
- 3253 (h) the trust instrument authorizes the settlor to use real or personal property owned by the trust; or
- 3255 (i) with respect to the property held in the trust, the settlor may:
  - 3256 (i) give a personal guarantee on a debt or obligation secured by the property;
  - 3257 (ii) make payments, directly or indirectly, on a debt or obligation secured by the property;
  - 3259 (iii) pay property taxes, casualty and liability insurance premiums, homeowner association dues, maintenance expenses, or other similar expenses on the property; or
- 3262 (iv) pay income tax on income attributable to the portion of property held in the trust, of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671 through 678, which payments will not be considered additional transfers to the trust for purposes of this section.
- 3266 (6)
  - . (a) If a trust instrument contains the provisions described in Subsections (3)(b) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding and abetting a fraudulent conveyance or another voidable transfer, participation in the trust transaction, or similar cause of action or claim for relief.
  - 3273 (b) For purposes of this Subsection (6), counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust.
  - 3277 (c) The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:
    - 3279 (i) the trust and the trust assets; and
    - 3280 (ii) the settlor, to the extent otherwise allowed in this section.
- 3281 (7)

## SB0100 compared with SB0100S01

- . (a) A cause of action or claim for relief under Subsection (3)(i) or (j) is a cause of action or claim for relief under Section 25-6-202 or 25-6-203.
- 3283 (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.
- 3286 (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:
- 3291 (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:
- 3293 (A) can demonstrate, by clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or
- 3295 (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
- 3299 (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
- 3308 (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.



## SB0100 compared with SB0100S01

- 3317 (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.
- 3321 (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.
- 3324 (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.
- 3327 (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.
- 3329 (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.
- 3332 (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).
- 3335 (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.
- 3338 (12) Nothing in this section alters rights vested or created under this section before May 14, 2019.
- 3519 Section 74. Section **74** is enacted to read:

3341

### CHAPTER 2. UNIFORM TRUST CODE

3342

#### Part 1. General Provisions

3522

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

Reserved.

3524

Section 75. Section **75B-2-102** is renumbered and amended to read:

## SB0100 compared with SB0100S01

3526 ~~[75-7-102]~~ **75B-2-102. Scope.**

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

3528 Section 76. Section **75B-2-103** is renumbered and amended to read:

3530 ~~[75-7-103]~~ **75B-2-103. Definitions.**

3532 [(1) In] As used in this chapter:

3533 ~~{(1) "Agent" means the same as that term is defined in Section 75-1-201.}~~

3534 [(a)] ~~{(2)}~~ (1) "Action," with respect to an act of a trustee, includes a failure to act.

3535 [(b)] ~~{(3)}~~ "Beneficiary" means a person that:

3536 [(i)] ~~{(a)}~~ has a present or future beneficial interest in a trust, vested or contingent; or

3537 [(ii)] ~~{(b)}~~ in a capacity other than that of trustee, holds a power of appointment over trust property.

3539 [(e)] ~~{(4)}~~ (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).

3361 ~~{(5) "Child" means, except as provided in Sections 75B-2-503 and 75B-2-504, the same as that term is defined in Section 75-1-201.}~~

3363 ~~{(6) "Claims" means the same as that term is defined in Section 75-1-201.}~~

3364 ~~{(7) "Conservator" means the same as that term is defined in Section 75-1-201.}~~

3365 ~~{(8) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.}~~

3367 ~~{(9) "Descendant" means the same as that term is defined in Section 75-1-201.}~~

3368 ~~{(10) "Devise" means the same as that term is defined in Section 75-1-201.}~~

3369 ~~{(11) "Distributee" means the same as that term is defined in Section 75-1-201.}~~

3370 [(d)] ~~{(12)}~~ (3) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

3372 ~~{(13) "Estate" means the same as that term is defined in Section 75-1-201.}~~

3373 ~~{(14) "Fiduciary" means the same as that term is defined in Section 75-1-201.}~~

3374 ~~{(15) "Governing instrument" means the same as that term is defined in Section 75-1-201.}~~

3375 ~~{(16) "Guardian" means the same as that term is defined in Section 75-1-201.}~~

3376 ~~{(17) "Incapacitated" means the same as that term is defined in Section 75-1-201.}~~

3377 [(e)] ~~{(18)}~~ (4) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

3379 [(f)] ~~{(19)}~~ (5) "Jurisdiction," with respect to a geographic area, includes a state or country.

3380 ~~{(20) "Lease" means the same as that term is defined in Section 75-1-201.}~~

## SB0100 compared with SB0100S01

- 3381 ~~{(21) "Minor" means an individual who is younger than 18 years old.}~~
- 3382 ~~{(22) "Mortgage" means the same as that term is defined in Section 75-1-201.}~~
- 3383 ~~{(23) "Organization" means the same as that term is defined in Section 75-1-201.}~~
- 3384 ~~{(24) "Parent" means the same as that term is defined in Section 75-1-201.}~~
- 3385 ~~{(25) "Person" means the same as that term is defined in Section 75-1-201.}~~
- 3386 ~~{(26) "Personal representative" means the same as that term is defined in Section 75-1-201.}~~
- 3387 ~~{(27) "Petition" means the same as that term is defined in Section 75-1-201.}~~
- 3388 [(g)] ~~{(28)}~~ (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.
- 3391 ~~{(29)}~~ (7) "Proceeding" means the same as that term is defined in Section 75-1-201.
- 3392 ~~{(30) {"Property" means the same as that term is defined in Section 75-1-201.}}~~
- 3393 ~~{(31) {"Protected person" means the same as that term is defined in Section 75-1-201.}}~~
- 3394 [(h)] ~~{(32)}~~ (8) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:
- 3396 [(i)] (a) is a current distributee or permissible distributee of trust income or principal; or
- 3397 [(ii)] (b) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- 3399 ~~{(33) "Record" means the same as that term is defined in Section 75-1-201.}~~
- 3400 [(i)] ~~{(34)}~~ (9) "Resident estate" or "resident trust" means:
- 3401 [(i)] (a) an estate of a decedent who at death was domiciled in this state;
- 3402 [(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
- 3404 [(iii)] (c) a trust administered in this state.
- 3405 [(j)] ~~{(35)}~~ (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.
- 3407 ~~{(36) "Security" means the same as that term is defined in Section 75-1-201.}~~
- 3408 ~~[(k)] { (37) }~~
- . ~~{(a) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust.}~~
- 3410

## SB0100 compared with SB0100S01

- {(b)} 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.}]
- 3413 {(38) "Sign" means the same as that term is defined in Section 75-1-201.}
- 3414 [(t)] {(39)} (11) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer or encumbrance of a beneficiary's interest.
- 3416 {(40) "State" means the same as that term is defined in Section 75-1-201.}
- 3417 {(41) "Successor" means a person, other than a creditor, that is entitled to property of a decedent under the decedent's will or Title 75, Utah Uniform Probate Code.}
- 3419 [(m)] {(42)} (12) "Terms of a trust" means:
- 3420 [(i)] (a) except as otherwise provided in Subsection [(1)(m)(ii)] {(42)(b)} (12)(b), the manifestation of the settlor's intent regarding a trust's provisions as:
- 3422 [(A)] (i) expressed in the trust instrument; or
- 3423 [(B)] (ii) established by other evidence that would be admissible in a judicial proceeding; or
- 3425 [(ii)] (b) the trust's provisions as established, determined, or amended by:
- 3426 [(A)] (i) a trustee or trust director in accordance with the applicable law;
- 3427 [(B)] (ii) court order; or
- 3428 [(C)] (iii) a nonjudicial settlement agreement under Section [75-7-110] 75B-2-110.
- 3429 {(43) "Testator" means the same as that term is defined in Section 75-1-201.}
- 3430 {(44)}
- . {(a) "Trust" means:}
- 3431 {(i) a health savings account, as defined in Section 223 of the Internal Revenue Code;}
- 3432 {(ii) an express trust, private or charitable, with additions thereto, wherever and however created;  
or}
- 3434 {(iii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.}
- 3436 {(b) "Trust" does not include:}
- 3437 {(i) a constructive trust;}
- 3438 {(ii) a resulting trust;}
- 3439 {(iii) a conservatorship;}
- 3440 {(iv) a personal representative;}

## SB0100 compared with SB0100S01

- 3441 ~~{(v) a trust account as defined in Title 75, Chapter 6, Nonprobate Transfers;}~~
- 3442 ~~{(vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors;}~~
- 3444 ~~{(vii) a business trust providing for certificates to be issued to beneficiaries;}~~
- 3445 ~~{(viii) a common trust fund;}~~
- 3446 ~~{(ix) a voting trust;}~~
- 3447 ~~{(x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;}~~
- 3448 ~~{(xi) a security arrangement;}~~
- 3449 ~~{(xii) a liquidation trust;}~~
- 3450 ~~{(xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or}~~
- 3452 ~~{(xiv) any arrangement under which a person is nominee or escrowee for another person.}~~
- 3454 ~~{(45) "Trustee" means an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.}~~
- 3456 [(n){ ~~{(46)}~~ } "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.]
- 3458 ~~{(47) "Ward" means the same as that term is defined in Section 75-1-201.}~~
- 3459 ~~{(48) "Will" means the same as that term is defined in Section 75-1-201.}~~
- 3460 [(2) Terms not specifically defined in this section have the meanings provided in Section 75-1-201.]
- 3581 Section 77. Section **75B-2-104** is renumbered and amended to read:
- 3583 ~~[75-7-104]~~ **75B-2-104. Knowledge.**
- 3465 (1) Subject to Subsection (2), a person has knowledge of a fact if the person:
- 3466 (a) has actual knowledge of [it] the fact;
- 3467 (b) has received a notice or notification of [it] the fact; or
- 3468 (c) from all the facts and circumstances known to the person at the time in question, has reason to know [it] the fact.
- 3470 (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.
- 3474

