

**Estate Planning Recodification**  
2025 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Todd D. Weiler**

---

---

**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;
- 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
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

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

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

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

32 **51-7-14**, as last amended by Laws of Utah 2023, Chapter 242  
33 **53B-8a-107**, as last amended by Laws of Utah 2023, Chapter 242  
34 **58-9-703**, as last amended by Laws of Utah 2007, Chapter 144  
35 **59-10-103**, as last amended by Laws of Utah 2023, Chapter 44  
36 **75-1-102**, as enacted by Laws of Utah 1975, Chapter 150  
37 **75-1-103**, as enacted by Laws of Utah 1975, Chapter 150  
38 **75-1-104**, as enacted by Laws of Utah 1975, Chapter 150  
39 **75-1-105**, as enacted by Laws of Utah 1975, Chapter 150  
40 **75-1-106**, as enacted by Laws of Utah 1975, Chapter 150  
41 **75-1-201**, as last amended by Laws of Utah 2024, Chapter 364  
42 **75-1-301**, as last amended by Laws of Utah 1992, Chapter 30  
43 **75-1-303**, as enacted by Laws of Utah 1975, Chapter 150  
44 **75-1-304**, as enacted by Laws of Utah 1975, Chapter 150  
45 **75-1-305**, as enacted by Laws of Utah 1975, Chapter 150  
46 **75-1-309**, as enacted by Laws of Utah 1975, Chapter 150  
47 **75-1-310**, as enacted by Laws of Utah 1975, Chapter 150  
48 **75-1-311**, as last amended by Laws of Utah 1977, Chapter 194  
49 **75-1-404**, as enacted by Laws of Utah 1975, Chapter 150  
50 **75-2-803**, as last amended by Laws of Utah 2024, Chapter 153  
51 **75-2-1209**, as last amended by Laws of Utah 2004, Chapter 89  
52 **75-3-101**, as enacted by Laws of Utah 1975, Chapter 150  
53 **75-3-105**, as enacted by Laws of Utah 1975, Chapter 150  
54 **75-3-303**, as last amended by Laws of Utah 2013, Chapter 364  
55 **75-3-308**, as last amended by Laws of Utah 1998, Chapter 39  
56 **75-3-504**, as enacted by Laws of Utah 1975, Chapter 150  
57 **75-3-608**, as enacted by Laws of Utah 1975, Chapter 150  
58 **75-3-616**, as enacted by Laws of Utah 1975, Chapter 150  
59 **75-3-703**, as last amended by Laws of Utah 2004, Chapter 89  
60 **75-3-704**, as last amended by Laws of Utah 1988, Chapter 110  
61 **75-3-710**, as last amended by Laws of Utah 1983, Chapter 226  
62 **75-3-714**, as last amended by Laws of Utah 1992, Chapter 30  
63 **75-3-913**, as last amended by Laws of Utah 2004, Chapter 89  
64 **75-3-915**, as enacted by Laws of Utah 1975, Chapter 150  
65 **75-3-916**, as last amended by Laws of Utah 1983, Chapter 226

66 **75-3-1008**, as enacted by Laws of Utah 1975, Chapter 150  
67 **75-5-303**, as last amended by Laws of Utah 2024, Chapter 113  
68 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150  
69 **75-5-416**, as last amended by Laws of Utah 2014, Chapter 142  
70 **75-5-417**, as last amended by Laws of Utah 2022, Chapter 358  
71 **75-6-201**, as last amended by Laws of Utah 1986, Chapter 158  
72 **75A-1-201**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
73 **75A-2-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
74 **75A-2-120**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
75 **75A-3-101**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
76 **75A-4-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
77 **75A-4-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
78 **75A-5-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
79 **75A-5-202**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
80 **75A-5-203**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
81 **75A-5-303**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
82 **75A-5-304**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
83 **75A-6-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
84 **75A-6-112**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
85 **75A-6-113**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
86 **75A-7-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
87 **75A-8-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
88 **75B-1-201**, as enacted by Laws of Utah 2024, Chapter 364  
89 **75B-1-301**, as enacted by Laws of Utah 2024, Chapter 364  
90 **75B-1-302**, as renumbered and amended by Laws of Utah 2024, Chapter 364  
91 **78B-5-505**, as last amended by Laws of Utah 2021, Chapter 260

92 ENACTS:

93 **75B-2-101**, Utah Code Annotated 1953

94 **75B-3-101**, Utah Code Annotated 1953

95 RENUMBERS AND AMENDS:

96 **75-1-111**, (Renumbered from 75-8-101, as enacted by Laws of Utah 1975, Chapter  
97 150)

98 **75B-2-102**, (Renumbered from 75-7-102, as enacted by Laws of Utah 2004, Chapter  
99 89)

100        **75B-2-103**, (Renumbered from 75-7-103, as last amended by Laws of Utah 2020,  
101        Chapter 348)  
102        **75B-2-104**, (Renumbered from 75-7-104, as enacted by Laws of Utah 2004, Chapter  
103        89)  
104        **75B-2-105**, (Renumbered from 75-7-105, as last amended by Laws of Utah 2024,  
105        Chapter 364)  
106        **75B-2-106**, (Renumbered from 75-7-106, as enacted by Laws of Utah 2004, Chapter  
107        89)  
108        **75B-2-107**, (Renumbered from 75-7-107, as last amended by Laws of Utah 2024,  
109        Chapter 364)  
110        **75B-2-108**, (Renumbered from 75-7-108, as enacted by Laws of Utah 2004, Chapter  
111        89)  
112        **75B-2-109**, (Renumbered from 75-7-109, as enacted by Laws of Utah 2004, Chapter  
113        89)  
114        **75B-2-110**, (Renumbered from 75-7-110, as enacted by Laws of Utah 2004, Chapter  
115        89)  
116        **75B-2-111**, (Renumbered from 75-7-111, as enacted by Laws of Utah 2004, Chapter  
117        89)  
118        **75B-2-112**, (Renumbered from 75-7-112, as enacted by Laws of Utah 2004, Chapter  
119        89)  
120        **75B-2-113**, (Renumbered from 75-7-1201, as enacted by Laws of Utah 2004, Forth  
121        Special Session, Chapters 1, 1)  
122        **75B-2-201**, (Renumbered from 75-7-201, as last amended by Laws of Utah 2003,  
123        Second Special Session, Chapters 3, 3)  
124        **75B-2-202**, (Renumbered from 75-7-202, as last amended by Laws of Utah 2004,  
125        Chapter 89)  
126        **75B-2-203**, (Renumbered from 75-7-203, as last amended by Laws of Utah 2024,  
127        Chapter 158)  
128        **75B-2-204**, (Renumbered from 75-7-204, as last amended by Laws of Utah 2003,  
129        Second Special Session, Chapters 3, 3)  
130        **75B-2-205**, (Renumbered from 75-7-205, as last amended by Laws of Utah 2024,  
131        Chapter 158)  
132        **75B-2-301**, (Renumbered from 75-7-301, as last amended by Laws of Utah 2024,  
133        Chapter 364)

- 134 **75B-2-302**, (Renumbered from 75-7-302, as repealed and reenacted by Laws of Utah  
135 2004, Chapter 89)
- 136 **75B-2-303**, (Renumbered from 75-7-303, as repealed and reenacted by Laws of Utah  
137 2004, Chapter 89)
- 138 **75B-2-304**, (Renumbered from 75-7-304, as repealed and reenacted by Laws of Utah  
139 2004, Chapter 89)
- 140 **75B-2-305**, (Renumbered from 75-7-305, as repealed and reenacted by Laws of Utah  
141 2004, Chapter 89)
- 142 **75B-2-401**, (Renumbered from 75-7-401, as last amended by Laws of Utah 2009,  
143 Chapter 278)
- 144 **75B-2-402**, (Renumbered from 75-7-402, as repealed and reenacted by Laws of Utah  
145 2004, Chapter 89)
- 146 **75B-2-403**, (Renumbered from 75-7-403, as repealed and reenacted by Laws of Utah  
147 2004, Chapter 89)
- 148 **75B-2-404**, (Renumbered from 75-7-404, as repealed and reenacted by Laws of Utah  
149 2004, Chapter 89)
- 150 **75B-2-405**, (Renumbered from 75-7-405, as repealed and reenacted by Laws of Utah  
151 2004, Chapter 89)
- 152 **75B-2-406**, (Renumbered from 75-7-406, as repealed and reenacted by Laws of Utah  
153 2004, Chapter 89)
- 154 **75B-2-407**, (Renumbered from 75-7-407, as repealed and reenacted by Laws of Utah  
155 2004, Chapter 89)
- 156 **75B-2-408**, (Renumbered from 75-7-408, as repealed and reenacted by Laws of Utah  
157 2004, Chapter 89)
- 158 **75B-2-409**, (Renumbered from 75-7-409, as repealed and reenacted by Laws of Utah  
159 2004, Chapter 89)
- 160 **75B-2-410**, (Renumbered from 75-7-410, as repealed and reenacted by Laws of Utah  
161 2004, Chapter 89)
- 162 **75B-2-411**, (Renumbered from 75-7-411, as repealed and reenacted by Laws of Utah  
163 2004, Chapter 89)
- 164 **75B-2-412**, (Renumbered from 75-7-412, as enacted by Laws of Utah 2004, Chapter  
165 89)
- 166 **75B-2-413**, (Renumbered from 75-7-413, as enacted by Laws of Utah 2004, Chapter  
167 89)

168       **75B-2-414**, (Renumbered from 75-7-414, as enacted by Laws of Utah 2004, Chapter  
169       89)  
170       **75B-2-415**, (Renumbered from 75-7-415, as enacted by Laws of Utah 2004, Chapter  
171       89)  
172       **75B-2-416**, (Renumbered from 75-7-416, as enacted by Laws of Utah 2004, Chapter  
173       89)  
174       **75B-2-417**, (Renumbered from 75-7-417, as enacted by Laws of Utah 2004, Chapter  
175       89)  
176       **75B-2-501**, (Renumbered from 75-7-501, as last amended by Laws of Utah 2024,  
177       Chapter 364)  
178       **75B-2-502**, (Renumbered from 75-7-502, as enacted by Laws of Utah 2004, Chapter  
179       89)  
180       **75B-2-503**, (Renumbered from 75-7-503, as last amended by Laws of Utah 2021,  
181       Chapter 260)  
182       **75B-2-504**, (Renumbered from 75-7-504, as enacted by Laws of Utah 2004, Chapter  
183       89)  
184       **75B-2-505**, (Renumbered from 75-7-505, as last amended by Laws of Utah 2024,  
185       Chapter 364)  
186       **75B-2-506**, (Renumbered from 75-7-506, as enacted by Laws of Utah 2004, Chapter  
187       89)  
188       **75B-2-507**, (Renumbered from 75-7-507, as enacted by Laws of Utah 2004, Chapter  
189       89)  
190       **75B-2-508**, (Renumbered from 75-7-508, as last amended by Laws of Utah 2023,  
191       Chapter 330)  
192       **75B-2-509**, (Renumbered from 75-7-509, as last amended by Laws of Utah 2023,  
193       Chapter 330)  
194       **75B-2-510**, (Renumbered from 75-7-510, as renumbered and amended by Laws of  
195       Utah 2004, Chapter 89)  
196       **75B-2-511**, (Renumbered from 75-7-511, as last amended by Laws of Utah 2023,  
197       Chapter 330)  
198       **75B-2-512**, (Renumbered from 75-7-512, as renumbered and amended by Laws of  
199       Utah 2004, Chapter 89)  
200       **75B-2-513**, (Renumbered from 75-7-513, as last amended by Laws of Utah 2004,  
201       Chapter 282 and renumbered and amended by Laws of Utah 2004, Chapter 89)

202        **75B-2-514**, (Renumbered from 75-7-514, as renumbered and amended by Laws of  
203        Utah 2004, Chapter 89)  
204        **75B-2-515**, (Renumbered from 75-7-515, as renumbered and amended by Laws of  
205        Utah 2004, Chapter 89)  
206        **75B-2-516**, (Renumbered from 75-7-516, as renumbered and amended by Laws of  
207        Utah 2004, Chapter 89)  
208        **75B-2-517**, (Renumbered from 75-7-517, as renumbered and amended by Laws of  
209        Utah 2004, Chapter 89)  
210        **75B-2-518**, (Renumbered from 75-7-518, as renumbered and amended by Laws of  
211        Utah 2004, Chapter 89)  
212        **75B-2-519**, (Renumbered from 75-7-519, as renumbered and amended by Laws of  
213        Utah 2004, Chapter 89)  
214        **75B-2-601**, (Renumbered from 75-7-604, as enacted by Laws of Utah 2004, Chapter  
215        89)  
216        **75B-2-602**, (Renumbered from 75-7-605, as enacted by Laws of Utah 2004, Chapter  
217        89)  
218        **75B-2-603**, (Renumbered from 75-7-606, as last amended by Laws of Utah 2019,  
219        Chapter 153)  
220        **75B-2-604**, (Renumbered from 75-7-607, as enacted by Laws of Utah 2004, Chapter  
221        89)  
222        **75B-2-701**, (Renumbered from 75-7-701, as enacted by Laws of Utah 2004, Chapter  
223        89)  
224        **75B-2-702**, (Renumbered from 75-7-702, as enacted by Laws of Utah 2004, Chapter  
225        89)  
226        **75B-2-703**, (Renumbered from 75-7-703, as last amended by Laws of Utah 2019,  
227        Chapter 153)  
228        **75B-2-704**, (Renumbered from 75-7-704, as enacted by Laws of Utah 2004, Chapter  
229        89)  
230        **75B-2-705**, (Renumbered from 75-7-705, as enacted by Laws of Utah 2004, Chapter  
231        89)  
232        **75B-2-706**, (Renumbered from 75-7-706, as enacted by Laws of Utah 2004, Chapter  
233        89)  
234        **75B-2-707**, (Renumbered from 75-7-707, as enacted by Laws of Utah 2004, Chapter  
235        89)

236 **75B-2-708**, (Renumbered from 75-7-708, as enacted by Laws of Utah 2004, Chapter  
237 89)  
238 **75B-2-709**, (Renumbered from 75-7-709, as enacted by Laws of Utah 2004, Chapter  
239 89)  
240 **75B-2-801**, (Renumbered from 75-7-801, as enacted by Laws of Utah 2004, Chapter  
241 89)  
242 **75B-2-802**, (Renumbered from 75-7-802, as enacted by Laws of Utah 2004, Chapter  
243 89)  
244 **75B-2-803**, (Renumbered from 75-7-803, as enacted by Laws of Utah 2004, Chapter  
245 89)  
246 **75B-2-804**, (Renumbered from 75-7-804, as enacted by Laws of Utah 2004, Chapter  
247 89)  
248 **75B-2-805**, (Renumbered from 75-7-805, as enacted by Laws of Utah 2004, Chapter  
249 89)  
250 **75B-2-806**, (Renumbered from 75-7-806, as enacted by Laws of Utah 2004, Chapter  
251 89)  
252 **75B-2-807**, (Renumbered from 75-7-807, as enacted by Laws of Utah 2004, Chapter  
253 89)  
254 **75B-2-808**, (Renumbered from 75-7-808, as enacted by Laws of Utah 2004, Chapter  
255 89)  
256 **75B-2-809**, (Renumbered from 75-7-809, as enacted by Laws of Utah 2004, Chapter  
257 89)  
258 **75B-2-810**, (Renumbered from 75-7-810, as enacted by Laws of Utah 2004, Chapter  
259 89)  
260 **75B-2-811**, (Renumbered from 75-7-811, as enacted by Laws of Utah 2004, Chapter  
261 89)  
262 **75B-2-812**, (Renumbered from 75-7-812, as enacted by Laws of Utah 2004, Chapter  
263 89)  
264 **75B-2-813**, (Renumbered from 75-7-813, as enacted by Laws of Utah 2004, Chapter  
265 89)  
266 **75B-2-814**, (Renumbered from 75-7-814, as last amended by Laws of Utah 2024,  
267 Chapter 364)  
268 **75B-2-815**, (Renumbered from 75-7-815, as enacted by Laws of Utah 2004, Chapter  
269 89)



270 **75B-2-816**, (Renumbered from 75-7-816, as last amended by Laws of Utah 2024,  
271 Chapter 364)  
272 **75B-2-817**, (Renumbered from 75-7-817, as enacted by Laws of Utah 2004, Chapter  
273 89)  
274 **75B-2-901**, (Renumbered from 75-7-901, as enacted by Laws of Utah 2004, Chapter  
275 89)  
276 **75B-2-902**, (Renumbered from 75-7-902, as enacted by Laws of Utah 2004, Chapter  
277 89)  
278 **75B-2-903**, (Renumbered from 75-7-903, as enacted by Laws of Utah 2004, Chapter  
279 89)  
280 **75B-2-904**, (Renumbered from 75-7-904, as enacted by Laws of Utah 2004, Chapter  
281 89)  
282 **75B-2-905**, (Renumbered from 75-7-905, as enacted by Laws of Utah 2004, Chapter  
283 89)  
284 **75B-2-906**, (Renumbered from 75-7-906, as enacted by Laws of Utah 2004, Chapter  
285 89)  
286 **75B-2-907**, (Renumbered from 75-7-907, as enacted by Laws of Utah 2004, Chapter  
287 89)  
288 **75B-2-1001**, (Renumbered from 75-7-1001, as enacted by Laws of Utah 2004, Chapter  
289 89)  
290 **75B-2-1002**, (Renumbered from 75-7-1002, as enacted by Laws of Utah 2004, Chapter  
291 89)  
292 **75B-2-1003**, (Renumbered from 75-7-1003, as enacted by Laws of Utah 2004, Chapter  
293 89)  
294 **75B-2-1004**, (Renumbered from 75-7-1004, as enacted by Laws of Utah 2004, Chapter  
295 89)  
296 **75B-2-1005**, (Renumbered from 75-7-1005, as enacted by Laws of Utah 2004, Chapter  
297 89)  
298 **75B-2-1006**, (Renumbered from 75-7-1006, as enacted by Laws of Utah 2004, Chapter  
299 89)  
300 **75B-2-1007**, (Renumbered from 75-7-1007, as enacted by Laws of Utah 2004, Chapter  
301 89)  
302 **75B-2-1008**, (Renumbered from 75-7-1008, as enacted by Laws of Utah 2004, Chapter  
303 89)