## SB0100 compared with SB0100S01

- (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.
- 3478 (c) Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.
- 3601 Section 78. Section **75B-2-105** is renumbered and amended to read:
- 3603 ~~[75-7-105]~~ **75B-2-105. Default and mandatory rules.**
- 3485 (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
- 3488 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any provision of this chapter except:
- 3490 (a) the requirements for creating a trust;
- 3491 (b) subject to Sections ~~[75-12-109, 75-12-111, and 75-12-112]~~ 75B-3-109, 75B-3-111, and 75B-3-112, the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- 3494 (c) the requirement that a trust and the terms of the trust be for the benefit of the trust's beneficiaries;
- 3496 (d) the power of the court to modify or terminate a trust under Sections ~~[75-7-410 through 75-7-416]~~ 75B-2-410 through 75B-2-416;
- 3498 (e) the effect of a spendthrift provision, ~~[Section 75B-1-302]~~ an asset protection trust described in Chapter 1, Part 3, Asset Protection Trust, and the rights of certain creditors and assignees to reach a trust as provided in Part 5, ~~[Creditor's Claims --]~~ Spendthrift and Discretionary Trusts;
- 3502 (f) the power of the court under Section ~~[75-7-702]~~ 75B-2-702 to require, dispense with, or modify or terminate a bond;
- 3504 (g) the effect of an exculpatory term under Section ~~[75-7-1008]~~ 75B-2-1008;
- 3505 (h) the rights under Sections ~~[75-7-1010 through 75-7-1013]~~ 75B-2-1010 through 75B-2-1013 of a person other than a trustee or beneficiary;
- 3507 (i) periods of limitation for commencing a judicial proceeding; and
- 3508 (j) the jurisdiction and venue requirements for an action involving a trust as described in Sections ~~[75-7-203 and 75-7-205]~~ 75B-2-203 and 75B-2-205.
- 3629 Section 79. Section **75B-2-106** is renumbered and amended to read:
- 3631 ~~[75-7-106]~~ **75B-2-106. Common law of trusts -- Principles of equity.**

## SB0100 compared with SB0100S01

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.

3634 Section 80. Section **75B-2-107** is renumbered and amended to read:

3636 ~~[75-7-107]~~**75B-2-107. Governing law.**

3518 (1) As used in this section:

3519 (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.

3521 (b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.

3523 (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.

3526 (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.

3529 (4) A trust shall be considered to be administered in this state if:

3530 (a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or

3532 (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.

3534 (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:

3536 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section 75B-1-302;

3538 (b) a provision that allows the trust to be perpetual; or

3539 (c) a provision that is not expressly prohibited by the law of this state.

3540 (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.

3543 (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).

## SB0100 compared with SB0100S01

- 3664 Section 81. Section **75B-2-108** is renumbered and amended to read:
- 3666 ~~[75-7-108]~~ **75B-2-108. Principal place of administration.**
- 3548 (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:
- 3551 (a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
- 3553 (b) all or part of the administration occurs in the designated jurisdiction.
- 3554 (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.
- 3556 (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.
- 3560 (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.
- 3563 (b) The notice of proposed transfer must include:
- 3564 ~~[(a)]~~ (i) the name of the jurisdiction to which the principal place of administration is to be transferred;
- 3566 ~~[(b)]~~ (ii) the address and telephone number at the new location at which the trustee can be contacted;
- 3568 ~~[(c)]~~ (iii) an explanation of the reasons for the proposed transfer;
- 3569 ~~[(d)]~~ (iv) the date on which the proposed transfer is anticipated to occur; and
- 3570 ~~[(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.
- 3573 (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.
- 3576 (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.
- 3699 Section 82. Section **75B-2-109** is renumbered and amended to read:
- 3701 ~~[75-7-109]~~ **75B-2-109. Methods and waiver of notice.**



## SB0100 compared with SB0100S01

- 3583 (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.
- 3586 (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.
- 3589 (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.
- 3591 (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.
- 3712 Section 83. Section **75B-2-110** is renumbered and amended to read:
- 3714 ~~[75-7-110]~~ **75B-2-110. Nonjudicial settlement agreements.**
- 3596 (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.
- 3599 (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.
- 3602 (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.
- 3606 (4) Matters that may be resolved by a nonjudicial settlement agreement include:
- 3607 (a) the interpretation or construction of the terms of the trust;
- 3608 (b) the approval of a trustee's report or accounting;
- 3609 (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- 3611 (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- 3613 (e) transfer of a trust's principal place of administration; and
- 3614 (f) liability of a trustee for an action relating to the trust.
- 3615 (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

## SB0100 compared with SB0100S01

to determine whether the agreement contains terms and conditions the court could have properly approved.

3738 Section 84. Section **75B-2-111** is renumbered and amended to read:

3740 ~~[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.

3744 Section 85. Section **75B-2-112** is renumbered and amended to read:

3746 ~~[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.

3752 Section 86. Section **75B-2-113** is renumbered and amended to read:

3754 ~~[75-7-1201]~~ **75B-2-113. Foreign trustees.**

- 3636 (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.
- 3639 (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.
- 3642 (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.
- 3647 (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.
- 3650 (5) Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

## SB0100 compared with SB0100S01

3771 Section 87. Section **75B-2-201** is renumbered and amended to read:

3654

### Part 2. Jurisdiction and Venue for Trusts

3774 ~~[75-7-201]~~**75B-2-201. Court -- Exclusive jurisdiction of trusts.**

3656 (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.

3659 (b) ~~[Proceedings which may be maintained under this section are those concerning]~~ An interested party may bring proceedings under Subsection (1)(a) concerning:

3661 (i) the administration and distribution of trusts;

3662 (ii) the declaration of rights; and

3663 (iii) the determination of other matters involving trustees and beneficiaries of trusts.

3664 (c) ~~[These include, but are not limited to proceedings]~~ A proceeding under Subsection (1) includes a proceeding to:

3666 (i) appoint or remove a trustee;

3667 (ii) review a trustee's fees;

3668 (iii) review and settle interim or final accounts;

3669 (iv) ascertain beneficiaries;

3670 (v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments;

3672 (vi) instruct trustees;

3673 (vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; ~~and~~ or

3675 (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.

3680 (2)

. (a) A proceeding under this section does not result in continuing supervision by the court over the administration of the trust.

3682 (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

## SB0100 compared with SB0100S01

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.

3808 Section 88. Section **75B-2-202** is renumbered and amended to read:

3810 ~~[75-7-202]~~ **75B-2-202. Effect of administration in this state -- Consent to jurisdiction.**

3693 (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.

3696 (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.

3699 (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.

3701 (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.

3704 (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).

3825 Section 89. Section **75B-2-203** is renumbered and amended to read:

3827 ~~[75-7-203]~~ **75B-2-203. Jurisdiction over an action involving a trust.**

3709 (1) A court of this state has jurisdiction as described in Title 78A, Judiciary and Judicial Administration, over an action involving a trust.

3711 (2) This section does not preclude judicial or nonjudicial alternative dispute resolution.

3831 Section 90. Section **75B-2-204** is renumbered and amended to read:

3833 ~~[75-7-204]~~ **75B-2-204. Trust proceedings -- Dismissal of matters relating to foreign trusts.**

3716 (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:

3718 (a) is under the continuing supervision of a foreign court;

3719 (b) is registered in another state; or

3720 (c) has a fiduciary which transacts a major portion of its trust administration in another state.

3722 (2) Notwithstanding Subsection (1), the court may entertain a proceeding regarding any matter involving a trust if:

## SB0100 compared with SB0100S01

- 3724 (a) all appropriate parties could not be bound by litigation in the courts of the other state; or  
3726 (b) the interests of justice would be seriously impaired.  
3727 (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.
- 3849 Section 91. Section **75B-2-205** is renumbered and amended to read:  
3851 ~~[75-7-205]~~ **75B-2-205. Venue for an action involving a trust.**
- 3733 (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:
- 3736 (a) the county in which the trust's principal place of administration is or will be located; or  
3738 (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.
- 3740 (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:
- 3743 (a) a county of this state in which a beneficiary resides;  
3744 (b) a county in which any trust property is located; or  
3745 (c) if the trust is created by a will, the county in which the decedent's estate was or is being administered.
- 3747 (3) This section does not apply to an action brought in the Business and Chancery Court.

3867 Section 92. Section **75B-2-301** is renumbered and amended to read:

- 3750 **Part 3. Representation**
- 3870 ~~[75-7-301]~~ **75B-2-301. Basic effect.**
- 3752 (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.
- 3754 (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.

3757

## SB0100 compared with SB0100S01

- (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.

3880 Section 93. Section **75B-2-302** is renumbered and amended to read:

3882 ~~[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.

3888 Section 94. Section **75B-2-303** is renumbered and amended to read:

3890 ~~[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:

- 3774 (1) a conservator may represent and bind the protected person whose estate the conservator controls;
- 3776 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;
- 3778 (3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- 3780 (4) a trustee may represent and bind the beneficiaries of the trust;
- 3781 (5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- 3783 (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.

3904 Section 95. Section **75B-2-304** is renumbered and amended to read:

3906 ~~[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.

## SB0100 compared with SB0100S01

3913 Section 96. Section **75B-2-305** is renumbered and amended to read:

3915 ~~[75-7-305]~~ **75B-2-305. Appointment of guardian ad litem or other representative.**

3797 (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.

3802 (b) A guardian ad litem or other representative may be appointed to represent several persons or interests.

3804 (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.

3807 (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.

3928 Section 97. Section **75B-2-401** is renumbered and amended to read:

3811 **Part 4. Creation, Validity, Modification, and Termination of a Trust**

3931 ~~[75-7-401]~~ **75B-2-401. Methods of creating trust.**

3813 (1) A trust may be created by:

3814 (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;

3816 (b) declaration by the owner of property that the owner holds identifiable property as trustee; or

3818 (c) exercise of a power of appointment in favor of a trustee.

3819 (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.

3822 (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.