304 **75B-2-1009**, (Renumbered from 75-7-1009, as enacted by Laws of Utah 2004, Chapter  
305 89)  
306 **75B-2-1010**, (Renumbered from 75-7-1010, as enacted by Laws of Utah 2004, Chapter  
307 89)  
308 **75B-2-1011**, (Renumbered from 75-7-1011, as last amended by Laws of Utah 2018,  
309 Chapter 281)  
310 **75B-2-1012**, (Renumbered from 75-7-1012, as enacted by Laws of Utah 2004, Chapter  
311 89)  
312 **75B-2-1013**, (Renumbered from 75-7-1013, as enacted by Laws of Utah 2004, Chapter  
313 89)  
314 **75B-2-1101**, (Renumbered from 75-7-1101, as enacted by Laws of Utah 2004, Chapter  
315 89)  
316 **75B-2-1102**, (Renumbered from 75-7-1102, as enacted by Laws of Utah 2004, Chapter  
317 89)  
318 **75B-2-1103**, (Renumbered from 75-7-1103, as enacted by Laws of Utah 2004, Chapter  
319 89)  
320 **75B-3-102**, (Renumbered from 75-12-102, as enacted by Laws of Utah 2019, Chapter  
321 153)  
322 **75B-3-103**, (Renumbered from 75-12-103, as enacted by Laws of Utah 2019, Chapter  
323 153)  
324 **75B-3-104**, (Renumbered from 75-12-104, as enacted by Laws of Utah 2019, Chapter  
325 153)  
326 **75B-3-105**, (Renumbered from 75-12-105, as enacted by Laws of Utah 2019, Chapter  
327 153)  
328 **75B-3-106**, (Renumbered from 75-12-106, as enacted by Laws of Utah 2019, Chapter  
329 153)  
330 **75B-3-107**, (Renumbered from 75-12-107, as enacted by Laws of Utah 2019, Chapter  
331 153)  
332 **75B-3-108**, (Renumbered from 75-12-108, as enacted by Laws of Utah 2019, Chapter  
333 153)  
334 **75B-3-109**, (Renumbered from 75-12-109, as enacted by Laws of Utah 2019, Chapter  
335 153)  
336 **75B-3-110**, (Renumbered from 75-12-110, as enacted by Laws of Utah 2019, Chapter  
337 153)

338 **75B-3-111**, (Renumbered from 75-12-111, as enacted by Laws of Utah 2019, Chapter  
339 153)

340 **75B-3-112**, (Renumbered from 75-12-112, as enacted by Laws of Utah 2019, Chapter  
341 153)

342 **75B-3-113**, (Renumbered from 75-12-113, as enacted by Laws of Utah 2019, Chapter  
343 153)

344 **75B-3-114**, (Renumbered from 75-12-114, as enacted by Laws of Utah 2019, Chapter  
345 153)

346 **75B-3-115**, (Renumbered from 75-12-115, as enacted by Laws of Utah 2019, Chapter  
347 153)

348 **75B-3-116**, (Renumbered from 75-12-116, as enacted by Laws of Utah 2019, Chapter  
349 153)

350 **75B-3-117**, (Renumbered from 75-12-117, as enacted by Laws of Utah 2019, Chapter  
351 153)

352 **75B-3-118**, (Renumbered from 75-12-118, as enacted by Laws of Utah 2019, Chapter  
353 153)

354 REPEALS:

355 **75-7-101**, as repealed and reenacted by Laws of Utah 2004, Chapter 89

356 **75-12-101**, as enacted by Laws of Utah 2019, Chapter 153

357

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

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

360 **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  
363 declaration of trust that transfers property to trustees, to be held and managed by  
364 them for the benefit of persons holding certificates representing the beneficial interest  
365 in the trust estate and assets.

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

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

- 372 75-1-201(55)].
- 373 [(e)] (d) "Trust business" does not include the following means of holding money, assets,
- 374 or other property:
- 375 (i) money held in a client trust account by an attorney authorized to practice law in
- 376 this state;
- 377 (ii) money held in connection with the purchase or sale of real estate by a person
- 378 licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate
- 379 Licensing and Practices Act;
- 380 (iii) money or other assets held in escrow by a person authorized by the department in
- 381 accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the [
- 382 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
- 384 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
- 386 person acting solely as the agent or representative or otherwise at the sole
- 387 direction of the person to which the debt or payment is owed, including money
- 388 held by an escrow agent for payment of taxes or insurance;
- 389 (vi) money and other assets held in trust on an occasional or isolated basis by a
- 390 person who does not represent that the person is engaged in the trust business in
- 391 Utah;
- 392 (vii) money or other assets found by a court to be held in an implied, resulting, or
- 393 constructive trust;
- 394 (viii) money or other assets held by a court appointed conservator, guardian, receiver,
- 395 trustee, or other fiduciary if:
- 396 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to
- 397 the court in the same manner as a personal representative under Title 75,
- 398 Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66,
- 399 Utah Rules of Civil Procedure; and
- 400 (B) the conservator, trustee, or other fiduciary is a certified public accountant or
- 401 has qualified for and received a designation as a certified financial planner,
- 402 chartered financial consultant, certified financial analyst, or similar designation
- 403 suitable to the court, that evidences the conservator's, trustee's, or other
- 404 fiduciary's professional competence to manage financial matters;
- 405 (ix) money or other assets held by a credit services organization operating in

406 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  
 408 the purchase or sale of securities by a regulated securities broker, dealer, or  
 409 transfer agent; or

410 (xi) money, assets, and other property held in a business trust for the benefit of  
 411 holders of certificates of beneficial interest if the fiduciary activities of the  
 412 business trust are merely incidental to conducting business in the business trust  
 413 form.

414 ~~[(d)]~~ (e) "Trust company" means an institution authorized to engage in the trust business  
 415 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  
 418 depository institution in Utah or its wholly owned subsidiary;
- 419 (iii) a corporation, including a credit union service organization, owned entirely by  
 420 one or more federally insured depository institutions as defined in Subsection  
 421 7-1-103(8);
- 422 (iv) a direct or indirect subsidiary of a depository institution holding company that  
 423 also has a direct or indirect subsidiary authorized to engage in business as a  
 424 depository institution in Utah; and
- 425 (v) any other corporation continuously and lawfully engaged in the trust business in  
 426 this state since before July 1, 1981.

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

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  
 430 in trust activities in this state solely to fulfill its duties as a trustee of a trust created  
 431 and administered in another state;
- 432 (b) a national bank, federal savings bank, federal savings and loan association, or federal  
 433 credit union authorized to engage in business as a depository institution in Utah, or  
 434 any wholly owned subsidiary of any of these, to the extent the institution is  
 435 authorized by its primary federal regulator to engage in the trust business in this state;  
 436 or
- 437 (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver,  
 438 guardian, trustee, or in any other fiduciary capacity.

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

440           **7-5-6 . Confidentiality of communications and writings concerning trust --**  
441 **Actions to protect property or authorized under probate laws not precluded.**

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

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

456           **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  
458 investment or distribution, shall be invested or distributed as soon as practicable as  
459 authorized under the instrument creating the account and may not be held uninvested  
460 any longer than is reasonably necessary.
- 461 (2) If the instrument creating an agency or fiduciary account contains provisions  
462 authorizing the trust company, its officers, or its directors to exercise their discretion in  
463 the matter of investments, money held in the trust account under that instrument may be  
464 invested only in those classes of securities which are approved by the directors of the  
465 trust company or a committee of directors appointed for that purpose. If a trust company  
466 acts in any agency or fiduciary capacity under appointment by a court [~~of competent~~] with  
467 jurisdiction, it shall make and account for the investments according to [~~Title 75, Utah~~  
468 ~~Uniform Probate Code~~] Title 75B, Trusts, unless the underlying instrument provides  
469 otherwise.
- 470 (3)(a) Money received or held as agent or fiduciary by any trust company which is also  
471 a depository institution, whether for investment or distribution, may be deposited in  
472 the commercial department or savings department of that trust company to the credit  
473 of its trust department. Whenever the money so deposited in a fiduciary or managing

474 agency account exceed the amount of federal deposit insurance applicable to that  
 475 account, the trust company shall deliver to the trust department or put under its  
 476 control collateral security as outlined in Regulation 9.10 of the Comptroller of the  
 477 Currency. However, if the instrument creating such a fiduciary or managing agency  
 478 account expressly provides that money may be deposited to the commercial or  
 479 savings department of the trust company, then the money may be so deposited  
 480 without setting aside collateral securities as required under this section and the  
 481 deposits in the event of insolvency of any such trust company shall be treated as other  
 482 general deposits are treated. A trust company that deposits trust funds in its  
 483 commercial or savings department shall be liable for interest on the deposits only at  
 484 the rates, if any, paid by the trust company on deposits of like kind not made to the  
 485 credit of its trust department.

486 (b) Money received or held as agent or fiduciary by a trust company, whether for  
 487 investment or distribution, may be deposited in an affiliated depository institution.  
 488 Whenever the money so deposited in a fiduciary or managing agency account exceed  
 489 the amount of federal deposit insurance applicable to that account, the depository  
 490 institution shall deliver to the trust company or put under its control collateral  
 491 security as outlined in Regulation 9.10 of the Comptroller of the Currency. However,  
 492 if the instrument creating the fiduciary or managing agency account expressly  
 493 permits money to be deposited in the affiliated depository institution, the money may  
 494 be so deposited without setting aside collateral securities as required under this  
 495 section and deposits in the event of insolvency of the depository institution shall be  
 496 treated as other general deposits are treated. A trust company that deposits trust  
 497 money in an affiliated depository institution is liable for interest on the deposits only  
 498 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  
 500 powers, privileges, and duties as set forth in Sections ~~[75-7-813 and 75-7-814]~~ 75B-2-813  
 501 and 75B-2-814 with respect to trustees, whether or not the trust company is acting as a  
 502 trustee as defined in ~~[Title 75, Utah Uniform Probate Code]~~ Section 75B-2-103.

503 (5) Nothing in this section may alter, amend, or limit the powers of a trust company acting  
 504 in a fiduciary capacity as specified in the particular instrument or order creating the  
 505 fiduciary relationship.

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

507 **7-5-10 . Lending trust funds to trust company, officer, director, or employee as**

508 **felony.**

509 (1) Unless expressly permitted in the instrument creating a trust account or by a person  
 510 authorized to give that permission or by a court order as permitted in Section ~~[75-7-802,~~  
 511 ~~no trust company shall]~~ 75B-2-802, a trust company may not lend to itself or to any  
 512 officer or director or employee of the trust company any funds held in any trust account  
 513 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,  
 515 is guilty of a third degree felony.

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

517 **7-5-11 . Self-dealing with trust property -- Own stock as trust property -- Policies**  
 518 **for dealing with trust securities.**

519 (1) Except as provided in Section 7-5-7, in [~~Title 75, Utah Uniform Probate Code]~~ Title  
 520 75B, Trusts, or as authorized under the instrument creating the relationship, a trust  
 521 company may not invest funds held as an agent or fiduciary in stock or obligations of, or  
 522 with such funds acquire property from, the trust company or any of its directors, officers  
 523 or employees, nor shall a trust company sell property held as an agent or fiduciary to the  
 524 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  
 526 affiliates received by it as assets of any trust account or in any other fiduciary  
 527 relationship of which it is appointed agent or fiduciary, unless the instrument creating  
 528 the relationship otherwise provides.

529 (3) Every trust company shall adopt written policies and procedures regarding decisions or  
 530 recommendations to purchase or sell any security to facilitate compliance with federal  
 531 and state securities laws. These policies and procedures, in particular, shall prohibit the  
 532 trust company from using material inside information in connection with any decision or  
 533 recommendation to purchase or sell any security.

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

535 **8-4-2 . Endowment care cemetery trust funds -- Deposits in endowment fund --**  
 536 **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~~  
 538 ~~Title 75, Chapter 7, Utah Uniform Trust Code]~~ in accordance with Title 75B, Chapter 2,  
 539 Uniform Trust Code.

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



- 542 endowment care trust fund.
- 543 (b) Each endowment care cemetery shall deposit in the endowment care trust fund for  
544 each plot space 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  
549 to a written contract of sale signed by the endowment care cemetery and the  
550 purchaser.
- 551 (b) The contract of sale shall specify the terms of the endowment care trust consistent  
552 with this section and the terms of payment.
- 553 (c) If requested by the purchaser, a copy of the endowment care trust shall be provided  
554 to the purchaser.
- 555 (3)(a) Each endowment care cemetery shall prepare an annual written report for the  
556 benefit of its trustor lot holders.
- 557 (b) The report shall contain:
- 558 (i) information determined to be reasonable and necessary to show compliance with  
559 the provisions of 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  
562 during a specific period; and
- 563 (iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts  
564 deposited in endowment care funds for crypts, niches, and grave space during a  
565 specific period, set forth on the accrual basis as determined by the cemetery  
566 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  
569 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  
571 of the endowment care cemetery's fiscal year.
- 572 (4) An officer, director, partner, proprietor, or other person having control of the records of  
573 an endowment care cemetery shall provide the reports and records necessary to comply  
574 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  
577 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  
580 shall be divided between the funds in the proportion that each contributed to the invested  
581 amount.
- 582 (7) Endowment care funds shall be invested in accordance with Section 31A-18-105 and [  
583 ~~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  
585 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  
588 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  
590 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;  
594 (iii) the location, description, and character of the investments in which the special  
595 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  
599 audits, in excess of 5% of the income derived from an endowment care fund in any  
600 year.
- 601 (b) If there are insufficient funds from the income derived from the endowment care  
602 trust fund to pay for the attestation of the endowment care funds, the endowment care  
603 cemetery shall pay amounts due from funds other than the endowment care trust fund  
604 or income derived from that fund.
- 605 (11) The income from an endowment care fund shall be used for the care, maintenance, and  
606 embellishment of the cemetery as determined by the endowment care cemetery, and to  
607 pay for administering the fund.

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

609 **26B-3-1008 . Statute of limitations -- Survival of right of action -- Insurance**

610 **policy not to limit time allowed for recovery.**

611 (1)(a) Subject to Subsection (6), action commenced by the department under this part  
612 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  
614 the claim for recovery or payment for the health care item or service upon which  
615 the action is based; or

616 (ii) six months after the date of the last payment for medical assistance, whichever is  
617 later.

618 (b) An action against any other third party, the recipient, or anyone to whom the  
619 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  
622 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  
625 provision that limits the time in which the department may submit its claim to  
626 recover medical assistance benefits to a period of less than 24 months from the date  
627 the provider furnishes services or goods to the recipient.

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

632 (4) The provisions of this section do not apply to Section 26B-3-1013 or Sections  
633 26B-3-1015 through 26B-3-1023.

634 (5) The provisions of this section supersede any other sections regarding the time limit in  
635 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  
637 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  
639 April 30, 2007.

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

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

645 **26B-3-1013 . Estate and trust recovery.**

646 (1)(a) Except as provided in Subsection (1)(b), upon a recipient's death, the department  
647 may recover from the recipient's recovery estate and any trust, in which the recipient  
648 is the grantor and a beneficiary, medical assistance correctly provided for the benefit  
649 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  
656 and recoverable under this section is a lien against the deceased recipient's recovery  
657 estate or any trust when the recipient is the grantor and a beneficiary.

658 (b) The lien holds the same priority as reasonable and necessary medical expenses of the  
659 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  
661 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  
664 accordance with Section 75-3-804; and

665 (ii) for a trust, by presenting the lien to the trustee in accordance with Section [  
666 ~~75-7-510~~] 75B-2-510.

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

669 (4) Claims against a deceased recipient's inter vivos trust shall be presented in accordance  
670 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  
672 making.

673 (6) Nothing in this section affects the right of the department to recover Medicaid  
674 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.

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

677 **49-11-303 . Fund investment standard -- Prudent investor rule.**

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

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

682 **51-7-14 . Prudent investor rule for management of investments -- Proxy voting --**  
683 **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  
685 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;

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~~  
695 ~~75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act~~] Title 75B, Chapter 2, Part  
696 9, Uniform Prudent Investor Act;

697 (b) make public fund investment decisions with the sole purpose of maximizing the  
698 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  
702 right to vote investor proxies; and

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

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

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

711 (b) The state treasurer is subject to the same restrictions on disclosure of the proxy

712 voting records as the originating public treasurer.

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

714 **53B-8a-107 . Program, administrative, and endowment funds -- Investment and**  
715 **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,  
717 the administrative fund, and the endowment fund.