3825 (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.

## SB0100 compared with SB0100S01

3948 Section 98. Section **75B-2-402** is renumbered and amended to read:

3950 ~~[75-7-402]~~ **75B-2-402. Requirements for creation.**

3832 (1) A trust is created only if:

3833 (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;

3835 (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree authorizes the creation of a trust;

3837 (c) the trust has a definite beneficiary or is:

3838 (i) a charitable trust;

3839 (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

3840 (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

3841 (d) the trustee has duties to perform; and

3842 (e) the same person is not the sole trustee and sole beneficiary.

3843 (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

3845 (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.

3968 Section 99. Section **75B-2-403** is renumbered and amended to read:

3970 ~~[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:

3855 (1) the settlor was domiciled, had a place of abode, or was a national;

3856 (2) a trustee was domiciled or had a place of business; or

3857 (3) any trust property was located.

3977 Section 100. Section **75B-2-404** is renumbered and amended to read:

3979 ~~[75-7-404]~~ **75B-2-404. Trust purposes.**

3861 (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.

3863 (2) A trust and [its] the trust's terms must be for the benefit of [its] the trust's beneficiaries.



## SB0100 compared with SB0100S01

3983 Section 101. Section **75B-2-405** is renumbered and amended to read:

3985 ~~[75-7-405]~~ **75B-2-405. Charitable purposes -- Enforcement.**

3867 (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.

3870 (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.

3873 (b) The selection must be consistent with the settlor's intention to the extent [it] intent can be ascertained.

3875 (3) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

3996 Section 102. Section **75B-2-406** is renumbered and amended to read:

3998 ~~[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.

4002 Section 103. Section **75B-2-407** is renumbered and amended to read:

4004 ~~[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.

4008 Section 104. Section **75B-2-408** is renumbered and amended to read:

4010 ~~[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.

4013 Section 105. Section **75B-2-409** is renumbered and amended to read:

4015 ~~[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.

4019 Section 106. Section **75B-2-410** is renumbered and amended to read:

## SB0100 compared with SB0100S01

- 4021            ~~[75-7-410]~~ **75B-2-410. Modification or termination of trust -- Proceedings for approval or disapproval.**
- 3904    (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.
- 3909    (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.
- 3915    (b) The settlor of a charitable trust may maintain a proceeding to modify the trust under Section ~~[75-7-413]~~ 75B-2-413.
- 4036            Section 107. Section **75B-2-411** is renumbered and amended to read:
- 4038            ~~[75-7-411]~~ **75B-2-411. Modification or termination of noncharitable irrevocable trust by consent.**
- 3921    (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.
- 3924    (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.
- 3930    (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.
- 3933

## SB0100 compared with SB0100S01

- (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.
- 3936 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.
- 3938 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries.
- 3940 (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:
- 3943 (a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- 3945 (b) the interests of a beneficiary who does not consent will be adequately protected.
- 4065 Section 108. Section **75B-2-412** is renumbered and amended to read:
- 4067 ~~[75-7-412]~~ **75B-2-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.**
- 3950 (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.
- 3953 (b) To the extent practicable, the modification must be made in accordance with the settlor's probable intention.
- 3955 (2) The court may modify the administrative terms of a trust if continuation of the trust on [its] the trust's existing terms would be impracticable or wasteful or impair the trust's administration.
- 3958 (3) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the court or otherwise in a manner consistent with the purposes of the trust.
- 4080 Section 109. Section **75B-2-413** is renumbered and amended to read:
- 4082 ~~[75-7-413]~~ **75B-2-413. Cy pres.**
- 3964 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:
- 3966 (a) the trust does not fail, in whole or in part;
- 3967 (b) the trust property does not revert to the settlor or the settlor's successors in interest; and

## SB0100 compared with SB0100S01

- 3969 (c) the court may apply cy pres to modify or terminate the trust by directing that the trust property  
be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable  
purposes.
- 3972 (2) A provision in the terms of a charitable trust that would result in distribution of the trust property  
to a noncharitable beneficiary prevails over the power of the court under Subsection (1) to apply cy  
pres to modify or terminate the trust only if, when the provision takes effect:
- 3976 (a) the trust property is to revert to the settlor and the settlor is still living; or
- 3977 (b) fewer than 21 years have elapsed since the date of the trust's creation.
- 4097 Section 110. Section **75B-2-414** is renumbered and amended to read:
- 4099 ~~[75-7-414]~~ **75B-2-414. Modification or termination of uneconomic trust.**
- 3981 (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a  
total value less than \$100,000 may terminate the trust if the trustee concludes that the value of the  
trust property is insufficient to justify the cost of administration.
- 3985 (2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it  
determines that the value of the trust property is insufficient to justify the cost of administration.
- 3988 (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.
- 3990 (4) This section does not apply to an easement for conservation or preservation.
- 4110 Section 111. Section **75B-2-415** is renumbered and amended to read:
- 4112 ~~[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.
- 4117 Section 112. Section **75B-2-416** is renumbered and amended to read:
- 4119 ~~[75-7-416]~~ **75B-2-416. Modification to achieve settlor's tax objectives.**
- 4001 (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.
- 4003 (2) The court may provide that the modification has retroactive effect.
- 4123 Section 113. Section **75B-2-417** is renumbered and amended to read:
- 4125 ~~[75-7-417]~~ **75B-2-417. Combination and division of trusts.**

## SB0100 compared with SB0100S01

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.

4129 Section 114. Section **75B-2-501** is renumbered and amended to read:

4012

### **Part 5. Spendthrift and Discretionary Trusts**

4132

#### **~~[75-7-501]~~ 75B-2-501. Rights of beneficiary's creditor or assignee.**

4014

(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.

4018

(2) The court may limit the award to relief as is appropriate under the circumstances.

4138

Section 115. Section **75B-2-502** is renumbered and amended to read:

4140

#### **~~[75-7-502]~~ 75B-2-502. Spendthrift provisions for beneficiaries other than the settlor.**

4023

(1) A spendthrift provision for a beneficiary other than the settlor is valid only if [~~it~~] the spendthrift provision restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the beneficiary is the trustee or cotrustee of the trust.

4026

(2) A term of a trust providing that the interest of a beneficiary other than the settlor is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

4029

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

4152

Section 116. Section **75B-2-503** is renumbered and amended to read:

4154

#### **~~[75-7-503]~~ 75B-2-503. Exceptions to spendthrift provision.**

4036

(1) As used in this section:

4037

(a) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.

4039

(b) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

4041

(c) [~~"Civil restitution of judgment"~~] "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

4043

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

## SB0100 compared with SB0100S01

- 4044 (e) "Victim" means the same as that term is defined in Section 77-38b-102.
- 4045 (2) Even if a trust contains a spendthrift provision, the following persons may obtain an order from a court that attaches present or future distributions to the beneficiary:
- 4047 (a) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;
- 4049 (b) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust;
- 4051 (c) a victim who has a judgment requiring the beneficiary to pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act, or similar provision in another state; or
- 4054 (d) the Office of State Debt Collection, created in Section 63A-3-502, for collecting payment on a civil accounts receivable or a civil judgment of restitution.
- 4056 (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.
- 4177 Section 117. Section **75B-2-504** is renumbered and amended to read:
- 4179 **~~[75-7-504]~~ 75B-2-504. Discretionary trusts -- Effect of standard.**
- 4061 (1) ~~[H]~~ 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.
- 4063 (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:
- 4066 (a) the discretion is expressed in the form of a standard of distribution; or
- 4067 (b) the trustee has abused the discretion.
- 4068 (3) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
- 4070 (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
- 4073 (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.
- 4077 (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.

## SB0100 compared with SB0100S01

4199 Section 118. Section **75B-2-505** is renumbered and amended to read:

4201 ~~[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:

4085 (1)

. (a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors.

4087 (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.

4090 (2)

. (a) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of ~~[Section 75B-1-302]~~ Chapter 1, Part 3, Asset Protection Trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.

4094 (b) With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of ~~[Section 75B-1-302]~~ Chapter 1, Part 3, Asset Protection Trust, the amount a 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.

4099 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust, when the distribution is:

4103 (i) subject to the discretion of a trustee who is not the settlor;

4104 (ii) subject to the consent of an advisor who is not the settlor; or

4105 (iii) at the direction of an advisor who is not the settlor.

4106 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances

## SB0100 compared with SB0100S01

to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

4233 Section 119. Section **75B-2-506** is renumbered and amended to read:

4235 ~~[75-7-506]~~ **75B-2-506. Overdue distribution.**

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

4240 Section 120. Section **75B-2-507** is renumbered 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.

4245 Section 121. Section **75B-2-508** is renumbered and amended to read:

4247 ~~[75-7-508]~~ **75B-2-508. Notice to creditors.**

4129 (1)

. (a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:

4131 (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

4133 (ii) in accordance with Section 45-1-101 for three weeks.

4134 (b) The notice required by Subsection (1)(a) shall:

4135 (i) provide the trustee's name and address; and

4136 (ii) notify creditors:

4137 (A) of the deceased settlor; and

4138 (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.

4140 (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.



## SB0100 compared with SB0100S01

- 4145 (b) Written notice shall be the notice described in Subsection (1) or a similar notice.
- 4146 (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.
- 4152 (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.
- 4157 (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.
- 4159 (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.
- 4280 Section 122. Section **75B-2-509** is renumbered and amended to read:
- 4282 **[75-7-509] 75B-2-509. Limitations on presentation of claims.**
- 4164 (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:
- 4170 (a) one year after the settlor's death; or
- 4171 (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.
- 4174 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.
- 4176 (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

## SB0100 compared with SB0100S01

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:

- 4181 (a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or
- 4183 (b) any other claim within the later of three months after [it] the claim arises, or the time specified in Subsection (1).
- 4185 (4) Nothing in this section affects or prevents:
- 4186 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;
- 4188 (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;
- 4191 (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
- 4194 (d) the right to recover medical assistance provided to the settlor under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery.