718 (2) The board shall:

719 (a) invest the plan in a manner that is consistent with the prudent investor rule for  
720 trustees established in [~~Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act~~]  
721 Title 75B, Chapter 2, Part 9, Uniform Prudent Investor Act;

722 (b) in accordance with the board's fiduciary responsibilities, make investment decisions  
723 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  
727 right to vote investor proxies; and

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

730 (3) Transfers may be made from the program fund to the administrative fund to pay  
731 operating costs:

732 (a) associated with administering the plan and as required under Sections 53B-8a-103  
733 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  
736 be deposited as received into separate accounts within the program fund which shall  
737 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  
744 for the purposes of the plan shall be:

745 (i) deposited, according to the nature of the donation, as received into the endowment

- 746 fund or the administrative fund; and
- 747 (ii) invested and accounted for separately.
- 748 (b) Any gifts, grants, or donations made by any governmental unit or any person, firm,
- 749 partnership, or corporation to the plan for deposit to the endowment fund or the
- 750 administrative fund is a grant, gift, or donation to the state for the accomplishment of
- 751 a valid public eleemosynary, charitable, and educational purpose and is not included
- 752 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
- 754 of low income account owners investing in the plan, for scholarships, or for other
- 755 college savings incentive programs as approved by the board.
- 756 (d) Transfers may be made between the endowment fund and the administrative fund
- 757 upon approval by the board.
- 758 (e) Endowment fund earnings not accruing to a beneficiary under an account agreement,
- 759 not transferred to the administrative fund, or not otherwise approved by the board for
- 760 expenditure, shall be reinvested in the endowment fund.
- 761 (6) Subsection (2) does not prohibit the board from offering individual account owners a
- 762 variety of voluntary investment options that have different risk profiles and investment
- 763 objectives.
- 764 (7)(a) The board shall make proxy voting records available to the state treasurer upon
- 765 the state treasurer's request.
- 766 (b) The state treasurer is subject to the same restrictions on disclosure of the proxy
- 767 voting records as the board.

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

769 **58-9-703 . Trust agreement.**

- 770 (1) Each trust established by a funeral service establishment shall be administered in
- 771 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
- 775 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
- 778 of the trust agreement until five years after all of its obligations under the trust
- 779 agreement have been executed or transferred.

- 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  
783 trust.
- 784 (4) Each trust agreement shall provide for distributions from the trust in accordance with  
785 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  
788 the buyer; or  
789 (c) revocation of the contract by the beneficiary or buyer.

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

791 **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  
795 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),  
797 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.  
800 636(a)-(36), to the extent that a deduction for the expenditures paid with the  
801 loan is disallowed, or a similar paycheck protection loan that is authorized by  
802 the federal government, provided in response to COVID-19, forgiven if the  
803 borrower meets the expenditure requirements, and exempt from federal income  
804 tax, to the extent that a deduction for the expenditures paid with the loan is  
805 disallowed; or  
806 (B) an amount that an individual receives in accordance with Section 6428,  
807 Internal Revenue Code, or an amount that an individual receives that is  
808 authorized by the federal government as a tax credit for the 2020 tax year,  
809 provided in response to COVID-19, paid in advance of the filing of the  
810 individual's 2020 federal income tax return, and exempt from federal income  
811 tax.
- 812 (b) "Corporation" includes:  
813 (i) an association;



- 814 (ii) a joint stock company; and  
815 (iii) an insurance company.
- 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,  
820 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  
825 Section 63, Internal Revenue Code; or  
826 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and  
827 (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.  
837 Sec. 1.170A-6(c)(2).
- 838 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the  
839 homesteaded land that was held to have been diminished from the Uintah and Ouray  
840 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  
843 or part of the trust without the consent of a person who has a substantial beneficial  
844 interest in the trust and the interest would be adversely affected by the exercise of the  
845 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,  
847 Sec. 101.

- 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  
850 resident estate or trust.
- 851 (p)(i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
852 unincorporated organization:
- 853 (A) through or by means of which any business, financial operation, or venture is  
854 carried on; and
- 855 (B) that is not, within the meaning of this chapter, a trust, an estate, or a  
856 corporation.
- 857 (ii) "Partnership" does not include any organization not included under the definition  
858 of "partnership" in Section 761, Internal Revenue Code.
- 859 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or  
860 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  
863 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  
874 to a beneficiary:
- 875 (I) designated in the trust; and
- 876 (II) that is not an organization described in Section 170(c), Internal Revenue  
877 Code;
- 878 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue  
879 Code; and
- 880 (v) under which the grantor of the trust is not treated as the owner of any portion of  
881 the trust for federal income tax purposes.

- 882 (t) "Resident individual" means an individual who is domiciled in this state for any  
883 period of time during the taxable year, but only for the duration of the period during  
884 which the individual is domiciled in this state.
- 885 (u) "Resident estate" or "resident trust" means the same as that term is defined in Section [  
886 75-7-103] 75B-2-103.
- 887 (v) "Service member" means the same as that term is defined in Pub. L. No. 108-189,  
888 Sec. 101.
- 889 (w) "State income tax percentage for a nonresident estate or trust" means a percentage  
890 equal to a nonresident estate's or trust's state taxable income for the taxable year  
891 divided by the nonresident estate's or trust's total adjusted gross income for that  
892 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  
898 to a nonresident individual's state taxable income for the taxable year divided by the  
899 difference between:
- 900 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross  
901 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  
905 member, the compensation the service member receives for military service if the  
906 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  
908 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  
911 that the part-year resident individual is a resident, the part-year resident  
912 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

- 916 individual is a nonresident, an amount calculated by:
- 917 (I) determining the part-year resident individual's adjusted gross income for
- 918 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
- 922 (1)(y)(i)(B)(I) that is derived from Utah sources in accordance with Section
- 923 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
- 926 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
- 930 service member receives for military service during the portion of the taxable
- 931 year that the service member is a nonresident if the service member is serving
- 932 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
- 935 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
- 940 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
- 944 (1)(z)(ii)(A) that is derived from Utah sources in accordance with Section
- 945 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
- 949 the tax imposed by this chapter:

- 950 (i) an individual;
- 951 (ii) an estate, a trust, or a beneficiary of an estate or a trust that is not a pass-through  
952 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  
957 created; and
- 958 (ii) ending on the day on which the qualified nongrantor charitable lead trust  
959 described in Subsection (1)(bb)(i) terminates.
- 960 (cc) "Uintah and Ouray Reservation" means the lands recognized as being included  
961 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  
966 on the resident or nonresident estate's or trust's federal income tax return for  
967 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  
972 resident or nonresident estate's or trust's federal income tax return for estates  
973 and trusts for the taxable year;
- 974 (B) the income distribution deduction that a resident or nonresident estate or trust  
975 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the  
976 resident or nonresident estate's or trust's federal income tax return for estates  
977 and trusts for the taxable year;
- 978 (C) the amount that a resident or nonresident estate or trust deducts as a deduction  
979 for estate tax or generation skipping transfer tax under Section 691(c), Internal  
980 Revenue Code, as allowed on the resident or nonresident estate's or trust's  
981 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  
983 exemption under Section 642(b), Internal Revenue Code, as allowed on the

984 resident or nonresident estate's or trust's federal income tax return for estates  
985 and trusts for the taxable year.

986 (ee) "Unitrust interest" means the same as that term is defined in 26 C.F.R. Sec.  
987 1.170A-6(c)(2).

988 (ff) "Ute tribal member" means an individual who is enrolled as a member of the Ute  
989 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  
993 context in the laws of the United States relating to federal income taxes unless a  
994 different meaning is clearly required.

995 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
996 mean the Internal Revenue Code or other provisions of the laws of the United States  
997 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  
999 of the laws of the United States relating to federal income taxes shall include any  
1000 corresponding or comparable provisions of the Internal Revenue Code as amended,  
1001 redesignated, or reenacted.

1002 Section 14. Section **75-1-102** is amended to read:

1003 **75-1-102 . Purposes -- Rule of construction.**

1004 (1) This ~~[eode]~~ title shall be liberally construed and applied to promote its underlying  
1005 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  
1008 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  
1010 decedent's property;

1011 (c) ~~[Fø]~~ to promote a speedy and efficient system for administering the estate of the  
1012 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.

1015 Section 15. Section **75-1-103** is amended to read:

1016 **75-1-103 . Supplementary general principles of law applicable.**

1017 Unless displaced by the particular provisions of this ~~[eode]~~ title, the principles of law and

1018 equity supplement ~~[its provisions]~~ the provisions of this title.

1019 Section 16. Section **75-1-104** is amended to read:

1020 **75-1-104 . Severability.**

1021 If any provision of this ~~[code]~~ title or the application ~~[thereof]~~ of this title to any person or  
1022 circumstances is held invalid, the invalidity shall not affect other provisions or applications of [  
1023 ~~the code which]~~ this title that can be given effect without the invalid provision or application,  
1024 and to this end the provisions of this ~~[code]~~ title are declared to be severable.

1025 Section 17. Section **75-1-105** is amended to read:

1026 **75-1-105 . Construction against implied repeal.**

1027 This ~~[code]~~ title is a general act intended as a unified coverage of ~~[its]~~ the title's subject  
1028 matter, and no part of ~~[it]~~ this title shall be deemed impliedly repealed by subsequent  
1029 legislation if it can reasonably be avoided.

1030 Section 18. Section **75-1-106** is amended to read:

1031 **75-1-106 . Effect of fraud and evasion.**

1032 (1) Whenever fraud has been perpetrated in connection with any proceeding or in any  
1033 statement filed under this ~~[code]~~ title or if fraud is used to avoid or circumvent the  
1034 provisions or purposes of this ~~[code]~~ title, any person injured thereby may obtain  
1035 appropriate relief against the perpetrator of the fraud or restitution from any person~~[-]~~ ,  
1036 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,  
1038 but no proceeding may be brought against one not a perpetrator of the fraud later than  
1039 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 [  
1041 ~~his]~~ the decedent's lifetime which affects the succession of ~~[his]~~ the decedent's estate.

1042 Section 19. Section **75-1-111**, which is renumbered from Section 75-8-101 is renumbered  
1043 and amended to read:

1044 ~~[75-8-101]~~ **75-1-111 . Time of taking effect -- Provisions for transition.**

1045 (1) This ~~[code]~~ title takes effect on July 1, 1977.

1046 (2) Except as ~~[provided elsewhere in this code, on the effective date of this code]~~ otherwise  
1047 provided by this title:

1048 (a) ~~[This code]~~ this title applies to any wills of decedents dying ~~[thereafter.]~~ on or after  
1049 July 1, 1977;

1050 (b) ~~[The code]~~ the title applies to any proceedings in court ~~[then pending or thereafter~~  
1051 commenced] that are pending or commenced on or after July 1, 1977, regardless of

- 1052 the time of the death of decedent except to the extent that in the opinion of the court  
 1053 the former procedure should be made applicable in a particular case in the interest of  
 1054 justice or because of infeasibility of application of the procedure of this ~~[eode.]~~ title;
- 1055 (c) ~~[Every]~~ every personal representative including a person administering an estate of a  
 1056 minor or incompetent holding an appointment on ~~[that date]~~ July 1, 1977, continues to  
 1057 hold the appointment but has only the powers conferred by this ~~[eode]~~ title and is  
 1058 subject to the duties imposed with respect to any act occurring or done ~~[thereafter.]~~ on  
 1059 or after July 1, 1977;
- 1060 (d)(i) ~~[An]~~ an act done before ~~[the effective date]~~ July 1, 1977, in any proceeding and  
 1061 any accrued right is not impaired by this ~~[eode.]~~ title; and
- 1062 (ii) ~~[If]~~ if a right is acquired, extinguished or barred upon the expiration of a  
 1063 prescribed period of time which has commenced to run by the provisions of any  
 1064 statute before ~~[the effective date]~~ July 1, 1977, the provisions shall remain in force  
 1065 with respect to that right~~[-]~~ ; and
- 1066 (e) ~~[Any]~~ any rule of construction or presumption provided in this ~~[eode]~~ title applies to  
 1067 instruments executed and multiple-party accounts opened before ~~[the effective date]~~  
 1068 July 1, 1977, unless there is a clear indication of a contrary intent.

1069 Section 20. Section **75-1-201** is amended to read:

1070 **75-1-201 . Title definitions.**

1071 As used in this title:

- 1072 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,  
 1073 an individual authorized to make decisions concerning another's health care, and an  
 1074 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  
 1076 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  
 1081 enforce the trust.
- 1082 (c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a  
 1083 beneficiary of:
- 1084 (i) an insurance or annuity policy;  
 1085 (ii) an account with POD designation;



- 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,  
1090 includes:
- 1091 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary  
1092 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,  
1094 fiduciary, or representative capacity is exercised.
- 1095 (4) "Beneficiary designation" means a governing instrument naming a beneficiary of an  
1096 insurance or annuity policy, of an account with POD designation, of a security registered  
1097 in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit  
1098 plan, or other nonprobate transfer at death.
- 1099 (5)(a) "Child" includes any individual entitled to take as a child under this title by  
1100 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  
1102 grandchild, or any more remote descendant.
- 1103 (6)(a) "Claims," in respect to estates of decedents and protected persons, includes  
1104 liabilities of the decedent or protected person, whether arising in contract, in tort, or  
1105 otherwise, and liabilities of the estate which arise at or after the death of the decedent  
1106 or after the appointment of a conservator, including funeral expenses and expenses of  
1107 administration.
- 1108 (b) "Claims" does not include estate or inheritance taxes, or demands or disputes  
1109 regarding title of a decedent or protected person to specific assets alleged to be  
1110 included in the estate.
- 1111 (7) "Community property with a right of survivorship" means joint tenants with the right of  
1112 survivorship.
- 1113 (8) "Conservator" means a person who is appointed by a court to manage the estate of a  
1114 protected person.
- 1115 (9) "Court" means any of the courts of record in this state having jurisdiction in matters  
1116 relating to the affairs of decedents.
- 1117 (10) "Descendant" means all of an individual's descendants of all generations, with the  
1118 relationship of parent and child at each generation being determined by the definition of  
1119 child and parent contained in this title.

- 1120 (11) "Devise," when used as a noun, means a testamentary disposition of real or personal  
1121 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  
1123 of Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing  
1124 trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee,  
1125 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  
1128 personal representative other than as a creditor or purchaser. A testamentary trustee is a  
1129 distributee only to the extent of distributed assets or increment thereto remaining in his  
1130 hands. A beneficiary of a testamentary trust to whom the trustee has distributed  
1131 property received from a personal representative is a distributee of the personal  
1132 representative. For purposes of this provision, "testamentary trustee" includes a trustee  
1133 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  
1135 subject to this title as originally constituted and as it exists from time to time during  
1136 administration.
- 1137 (16) "Exempt property" means that property of a decedent's estate which is described in  
1138 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  
1141 jurisdiction.
- 1142 (19) "Formal proceedings" means proceedings conducted before a judge with notice to  
1143 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  
1146 with POD designation, security registered in beneficiary form (TOD), pension,  
1147 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a  
1148 power of appointment or a power of attorney, or a dispositive, appointive, or nominative  
1149 instrument of any similar type.
- 1150 (22)(a) "Guardian" means a person who has qualified as a guardian of a minor or  
1151 incapacitated person pursuant to testamentary or court appointment, or by written  
1152 instrument as provided in Section 75-5-202.5.
- 1153 (b) "Guardian" does not include a person who is merely a guardian ad litem.

- 1154 (23) "Heirs," except as controlled by Section 75-2-711, means persons, including the  
1155 surviving spouse and state, who are entitled under the statutes of intestate succession to  
1156 the property of a decedent.
- 1157 (24) "Incapacitated" means a judicial determination after proof by clear and convincing  
1158 evidence that an adult's ability to do the following is impaired to the extent that the  
1159 individual lacks the ability, even with appropriate technological assistance, to meet the  
1160 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  
1166 persons by an officer of the court acting as a registrar for probate of a will or  
1167 appointment of a personal representative.
- 1168 (27)(a) "Interested person" includes heirs, devisees, children, spouses, creditors,  
1169 beneficiaries, and any others having a property right in or claim against a trust estate  
1170 or the estate of a decedent, ward, or protected person. The meaning of interested  
1171 person as it relates to particular persons may vary from time to time and is  
1172 determined according to the particular purposes of, and matter involved in, any  
1173 proceeding.
- 1174 (b) "Interested person" includes persons having priority for appointment as personal  
1175 representative, other fiduciaries representing interested persons, a settlor of a trust, if  
1176 living, or the settlor's legal representative, if any, if the settlor is living but  
1177 incapacitated.
- 1178 (28) "Issue" means a descendant of an individual.
- 1179 (29)(a) "Joint tenants with the right of survivorship" includes coowners of property held  
1180 under circumstances that entitle one or more to the whole of the property on the death  
1181 of the other.
- 1182 (b) "Joint tenants with the right of survivorship" does not include forms of coownership  
1183 registration in which the underlying ownership of each party is in proportion to that  
1184 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  
1187 administration, and letters of conservatorship.