4315 Section 123. Section **75B-2-510** is renumbered and amended to read:

4317 ~~[75-7-510]~~ **75B-2-510. Manner of presentation of claims.**

4199 (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be presented as follows:

4201 (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.

4204 (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.

4206 (iii) If a claim is not yet due, the date when [it] the claim will become due shall be stated.

4208 (iv) If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated.

4210 (v) If the claim is secured, the security shall be described.

4211 (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.

4213 (b)

## SB0100 compared with SB0100S01

- (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.
- 4217 (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.
- 4220 (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,] .
- 4223 (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 the 60-day period, [~~but in no event may~~] except that the extension may not run beyond the applicable statute of limitations.
- 4347 Section 124. Section **75B-2-511** is renumbered and amended to read:
- 4349 ~~[75-7-511]~~ **75B-2-511. Classification of claims.**
- 4231 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to pay all claims in full, the trustee shall make payment in the following order:
- 4233 (a) reasonable funeral expenses;
- 4234 (b) costs and expenses of administration;
- 4235 (c) debts and taxes with preference under federal law;
- 4236 (d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending the deceased settlor, and medical assistance if Section 26B-3-1013 applies;
- 4239 (e) debts and taxes with preference under other laws of this state; and
- 4240 (f) all other claims.
- 4241 (2) No preference shall be given in the payment of any claim over any other claim of the same class[~~;~~ and a] .
- 4243 (3) A claim due and payable shall not be entitled to a preference over claims not due.
- 4363 Section 125. Section **75B-2-512** is renumbered and amended to read:
- 4365 ~~[75-7-512]~~ **75B-2-512. Allowance of claims.**
- 4247 (1)

## SB0100 compared with SB0100S01

- . (a) As to claims presented in the manner described in Section [~~75-7-510~~] 75B-2-510 and within the time limit prescribed in Section [~~75-7-509~~] 75B-2-509, the trustee may mail a notice to any claimant stating that the claim has been allowed or disallowed.
- 4250 (b) If, after allowing or disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall notify the claimant.
- 4252 (c) The trustee may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred.
- 4255 (d) If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the trustee not later than 60 days after the mailing of the notice of disallowance or partial allowance.
- 4260 (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.
- 4263 (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.
- 4266 (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.
- 4269 (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.
- 4271 (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.
- 4394 Section 126. Section **75B-2-513** is renumbered and amended to read:
- 4396 ~~[75-7-513]~~ 75B-2-513. Payment of claims.
- 4278 (1)
- .

## SB0100 compared with SB0100S01

- (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.
- 4284 (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.
- 4288 (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:
- 4291 (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
- 4294 (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.
- 4415 Section 127. Section **75B-2-514** is renumbered and amended to read:
- 4417 ~~[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:
- 4302 (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
- 4305 (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.
- 4429 Section 128. Section **75B-2-515** is renumbered and amended to read:
- 4431 ~~[75-7-515]~~ **75B-2-515. Claims not due and contingent or unliquidated claims.**

## SB0100 compared with SB0100S01

4313 (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.

4317 (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:

4319 (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

4321 (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.

4443 Section 129. Section **75B-2-516** is renumbered and amended to read:

4445 ~~[75-7-516]~~ **75B-2-516. Counterclaims.**

4327 (1)

(a) In allowing a claim, the trustee may deduct any counterclaim which the deceased settlor's estate has against the claimant.

4329 (b) In determining a claim against a deceased settlor's estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

4332 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based.

4334 (3) A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

4455 Section 130. Section **75B-2-517** is renumbered and amended to read:

4457 ~~[75-7-517]~~ **75B-2-517. Execution and levies prohibited.**

4339 (1) No execution may issue upon nor may any levy be made against any property of the deceased settlor's estate under any judgment against a deceased settlor or a trustee.

4341 (2) This section may not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

4462 Section 131. Section **75B-2-518** is renumbered and amended to read:

4464 ~~[75-7-518]~~ **75B-2-518. Compromise of claims.**

## SB0100 compared with SB0100S01

When a claim against a deceased settlor's estate has been presented in any manner, the trustee may, if [it] the claim appears in the best interest of the deceased settlor's estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

4469 Section 132. Section **75B-2-519** is renumbered and amended to read:

4471 ~~[75-7-519]~~ **75B-2-519. Encumbered assets.**

- 4353 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of [his] the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be in the best interest of the deceased settlor's estate.
- 4359 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets, provides otherwise.

4482 Section 133. Section **75B-2-601** is renumbered and amended to read:

4365

### Part 6. Revocable Trust

4485 ~~[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.

4489 Section 134. Section **75B-2-602** is renumbered and amended to read:

4491 ~~[75-7-605]~~ **75B-2-602. Revocation or amendment of revocable trust.**

4373 (1)

. (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

4375 (b) This Subsection (1) does not apply to a trust created under an instrument executed before May 1, 2004.

4377 (2) If a revocable trust is created or funded by more than one settlor:

4378 (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

## SB0100 compared with SB0100S01

- 4381 (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.
- 4384 (3) The settlor may revoke or amend a revocable trust:
- 4385 (a) by substantially complying with a method provided in the terms of the trust; or
- 4386 (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:
- 4388 (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
- 4391 (ii) any other method manifesting clear and convincing evidence of the settlor's intent.
- 4392 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
- 4394 (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.
- 4397 (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.
- 4401 (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.
- 4523 Section 135. Section **75B-2-603** is renumbered and amended to read:
- 4525 ~~[75-7-606]~~ **75B-2-603. Settlor's powers -- Powers of withdrawal.**
- 4407 (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.
- 4409 (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.
- 4413 (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.



## SB0100 compared with SB0100S01

- 4416 (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.
- 4418 (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.
- 4540 Section 136. Section **75B-2-604** is renumbered and amended to read:
- 4542 ~~[75-7-607]~~ **75B-2-604. Limitation on action contesting validity of revocable trust --**  
**Distribution of trust property.**
- 4425 (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:
- 4427 (a) three years after the settlor's death; or
- 4428 (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 the time allowed for commencing a proceeding.
- 4431 (2)
- . (a) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust.
- 4434 (b) The trustee is not subject to liability for doing so unless:
- 4435 ~~[(a)]~~ (i) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or
- 4437 ~~[(b)]~~ (ii) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.
- 4440 (3)
- . (a) With respect to a potential contest, the trustee is only liable for actions taken two or more business days after the trustee has actual receipt of written notice from a potential contestant.
- 4443 (b) The written notice shall include the name of the settlor or of the trust, the name of the potential contestant, and a description of the basis for the potential contest.
- 4445 (c) The written notice shall be mailed to the trustee at the principal place of administration of the trust by registered or certified mail, return receipt requested, or served upon the trustee in the same manner as a summons in a civil action.
- 4448 (d) Any other form or service of notice is not sufficient to impose liability on the trustee for actions taken pursuant to the terms of the trust.

## SB0100 compared with SB0100S01

4450 (4) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution  
4451 received.

4452 Section 137. Section **75B-2-701** is renumbered and amended to read:

4453

### Part 7. Office of Trustee

4454 ~~[75-7-701]~~ **75B-2-701. Accepting or declining trusteeship.**

4455 (1) Except as otherwise provided in Subsection (3), a person designated as trustee accepts the  
4456 trusteeship:

4457 (a) by substantially complying with a method of acceptance provided in the terms of the trust; or

4458 (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly  
4459 made exclusive, by accepting delivery of the trust property, exercising powers or performing duties  
4460 as trustee, or otherwise indicating acceptance of the trusteeship.

4461 (2)

. (a) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship.

4462 (b) A designated trustee who does not accept the trusteeship within a reasonable time after knowing of  
4463 the designation is considered to have rejected the trusteeship.

4464 (3) A person designated as trustee, without accepting the trusteeship, may:

4465 (a) act to preserve the trust property if, within a reasonable time after acting, the person sends a  
4466 rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified  
4467 beneficiary; and

4468 (b) inspect or investigate trust property to determine potential liability under environmental or other law  
4469 or for any other purpose.

4470 Section 138. Section **75B-2-702** is renumbered and amended to read:

4471 ~~[75-7-702]~~ **75B-2-702. Trustee's bond.**

4472 (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a  
4473 bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and  
4474 the court has not dispensed with the requirement.

4475 (2)

. (a) The court may specify the amount of a bond, ~~[its]~~ the bond's liabilities, and whether sureties are  
4476 necessary.

4477 (b) The court may modify or terminate a bond at any time.

4478 (3)

## SB0100 compared with SB0100S01

- . (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.
- 4485 (b) The cost of any bond shall be borne by the trust.
- 4486 (4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.
- 4606 Section 139. Section **75B-2-703** is renumbered and amended to read:
- 4608 **[75-7-703] 75B-2-703. Cotrustees.**
- 4490 (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.
- 4491 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
- 4492 (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.
- 4497 (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.
- 4502 (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.
- 4504 (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.
- 4509 (c) Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
- 4511 (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.
- 4513 (7) Subject to Section ~~[75-12-112]~~ 75B-3-112, each trustee shall exercise reasonable care to:
- 4514 (a) prevent a cotrustee from committing a serious breach of trust; and
- 4515 (b) compel a cotrustee to redress a serious breach of trust.

## SB0100 compared with SB0100S01

4516 (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.

4638 Section 140. Section **75B-2-704** is renumbered and amended to read:

4640 ~~[75-7-704]~~ **75B-2-704. Vacancy in trusteeship -- Appointment of successor.**

4522 (1) A vacancy in a trusteeship occurs if:

4523 (a) a person designated as trustee rejects the trusteeship;

4524 (b) a person designated as trustee cannot be identified or does not exist;

4525 (c) a trustee resigns;

4526 (d) a trustee is disqualified or removed;

4527 (e) a trustee dies; or

4528 (f) a guardian or conservator is appointed for an individual serving as trustee, unless otherwise provided  
in the trust.