- 1188 (32) "Minor" means a person who is under 18 years old.
- 1189 (33) "Minor protected person" means a minor for whom a conservator has been appointed  
1190 because of minority.
- 1191 (34) "Minor ward" means a minor for whom a guardian has been appointed solely because  
1192 of minority.
- 1193 (35) "Mortgage" means any conveyance, agreement, or arrangement in which property is  
1194 used as security.
- 1195 (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at  
1196 the time of the decedent's death.
- 1197 [~~(37) "Organization" includes a corporation, limited liability company, business trust, estate,  
1198 trust, partnership, joint venture, association, government or governmental subdivision or  
1199 agency, or any other legal or commercial entity.]~~
- 1200 (37) "Organization" means an association, a business trust, a corporation, a government or  
1201 governmental subdivision, agency, or instrumentality, an estate, a limited liability  
1202 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  
1204 the child died without a will, as a parent under this title by intestate succession from  
1205 the child whose relationship is in question.
- 1206 (b) "Parent" does not include any person who is only a stepparent, foster parent, or  
1207 grandparent.
- 1208 (39) "Payor" means a trustee, insurer, business entity, employer, government, governmental  
1209 agency or subdivision, or any other person authorized or obligated by law or a governing  
1210 instrument to make payments.
- 1211 (40) "Person" means an individual or an organization.
- 1212 [~~(41) "Personal representative" includes executor, administrator, successor personal  
1213 representative, special administrator, and persons who perform substantially the same  
1214 function under the law governing their status.]~~
- 1215 (41) "Personal representative" means an executor, an administrator, a successor personal  
1216 representative, a special administrator, or a person who performs substantially the same  
1217 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  
1221 anything that may be the subject of ownership.]~~

- 1222 (44) "Property" means anything that may be the subject of ownership, whether real or  
1223 personal, legal or equitable, or any interest in anything that may be the subject of  
1224 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  
1228 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  
1230 registrar as provided in Section 75-1-307.
- 1231 (49) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of  
1232 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease  
1233 or in payments out of production under such a title or lease, collateral trust certificate,  
1234 transferable share, voting trust certificate, and, in general, any interest or instrument  
1235 commonly known as a security, or any certificate of interest or participation, any  
1236 temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or  
1237 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  
1239 administration, distribution, and closing.
- 1240 (51) "Sign" means, with present intent to authenticate or adopt a record other than a will  
1241 that is not an electronic will as defined in Section 75-2-1402:  
1242 (a) to execute or adopt a tangible symbol; or  
1243 (b) to attach to or logically associate with the record an electronic symbol, sound, or  
1244 process.
- 1245 (52) "Special administrator" means a personal representative as described in Sections  
1246 75-3-614 through 75-3-618.
- 1247 (53) "State" means a state of the United States, the District of Columbia, the  
1248 Commonwealth of Puerto Rico, the United States Virgin Islands, any territory or insular  
1249 possession subject to the jurisdiction of the United States, or a Native American tribe or  
1250 band recognized by federal law or formally acknowledged by a state.
- 1251 (54) "Successor personal representative" means a personal representative, other than a  
1252 special administrator, who is appointed to succeed a previously appointed personal  
1253 representative.
- 1254 (55) "Successors" means persons, other than creditors, who are entitled to property of a  
1255 decedent under the decedent's will or this title.

- 1256 (56) "Supervised administration" means the proceedings described in Chapter 3, Part 5,  
 1257 Supervised Administration.
- 1258 (57)(a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death  
 1259 Security Registration Act, that an individual has neither predeceased an event,  
 1260 including the death of another individual, nor is considered to have predeceased an  
 1261 event under Section 75-2-104 or 75-2-702.
- 1262 (b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and  
 1263 "surviving."
- 1264 (58) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 1265 (59) "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  
 1269 created; or]
  - 1270 [(iii) a trust created or determined by judgment or decree under which the trust is to be  
 1271 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;]
  - 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,  
 1286 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  
 1289 or not appointed or confirmed by the court.]

1290 (60) "Trust" means the same as that term is defined in Section 75B-2-103.

1291 (61) "Trustee" means the same as that term is defined in Section 75B-2-103.

1292 (62) "Ward" means a person for whom a guardian has been appointed.

1293 (63) "Will" [~~includes~~] means codicil and any testamentary instrument [~~which~~] that merely  
 1294 appoints an executor, revokes or revises another will, nominates a guardian, or expressly  
 1295 excludes or limits the right of an individual or class to succeed to property of the  
 1296 decedent passing by intestate succession.

1297 Section 21. Section **75-1-301** is amended to read:

1298 **75-1-301 . Territorial application.**

1299 Except as otherwise provided in this [~~code~~] title, this [~~code~~] title applies to:

1300 (1) [~~The~~] the affairs and estates of decedents, missing persons, and persons to be protected,  
 1301 domiciled in this state;

1302 (2) [~~The~~] the property of nonresidents located in this state or property coming into the  
 1303 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.

1307 Section 22. Section **75-1-303** is amended to read:

1308 **75-1-303 . Venue -- Multiple proceedings -- Transfer -- Orders and hearings.**

1309 (1) Where a proceeding under this [~~code~~] title could be maintained in more than one place in  
 1310 this state, the court in which the proceeding is first commenced has the exclusive right to  
 1311 proceed.

1312 (2)(a) If proceedings concerning the same estate, protected person, ward, or trust are  
 1313 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  
 1315 matter[~~, and the other courts~~] ; and

1316 (ii) the other court shall hold the matter in abeyance until the question of venue is  
 1317 decided[~~; and if~~] .

1318 (b) If the ruling court determines that venue is properly in another court, [~~it~~] the ruling  
 1319 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  
 1321 another court of this state, the court making the finding may transfer the proceeding or  
 1322 file to the other court.

1323 (4)(a) The [~~judge of the~~]court in which any proceeding under this [~~code~~] title is pending

1324 may make any order relating to the proceeding in chambers at any place in [his] the  
1325 court's district, and the order shall have the same force and effect as if made by the  
1326 court sitting in the proper county.

1327 (b) The hearing of any matter requiring notice shall be had at the time and place  
1328 appointed or at the time to which the same may be postponed, except that where there  
1329 is no contest or where all the parties consent, the hearing may be had at any place  
1330 within the judicial district in which the matter is pending.

1331 Section 23. Section **75-1-304** is amended to read:

1332 **75-1-304 . Practice in court.**

1333 Unless specifically provided to the contrary in this [eode] title or unless inconsistent with [  
1334 its] this title's provisions, the [~~rules of civil procedure~~] Utah Rules of Civil Procedure, including  
1335 the rules concerning vacation of orders and appellate review, govern formal proceedings under  
1336 this [eode] title.

1337 Section 24. Section **75-1-305** is amended to read:

1338 **75-1-305 . Records and certified copies.**

1339 (1) The clerk of the court shall keep a record for each decedent, ward, protected  
1340 person, or trust involved in any document which may be filed with the court under this [  
1341 eode] title, including petitions and applications, demands for notices or bonds, and of any  
1342 orders or responses relating thereto by the registrar or court, and establish and maintain a  
1343 system for indexing, filing, or recording which is sufficient to enable users of the records  
1344 to obtain adequate information.

1345 (2) Upon payment of the fees required by law the clerk must issue certified copies of any  
1346 probated wills, letters issued to personal representatives, or any other record or paper  
1347 filed or recorded.

1348 (3) Certificates relating to probated wills must indicate whether the decedent was domiciled  
1349 in this state and whether the probate was formal or informal.

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

1351 Section 25. Section **75-1-309** is amended to read:

1352 **75-1-309 . Oath or affirmation on filed documents.**

1353 (1) Except as otherwise specifically provided in this [eode] title or by rule, every  
1354 document filed with the court under this code, including applications, petitions, and  
1355 demands for notice, shall be deemed to include an oath, affirmation, or statement to the  
1356 effect that its representations are true as far as the person executing or filing it knows or  
1357 is informed[; and penalties] .



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

1359 Section 26. Section **75-1-310** is amended to read:

1360 **75-1-310 . Costs -- In discretion of court.**

1361 When not otherwise prescribed in this [~~code, the court, or the Supreme Court on appeal~~  
1362 ~~from the court, may, in its-~~] title, the court, or an appellate court on appeal from the court, may  
1363 in the court's discretion, order costs to be paid by any party to the proceedings or out of the  
1364 assets of the estate as justice may require.

1365 Section 27. Section **75-1-311** is amended to read:

1366 **75-1-311 . Consent to jurisdiction.**

1367 (1) By submitting an application for informal probate or appointment or a petition for  
1368 formal probate, adjudication of intestacy, or appointment the applicant or petitioner  
1369 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  
1371 pursuant to his submission to jurisdiction shall be delivered to him or mailed to him by  
1372 ordinary first-class mail at his address as it is known to the moving party or as listed in  
1373 the application or petition or as thereafter reported to the court.

1374 Section 28. Section **75-1-404** is amended to read:

1375 **75-1-404 . Publication in newspapers.**

1376 (1) Newspapers shall publish all notices of proceedings under [~~the code~~] this title under  
1377 the heading "Probate, Guardianship, Conservator and Trust Notices. Consult clerk of the  
1378 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  
1380 period as the paper is regularly issued, unless otherwise provided by law or directed by  
1381 the court, and as far as possible in one column in the alphabetical order of the surnames  
1382 of decedents, wards, incapacitated persons, and creators of trusts.

1383 Section 29. Section **75-2-803** is amended to read:

1384 **75-2-803 . Definitions -- Effect of homicide on intestate succession, wills, trusts,**  
1385 **joint assets, life insurance, and beneficiary designations -- Petition -- Forfeiture --**  
1386 **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  
1391 any other benefit to a beneficiary designated in a governing instrument.

- 1392 (d)(i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means  
1393 any felony homicide offense described in Title 76, Chapter 5, Offenses Against  
1394 the Individual, for which the elements are established by a preponderance of the  
1395 evidence and by applying the same principles of culpability and defenses  
1396 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  
1400 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  
1404 which the decedent, at the time of or immediately before death, was alone  
1405 empowered, by law or under the governing instrument, to cancel the designation in  
1406 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  
1408 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  
1411 benefits under this chapter with respect to the decedent's estate, including an intestate  
1412 share, an elective share, an omitted spouse's or child's share, a homestead allowance,  
1413 exempt property, and a family allowance.
- 1414 (b) If the decedent died intestate, the decedent's intestate estate passes as if the killer  
1415 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  
1419 governing instrument;  
1420 (ii) provision in a governing instrument conferring a general or nongeneral power of  
1421 appointment on the killer; and  
1422 (iii) nomination of the killer in a governing instrument, nominating or appointing the  
1423 killer to serve in any fiduciary or representative capacity, including a personal  
1424 representative, executor, trustee, or agent; and  
1425 (b) severs the interests of the decedent and killer in property held by them at the time of

1426 the killing as joint tenants with the right of survivorship, transforming the interests of  
1427 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  
1429 acquired for value and in good faith reliance on an apparent title by survivorship in the  
1430 killer unless a writing declaring the severance has been noted, registered, filed, or  
1431 recorded in records appropriate to the kind and location of the property which are relied  
1432 upon, in the ordinary course of transactions involving such property, as evidence of  
1433 ownership.

1434 (5) Provisions of a governing instrument are given effect as if the killer disclaimed all  
1435 provisions revoked by this section or, in the case of a revoked nomination in a fiduciary  
1436 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  
1438 circumstances not covered by this section shall be treated in accordance with the  
1439 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  
1441 has committed a disqualifying homicide of the decedent.

1442 (b) An individual has committed a disqualifying homicide of the decedent for purposes  
1443 of this section if:

1444 (i) unless the court finds that disinheritance would create a manifest injustice, the  
1445 court finds that, by a preponderance of the evidence, the individual has committed  
1446 a disqualifying homicide of the decedent; or

1447 (ii) the court finds that a judgment of conviction has been entered against the  
1448 individual for a disqualifying homicide of the decedent and all direct appeals for  
1449 the judgment have been exhausted.

1450 (8)(a) Before a court determines whether an individual committed a disqualifying  
1451 homicide of the decedent under Subsection (7), the decedent's estate may petition the  
1452 court to:

1453 (i) enter a temporary restraining order, an injunction, or a temporary restraining order  
1454 and an injunction, to preserve the property or assets of the killer or the killer's  
1455 estate;

1456 (ii) require the execution of a trustee's bond under Section [75-7-702] 75B-2-702 for  
1457 the killer's estate;

1458 (iii) establish a constructive trust on any property or assets of the killer or the killer's  
1459 estate that is effective from the time the killer's act caused the death of the

- 1460 decedent; or
- 1461 (iv) take any other action necessary to preserve the property or assets of the killer or
- 1462 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
- 1465 disqualifying homicide of the decedent.
- 1466 (b) Upon a petition for a temporary restraining order or an injunction under Subsection
- 1467 (8)(a)(i), a court may enter a temporary restraining order against an owner's property
- 1468 in accordance with Rule 65A of the Utah Rules of Civil Procedure, without notice or
- 1469 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
- 1471 a judgment or damages owed by the killer for conduct resulting in the
- 1472 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
- 1476 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
- 1478 transferred an item of property or any other benefit to a beneficiary designated in a
- 1479 governing instrument affected by a disqualifying homicide, or for having taken
- 1480 any other action in good faith reliance on the validity of the governing instrument,
- 1481 upon request and satisfactory proof of the decedent's death, before the payor or
- 1482 other third party received written notice of a claimed forfeiture or revocation
- 1483 under this section.
- 1484 (ii) A payor or other third party is liable for a payment made or other action taken
- 1485 after the payor or other third party received written notice of a claimed forfeiture
- 1486 or revocation under this section.
- 1487 (b)(i) Written notice of a claimed forfeiture or revocation under Subsection (9)(a)
- 1488 shall be mailed to the payor's or other third party's main office or home by
- 1489 registered or certified mail, return receipt requested, or served upon the payor or
- 1490 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
- 1492 section, a payor or other third party may pay any amount owed or transfer or
- 1493 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  
1495 decedent's estate; or
- 1496 (B) if no proceedings have been commenced, the court having jurisdiction of  
1497 probate proceedings relating to the decedent's estates located in the county of  
1498 the decedent's residence.
- 1499 (iii) The court shall hold the funds or item of property and, upon the court's  
1500 determination under this section, shall order disbursement in accordance with the  
1501 determination.
- 1502 (iv) Payments, transfers, or deposits made to or with the court discharge the payor or  
1503 other third party from all claims for the value of amounts paid to or items of  
1504 property transferred to or deposited with the court.
- 1505 (10)(a) A person who purchases property for value and without notice, or who receives  
1506 a payment or other item of property in partial or full satisfaction of a legally  
1507 enforceable obligation, is:
- 1508 (i) not obligated under this section to return the payment, item of property, or benefit;  
1509 and
- 1510 (ii) not liable under this section for the amount of the payment or the value of the  
1511 item of property or benefit.
- 1512 (b) Notwithstanding Subsection (10)(a), a person who, not for value, receives a payment,  
1513 item of property, or any other benefit to which the person is not entitled under this  
1514 section is:
- 1515 (i) obligated to return the payment, item of property, or benefit to the person who is  
1516 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  
1518 property or benefit to the person who is entitled to the payment, property, or  
1519 benefit under this section.
- 1520 (c) If this section or any part of this section is preempted by federal law with respect to a  
1521 payment, an item of property, or any other benefit covered by this section, a person  
1522 who, not for value, receives the payment, item of property, or any other benefit to  
1523 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  
1525 would have been entitled to the payment, property, or benefit if this section or part  
1526 were not preempted; and
- 1527 (ii) personally liable for the amount of the payment or the value of the item of

1528 property or benefit, to the person who would have been entitled to the payment,  
1529 property, or benefit if this section or part were not preempted.

1530 Section 30. Section **75-2-1209** is amended to read:

1531 **75-2-1209 . Real estate conveyed to a trust under the Statutory Rule Against**  
1532 **Perpetuities.**

1533 On or after the effective date, when title to real property is granted to the trustee of a  
1534 trust governed by Title 75, Chapter 2, Part 12, Statutory Rule Against Perpetuities, the terms of  
1535 the trust, provisions regarding the appointment of successor trustees, and the names and  
1536 addresses of successor trustees must be disclosed in accordance with Section [75-7-816]  
1537 75B-2-816.

1538 Section 31. Section **75-3-101** is amended to read:

1539 **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,  
1541 devisees, and heirs to his property are subject to the restrictions and limitations  
1542 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  
1544 it is devised by his last will or to those indicated as substitutes for them in cases  
1545 involving lapse, renunciation, or other circumstances affecting the devolution of testate  
1546 estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as  
1547 substitutes for them in cases involving renunciation or other circumstances affecting  
1548 devolution of intestate estates, subject to homestead allowance, exempt property and  
1549 family allowance, rights of creditors, elective share of the surviving spouse, and  
1550 administration.

1551 Section 32. Section **75-3-105** is amended to read:

1552 **75-3-105 . Proceedings affecting devolution and administration -- Jurisdiction of**  
1553 **subject matter.**

1554 (1)(a) Persons interested in decedents' estates may apply to the registrar for  
1555 determination in the informal proceedings provided in this chapter and may petition  
1556 the court for orders in formal proceedings within the court's jurisdiction, including,  
1557 but not limited to those described in this chapter.

1558 (b) The court may hear and determine formal proceedings involving administration and  
1559 distribution of decedents' estates after notice to interested persons in conformity with  
1560 Section 75-1-401.

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

1562 given notice.

1563 (2) For purposes of this ~~[code]~~ title, formal proceedings involving administration and  
1564 distribution of decedent's estates shall include proceedings to determine the heirs of a  
1565 decedent and proceedings to construe a duly probated will of a decedent, whether or not  
1566 the estate of the decedent is being, or previously has been, administered or distributed.

1567 Section 33. Section **75-3-303** is amended to read:

1568 **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  
1570 whether:

1571 (a) the application is complete;

1572 (b) the applicant has made oath or affirmation that the statements contained in the  
1573 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~~  
1575 ~~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  
1578 for electronic storage and electronic filing and is now in the possession of the  
1579 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  
1581 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  
1584 appointed in another county of this state or except as provided in Subsection (4), if it  
1585 appears that this or another will of the decedent has been the subject of a previous  
1586 probate order.

1587 (3) A will which appears to have the required signatures and which contains an attestation  
1588 clause showing that requirements of execution under Section 75-2-502, 75-2-503, or  
1589 75-2-506 have been met shall be probated without further proof. In other cases, the  
1590 registrar may assume execution if the will appears to have been properly executed, or he  
1591 may accept a sworn statement or affidavit of any person having knowledge of the  
1592 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  
1594 granted at any time upon written application by any interested person, together with  
1595 deposit of an authenticated copy of the will and of the statement probating it from the

1596 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  
1598 not eligible for probate under Subsection (1) above may be probated in this state upon  
1599 receipt by the registrar of a duly authenticated copy of the will and a duly authenticated  
1600 certificate of its legal custodian that the copy filed is a true copy and that the will has  
1601 become operative under the law of the other place.

1602 Section 34. Section **75-3-308** is amended to read:

1603 **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;

1606 (b) the applicant has made oath or affirmation that the statements contained in the  
1607 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~~  
1609 ~~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  
1612 probated; but this requirement does not apply to the appointment of a special  
1613 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  
1616 priority entitling him to the appointment.

1617 (2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that a  
1618 personal representative who has not filed a written statement of resignation as provided  
1619 in Subsection 75-3-610(3) has been appointed in this or another county of this state, that[  
1620 (] , unless the applicant is the domiciliary personal representative or his nominee[)] , the  
1621 decedent was not domiciled in this state, and that a personal representative whose  
1622 appointment has not been terminated has been appointed by a court in the state of  
1623 domicile, or that other requirements of this section have not been met.

1624 Section 35. Section **75-3-504** is amended to read:

1625 **75-3-504 . Powers of personal representative.**

1626 (1) Unless restricted by the court, a supervised personal representative has, without

1627 interim orders approving exercise of a power, all powers of personal representatives

1628 under this [eode] title, but he shall not exercise his power to make any distribution of the  
1629 estate without prior order of the court.



1630 (2) Any other restriction on the power of a personal representative which may be ordered  
 1631 by the court must be endorsed on his letters of appointment and, unless so endorsed, is  
 1632 ineffective as to persons dealing in good faith with the personal representative.

1633 Section 36. Section **75-3-608** is amended to read:

1634 **75-3-608 . Termination of appointment -- General.**

1635 (1) Termination of appointment of a personal representative occurs as indicated in  
 1636 Sections 75-3-609 through 75-3-612.

1637 (2) Termination ends the right and power pertaining to the office of personal representative  
 1638 as conferred by this [eøde] title or any will, except that a personal representative, at any  
 1639 time prior to distribution or until restrained or enjoined by court order, may perform acts  
 1640 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  
 1642 or omissions occurring before termination or relieve him of the duty to preserve assets  
 1643 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  
 1645 but terminates his authority to represent the estate in any pending or future proceeding.

1646 Section 37. Section **75-3-616** is amended to read:

1647 **75-3-616 . Special administrator -- Appointed informally -- Powers and duties.**

1648 (1) A special administrator appointed by the registrar in informal proceedings pursuant  
 1649 to Subsection 75-3-614(1)(a) has the duty to collect and manage the assets of the estate,  
 1650 to preserve them, to account therefor and to deliver them to the general personal  
 1651 representative upon [his] the special administrator's qualification.

1652 (2) The special administrator has the power of a personal representative under the [eøde] title  
 1653 necessary to perform his duties.

1654 Section 38. Section **75-3-703** is amended to read:

1655 **75-3-703 . General duties -- Relation and liability to persons interested in estate --**  
 1656 **Standing to sue.**

1657 (1)(a) A personal representative is a fiduciary who shall observe the standard of care  
 1658 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  
 1660 decedent in accordance with the terms of any probated and effective will and this [  
 1661 eøde] title and as expeditiously and efficiently as is consistent with the best interests  
 1662 of the estate. [He]

1663 (c) A personal representative shall use the authority conferred upon [him] the personal

1664 representative by this [eode] title, the terms of the will, if any, and any order in  
1665 proceedings to which [he] the personal representative is party for the best interests of  
1666 successors to the estate.

1667 (2)(a) A personal representative [~~shall not~~] may not be surcharged for acts of  
1668 administration or distribution if the conduct in question was authorized at the time.

1669 (b) Subject to other obligations of administration, an informally probated will is  
1670 authority to administer and distribute the estate according to [its terms] the terms of  
1671 the will.

1672 (c) An order of appointment of a personal representative, whether issued in informal or  
1673 formal proceedings, is authority to distribute apparently intestate assets to the heirs of  
1674 the decedent if, at the time of distribution, the personal representative is not aware of  
1675 a pending testacy proceeding, a proceeding to vacate an order entered in an earlier  
1676 testacy proceeding, a formal proceeding questioning his appointment or fitness to  
1677 continue, or a supervised administration proceeding.

1678 (d) Nothing in this section affects the duty of the personal representative to administer  
1679 and distribute the estate in accordance with the rights of claimants, the surviving  
1680 spouse, any minor and dependent children, and any pretermitted child of the decedent  
1681 as described elsewhere in this [eode] title.

1682 (3) Except as to proceedings which do not survive the death of the decedent, a personal  
1683 representative of a decedent domiciled in this state at [his] the decedent's death has the  
1684 same standing to sue and be sued in the courts of this state and courts of any other  
1685 jurisdiction as [his] the decedent had immediately prior to death.

1686 Section 39. Section **75-3-704** is amended to read:

1687 **75-3-704 . Personal representative to proceed without court order -- Exception.**

1688 A personal representative shall proceed expeditiously with the settlement and  
1689 distribution of a decedent's estate and except as otherwise specified or ordered in regard to a  
1690 supervised personal representative, do so without adjudication, order, or direction of the court,  
1691 but may invoke the jurisdiction of the court in proceedings authorized by this [eode] title to  
1692 resolve questions concerning the estate or its administration.

1693 Section 40. Section **75-3-710** is amended to read:

1694 **75-3-710 . Powers of personal representatives -- In general.**

1695 (1) Until termination of his appointment a personal representative has the same power  
1696 over the title to property of the estate that an absolute owner would have, in trust,  
1697 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  
1699 specifically provided by this [eøde] title.

1700 Section 41. Section **75-3-714** is amended to read:

1701 **75-3-714 . Transactions authorized for personal representatives -- Exceptions.**

1702 Except as restricted or otherwise provided by this [eøde] title, by the will or by an order  
1703 in a formal proceeding and subject to the priorities stated in Section 75-3-902, a personal  
1704 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  
1706 in which the representative is personally interested or which are otherwise improper for  
1707 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  
1710 obligations of the estate, as he may determine under the circumstances. In performing  
1711 enforceable contracts by the decedent to convey or lease land, the personal  
1712 representative, among other possible courses of action, may:
- 1713 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining  
1714 due or the purchaser's note for the sum remaining due secured by a mortgage or deed  
1715 of trust on the land; or
- 1716 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance  
1717 with the escrow agreement, be paid to the successors of the decedent, as designated  
1718 in the escrow agreement;
- 1719 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges  
1720 constituted binding obligations of the decedent or were properly presented as claims, if  
1721 in the judgment of the personal representative the decedent would have wanted the  
1722 pledges completed under the circumstances;
- 1723 (5) if funds are not needed to meet debts and expenses currently payable and are not  
1724 immediately distributable, deposit or invest liquid assets of the estate, including money  
1725 received from the sale of other assets, in federally insured interest-bearing accounts,  
1726 readily marketable secured loan arrangements, or other prudent investments which  
1727 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  
1729 credit, at public or private sale; and manage, develop, improve, exchange, partition,  
1730 change the character of, or abandon an estate asset;
- 1731 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures,

- 1732 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  
1734 and adjust boundaries; adjust differences in valuation on exchange or partition by giving  
1735 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  
1737 or renew, for a term within or extending beyond the period of administration;
- 1738 (10) enter into a lease or arrangement for exploration and removal of minerals or other  
1739 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  
1741 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  
1744 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  
1746 interest of the estate but the personal representative is liable for any act of the nominee  
1747 in connection with the security so held;
- 1748 (15) insure the assets of the estate against damage, loss, and liability and himself against  
1749 liability as to third persons;
- 1750 (16) borrow money with or without security to be repaid from the estate assets or otherwise;  
1751 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,  
1753 or in any manner modify the terms of any obligation owing to the estate. If the personal  
1754 representative holds a mortgage, pledge, or other lien upon property of another person,  
1755 he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets  
1756 from the owner thereof in satisfaction of the indebtedness secured by lien;
- 1757 (18) pay taxes, assessments, compensation of the personal representative, and other  
1758 expenses incident to the administration of the estate;
- 1759 (19) sell or exercise stock subscription or conversion rights; and consent, directly or  
1760 through a committee or other agent, to the reorganization, consolidation, merger,  
1761 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  
1763 or provided by law;
- 1764 (21) employ persons, including attorneys, auditors, investment advisers, or agents, even if  
1765 they are associated with the personal representative, to advise or assist the personal

- 1766 representative in the performance of his administrative duties; act without independent  
 1767 investigation upon their recommendations; and instead of acting personally, employ one  
 1768 or more agents to perform any act of administration, whether or not discretionary;
- 1769 (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the  
 1770 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  
 1772 for cash, credit, or for part cash and part credit, and with or without security for unpaid  
 1773 balances;
- 1774 (24) continue any unincorporated business or venture in which the decedent was engaged at  
 1775 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  
 1777 appointment of a general personal representative if continuation is a reasonable  
 1778 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  
 1780 order of the court in a formal proceeding to which the persons interested in the estate  
 1781 are parties; or
- 1782 (c) throughout the period of administration if the business is incorporated by the  
 1783 personal representative and if none of the probable distributees of the business who  
 1784 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  
 1786 his death;
- 1787 (26) provide for exoneration of the personal representative from personal liability in any  
 1788 contract entered into on behalf of the estate;
- 1789 (27) satisfy and settle claims and distribute the estate as provided in this [eode] title.
- 1790 Section 42. Section **75-3-913** is amended to read:
- 1791 **75-3-913 . Distributions to trustee.**
- 1792 (1) Before distributing to a trustee, the personal representative may require that the trust be  
 1793 registered if the state in which [it] the trust is to be administered provides for registration  
 1794 and that the trustee inform the qualified beneficiaries [~~as provided in Section 75-7-811~~]  
 1795 as described in Section 75B-2-811.
- 1796 (2) If the trust instrument does not excuse the trustee from giving bond, the personal  
 1797 representative may:
- 1798 (a) petition the appropriate court to require that the trustee post bond if [he] the trustee  
 1799 apprehends that distribution might jeopardize the interests of persons who are not

1800 able to protect themselves[; and he may] ; and

1801 (b) withhold distribution until the court has acted.

1802 (3) No inference of negligence on the part of the personal representative shall be drawn  
1803 from [his] the personal representative's failure to exercise the authority conferred by  
1804 Subsections (1) and (2).

1805 Section 43. Section **75-3-915** is amended to read:

1806 **75-3-915 . Distribution to person under disability.**

1807 A personal representative may discharge [his] the personal representative's obligation to  
1808 distribute to any person under legal disability by distributing to [his] the person's conservator,  
1809 or any other person authorized by this [code] title or otherwise to give a valid receipt and  
1810 discharge for the distribution.

1811 Section 44. Section **75-3-916** is amended to read:

1812 **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  
1815 estate tax and the estate tax payable to this state;

1816 (b) "Fiduciary" means personal representative, executor, administrator of any  
1817 description, or trustee;

1818 (c) "Person" means any individual, partnership, association, joint stock company,  
1819 corporation, government, political subdivision, governmental agency, or local  
1820 governmental agency;

1821 (d) "Person interested in the estate" means any person, including a personal  
1822 representative, conservator, guardian, or trustee entitled to receive, or who has  
1823 received, from a decedent while alive or by reason of the death of a decedent any  
1824 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  
1826 Columbia, or the Commonwealth of Puerto Rico; and

1827 (f) "Tax" means the federal estate tax and the inheritance, estate, or other death tax  
1828 payable to this state and interest and penalties imposed in addition to the tax but  
1829 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  
1831 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  
1833 each person interested in the estate bears to the total value of the interests of all

- 1834 persons interested in the estate.
- 1835 (c) The values used in determining the tax shall be used for that purpose.
- 1836 (d) If the decedent's will or other dispositive instrument directs a method of
- 1837 apportionment of tax different from the method described in this [eode] title, the
- 1838 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
- 1840 shall determine the apportionment of the tax. If there are no probate proceedings, the
- 1841 court of the county in which the decedent was domiciled at death shall determine the
- 1842 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
- 1844 manner provided in Subsection (2), because of special circumstances, it may direct
- 1845 the apportionment in the manner it finds equitable.
- 1846 (c)(i) The expenses reasonably incurred by any fiduciary and by other persons
- 1847 interested in the estate concerning the determination of the amount and
- 1848 apportionment of the tax shall be apportioned as provided in Subsection (2) and
- 1849 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
- 1851 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
- 1853 the tax is due to delay caused by the negligence of the fiduciary, the court may charge
- 1854 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
- 1856 the amount of the tax apportioned to the person in accordance with this [eode] title,
- 1857 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
- 1859 any property of the decedent in his possession and distributable to any person
- 1860 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
- 1862 tax and distributable to any person interested in the estate is insufficient to satisfy
- 1863 the proportionate amount of the tax determined to be due from the person, the
- 1864 fiduciary or other person required to pay the tax may recover the deficiency from
- 1865 the person interested in the estate.
- 1866 (iii) If the property is not in the possession of the fiduciary or other person required to
- 1867 pay the tax, the fiduciary or the other person required to pay the tax may recover

1868 from any person interested in the estate the amount of the tax apportioned to the  
1869 person in accordance with this section.

1870 (b) If property held by the fiduciary or other person required to pay the tax is distributed  
1871 prior to final apportionment of the tax, the fiduciary or other person may require the  
1872 distributee to provide a bond or other security for the apportionment liability in the  
1873 form and amount prescribed by the fiduciary, with the approval of the court having  
1874 jurisdiction of the administration of the estate.

1875 (5)(a) In making an apportionment, allowances shall be made for any exemptions  
1876 granted, any classification made of persons interested in the estate, and any  
1877 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  
1879 person to the decedent or by reason of the purposes of the gift inures to the benefit  
1880 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  
1882 deduction, the tax apportionable against the present interest shall be paid from  
1883 principal.

1884 (c) Any deduction for property previously taxed and any credit for gift taxes or death  
1885 taxes of a foreign country paid by the decedent or his estate inures to the  
1886 proportionate benefit of all persons liable to apportionment.

1887 (d) Any credit for inheritance, succession, or estate taxes or taxes of this nature in  
1888 respect to property or interests includable in the estate inures to the benefit of the  
1889 persons or interests chargeable with the payment of the tax to the extent that, or in  
1890 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  
1892 or any charitable, public, or similar gift or bequest does not constitute an  
1893 allowable deduction for purposes of the tax solely by reason of an inheritance tax  
1894 or other death tax imposed upon and deductible from the property, the property  
1895 shall not be included in the computation provided for in Subsection (2), and to that  
1896 extent no apportionment shall be made against the property.

1897 (ii) This does not apply in any instance where the result will be to deprive the estate  
1898 of a deduction otherwise allowable under Section 2053(d) [~~of the Internal~~  
1899 ~~Revenue Code of 1954 of the United States~~], Internal Revenue Code, relating to  
1900 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



- 1902 interest in any property or fund is subject to apportionment as between the temporary  
1903 interest and the remainder.
- 1904 (b) The tax on the temporary interest and the tax, if any, on the remainder is chargeable  
1905 against the corpus of the property or funds subject to the temporary interest and  
1906 remainder.
- 1907 (7)(a) Neither the fiduciary nor other person required to pay the tax is under any duty to  
1908 institute any suit or proceeding to recover from any person interested in the estate the  
1909 amount of the tax apportioned to the person until the expiration of the three months  
1910 next following final determination of the tax.
- 1911 (b) A fiduciary or other person required to pay the tax who institutes the suit or  
1912 proceeding within a reasonable time after the three months' period is not subject to  
1913 any liability or surcharge because any portion of the tax apportioned to any person  
1914 interested in the estate was collectible at a time following the death of the decedent  
1915 but thereafter became uncollectible. If the fiduciary or other person required to pay  
1916 the tax cannot collect from any person interested in the estate the amount of the tax  
1917 apportioned to the person, the amount not recoverable shall be paid from the  
1918 residuary estate.
- 1919 (c) To the extent that the residuary estate is not adequate, the balance shall be equitably  
1920 apportioned among the other persons interested in the estate who are subject to  
1921 apportionment.
- 1922 (8)(a) Subject to this section, a fiduciary acting in another state or a person required to  
1923 pay the tax who is domiciled in another state may institute an action in the courts of  
1924 this state and may recover a proportionate amount of the federal estate tax, of an  
1925 estate tax payable to another state, or of a death duty due by a decedent's estate to  
1926 another state, from a person interested in the estate who is either domiciled in this  
1927 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  
1929 having jurisdiction of the administration of the decedent's estate in the other state is  
1930 prima facie correct.
- 1931 (c) The provisions of this section apply only if the state in which the determination of  
1932 apportionment was made affords a substantially similar remedy.
- 1933 (9) This section does not apply to the apportionment of expenses incurred in connection  
1934 with the determination of the amount and apportionment of the taxes due on account of  
1935 the death of decedents dying prior to July 1, 1983.

1936 Section 45. Section **75-3-1008** is amended to read:

1937 **75-3-1008 . Subsequent administration.**

1938 (1) If other property of the estate is discovered after an estate has been settled and the  
1939 personal representative discharged or after one year after a closing statement has been  
1940 filed, the court upon petition of any interested person and upon notice as it directs may  
1941 appoint the same or a successor personal representative to administer the  
1942 subsequently-discovered estate.

1943 (2) If a new appointment is made, unless the court orders otherwise, the provisions of this [   
1944 eode] title apply as appropriate[;] but no claim previously barred may be asserted in the  
1945 subsequent administration.