4530 (2)

. (a) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled.

4532 (b) A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

4533 (3) A vacancy in a trusteeship required to be filled must be filled in the following order of priority:

4535 (a) by a person designated in the terms of the trust to act as successor trustee;

4536 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

4537 (c) by a person appointed by the court.

4538 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the  
following order of priority:

4540 (a) by a person designated in the terms of the trust to act as successor trustee;

4541 (b) by a person selected by the charitable organizations expressly designated to receive distributions  
under the terms of the trust if the attorney general concurs in the selection; or

4544 (c) by a person appointed by the court.

4545 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an  
additional trustee or special fiduciary whenever the court considers the appointment necessary for  
the administration of the trust.

4667 Section 141. Section **75B-2-705** is renumbered and amended to read:

4669 ~~[75-7-705]~~ **75B-2-705. Resignation of trustee.**

## SB0100 compared with SB0100S01

- 4551 (1) A trustee may resign:
- 4552 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- 4554 (b) with the approval of the court.
- 4555 (2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
- 4557 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

4678 Section 142. Section **75B-2-706** is renumbered and amended to read:

4680 ~~[75-7-706]~~ **75B-2-706. Removal of trustee.**

- 4562 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on ~~[its]~~ the court's own initiative.
- 4564 (2) The court may remove a trustee if:
- 4565 (a) the trustee has committed a serious breach of trust;
- 4566 (b) lack of cooperation among cotrustees substantially impairs the administration of the trust;
- 4568 (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
- 4571 (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.
- 4575 (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.

4698 Section 143. Section **75B-2-707** is renumbered and amended to read:

4700 ~~[75-7-707]~~ **75B-2-707. Delivery of property by former trustee.**

- 4582 (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.

4586

## SB0100 compared with SB0100S01

- (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.

4708 Section 144. Section **75B-2-708** is renumbered and amended to read:

4710 ~~[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.

4713 Section 145. Section **75B-2-709** is renumbered and amended to read:

4715 ~~[75-7-709]~~ **75B-2-709. Reimbursement of expenses.**

4597 (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

4599 (a) expenses that were properly incurred in the administration of the trust; and

4600 (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

4602 (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.

4723 Section 146. Section **75B-2-801** is renumbered and amended to read:

4606

### Part 8. Duties and Power of Trustee

4726 ~~[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.

4730 Section 147. Section **75B-2-802** is renumbered and amended to read:

4732 ~~[75-7-802]~~ **75B-2-802. Duty of loyalty.**

4614 (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

4615 (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:

4621 (a) the transaction was authorized by the terms of the trust;

4622 (b) the transaction was approved by the court;

## SB0100 compared with SB0100S01

- 4623 (c) the beneficiary did not commence a judicial proceeding within the time allowed by Section  
[75-7-1005] 75B-2-1005;
- 4625 (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
- 4627 (e) the transaction involves a contract entered into or claim acquired by the trustee before the person  
became or contemplated becoming trustee.
- 4629 (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:
- 4633 (a) the trustee's spouse;
- 4634 (b) the trustee's descendants, siblings, parents, or [their spouses] the spouses of the trustee's  
descendants, siblings, or parents;
- 4636 (c) an agent of the trustee, including but not limited to an attorney, accountant, or financial advisor; or
- 4638 (d) a corporation or other person or enterprise in which the trustee, or a person that owns a significant  
interest in the trustee, has an interest that might affect the trustee's best judgment.
- 4641 (4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs  
during the existence of the trust or while the trustee retains significant influence over the beneficiary  
and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee  
establishes that the transaction was fair to the beneficiary.
- 4646 (5) A transaction not concerning trust property in which the trustee engages in the trustee's individual  
capacity involves a conflict between personal and fiduciary interests if the transaction concerns an  
opportunity properly belonging to the trust.
- 4649 (6)
- . (a) An investment by a trustee in securities of an investment company or investment trust to which the  
trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be  
affected by a conflict between personal and fiduciary interests if the investment complies with the  
prudent investor rule of Section [75-7-901] 75B-2-901.
- 4654 (b) The trustee may be compensated by the investment company or investment trust for providing those  
services out of fees charged to the trust.
- 4656 (7)
- .

## SB0100 compared with SB0100S01

- (a) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.
- 4659 (b) If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.
- 4662 (8) This section does not preclude the following actions by the trustee:
- 4663 (a) an agreement between the trustee and a beneficiary relating to the appointment or compensation of the trustee;
- 4665 (b) payment of reasonable compensation to the trustee;
- 4666 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;
- 4669 (d) a deposit of trust money in a regulated financial service institution operated by the trustee;
- 4671 (e) an advance by the trustee of money for the protection of the trust;
- 4672 (f) collecting, holding, and retaining trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made, even though the assets include an asset in which the trustee is personally interested;
- 4675 (g) acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;
- 4677 (h) borrowing money to be repaid from the trust assets or otherwise;
- 4678 (i) advancing money to be repaid from the assets or otherwise;
- 4679 (j) employing [~~persons, including attorneys, auditors, investment advisers, or agents~~] a person, including an attorney, an auditor, an investment adviser, or an agent, even if [~~they are~~] the person is associated with the trustee:
- 4682 (i) to advise or assist the trustee in the performance of the trustee's administrative duties or perform any act of administration, whether or not discretionary; or
- 4684 (ii) to act without independent investigation upon [~~their~~] the person's recommendations;
- 4686 (k) if a governing instrument or order requires or authorizes investment in United States government obligations, investing in those obligations, either directly or in the form of securities or other interests, in any open-end or closed-end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:



## SB0100 compared with SB0100S01

4691 (i) the portfolio of the investment company or investment trust is limited to United States government  
obligations, and repurchase agreements are fully collateralized by United States government  
obligations; and

4694 (ii) the investment company or investment trust takes delivery of the collateral for any repurchase  
agreement either directly or through an authorized custodian.

4696 (9) The court may appoint a special fiduciary to make a decision with respect to any proposed  
transaction that might violate this section if entered into by the trustee.

4817 Section 148. Section **75B-2-803** is renumbered and amended to read:

4819 ~~[75-7-803]~~ **75B-2-803. Impartiality.**

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.

4823 Section 149. Section **75B-2-804** is renumbered and amended to read:

4825 ~~[75-7-804]~~ **75B-2-804. Prudent administration.**

4707 (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.

4709 (2) In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

4829 Section 150. Section **75B-2-805** is renumbered and amended to read:

4831 ~~[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.

4834 Section 151. Section **75B-2-806** is renumbered and amended to read:

4836 ~~[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.

4839 Section 152. Section **75B-2-807** is renumbered and amended to read:

4841 ~~[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.

4843 Section 153. Section **75B-2-808** is renumbered and amended to read:

4845 ~~[75-7-808]~~ **75B-2-808. Recordkeeping and identification of trust property.**

4727 (1) A trustee shall keep adequate records of the administration of the trust.

## SB0100 compared with SB0100S01

- 4728 (2) A trustee shall keep trust property separate from the trustee's own property.
- 4729 (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.
- 4732 (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.
- 4853 Section 154. Section **75B-2-809** is renumbered and amended to read:
- 4855 ~~[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.
- 4858 Section 155. Section **75B-2-810** is renumbered and amended to read:
- 4860 ~~[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.
- 4864 Section 156. Section **75B-2-811** is renumbered and amended to read:
- 4866 ~~[75-7-811]~~ **75B-2-811. Duty to inform and report.**
- 4748 (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.
- 4752 (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.
- 4755 (2) Except to the extent the terms of the trust provide otherwise, a trustee:
- 4756 (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;
- 4759 (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;
- 4761

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- (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
- 4767 (d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.
- 4769 (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.
- 4775 (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.
- 4778 (c) A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.
- 4780 (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.
- 4782 (b) A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.
- 4903 Section 157. Section **75B-2-812** is renumbered and amended to read:
- 4905 **[75-7-812]75B-2-812. Discretionary powers -- Tax savings.**
- 4787 (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.
- 4791 (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:

4793

## SB0100 compared with SB0100S01

- (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
- 4799 (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.
- 4801 (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.
- 4804 (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.
- 4806 (4) Subsection (2) does not apply to:
- 4807 (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;
- 4810 (b) any trust during any period that the trust may be revoked or amended by [its] the trust's settlor; or
- 4812 (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.
- 4933 Section 158. Section **75B-2-813** is renumbered and amended to read:
- 4935 ~~[75-7-813]~~ **75B-2-813. General powers of trustee.**
- 4817 (1) A trustee, without authorization by the court, may exercise:
- 4818 (a) powers conferred by the terms of the trust; or
- 4819 (b) except as limited by the terms of the trust:
- 4820 (i) all powers over the trust property [~~which~~] that an unmarried competent owner has over individually owned property;
- 4822 (ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
- 4824 (iii) any other powers conferred by this chapter.
- 4825 (2) The exercise of a power is subject to the fiduciary duties prescribed by this part.
- 4945 Section 159. Section **75B-2-814** is renumbered and amended to read:

## SB0100 compared with SB0100S01

4947 ~~[75-7-814]~~ **75B-2-814. Specific powers of trustee.**

4829 (1) Without limiting the authority conferred by Section ~~[75-7-813]~~ 75B-2-813, a trustee may:

- 4830 (a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- 4832 (b) acquire or sell property, for cash or on credit, at public or private sale;
- 4833 (c) exchange, partition, or otherwise change the character of trust property;
- 4834 (d) deposit trust money in an account in a regulated financial service institution;
- 4835 (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 beyond the duration of the trust;
- 4839 (f) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- 4844 (g) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
- 4846 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
- 4848 (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
- 4850 (iii) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
- 4852 (iv) deposit the securities with a depository or other regulated financial service institution;
- 4854 (h) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;
- 4859 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

## SB0100 compared with SB0100S01

- 4863 (j) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
- 4866 (k) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- 4869 (l) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- 4871 (m) with respect to possible liability for violation of environmental law:
  - 4872 (i) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
  - 4876 (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
  - 4880 (iii) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
  - 4883 (iv) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and
  - 4885 (v) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
- 4887 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
- 4889 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;
- 4891 (p) exercise elections with respect to federal, state, and local taxes;
- 4892 (q) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
- 4896 (r) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

## SB0100 compared with SB0100S01

- 4899 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 4900 (t) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;
- 4904 (u) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying [it] the amount directly to the beneficiary or applying it for the beneficiary's benefit, or by:
- 4907 (i) paying [it] the amount to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
- 4909 (ii) paying [it] the amount to the beneficiary's custodian under Title 75A, Chapter 8, Uniform Transfers to Minors Act;
- 4911 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying [it] the amount to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
- 4915 (iv) managing [it] the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;
- 4917 (v) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
- 4921 (w) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;
- 4923 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
- 4925 (y) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
- 4927 (z) on termination of the trust, exercise the powers appropriate to finalize the administration of the trust and distribute the trust property to the persons entitled to [it] the trust.
- 4930 (2) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.
- 4932 (a) The trustee shall exercise reasonable care, skill, and caution in:
- 4933 (i) selecting the agent;

## SB0100 compared with SB0100S01

- 4934 (ii) establishing the scope and terms of the delegation consistent with the purposes of the trust; and  
4936 (iii) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.
- 4938 (b) In performing a delegated function, an agent has a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- 4940 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
- 4943 (3)
- . (a) The trustee may exercise the powers set forth in this section and in the trust either in the name of the trust or in the name of the trustee as trustee, specifically including the right to take title, to encumber or convey assets, including real property, in the name of the trust.
- 4947 (b) This Subsection (3) applies to a trustee's exercise of trust powers.
- 4948 (c) After May 11, 2010, for recording purposes, the name of the trustee, the address of the trustee, and the name and date of the trust, shall be included on all recorded documents affecting real property to which the trust is a party in interest.
- 5070 Section 160. Section **75B-2-815** is renumbered and amended to read:  
5072 ~~[75-7-815]~~ **75B-2-815. Distribution upon termination.**
- 4954 (1)
- . (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution.
- 4956 (b) The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.
- 4960 (2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to [it] the trust property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.
- 4964 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:  
4966 (a) [it] the release was induced by improper conduct of the trustee; or  
4967 (b) the beneficiary, at the time of the release, did not know or had no reason to know of the beneficiary's rights or of the material facts relating to the breach.



## SB0100 compared with SB0100S01

5088 Section 161. Section **75B-2-816** is renumbered and amended to read:

5090 ~~[75-7-816]~~ **75B-2-816. Recitals when title to real property is in trust -- Failure.**

- 4972 (1) When title to real property is granted to a person as trustee, the terms of the trust may be given either:
- 4974 (a) in the deed of transfer; or
- 4975 (b) in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.
- 4977 (2) If the terms of the trust are not made public as required in Subsection (1), a conveyance from the trustee is absolute in favor of purchasers for value who take the property without notice of the terms of the trust.
- 4980 (3) The terms of the trust recited in the deed of transfer or the instrument recorded under Subsection (1) (b) shall include:
- 4982 (a) the name of the trustee;
- 4983 (b) the address of the trustee; and
- 4984 (c) the name and date of the trust.
- 4985 (4) Any real property titled in a trust ~~[which]~~ that has a restriction on transfer described in Section 75B-1-302 shall include in the title the words "asset protection trust."

5106 Section 162. Section **75B-2-817** is renumbered and amended to read:

5108 ~~[75-7-817]~~ **75B-2-817. Marital deduction formulas -- Trusts.**

- 4990 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust executed before September 13, 1981, contains a formula expressly providing that the decedent's spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, this formula shall be construed as referring to the unlimited marital deduction allowable by federal law as amended by Section 403(a) of the Economic Recovery Tax Act of 1981.
- 4996 (2) The intention of a trustor as expressed in the trust shall control the legal effect of any dispositions made by it for purposes of construing Subsection (1), and the rule of construction of Subsection (1) shall apply unless a contrary intention is indicated by the trust.

5119 Section 163. Section **75B-2-901** is renumbered and amended to read:

5002

### Part 9. Uniform Prudent Investor Act

5122 ~~[75-7-901]~~ **75B-2-901. Prudent investor rule.**

5004 (1)

## SB0100 compared with SB0100S01

- (a) Except as otherwise provided in Subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule [~~set forth~~] described in this chapter.
- 5007 (b) If a trustee is named on the basis of a trustee's representations of special skills or expertise, the trustee has a duty to use those special skills or expertise.
- 5009 (2)
- . (a) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust.
- 5011 (b) A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.
- 5132 Section 164. Section **75B-2-902** is renumbered and amended to read:
- 5134 ~~[75-7-902]~~ **75B-2-902. Standard of care -- Portfolio strategy -- Risk and return objectives.**
- 5017 (1)
- . (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.
- 5020 (b) In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- 5022 (2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- 5026 (3) Among circumstances that a trustee shall consider in investing and managing trust assets are the following which may be relevant to the trust or [~~its~~] the trust's beneficiaries:
- 5028 (a) general economic conditions;
- 5029 (b) the possible effect of inflation or deflation;
- 5030 (c) the expected tax consequences of investment decisions or strategies;
- 5031 (d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- 5034 (e) the expected total return from income and the appreciation of capital;
- 5035 (f) other resources of the beneficiaries;
- 5036 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- 5038

## SB0100 compared with SB0100S01

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

5040 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

5042 (5) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

5163 Section 165. Section **75B-2-903** is renumbered and amended to read:

5165 ~~[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.

5169 Section 166. Section **75B-2-904** is renumbered and amended to read:

5171 ~~[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.

5177 Section 167. Section **75B-2-905** is renumbered and amended to read:

5179 ~~[75-7-905]~~ **75B-2-905. Reviewing compliance.**

5061 (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.

5063 (2) This section does not require a specific outcome in investing.

5183 Section 168. Section **75B-2-906** is renumbered and amended to read:

5185 ~~[75-7-906]~~ **75B-2-906. Investment direction.**

5067 (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:

5070 (a) retention;

5071 (b) purchase;

5072 (c) sale;

## SB0100 compared with SB0100S01

- 5073 (d) exchange;
- 5074 (e) tender; or
- 5075 (f) any other transaction affecting ownership in the investment.
- 5076 (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:
- 5078 (i) is manifestly contrary to the terms of the trust; or
- 5079 (ii) seriously breaches a fiduciary duty to the beneficiaries.
- 5080 (b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).
- 5082 (3) If the terms of a trust authorize a person to give investment direction to the trustee, the person authorized to give investment direction:
- 5084 (a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;
- 5086 (b) is required to act in good faith with regard to:
- 5087 (i) the purposes of the trust; and
- 5088 (ii) the interests of the beneficiaries; and
- 5089 (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.
- 5091 (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:
- 5093 (a) the terms of a trust authorizes a person to give the investment direction to the trustee; and
- 5095 (b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).
- 5097 (5) If the terms of a trust require another person's approval or consent to an investment decision of the trustee:
- 5099 (a) the person from whom approval or consent is required:
- 5100 (i) is presumptively a fiduciary;
- 5101 (ii) is required to act in good faith with regard to:
- 5102 (A) the purposes of the trust; and
- 5103 (B) the interests of the beneficiaries; and

## SB0100 compared with SB0100S01

- 5104 (iii) is liable for any loss that results from breach of the fiduciary duty; and  
5105 (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.

5227 Section 169. Section **75B-2-907** is renumbered and amended to read:

5229 ~~[75-7-907]~~ **75B-2-907. Language invoking standard of chapter.**

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

5238 Section 170. Section **75B-2-1001** is renumbered and amended to read:

5121 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

5241 ~~[75-7-1001]~~ **75B-2-1001. Remedies for breach of trust.**

- 5123 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.  
5124 (2) To remedy a breach of trust that has occurred or may occur, the court may:  
5125 (a) compel the trustee to perform the trustee's duties;  
5126 (b) enjoin the trustee from committing a breach of trust;  
5127 (c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;  
5129 (d) order a trustee to account;  
5130 (e) appoint a special fiduciary to take possession of the trust property and administer the trust;  
5132 (f) suspend the trustee;  
5133 (g) remove the trustee as provided in Section ~~[75-7-706]~~ 75B-2-706;  
5134 (h) reduce or deny compensation to the trustee;  
5135 (i) subject to Section ~~[75-7-1012]~~ 75B-2-1012, void an act of the trustee, impose a lien or a constructive  
trust on trust property, or trace trust property wrongfully disposed of and recover the property or  
[its] the property's proceeds; or  
5138 (j) order any other appropriate relief.

## SB0100 compared with SB0100S01

5258 Section 171. Section **75B-2-1002** is renumbered and amended to read:

5260 ~~[75-7-1002]~~ **75B-2-1002. Damages for breach of trust.**

5142 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

5144 (a) the amount required to restore the value of the trust property and trust distributions to what  
[they] the beneficiaries would have been had the breach not occurred; or

5146 (b) the profit the trustee made by reason of the breach.

5147 (2)

. (a) Except as otherwise provided in this Subsection (2), if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

5150 (b) A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

5153 (c) A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

5274 Section 172. Section **75B-2-1003** is renumbered and amended to read:

5276 ~~[75-7-1003]~~ **75B-2-1003. Damages in absence of breach.**

5158 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

5160 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

5281 Section 173. Section **75B-2-1004** is renumbered and amended to read:

5283 ~~[75-7-1004]~~ **75B-2-1004. Attorney's fees and costs.**

5165 (1) In a judicial proceeding involving the administration of a trust, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

5169 (2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or not, the trustee is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred.