1946 Section 46. Section **75-5-303** is amended to read:

1947 **75-5-303 . Procedure for court appointment of a guardian of an incapacitated**  
1948 **person.**

1949 (1) An incapacitated person or any person interested in the incapacitated person's welfare  
1950 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  
1952 incapacity.

1953 (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the  
1954 court shall appoint an attorney to represent the person in the proceeding the cost of  
1955 which shall be paid by the person alleged to be incapacitated, unless the allegedly  
1956 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  
1958 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  
1960 incapacitated person, regardless of whether the nominee is specified in the moving  
1961 petition or nominated during the proceedings, the petitioner shall be entitled to  
1962 receive from the incapacitated person reasonable attorney fees and court costs  
1963 incurred in bringing, prosecuting, or defending the petition.

1964 (3) The legal representation of the incapacitated person by an attorney shall terminate upon  
1965 the appointment of a guardian, unless:

1966 (a) there are separate conservatorship proceedings still pending before the court  
1967 subsequent to the appointment of a guardian;

1968 (b) there is a timely filed appeal of the appointment of the guardian or the determination  
1969 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  
 1972 assistant appointed by the court who shall submit a report in writing to the court and  
 1973 may be interviewed by a visitor sent by the court. The visitor also may interview the  
 1974 person seeking appointment as guardian, visit the present place of abode of the person  
 1975 alleged to be incapacitated and the place it is proposed that the person will be detained  
 1976 or reside if the requested appointment is made, conduct other investigations or  
 1977 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  
 1979 and see or hear all evidence bearing upon the person's condition. If the person  
 1980 seeking the guardianship requests a waiver of presence of the person alleged to be  
 1981 incapacitated, the court shall order an investigation by a court visitor, the costs of  
 1982 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  
 1984 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  
 1990 present evidence, to cross-examine witnesses, including the court-appointed  
 1991 physician and the visitor, and to trial by jury. The issue may be determined at a  
 1992 closed hearing without a jury if the person alleged to be incapacitated or the person's  
 1993 counsel so requests.
- 1994 (d) Counsel for the person alleged to be incapacitated [~~as defined in Subsection~~  
 1995 ~~75-1-201(22),~~] is not required if:
- 1996 (i) the person is the biological or adopted child of the petitioner;  
 1997 (ii) the value of the person's entire estate does not exceed \$20,000 as established by  
 1998 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  
 2001 person's acceptance of the appointment of petitioner;  
 2002 (v) no attorney from the state court's list of attorneys who have volunteered to  
 2003 represent respondents in guardianship proceedings is able to provide counsel to

2004 the person within 60 days of the date of the appointment described in Subsection  
2005 (2);

2006 (vi) the court is satisfied that counsel is not necessary in order to protect the interests  
2007 of the person; and

2008 (vii) the court appoints a visitor under Subsection (4).

2009 Section 47. Section **75-5-412** is amended to read:

2010 **75-5-412 . Terms and requirements of bonds.**

2011 (1) The following requirements and provisions apply to any bond required under Section  
2012 75-5-411:

2013 (a) [~~Unless~~] unless otherwise provided by the terms of the approved bond, sureties are  
2014 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  
2016 jurisdiction of the court which issued letters to the primary obligor in any  
2017 proceeding pertaining to the fiduciary duties of the conservator and naming the  
2018 surety as a party defendant[-] ; and

2019 (ii) [~~Notice~~] notice of the proceeding shall be delivered to the surety or mailed to him  
2020 by registered or certified mail at his address as listed with the court where the  
2021 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  
2023 may be initiated against a surety for breach of the obligation of the bond of the  
2024 conservator; and

2025 (d) [~~The~~] the bond of the conservator is not void after the first recovery but may be  
2026 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  
2028 action or proceeding against the primary obligor is barred by adjudication or limitation  
2029 under this [~~code~~] title.

2030 Section 48. Section **75-5-416** is amended to read:

2031 **75-5-416 . Petitions for orders subsequent to appointment.**

2032 (1) Any person interested in the welfare of a person for whom a conservator has been  
2033 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,~~  
2039 ~~Chapter 7, Utah Uniform Trust Code~~] Title 75B, Chapter 2, Uniform Trust Code, if  
2040 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  
2042 conservator's fiduciary responsibility.
- 2043 (3) Upon notice and hearing the court may give appropriate instructions or make any  
2044 appropriate order.
- 2045 Section 49. Section **75-5-417** is amended to read:
- 2046 **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  
2048 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,  
2050 the conservator shall send a report with a full accounting to the court on an annual  
2051 basis.
- 2052 (b) For estates less than \$50,000 excluding the residence owned by the ward, the  
2053 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  
2062 Subsections (2)(a) and (b).
- 2063 (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and  
2064 approved by the court.
- 2065 (3)(a) Corporate fiduciaries are not required to fully petition the court, but shall submit  
2066 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  
2069 information included in, an accounting report provided to a ward in accordance with  
2070 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

- 2072 receiving written notice of the failure to file and after a grace period of two months  
2073 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  
2078 ward.
- 2079 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be  
2080 paid by the estate.
- 2081 (6) These provisions and penalties governing annual reports do not apply if the conservator  
2082 is the parent of the ward.

2083 Section 50. Section **75-6-201** is amended to read:

2084 **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,  
2086 mortgage, promissory note, deposit agreement, pension plan, trust agreement,  
2087 conveyance, or any other written instrument effective as a contract, gift, conveyance, or  
2088 trust are considered nontestamentary, and this [eode] title does not invalidate the  
2089 instrument or any provision:
- 2090 (a) that money or other benefits previously due to, controlled, or owned by a decedent  
2091 shall be paid after his death to a person designated by the decedent in either the  
2092 instrument or a separate writing, including a will, executed at the same time as the  
2093 instrument or subsequently;
  - 2094 (b) that any money due or to become due under the instrument shall cease to be payable  
2095 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  
2097 designated by the decedent in either the instrument or a separate writing, including a  
2098 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  
2101 more persons shall have access to the repository, that purports to create a joint  
2102 tenancy in the repository or in the contents of the repository, or that purports to vest  
2103 ownership of the contents of the repository in the surviving lessee is ineffective to  
2104 create joint ownership of the contents of the repository or to transfer ownership at  
2105 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  
2107 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  
2109 access to the repository by the terms of the lease agreement without liability on the  
2110 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  
2112 individuals shall be deemed to be held in joint tenancy with right of survivorship unless  
2113 otherwise indicated.

2114 Section 51. Section **75A-1-201** is amended to read:

2115 **75A-1-201 . Definitions for part.**

2116 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;

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 [~~(n)~~] (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  
2133 negligently or not.]~~

2134 (2) "Good faith" means honesty in fact in the conduct or transaction concerned and the  
2135 observance of reasonable fiduciary standards.

2136 (3) "Principal" means a person to whom a fiduciary owes an obligation.

2137 Section 52. Section **75A-2-102** is amended to read:

2138 **75A-2-102 . Definitions for chapter.**

2139 As used in this chapter:

- 2140 (1)(a) "Agent" means a person granted authority to act for a principal under a power of  
2141 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  
2143 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) "Durable," with respect to a power of attorney, means not terminated by the principal's  
2151 incapacity.
- 2152 (9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
2153 optical, electromagnetic, or similar capabilities.
- 2154 (10) "Estate" means the same as that term is defined in Section 75-1-201.
- 2155 (11) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 2156 ~~[(12) "Good faith" means honesty in fact.]~~
- 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) "Incapacity" means the inability of an individual to manage property or business  
2160 affairs because the individual:
- 2161 (a) has an impairment in the ability to receive and evaluate information or make or  
2162 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) "Lease" means the same as that term is defined in Section 75-1-201.
- 2168 (16) "Mortgage" means the same as that term is defined in Section 75-1-201.
- 2169 (17) "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,~~  
2171 ~~limited liability company, association, joint venture, public corporation, government or~~  
2172 ~~governmental subdivision, agency, or instrumentality, or any other legal or commercial~~  
2173 ~~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) "Power of attorney" means a writing or other record that grants authority to an agent to  
2177 act in the place of the principal, whether or not the term power of attorney is used.
- 2178 (21)(a) "Presently exercisable general power of appointment," with respect to property  
2179 or a property interest subject to a power of appointment, means power exercisable at  
2180 the time in question to vest absolute ownership in the principal individually, the  
2181 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  
2183 appointment not exercisable until the occurrence of a specified event, the satisfaction  
2184 of an ascertainable standard, or the passage of a specified period only after the  
2185 occurrence of the specified event, the satisfaction of the ascertainable standard, or the  
2186 passage of the specified period.
- 2187 (c) "Presently exercisable general power of appointment" does not include a power  
2188 exercisable in a fiduciary capacity or only by will.
- 2189 (22) "Principal" means an individual who grants authority to an agent in a power of  
2190 attorney.
- 2191 [~~(23) "Property" means anything that may be the subject of ownership, whether real or  
2192 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  
2194 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) "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  
2202 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
2203 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)(a) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of  
2207 securities and financial instruments, whether held directly, indirectly, or in any other

2208 manner.

2209 (b) "Stocks and bonds" does not include commodity futures contracts and call or put  
2210 options on stocks or stock indexes.

2211 (29) "Trust" means the same as that term is defined in Section 75-1-201.

2212 (30) "Trustee" means the same as that term is defined in Section 75-1-201.

2213 (31) "Will" means the same as that term is defined in Section 75-1-201.

2214 Section 53. Section **75A-2-120** is amended to read:

2215 **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  
2217 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  
2220 certification, a translation, or an opinion of counsel under Subsection 75A-2-119(4)  
2221 no later than seven business days after presentation of the power of attorney for  
2222 acceptance;

2223 (b) if a person requests a certification, a translation, or an opinion of counsel under  
2224 Subsection 75A-2-119(4), the person shall accept the power of attorney no later than  
2225 five business days after receipt of the certification, translation, or opinion of counsel;  
2226 and

2227 (c) a person may not require an additional or different form of power of attorney for  
2228 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  
2231 the same circumstances;

2232 (b) engaging in a transaction with the agent or the principal in the same circumstances  
2233 would be inconsistent with federal law;

2234 (c) the person has actual knowledge of the termination of the agent's authority or of the  
2235 power of attorney before exercise of the power;

2236 (d) a request for a certification, a translation, or an opinion of counsel under Subsection  
2237 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  
2239 have the authority to perform the act requested, whether or not a certification, a  
2240 translation, or an opinion of counsel under Subsection 75A-2-119(4) has been  
2241 requested or provided; or

2242 (f) the person makes, or has actual knowledge that another person has made, a report to  
 2243 the Division of Aging and Adult Services stating a good faith belief that the principal  
 2244 may be subject to physical or financial abuse, neglect, exploitation, or abandonment  
 2245 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  
 2247 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  
 2250 that confirms the validity of the power of attorney or mandates acceptance of the  
 2251 power of attorney.

2252 (5) Court proceedings under this section shall be conducted [~~pursuant to the terms in the~~  
 2253 ~~Uniform Probate Code~~] in accordance with the provisions of Title 75, Utah Uniform  
 2254 Probate Code, governing venue and procedures.

2255 Section 54. Section **75A-3-101** is amended to read:

2256 **75A-3-101 . Definitions for chapter.**

2257 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  
 2264 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  
 2268 requirements of this chapter; or

2269 (ii) a witnessed oral statement, made in accordance with the requirements of this  
 2270 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  
 2273 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

- 2276 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
- 2279 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
- 2281 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
- 2283 individual;
- 2284 (b) the degree of physical pain or discomfort caused to the individual by the treatment or
- 2285 the withholding or withdrawal of treatment;
- 2286 (c) the degree to which the individual's medical condition, the treatment, or the
- 2287 withholding or withdrawal of treatment, result in a severe and continuing impairment
- 2288 of the dignity of the individual by subjecting the individual to humiliation and
- 2289 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;
- 2292 (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal
- 2293 of treatment; and
- 2294 (g) the religious beliefs and basic values of the individual receiving treatment, to the
- 2295 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
- 2297 appointing a particular individual as agent.
- 2298 (7) "Child" means the same as that term is defined in Section 75-1-201.
- 2299 (8) "Declarant" means an adult who has completed and signed or directed the signing of an
- 2300 advance health care directive.
- 2301 (9) "Default surrogate" means the adult who may make decisions for an individual when
- 2302 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) "Emergency medical services provider" means a person that is licensed, designated, or
- 2306 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) "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  
 2311 Utah law; and
- 2312 (ii) enabling health care providers to interpret the statutory form set forth in Section  
 2313 75A-3-303; and
- 2314 (b) means the standard of care that justifies a provider in declining to provide life  
 2315 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  
 2317 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  
 2320 individual.
- 2321 (13) "Guardian" means the same as that term is defined in Section 75-1-201.
- 2322 (14) "Health care" means any care, treatment, service, or procedure to improve, maintain,  
 2323 diagnose, or otherwise affect an individual's physical or mental condition.
- 2324 (15)(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  
 2326 communicated to a health care provider[~~;~~] .
- 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,  
 2330 and orders not to resuscitate; and
- 2331 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and  
 2332 all other forms of health care[~~;~~and] .
- 2333 (c) "Health care decision" does not include decisions about an adult's financial affairs or  
 2334 social interactions other than as indirectly affected by the health care decision.
- 2335 (16) "Health care decision making capacity" means an adult's ability to make an informed  
 2336 decision about receiving or refusing health care, including:
- 2337 (a) the ability to understand the nature, extent, or probable consequences of health status  
 2338 and health care alternatives;
- 2339 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and  
 2340 alternatives of accepting or rejecting health care; and
- 2341 (c) the ability to communicate a decision.
- 2342 (17) "Health care facility" means:
- 2343 (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility

- 2344           Licensing and Inspection; and
- 2345           (b) private offices of physicians, dentists, and other health care providers licensed to
- 2346           provide health care under Title 58, Occupations and Professions.
- 2347 (18) "Health care provider" means the same as that term is defined in Section 78B-3-403,
- 2348           except that "health care provider" does not include an emergency medical services
- 2349           provider.
- 2350 (19) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 2351 (20) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 2352 (21)(a) "Life sustaining care" means any medical intervention, including procedures,
- 2353           administration of medication, or use of a medical device, that maintains life by
- 2354           sustaining, restoring, or supplanting a vital function.
- 2355           (b) "Life sustaining care" does not include care provided for the purpose of keeping an
- 2356           individual comfortable.
- 2357 (22) "Minor" means an individual who:
- 2358           (a) is under 18 years old; and
- 2359           (b) is not an emancipated minor.
- 2360 (23) "Order for life sustaining treatment" means an order related to life sustaining
- 2361           treatment, on a form designated by the Department of Health and Human Services under
- 2362           Section ~~[75-3-106]~~ 75A-3-106, that gives direction to health care providers, health care
- 2363           facilities, and emergency medical services providers regarding the specific health care
- 2364           decisions of the individual to whom the order relates.
- 2365 (24) "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) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title
- 2368           58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical
- 2369           Practice Act.
- 2370 (27) "Physician assistant" means an individual licensed as a physician assistant under Title
- 2371           58, Chapter 70a, Utah Physician Assistant Act.
- 2372 (28) "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
- 2375           circumstances.
- 2376 (29) "State" means the same as that term is defined in Section 75-1-201.
- 2377 (30) "Substituted judgment" means the standard to be applied by a surrogate when making a

- 2378 health care decision for an adult who previously had the capacity to make health care  
2379 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  
2385 circumstances; and  
2386 (d) to the extent that the preferences described in Subsections (30)(a) through (c) are  
2387 unknown, the best interest of the adult.
- 2388 (31) "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.
- 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.
- 2394 Section 55. Section **75A-4-102** is amended to read:
- 2395 **75A-4-102 . Definitions for chapter.**
- 2396 As used in this chapter:
- 2397 (1) "Appointee" means a person to which a powerholder makes an appointment of  
2398 appointive property.
- 2399 (2) "Appointive property" means the property or property interest subject to a power of  
2400 appointment.
- 2401 (3)(a) "Blanket-exercise clause" means a clause in an instrument that exercises a power  
2402 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  
2405 powerholder has;  
2406 (ii) expressly uses the words "any property" in appointing any property over which  
2407 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) "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) "Exclusionary power of appointment" means a power of appointment exercisable in  
2413 favor of any one or more of the permissible appointees to the exclusion of the other  
2414 permissible appointees.
- 2415 (8) "General power of appointment" means a power of appointment exercisable in favor of  
2416 the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of  
2417 the powerholder's estate.
- 2418 (9) "Gift-in-default clause" means a clause identifying a taker in default of appointment.
- 2419 (10) "Impermissible appointee" means a person that is not a permissible appointee.
- 2420 (11) "Instrument" means a record.
- 2421 (12)(a) "Nongeneral power of appointment" means a power of appointment that is not a  
2422 general power of appointment.
- 2423 (b) "Nongeneral power of appointment" includes a special power of appointment, a  
2424 limited power of appointment, or similar terminology that is used in an instrument  
2425 creating a power that does not grant powers making it a general power of  
2426 appointment.
- 2427 (13) "Permissible appointee" means a person in whose favor a powerholder may exercise a  
2428 power of appointment.
- 2429 [~~(14) "Person" means an individual, estate, trust, business or nonprofit entity, public  
2430 corporation, government or governmental subdivision, agency, instrumentality, or other  
2431 legal entity.~~]
- 2432 (14) "Person" means the same as that term is defined in Section 75-1-201.
- 2433 (15) "Powerholder" means a person in whom a donor creates a power of appointment.
- 2434 (16)(a) "Power of appointment" means a power that enables a powerholder acting in a  
2435 nonfiduciary capacity to designate a recipient of an interest in, or another power of  
2436 appointment over, the appointive property.
- 2437 (b) "Power of appointment" does not include a power of attorney.
- 2438 (17)(a) "Presently exercisable power of appointment" means a power of appointment  
2439 exercisable by the powerholder at a relevant time.
- 2440 (b) "Presently exercisable power of appointment" includes a power of appointment not  
2441 exercisable until the occurrence of a specified event, the satisfaction of an  
2442 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  
 2447 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  
 2450 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) "Specific-exercise clause" means a clause in an instrument that specifically refers to  
 2453 and exercises a particular power of appointment.
- 2454 (21) "Taker in default of appointment" means a person that takes all or part of the  
 2455 appointive property to the extent the powerholder does not effectively exercise the  
 2456 power of appointment.
- 2457 (22) "Terms of the instrument" means the manifestation of the intent of the maker of the  
 2458 instrument regarding the instrument's provisions as expressed in the instrument or as  
 2459 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.
- 2462 Section 56. Section **75A-4-302** is amended to read:
- 2463 **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  
 2466 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  
 2469 revocable trust, manifests the powerholder's intent to exercise a power of appointment  
 2470 only if:
- 2471 (a) the terms of the instrument containing the residuary clause do not manifest a contrary  
 2472 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.
- 2476 Section 57. Section **75A-5-102** is amended to read:
- 2477 **75A-5-102 . Definitions for chapter.**
- 2478 As used in this chapter:
- 2479 (1)(a) "Accounting period" means a calendar year, unless a fiduciary selects another

- 2480 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  
2482 calendar months or approximately 12 calendar months that begins when an income  
2483 interest begins or ends when an income interest ends.
- 2484 (2)(a) "Asset-backed security" means a security that is serviced primarily by the cash  
2485 flows of a discrete pool of fixed or revolving receivables or other financial assets that  
2486 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  
2488 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,  
2490 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  
2494 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  
2499 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  
2501 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  
2503 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  
2505 beneficiary's capacity as a beneficiary, made under the terms of the trust, without  
2506 consideration other than the beneficiary's right to receive the payment or transfer  
2507 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  
2511 and the property of the estate as it exists at any time during administration.
- 2512 (8) "Fiduciary" includes:
- 2513 (a) a trustee, trust director as defined in Section ~~[75-12-102]~~ 75B-3-102, personal

- 2514 representative, life tenant, holder of a term interest, and person acting under a  
2515 delegation from a fiduciary;
- 2516 (b) a person that holds property for a successor beneficiary whose interest may be  
2517 affected by an allocation of receipts and expenditures between income and principal;  
2518 and
- 2519 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the  
2520 trust and applicable law.
- 2521 (9)(a) "Income" means money or other property a fiduciary receives as current return  
2522 from principal.
- 2523 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a  
2524 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  
2526 or part of net income, whether the terms of the trust require the net income to be  
2527 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  
2529 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  
2535 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  
2538 (11)(a) or (b);
- 2539 (d) a corporation, partnership, limited liability company, or other entity in which persons  
2540 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  
2543 receive net income that the terms of the trust require the fiduciary to distribute.
- 2544 (13)(a) "Net income" means:
- 2545 (i) the total allocations during an accounting period to income under the terms of a  
2546 trust and this chapter minus the disbursements during the accounting period, other  
2547 than distributions, allocated to income under the terms of the trust and this

- 2548 chapter; and
- 2549 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
- 2550 determined under Part 3, Unitrust.
- 2551 (b) "Net income" includes an adjustment from principal to income under Section
- 2552 75A-5-203.
- 2553 (c) "Net income" does not include an adjustment from income to principal under Section
- 2554 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~~
- 2561 ~~instrumentality; or]~~
- 2562 ~~[(f) any other legal entity.]~~
- 2563 ~~[(15) "Personal representative" means an executor, administrator, successor personal~~
- 2564 ~~representative, special administrator, or person that performs substantially the same~~
- 2565 ~~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) "Principal" means property held in trust for distribution to, production of income for,
- 2569 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~~
- 2571 ~~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) "Settlor" means the same as that term is defined in Section [75-7-103] 75B-2-103.
- 2575 ~~[(19)]~~ (20) "Special tax benefit" means:
- 2576 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the
- 2577 Internal Revenue Code because of the qualification of an income interest in the trust
- 2578 as a present interest in property;
- 2579 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal
- 2580 Revenue Code at a time the trust holds stock of an S corporation described in Section
- 2581 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  
 2583 2523 of the Internal Revenue Code that depends or depended in whole or in part on  
 2584 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  
 2586 tax imposed by Section 2601 of the Internal Revenue Code because the trust was  
 2587 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,  
 2589 could be made from the trust; or
- 2590 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue  
 2591 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  
 2593 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,  
 2595 could be made from the trust; or
- 2596 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue  
 2597 Code, could occur with respect to the trust.
- 2598 [~~(20)~~] (21) "Successive interest" means the interest of a successor beneficiary.
- 2599 [~~(21)~~] (22) "Successor beneficiary" means a person entitled to receive income or principal or  
 2600 to use property when an income interest or other current interest ends.
- 2601 [~~(22)~~] (23) "Terms of a trust" means:
- 2602 (a) except as otherwise provided in Subsection [~~(22)(b)~~], (23)(b) the manifestation of the  
 2603 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;
- 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  
 2612 beneficiaries.
- 2613 [~~(23)~~] (24)(a) "Trust" includes:
- 2614 (i) an express trust, private or charitable, with additions to the trust, wherever and  
 2615 however created; and

2616 (ii) a trust created or determined by judgment or decree under which the trust is to be  
2617 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  
2621 arrangement for a minor, business trust, voting trust, security arrangement,  
2622 liquidation trust, or trust for the primary purpose of paying debts, dividends,  
2623 interest, salaries, wages, profits, pensions, retirement benefits, or employee  
2624 benefits of any kind; or

2625 (iii) an arrangement under which a person is a nominee, escrowee, or agent for  
2626 another.

2627 [~~(24)~~] (25)(a) "Trustee" means a person, other than a personal representative, that owns  
2628 or holds property for the benefit of a beneficiary.

2629 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed or  
2630 confirmed by a court.

2631 [~~(25)~~] (26)(a) "Will" means any testamentary instrument recognized by applicable law  
2632 that makes a legally effective disposition of an individual's property effective at the  
2633 individual's death.

2634 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

2635 Section 58. Section **75A-5-202** is amended to read:

2636 **75A-5-202 . Judicial review of exercise of discretionary power -- Request for**  
2637 **instruction.**

2638 (1) In this section, "fiduciary decision" means:

2639 (a) a fiduciary's allocation between income and principal or other determination  
2640 regarding income and principal required or authorized by the terms of the trust or this  
2641 chapter;

2642 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income  
2643 and principal granted by the terms of the trust or this chapter, including the power to:

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  
2647 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  
2651 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  
2653 discretion, the court may order a remedy authorized by law, including a remedy  
2654 authorized in Section [~~75-7-1001~~] 75B-2-1001.
- 2655 (b) To place the beneficiaries in the positions that the beneficiaries would have occupied  
2656 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  
2658 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  
2662 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  
2667 beneficiary.
- 2668 (4)(a) On petition by a fiduciary for instruction, the court may determine whether a  
2669 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  
2671 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  
2674 making the proposed decision and the facts on which the fiduciary relies; and  
2675 (iii) explains how the beneficiary will be affected by the proposed decision.
- 2676 Section 59. Section **75A-5-203** is amended to read:
- 2677 **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  
2679 record, without court approval, may adjust between income and principal if the fiduciary  
2680 determines the exercise of the power to adjust will assist the fiduciary to administer the  
2681 trust or estate impartially.
- 2682 (2) This section does not create a duty to exercise or consider the power to adjust under  
2683 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  
2685 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  
2687 (1), a fiduciary shall consider all factors the fiduciary considers relevant, including the  
2688 relevant factors in Subsection 75A-5-201(5) and the application of Subsection  
2689 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  
2691 the power to make a determination that an allocation is insubstantial under Section  
2692 75A-5-408 if:
- 2693 (a) the adjustment or determination would reduce the amount payable to a current  
2694 income beneficiary from a trust that qualifies for a special tax benefit, except to the  
2695 extent the adjustment is made to provide for a reasonable apportionment of the total  
2696 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,  
2698 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms  
2699 of the trust;
- 2700 (c) the adjustment or determination would reduce an amount that is permanently set  
2701 aside for a charitable purpose under the terms of the trust, unless both income and  
2702 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  
2704 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  
2706 assets to be included in the gross estate of an individual for federal estate tax  
2707 purposes;
- 2708 (f) possessing or exercising the power would cause an individual to be treated as making  
2709 a gift for federal gift tax purposes;
- 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  
2712 possessing or exercising the power would cause the adjusted principal or income to  
2713 be considered an available resource or available income under a public-benefit  
2714 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



- 2718 power to adjust, unless the exercise of the power to adjust by the remaining  
2719 co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other  
2720 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  
2723 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  
2725 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  
2728 trust or by a provision of law outside this chapter, a fiduciary may not appoint  
2729 a co-fiduciary.
- 2730 (B) If the exercise of the power to adjust by a co-fiduciary is not permitted by the  
2731 terms of the trust or by a provision of law outside this chapter, the co-fiduciary  
2732 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  
2734 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of  
2735 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  
2738 (5)(a) through (f).
- 2739 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the power to  
2740 adjust under Subsection (1):
- 2741 (a) must be in a record;
- 2742 (b) applies to the entire power to adjust, unless the release or delegation provides a  
2743 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  
2749 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  
2751 specified period, including a period measured by the life of an individual or the lives

2752 of more than one individual.

2753 (9) Terms of a trust that deny or limit the power to adjust between income and principal do  
2754 not affect the application of this section, unless the terms of the trust expressly deny or  
2755 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  
2757 apply to the current accounting period, the immediately preceding accounting period,  
2758 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)~~]  
2761 75B-2-811(3); or

2762 (b) communicated at least annually to the qualified beneficiaries determined under  
2763 Subsection [~~75-7-103(1)(h)~~] 75B-2-103(32).

2764 Section 60. Section **75A-5-303** is amended to read:

2765 **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  
2768 policy for the trust providing:

2769 (i) that, in administering the trust, the net income of the trust will be a unitrust  
2770 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 (b) change the percentage or method used to calculate a unitrust amount for a unitrust if  
2773 the fiduciary adopts in a record a unitrust policy or an amendment or replacement of  
2774 a unitrust policy providing changes in the percentage or method used to calculate the  
2775 unitrust amount; or

2776 (c) convert a unitrust to an income trust if the fiduciary adopts, in a record, a  
2777 determination that, in administering the trust, the net income of the trust will be net  
2778 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  
2781 impartially;

2782 (b) the fiduciary sends a notice in a record, in the manner required by Section 75A-5-304,  
2783 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  
2785 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  
2789 Subsection [~~75-7-103(1)(h)~~] 75B-2-103(32) receiving the notice under Subsection  
2790 (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  
2795 75A-5-304(4)(e), an objection in a record to the action proposed under Subsection  
2796 (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  
2798 75A-5-304(4)(e), an objection in a record described in Subsection 75A-5-304(4)(d) to  
2799 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  
2804 the proceeding under Subsection (3)(a), regardless of whether the person:
- 2805 (i) consented under Subsection 75A-5-304(3); or  
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  
2808 action proposed in the notice, the fiduciary shall notify each person described in  
2809 Subsection 75A-5-304(1) in a record of the decision not to take the action and the  
2810 reasons for the decision.
- 2811 (5) If a beneficiary requests in a record that a fiduciary take an action described in  
2812 Subsection (1) and the fiduciary declines to act or does not act within 90 days after  
2813 receiving the request, the beneficiary may request the court to direct the fiduciary to take  
2814 the action requested.
- 2815 (6) In deciding whether and how to take an action authorized by Subsection (1), or whether  
2816 and how to respond to a request by a beneficiary under Subsection (5), a fiduciary shall  
2817 consider all factors relevant to the trust and the beneficiaries, including the relevant  
2818 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

- 2820 Subsection 75A-5-203(8), a fiduciary may:
- 2821 (a) release or delegate the power to convert an income trust to a unitrust under
- 2822 Subsection (1)(a);
- 2823 (b) change the percentage or method used to calculate a unitrust amount under
- 2824 Subsection (1)(b); or
- 2825 (c) convert a unitrust to an income trust under Subsection (1)(c).
- 2826 Section 61. Section **75A-5-304** is amended to read:
- 2827 **75A-5-304 . Notice.**
- 2828 (1) A fiduciary shall send a notice required by Subsection 75A-5-303(2)(b) in a manner
- 2829 authorized under Section [~~75-7-109~~] 75B-2-109 to:
- 2830 (a) the qualified beneficiaries determined under Subsection [~~75-7-103(1)(h)~~]
- 2831 75B-2-103(32);
- 2832 (b) each person acting, in accordance with Title 75, Chapter 12, Uniform Directed Trust
- 2833 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
- 2835 trustee or person described in Subsection (1)(b), to the extent the power is exercisable
- 2836 when the person that exercises the power is not then serving as trustee or is a person
- 2837 described in Subsection (1)(b).
- 2838 (2) The representation provisions of [~~Sections 75-7-301 through 75-7-305~~] Title 75B,
- 2839 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
- 2841 Subsection 75A-5-303(2)(b).
- 2842 (b) If a person required to receive a notice under Subsection (1) consents under
- 2843 Subsection (3)(a) to not receive the notice, the fiduciary is not required to send the
- 2844 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
- 2848 under Subsection 75A-5-303(1)(a);
- 2849 (c) for a change in the percentage or method used to calculate the unitrust amount, a
- 2850 copy of the unitrust policy or amendment or replacement of the unitrust policy
- 2851 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
- 2853 action by stating in a record the basis for the objection and sending or delivering the

- 2854 record to the fiduciary;
- 2855 (e) the date by which the fiduciary shall receive an objection under Subsection (4)(d),
- 2856 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
- 2858 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
- 2861 information.

2862 Section 62. Section **75A-6-102** is amended to read:

2863 **75A-6-102 . Definitions for chapter.**

2864 As used in this chapter:

- 2865 (1) "Account" means an arrangement under a terms of service agreement in which a
- 2866 custodian carries, maintains, processes, receives, or stores a digital asset of the user or
- 2867 provides goods or services to the user.
- 2868 [~~(2) "Agent" means an attorney in fact granted authority under a durable or nondurable power~~
- 2869 ~~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
- 2873 person with which a user has had an electronic communication, the time and date of the
- 2874 communication, and the electronic address of the person.
- 2875 [~~(5)(a) "Conservator" means a person appointed by a court to manage the estate of a living~~
- 2876 ~~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) "Content of an electronic communication" means information concerning the substance
- 2880 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
- 2883 to the public or is carried or maintained by a custodian providing a remote computing
- 2884 service to the public; and
- 2885 (c) is not readily accessible to the public.
- 2886 (7) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial
- 2887 Administration.

- 2888 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a  
2889 digital asset of a user.
- 2890 (9) "Designated recipient" means a person chosen by a user using an online tool to  
2891 administer digital assets of the user.
- 2892 (10)(a) "Digital asset" means an electronic record in which an individual has a right or  
2893 interest.
- 2894 (b) "Digital asset" does not include an underlying asset or liability unless the asset or  
2895 liability is itself an electronic record.
- 2896 ~~[(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
2897 optical, electromagnetic, or similar capabilities.]~~
- 2898 (11) "Electronic" means the same as that term is defined in Section 75A-2-102.
- 2899 (12) "Electronic communication" has the same meaning as the definition in 18 U.S.C. Sec.  
2900 2510(12).
- 2901 (13) "Electronic communication service" means a custodian that provides to a user the  
2902 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) "Fiduciary" means an original, additional, or successor personal representative,  
2905 conservator, guardian, agent, or trustee.
- 2906 ~~[(16)(a) "Guardian" means a person appointed by a court to manage the affairs of a living  
2907 individual.]~~
- 2908 ~~[(b) "Guardian" includes a limited guardian.]~~
- 2909 (16) "Guardian" means the same as that term is defined in Section 75-1-201.
- 2910 (17) "Information" means data, text, images, videos, sounds, codes, computer programs,  
2911 software, databases, or the like.
- 2912 (18) "Online tool" means an electronic service provided by a custodian that allows the user,  
2913 in an agreement distinct from the terms of service agreement between the custodian and  
2914 user, to provide directions for disclosure or nondisclosure of digital assets to a third  
2915 person.
- 2916 ~~[(19) "Person" means an individual, estate, business or nonprofit entity, public corporation,  
2917 government or governmental subdivision, agency, instrumentality, or other legal entity.]~~
- 2918 ~~[(20) "Personal representative" means an executor, administrator, special administrator as  
2919 defined in Section 75-1-201, or person that performs substantially the same function under  
2920 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~~

- 2922       principal.]
- 2923   ~~[(22) "Principal" means an individual who grants authority to an agent in a power of attorney.]~~
- 2924   (19) "Person" means the same as that term is defined in Section 75-1-201.
- 2925   (20) "Personal representative" means the same as that term is defined in Section 75-1-201.
- 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)(a) "Protected person" means an individual for whom a conservator or guardian has
- 2929       been appointed.
- 2930       (b) "Protected person" includes an individual for whom an application for the
- 2931       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~~
- 2933       ~~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) "Remote computing service" means a custodian that provides to a user computer
- 2936       processing services or the storage of digital assets by means of an electronic
- 2937       communications system, as defined in 18 U.S.C. Sec. 2510(14).
- 2938   (26) "Successor personal representative" means the same as that term is defined in Section
- 2939       75-1-201.
- 2940   (27) "Terms of service agreement" means an agreement that controls the relationship
- 2941       between a user and a custodian.
- 2942   (28) "Trust" means the same as that term is defined in Section 75-1-201.
- 2943   (29)(a) "Trustee" means a fiduciary with legal title to property pursuant to an agreement
- 2944       or declaration that creates a beneficial interest in another.
- 2945       (b) "Trustee" includes a successor trustee.
- 2946   (30) "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~~
- 2949       ~~an instrument that revokes or revises a testamentary instrument.]~~
- 2950       Section 63. Section **75A-6-112** is amended to read:
- 2951       **75A-6-112 . Disclosure of contents of electronic communications held in trust**
- 2952       **when trustee not original user.**
- 2953       Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
- 2954       custodian shall disclose to a trustee that is not an original user of an account the content of an
- 2955       electronic communication sent or received by an original or successor user and carried,

2956 maintained, processed, received, or stored by the custodian in the account of the trust if the  
2957 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 [  
2960 75-7-1013] 75B-2-1013 that includes consent to disclosure of the content of electronic  
2961 communications to the trustee;
- 2962 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the  
2963 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  
2966 assigned by the custodian to identify the trust's account; or
- 2967 (b) evidence linking the account to the trust.