5291 Section 174. Section **75B-2-1005** is renumbered and amended to read:

5293 ~~[75-7-1005]~~ **75B-2-1005. Limitation of action against trustee.**

## SB0100 compared with SB0100S01

- 5175 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than six months after the date that the beneficiary or a person who may represent and bind the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.
- 5180 (2) A report adequately discloses the existence of a potential claim for breach of trust if [it] the report provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into [its] the claim's existence.
- 5183 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within one year after the first to occur of:
- 5185 (a) the removal, resignation, or death of the trustee;
- 5186 (b) the termination of the beneficiary's interest in the trust; or
- 5187 (c) the termination of the trust.
- 5188 (4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

5309 Section 175. Section **75B-2-1006** is renumbered and amended to read:

5311 ~~75-7-1006~~ **75B-2-1006. Reliance on trust instrument.**

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

5315 Section 176. Section **75B-2-1007** is renumbered and amended to read:

5317 ~~75-7-1007~~ **75B-2-1007. Event affecting administration or distribution.**

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

5321 Section 177. Section **75B-2-1008** is renumbered and amended to read:

5323 ~~75-7-1008~~ **75B-2-1008. Exculpation of trustee.**

A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that [it] the term:

- 5207 (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or
- 5209 (2) was inserted by the trustee or fiduciary without disclosure of its existence and contents.

## SB0100 compared with SB0100S01

5329 Section 178. Section **75B-2-1009** is renumbered and amended to read:

5331 ~~[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.

5337 Section 179. Section **75B-2-1010** is renumbered and amended to read:

5339 ~~[75-7-1010]~~ **75B-2-1010. Limitation on personal liability of trustee.**

- 5221 (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.
- 5224 (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.
- 5227 (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.
- 5232 (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.
- 5235 (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.
- 5241 (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



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any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary.

5245 (b) The provisions of this section shall not be construed to limit the fiduciary liability of any trustee for  
[his] the trustee's own acts or omissions with respect to the trust estate.

5366 Section 180. Section **75B-2-1011** is renumbered and amended to read:

5368 ~~[75-7-1011]~~ **75B-2-1011. Interest as general partner.**

5250 (1) Except as otherwise provided in Subsection (3) or unless personal liability is imposed in the  
contract, a trustee who holds an interest as a general partner in a general or limited partnership is  
not personally liable on a contract entered into by the partnership after the trust's acquisition of  
the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed  
~~[pursuant to]~~ in accordance with Title 48, Chapter 2e, Utah Uniform Limited Partnership Act.

5256 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a general partner  
is not personally liable for torts committed by the partnership or for obligations arising from  
ownership or control of the interest unless the trustee is personally at fault.

5260 (3) The immunity provided by this section does not apply if an interest in the partnership is held by the  
trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the  
trustee's descendants, siblings, or parents, or the spouse of any of them.

5264 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable  
for contracts and other obligations of the partnership as if the settlor were a general partner.

5386 Section 181. Section **75B-2-1012** is renumbered and amended to read:

5388 ~~[75-7-1012]~~ **75B-2-1012. Protection of person dealing with trustee.**

5270 (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for  
value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising  
the trustee's powers is protected from liability as if the trustee properly exercised the power.

5274 (2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire  
into the extent of the trustee's powers or the propriety of ~~[their]~~ the trustee's exercise.

5277 (3) A person who in good faith delivers assets to a trustee need not ensure ~~[their]~~ the assets' proper  
application.

5279 (4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith  
and for value deals with a former trustee, without knowledge that the trusteeship has terminated is  
protected from liability as if the former trustee were still a trustee.

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- 5283 (5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.
- 5404 Section 182. Section **75B-2-1013** is renumbered and amended to read:
- 5406 ~~[75-7-1013]~~**75B-2-1013. Certification of trust.**
- 5288 (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:
- 5291 (a) that the trust exists and the date the trust instrument was executed;
- 5292 (b) the identity of the settlor;
- 5293 (c) the identity and address of the currently acting trustee;
- 5294 (d) the powers of the trustee in the pending transaction;
- 5295 (e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- 5297 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and
- 5299 (g) the name in which title to trust property may be taken.
- 5300 (2) A certification of trust may be signed or otherwise authenticated by any trustee.
- 5301 (3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- 5304 (4) A certification of trust need not contain the dispositive terms of a trust.
- 5305 (5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.
- 5308 (6)
- . (a) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in it are incorrect is not liable to any person for acting and may assume without inquiry the existence of the facts contained in the certification.
- 5312 (b) Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
- 5315 (7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

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5318 (8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts  
is liable for costs, expenses, attorney fees, and damages if the court determines that the person did  
not act in good faith in demanding the trust instrument.

5321 (9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial  
proceeding concerning the trust.

5442 Section 183. Section **75B-2-1101** is renumbered and amended to read:

5325

### **Part 11. Applicability Provisions**

5445 ~~[75-7-1101]~~ **75B-2-1101. 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.

5449 Section 184. Section **75B-2-1102** is renumbered and amended to read:

5451 ~~[75-7-1102]~~ **75B-2-1102. Electronic records and signatures.**

The provisions of this chapter governing the legal effect, validity, or enforceability of  
electronic records or electronic signatures, and of contracts formed or performed with the use  
of such records or signatures, conform to the requirements of Section 102 of the Electronic  
Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7002) and supersede,  
modify, and limit the requirements of the Electronic Signatures in Global and National  
Commerce Act.

5458 Section 185. Section **75B-2-1103** is renumbered and amended to read:

5460 ~~[75-7-1103]~~ **75B-2-1103. Application to existing relationships.**

5342 (1) Except as otherwise provided, this chapter applies to:

5343 (a) all trusts created before, on, or after July 1, 2004;

5344 (b) all judicial proceedings concerning trusts commenced on or after July 1, 2004; and

5345 (c) judicial proceedings concerning trusts commenced before July 1, 2004, unless the court finds that  
application of a particular provision of this chapter would 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.

5350 (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.

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5353 (3) An act done before July 1, 2004, is not affected by this chapter.

5354 (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.

5476 Section 186. Section **186** is enacted to read:

5358

### CHAPTER 3. UNIFORM DIRECTED TRUST ACT

5478 **75B-3-101. Reserved.**

Reserved.

5480 Section 187. Section **75B-3-102** is renumbered and amended to read:

5482 ~~[75-12-102]~~ **75B-3-102. Definitions.**

As used in this chapter:

5365 (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.

5368 (2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

5369 (3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

5370 ~~[(4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.]~~

5372 ~~[(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.

5375 (b) "Power of direction" includes a power over the investment, management, or distribution of trust property or other matters of trust administration.

5377 (c) "Power of direction" does not include the powers described in Subsection ~~[75-12-105(2)]~~ 75B-3-105(2).

5379 ~~[(6) "Settlor" means the same as that term is defined in Section {f} 75-7-103 {j} 75B-2-103].~~

5380 ~~[(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 jurisdiction of the United States.]~~

5383 ~~[(8)]~~ (5) "Terms of a trust" means:

5384 (a) subject to Subsection ~~[(8)(b)]~~ (5)(b), the manifestation of the settlor's intent regarding a trust's provisions as:

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- 5386 (i) expressed in the trust instrument; or
- 5387 (ii) established by other evidence that would be admissible in a judicial proceeding; or
- 5388 (b) the trust's provisions as established, determined, or amended by:
- 5389 (i) a trustee or trust director in accordance with applicable law;
- 5390 (ii) a court order; or
- 5391 (iii) a nonjudicial settlement agreement under Section ~~[75-7-110]~~ 75B-2-110.
- 5392 ~~[(9)]~~ (6) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee, regardless of whether:
- 5395 (a) the terms of the trust refer to the person as a trust director; or
- 5396 (b) the person is a beneficiary or settlor of the trust.
- 5397 ~~[(10) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.]~~
- 5517 Section 188. Section **75B-3-103** is renumbered and amended to read:
- 5519 ~~[75-12-103]~~75B-3-103. Application -- Principal place of administration.
- 5401 (1) This chapter applies to a trust, whenever created, that has the trust's principal place of administration in this state, subject to the following rules:
- 5403 (a) if the trust was created before May 14, 2019, this chapter applies only to a decision or action occurring on or after May 14, 2019; and
- 5405 (b) if the principal place of administration of the trust is changed to this state on or after May 14, 2019, this chapter applies only to a decision or action occurring on or after the date of the change.
- 5408 (2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, the terms of the trust that designate the principal place of administration of the trust are valid and controlling if:
- 5411 (a) a trustee's principal place of business is located in, or a trustee is a resident of, the designated jurisdiction;
- 5413 (b) a trust director's principal place of business is located in, or a trust director is a resident of, the designated jurisdiction; or
- 5415 (c) all or part of the administration occurs in the designated jurisdiction.
- 5535 Section 189. Section **75B-3-104** is renumbered and amended to read:
- 5537 ~~[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

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modified by this chapter or the law of this state other than this chapter.

5540 Section 190. Section **75B-3-105** is renumbered and amended to read:

5542 ~~[75-12-105]~~ **75B-3-105. Exclusions.**

- 5424 (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.
- 5427 (2) This chapter does not apply to:
- 5428 (a) a power of appointment;
- 5429 (b) a power to appoint or remove a trustee or trust director;
- 5430 (c) a power of a settlor over a trust to the extent the settlor has a power to revoke the trust;
- 5432 (d) a power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:
- 5434 (i) the beneficiary; or
- 5435 (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
- 5438 (e) power over a trust if:
- 5439 (i) the terms of the trust provide that the power is held in a nonfiduciary capacity; and
- 5440 (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.
- 5443 (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.

5566 Section 191. Section **75B-3-106** is renumbered and amended to read:

5568 ~~[75-12-106]~~ **75B-3-106. Powers of trust director.**

- 5450 (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.
- 5452 (2) Unless the terms of a trust provide otherwise:
- 5453 (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
- 5455 (b) trust directors with joint powers shall act by majority decision.

## SB0100 compared with SB0100S01

5575 Section 192. Section **75B-3-107** is renumbered and amended to read:

5577 ~~[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:

5462 (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

5465 (2) a charitable interest in the trust, including notice regarding the interest to the attorney general.

5586 Section 193. Section **75B-3-108** is renumbered and amended to read:

5588 ~~[75-12-108]~~**75B-3-108. Duty and liability of trust director.**

5470 (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):

5472 (a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

5474 (i) if the power is held individually, as a sole trustee in a like position and under similar circumstances;  
or

5476 (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

5478 (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.

5481 (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.

5485 (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.

5606 Section 194. Section **75B-3-109** is renumbered and amended to read:

5608 ~~[75-12-109]~~**75B-3-109. Duty and liability of directed trustee.**

5490 (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.

## SB0100 compared with SB0100S01

- 5493 (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.
- 5496 (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:
- 5498 (a) the breach involved the trustee's or other director's willful misconduct;
- 5499 (b) the release was induced by improper conduct of the trustee or other director in procuring the release; or
- 5501 (c) at the time of the release, the director did not know the material facts relating to the breach.
- 5503 (4) A directed trustee that has reasonable doubt about the directed trustee's duty under this section may petition the court for instructions.
- 5505 (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.
- 5626 Section 195. Section **75B-3-110** is renumbered and amended to read:
- 5628 ~~[75-12-110]~~**75B-3-110. Duty to provide information to trust director or trustee.**
- 5510 (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:
- 5512 (a) the powers or duties of the trustee; and
- 5513 (b) the powers or duties of the director.
- 5514 (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:
- 5516 (a) the powers or duties of the director; and
- 5517 (b) the powers or duties of the trustee or other director.
- 5518 (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.
- 5521 (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.
- 5643 Section 196. Section **75B-3-111** is renumbered and amended to read:
- 5645 ~~[75-12-111]~~**75B-3-111. No duty to monitor, inform, or advise.**



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- 5527 (1) Unless the terms of a trust provide otherwise:
- 5528 (a) a trustee does not have a duty to:
- 5529 (i) monitor a trust director; or
- 5530 (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
- 5532 (b) by taking an action described in Subsection (1)(a), a trustee does not assume the duty excluded under Subsection (1)(a).
- 5534 (2) Unless the terms of a trust provide otherwise:
- 5535 (a) a trust director does not have a duty to:
- 5536 (i) monitor a trustee or another trust director; or
- 5537 (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
- 5540 (b) by taking an action described in Subsection (1)(a), a trust director does not assume the duty excluded under Subsection (1)(a).
- 5661 Section 197. Section **75B-3-112** is renumbered and amended to read:
- 5663 ~~[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**.
- 5669 Section 198. Section **75B-3-113** is renumbered and amended to read:
- 5671 ~~[75-12-113]~~ **75B-3-113. Limitation of action against trust director.**
- 5553 (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.
- 5556 (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.

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5679 Section 199. Section **75B-3-114** is renumbered and amended to read:

5681 ~~[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.

5685 Section 200. Section **75B-3-115** is renumbered and amended to read:

5687 ~~[75-12-115]~~ **75B-3-115. Jurisdiction over trust director.**

5569 (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.

5572 (2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

5693 Section 201. Section **75B-3-116** is renumbered and amended to read:

5695 ~~[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:

5579 (1) acceptance under Section ~~[75-7-701]~~ 75B-2-701;

5580 (2) giving of bond to secure performance under Section ~~[75-7-702]~~ 75B-2-702;

5581 (3) reasonable compensation under Section ~~[75-7-708]~~ 75B-2-708;

5582 (4) resignation under Section ~~[75-7-705]~~ 75B-2-705;

5583 (5) removal under Section ~~[75-7-706]~~ 75B-2-706; and

5584 (6) vacancy and appointment of successor under Section ~~[75-7-704]~~ 75B-2-704.

5704 Section 202. Section **75B-3-117** is renumbered and amended to read:

5706 ~~[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.

5710 Section 203. Section **75B-3-118** is renumbered and amended to read:

5712 ~~[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

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the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

5717 Section 204. Section **78B-5-505** is amended to read:

5718 **78B-5-505. Property exempt from execution.**

5600 (1)

. (a) An individual is entitled to exemption of the following property:

5601 (i) a burial plot for the individual and the individual's family;

5602 (ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain  
health;

5604 (iii) benefits that the individual or the individual's dependent have received or are entitled to receive  
from any source because of:

5606 (A) disability;

5607 (B) illness; or

5608 (C) unemployment;

5609 (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;

5612 (v) veterans benefits;

5613 (vi) money or property received, and rights to receive money or property for child support;

5615 (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;

5618 (viii)

. (A) one:

5619 (I) clothes washer and dryer;

5620 (II) refrigerator;

5621 (III) freezer;

5622 (IV) stove;

5623 (V) microwave oven; and

5624 (VI) sewing machine;

5625 (B) all carpets in use;

5626 (C) provisions sufficient for 12 months actually provided for individual or family use;

5628 (D) all wearing apparel of every individual and dependent, not including jewelry or furs; and

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- 5630 (E) all beds and bedding for every individual or dependent;
- 5631 (ix) except for works of art held by the debtor as part of a trade or business, works of art:
- 5633 (A) depicting the debtor or the debtor and the debtor's resident family; or
- 5634 (B) produced by the debtor or the debtor and the debtor's resident family;
- 5635 (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;
- 5639 (xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;
- 5643 (xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;
- 5647 (xiii) proceeds and avails of any unmaturing life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;
- 5651 (xiv) except as provided in Subsection (1)(b), and except for a judgment described in Subsection ~~[75-7-503(2)(e)]~~ 75B-2-503(2)(c), any money or other assets held for or payable to the individual as an owner, participant, or beneficiary from or an interest of the individual as an owner, participant, or beneficiary in a fund or account, including an inherited fund or account, in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code, including an owner's, a participant's, or a beneficiary's interest that arises by inheritance, designation, appointment, or otherwise;
- 5660 (xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code;
- 5663 (xvi) unpaid earnings of the household of the filing individual due as of the date of the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family income for the household size of the filing individual as determined by the Utah State Annual Median

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Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid earnings are paid more often than once a month or, if unpaid earnings are not paid more often than once a month, then in the amount of 1/12 of the Utah State annual median family income for the household size of the individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers;

- 5674 (xvii) except for curio or relic firearms, as defined in Section 76-10-501, any three of the following:
- 5676 (A) one handgun and ammunition for the handgun not exceeding 1,000 rounds;
- 5677 (B) one shotgun and ammunition for the shotgun not exceeding 1,000 rounds; and
- 5678 (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000 rounds; and
- 5680 (xviii) money, not exceeding \$200,000, in the aggregate, that an individual deposits, more than 18 months before the day on which the individual files a petition for bankruptcy or an action is filed by a creditor against the individual, as applicable, in all tax-advantaged accounts for saving for higher education costs on behalf of a particular individual that meets the requirements of Section 529, Internal Revenue Code.
- 5686 (b)
- . (i) Any money, asset, or other interest in a fund or account that is exempt from a claim of a creditor of the owner, beneficiary, or participant under Subsection (1)(a)(xiv) does not cease to be exempt after the owner's, participant's, or beneficiary's death by reason of a direct transfer or eligible rollover to an inherited individual retirement account as defined in Section 408(d)(3), Internal Revenue Code.
- 5692 (ii) Subsections (1)(a)(xiv) and (1)(b)(i) apply to all inherited individual retirement accounts without regard to the date on which the account was created.
- 5694 (c)
- . (i) The exemption granted by Subsection (1)(a)(xiv) does not apply to:
- 5695 (A) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or
- 5697 (B) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy, except amounts directly rolled over from other funds that are exempt from attachment under this section.
- 5700

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(ii) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to the secured creditor's interest in proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

5704 (2)

(a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a victim who is a child if the person receiving the benefits has been convicted of a felony sex offense against the victim and ordered by the sentencing court to pay restitution to the victim.

5709 (b) The exemption from execution under this Subsection (2) shall be reinstated upon payment of the restitution in full.

5711 (3) The exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

5713 (4)

(a) The exemptions described in Subsections (1)(a)(iii), (iv), (vi), (vii), (x), (xii), (xiii), (xiv), (xv), (xvii), and (xviii) do not apply to a civil accounts receivable or a civil judgment of restitution for an individual who is found in contempt under Section 78B-6-317.

5717 (b) Subsection (4)(a) does not apply to the benefits described in Subsection (1)(a)(iii) if the individual's dependent received, or is entitled to receive, the benefits.

5837 Section 205. **Repealer.**

This Bill Repeals:

5838 This bill repeals:

5839 Section **75-7-101, Title.**

5840 Section **75-12-101, Title.**

5841 Section 206. **Effective date.**

This bill takes effect on May 7, 2025.

5843 Section 207. **Coordinating S.B. 100 with S.B. 134.**

If S.B. 100, Estate Planning Recodification, and S.B. 134, Health-Care Decisions Act Amendments, both pass and become law, the Legislature intends that, on January 1, 2026, the following subsections enacted by S.B. 134 be deleted and the remaining subsections renumbered accordingly:

(1) Subsection 75A-9-101(7), defining the term, "Electronic";

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(2) Subsection 75A-9-101(10), defining the term, "Guardian";

(3) Subsection 75A-9-101(19), defining the term, "Person";

(4) Subsection 75A-9-101(24), defining the term, "Record";

(5) Subsection 75A-9-101(26), defining the term, "Sign"; and

(6) Subsection 75A-9-101(27), defining the term, "State".

5854

**Section 208. Coordinating S.B. 100 with H.B. 334.**

If S.B. 100, Estate Planning Recodification, and H.B. 334, Guardianships and Supported Decision-Making Agreements Amendments, both pass and become law, the Legislature intends that, on May 7, 2025, the changes in H.B. 334 to Subsection 7-5-1(1)(b) not be made.

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