2968 Section 64. Section **75A-6-113** is amended to read:

2969 **75A-6-113 . Disclosure of other digital assets held in trust when trustee not**  
2970 **original user.**

2971 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a  
2972 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of  
2973 electronic communications sent or received by an original or successor user and stored,  
2974 carried, or maintained by the custodian in an account of the trust and any digital assets, other  
2975 than the content of electronic communications, in which the trust has a right or interest if the  
2976 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 [  
2979 75-7-1013] 75B-2-1013;
- 2980 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the  
2981 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  
2984 assigned by the custodian to identify the trust's account; or
- 2985 (b) evidence linking the account to the trust.

2986 Section 65. Section **75A-7-102** is amended to read:

2987 **75A-7-102 . Definitions for chapter.**

2988 As used in this chapter:

- 2989 (1) "Assignment" includes any written stock power, bond power, bill of sale, deed,



- 2990 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
- 2993 beneficiary under a trust, a ward, a beneficial owner of a security registered in the
- 2994 name of a nominee, or a minor owner of a security registered in the name of a
- 2995 custodian, or a claim of any similar interest, whether the claim is asserted by the
- 2996 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
- 2999 security.
- 3000 (4) "Fiduciary" means an executor, administrator, trustee, guardian, committee,
- 3001 conservator, curator, tutor, custodian or nominee.
- 3002 ~~[(5) "Person" includes an individual, a corporation, government or governmental subdivision~~
- 3003 ~~or agency, business trust, estate, trust, partnership or association, two or more persons~~
- 3004 ~~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) "Security" includes any share of stock, bond, debenture, note or other security issued by
- 3007 a corporation which is registered as to ownership on the books of the corporation.
- 3008 (7) "Transfer" means a change on the books of a corporation in the registered ownership of
- 3009 a security.
- 3010 (8) "Transfer agent" means a person employed or authorized by a corporation to transfer
- 3011 securities issued by the corporation.
- 3012 Section 66. Section **75A-8-102** is amended to read:
- 3013 **75A-8-102 . Definitions for chapter.**
- 3014 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
- 3019 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,~~
- 3021 ~~or temporary guardian of a minor's property or a person legally authorized to perform~~
- 3022 ~~substantially the same functions.]~~
- 3023 (5) "Conservator" means the same as that term is defined in Section 75-1-201.

- 3024 (6) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial  
3025 Administration.
- 3026 (7) "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) "Custodian" means a person so designated under Section 75A-8-110 or a successor or  
3030 substitute custodian designated under Section 75A-8-119.
- 3031 (9) "Estate" means the same as that term is defined in Section 75-1-201.
- 3032 (10) "Fiduciary" means the same as that term is defined in Section 75-1-201.
- 3033 (11) "Financial institution" means a bank, trust company, savings institution, or credit  
3034 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) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- 3037 (14) "Incapacity" means the same as that term is defined in Section 75-1-201.
- 3038 (15) "Interested person" means the same as that term is defined in Section 75-1-201.
- 3039 (16) "Legal representative" means an individual's personal representative or conservator.
- 3040 (17) "Member of the minor's family" means the minor's parent, stepparent, spouse,  
3041 grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by  
3042 adoption.
- 3043 (18) "Minor" means an individual who is under 21 years old.
- 3044 (19) "Parent" means the same as that term is defined in Section 75-1-201.
- 3045 (20) "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,~~  
3047 ~~or other legal entity.]~~
- 3048 [~~(22) "Personal representative" means an executor, administrator, successor personal~~  
3049 ~~representative as defined in Section 75-1-201, or special administrator as defined in Section~~  
3050 ~~75-1-201, of a decedent's estate or a person legally authorized to perform substantially the~~  
3051 ~~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) "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) "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~~  
 3059 ~~Commonwealth of Puerto Rico, and any territory or possession subject to the legislative~~  
 3060 ~~authority of the United States.]~~

3061 (27) "State" means the same as that term is defined in Section 75-1-201.

3062 (28) "Testator" means the same as that term is defined in Section 75-1-201.

3063 (29) "Transfer" means a transaction that creates custodial property under Section [  
 3064 ~~75A-8-109]~~ 75A-8-110.

3065 (30) "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) "Trust company" means a financial institution, corporation, or other legal entity,  
 3068 authorized to exercise general trust powers.

3069 (33) "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.

3071 Section 67. Section **75B-1-201** is amended to read:

3072 **75B-1-201 . Definitions for part.**

3073 As used in this part:

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 trust" means a trust:

3077 (a) created by an employer as part of a pension, stock bonus, disability, death benefit,  
 3078 profit sharing, retirement, or similar plan primarily for the benefit of an employee or  
 3079 the employee's family, appointee, or beneficiary;

3080 (b) to which contributions are made by the employer or employee; and

3081 (c) that is created for the purpose of distributing principal or income to the employee or  
 3082 the employee's family, appointee, or beneficiary.

3083 Section 68. Section **75B-1-301** is amended to read:

3084 **75B-1-301 . Definitions for part.**

3085 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  
 3089 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
 3090 undisputed, legal, equitable, secured, or unsecured:

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

- 3092                   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
- 3100                 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
- 3104           personal property owned by the trust if the use or occupancy is in accordance with the
- 3105           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~~
- 3108           ~~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 (8) "Transfer" means any form of transfer of property, including gratuitous transfers,
- 3113           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.
- 3116           Section 69. Section **75B-1-302** is amended to read:
- 3117           **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
- 3119           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
- 3121                 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
- 3124                 the distribution before it has been paid or delivered by the trustee to the settlor, as
- 3125                 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
- 3128 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
- 3130 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
- 3132 satisfied.
- 3133 (b) Where this Subsection (3) requires that a provision be included in the trust
- 3134 instrument, no particular language need be used in the trust instrument if the meaning
- 3135 of the trust provision otherwise complies with this Subsection (3).
- 3136 (c) An agreement or understanding, express or implied, between the settlor and the
- 3137 trustee that attempts to grant or permit the retention by the settlor of greater rights or
- 3138 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
- 3140 established pursuant to this section.
- 3141 (e) The trust instrument shall require that at all times at least one trustee shall be a Utah
- 3142 resident or Utah trust company, as the term "trust company" is defined in Section
- 3143 7-5-1.
- 3144 (f)(i) The trust instrument shall provide that neither the interest of the settlor, as
- 3145 beneficiary, nor the income or principal of the trust may be voluntarily or
- 3146 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
- 3148 beneficial interest in the trust that is enforceable under applicable nonbankruptcy
- 3149 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
- 3151 a person who has a substantial beneficial interest in the trust, which interest would be
- 3152 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
- 3155 approval or consent of any person, may be given the power, under the trust
- 3156 agreement, to substitute assets of substantially equivalent value.
- 3157 (h) The trust instrument may not provide for any mandatory distributions of either
- 3158 income or principal to the settlor, as beneficiary, except as provided in Subsection
- 3159 (5)(g).

- 3160 (i)(i) The trust instrument shall require that, at least 30 days before paying and  
3161 delivering any distribution to the settlor, as beneficiary, the trustee notify in  
3162 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  
3164 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  
3166 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  
3169 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A  
3170 settlor's expressed intention to protect trust assets from the settlor's potential future  
3171 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 ~~[(m)]~~ (n) With respect to each transfer of assets to the trust, the settlor shall sign a sworn  
3174 affidavit stating that at the time of the transfer of the assets to the trust:
- 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  
3178 transferring the assets to the trust;
- 3179 (iv) there is no pending or threatened court action against the settlor, except for a  
3180 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  
3182 expected to have a material adverse effect on the financial condition of the settlor,  
3183 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  
3185 domestic support obligation;
- 3186 (vii) the settlor does not contemplate filing for relief under the provisions of United  
3187 States Code, Title 11, Bankruptcy; and
- 3188 (viii) the assets being transferred to the trust were not derived from unlawful  
3189 activities.
- 3190 (4) Failure to satisfy the requirements of Subsection (3) shall result in the consequences  
3191 described in this Subsection (4).
- 3192 (a) If any requirement of Subsections (3)(b) through (g) is not satisfied, none of the  
3193 property held in the trust will at any time have the benefit of the protections described

- 3194 in Subsection (1).
- 3195 (b) If the trustee does not send the notice required under Subsection [~~(3)(g);~~] (3)(i) the  
3196 court may authorize any person with a domestic support obligation against the settlor  
3197 to whom notice was not sent to attach the distribution or future distributions, but the  
3198 person may not:
- 3199 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the  
3200 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  
3203 property transferred to the trust that does not satisfy the requirement may not have  
3204 the benefit of the protections described in Subsection (1).
- 3205 (d) If the requirement described in Subsection (3)(h) is not satisfied, the property  
3206 transferred to the trust that does not satisfy the requirement does not have the benefit  
3207 of the protections described in Subsection (1) with respect to any person with a  
3208 domestic support obligation.
- 3209 (e) A creditor of the settlor has the burden of proving that the requirement in Subsection  
3210 (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  
3213 may not determine whether a discretionary distribution will be made;
- 3214 (b) the settlor participates in a determination regarding whether a discretionary  
3215 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  
3218 made;
- 3219 (iii) exercising a right to consent to or veto the distribution under a power described  
3220 in Subsection (5)(e);
- 3221 (iv) signing documentation in the settlor's capacity as a cotrustee that implements a  
3222 distribution when the other trustees use discretionary power to independently  
3223 authorize a distribution; or
- 3224 (v) participating in an action authorizing a distribution if the other trustees can  
3225 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  
3227 nonsubordinate advisor or a trust protector who can remove and appoint trustees and

- 3228 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
- 3230 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
- 3232 from the trust;
- 3233 (f) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral
- 3234 power of appointment or similar power;
- 3235 (g) the trust instrument gives the settlor the right to receive the following types of
- 3236 distributions:
- 3237 (i) income, principal, or both in the discretion of a person, including a trustee, other
- 3238 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
- 3241 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
- 3243 instrument, but not exceeding the amount that may be defined as income under 26
- 3244 U.S.C. Sec. 643(b);
- 3245 (v) the transferor's potential or actual use of real property held under a qualified
- 3246 personal residence trust, or potential or actual possession of a qualified annuity
- 3247 interest, within the meaning of 26 U.S.C. Sec. 2702 and the accompanying
- 3248 regulations;
- 3249 (vi) income or principal from a grantor retained annuity trust or grantor retained
- 3250 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
- 3252 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
- 3254 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
- 3258 property;
- 3259 (iii) pay property taxes, casualty and liability insurance premiums, homeowner
- 3260 association dues, maintenance expenses, or other similar expenses on the property;
- 3261 or



- 3262 (iv) pay income tax on income attributable to the portion of property held in the trust,  
3263 of which the settlor is considered to be the owner under 26 U.S.C. Secs. 671  
3264 through 678, which payments will not be considered additional transfers to the  
3265 trust for purposes of this section.
- 3266 (6)(a) If a trust instrument contains the provisions described in Subsections (3)(b)  
3267 through (g), the transfer restrictions prevent a creditor or other person from asserting  
3268 any cause of action or claim for relief against a trustee of the trust or against others  
3269 involved in the counseling, drafting, preparation, execution, or funding of the trust  
3270 for conspiracy to commit fraudulent conveyance or another voidable transfer, aiding  
3271 and abetting a fraudulent conveyance or another voidable transfer, participation in the  
3272 trust transaction, or similar cause of action or claim for relief.
- 3273 (b) For purposes of this Subsection (6), counseling, drafting, preparation, execution, or  
3274 funding of the trust includes the preparation and funding of a limited partnership, a  
3275 limited liability company, or other entity if interests in the entity are subsequently  
3276 transferred to the trust.
- 3277 (c) The creditor and other person prevented from asserting a cause of action or claim for  
3278 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)(a) A cause of action or claim for relief under Subsection (3)(i) or (j) is a cause of  
3282 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  
3284 this section is not a cause of action or claim for relief under Sections 25-6-101  
3285 through 25-6-407.
- 3286 (c) Notwithstanding Section 25-6-305, a cause of action or claim for relief regarding a  
3287 fraudulent conveyance or other voidable transfer of a settlor's assets under this  
3288 section is extinguished unless the action is brought by a creditor of the settlor who  
3289 was a creditor of the settlor before the assets in question were transferred to the trust  
3290 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  
3292 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  
3294 specific claim against the settlor before the transfer; or  
3295 (B) files another action, other than an action alleging a fraudulent conveyance or

- 3296 other voidable transfer against the settlor that asserts a claim based on an act or  
3297 omission of the settlor that occurred before the transfer, and the action  
3298 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  
3300 which notice of the transfer is mailed to the creditor, which notice shall state  
3301 the name and address of the settlor or the settlor's representative, the name and  
3302 address of the trustee or the trustee's representative, and also describe the assets  
3303 that were transferred, but does not need to state the value of those assets if the  
3304 assets are other than cash, and which shall inform the creditor that the creditor  
3305 is required to bring the creditor's cause of action or claim for relief against the  
3306 settlor and the trustee within 120 days from the mailing of the notice or be  
3307 forever barred; or  
3308 (B) with respect to a creditor not known to the settlor, 120 days after the date on  
3309 which notice of the transfer is first published in a newspaper of general  
3310 circulation in the county in which the settlor then resides, or is published on a  
3311 public legal notice website as defined in Section 45-1-101, which notice shall  
3312 state the name of the settlor or the settlor's representative, the address of the  
3313 settlor or the settlor's representative, the name of the trustee or the trustee's  
3314 representative, the address of the trustee or the trustee's representative, and also  
3315 describe the assets that were transferred, but does not need to state the value of  
3316 those assets.
- 3317 (8)(a) The notice required in Subsection (7)(c)(ii)(B) shall be published in accordance  
3318 with the provisions of Section 45-1-101 for three consecutive weeks and inform  
3319 creditors that they are required to bring a cause of action or claim for relief within  
3320 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  
3322 prevent the shortening of the limitations period under Subsection (7)(c)(ii) with  
3323 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  
3325 Section ~~[75-7-107]~~ 75B-2-107, and if it otherwise meets the requirements of this  
3326 section.
- 3327 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that  
3328 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

3330 creditor of a beneficiary who is not the settlor is subject to ~~[Section 75-7-501 et. seq]~~  
 3331 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  
 3333 by a creditor of a beneficiary who is the settlor is subject to the provisions of  
 3334 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  
 3336 25-6-407, the provision of this section shall supersede the conflicting provision in  
 3337 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,  
 3339 2019.

3340 Section 70. Section **75B-2-101** is enacted to read:

3341 **CHAPTER 2. UNIFORM TRUST CODE**

3342 **Part 1. General Provisions**

3343 **75B-2-101 . Reserved.**

3344 Reserved.

3345 Section 71. Section **75B-2-102**, which is renumbered from Section 75-7-102 is renumbered  
 3346 and amended to read:

3347 **[75-7-102] 75B-2-102 . Scope.**

3348 This chapter applies to ~~[trusts as defined in Section 75-1-201]~~ a trust.

3349 Section 72. Section **75B-2-103**, which is renumbered from Section 75-7-103 is renumbered  
 3350 and amended to read:

3351 **[75-7-103] 75B-2-103 . Definitions.**

3352 ~~[(1) In]~~ As used in this chapter:

3353 ~~(1)~~ "Agent" means the same as that term is defined in Section 75-1-201.

3354 ~~[(a)]~~ (2) "Action," with respect to an act of a trustee, includes a failure to act.

3355 ~~[(b)]~~ (3) "Beneficiary" means a person that:

3356 ~~[(i)]~~ (a) has a present or future beneficial interest in a trust, vested or contingent; or

3357 ~~[(ii)]~~ (b) in a capacity other than that of trustee, holds a power of appointment over trust  
 3358 property.

3359 ~~[(c)]~~ (4) "Charitable trust" means a trust, or portion of a trust, created for a charitable  
 3360 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  
 3362 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
- 3366 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) "Environmental law" means a federal, state, or local law, rule, regulation, or
- 3371 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) "Interests of the beneficiaries" means the beneficial interests provided in the terms
- 3378 of the trust.
- 3379 [(f)] (19) "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.
- 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) "Power of withdrawal" means a presently exercisable general power of
- 3389 appointment other than a power exercisable only upon consent of the trustee or a person
- 3390 holding an adverse interest.
- 3391 (29) "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) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
- 3395 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  
 3398            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) "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  
 3403            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) "Revocable," as applied to a trust, means revocable by the settlor without the  
 3406            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  
 3409            property to, a trust.  
 3410            (b) If more than one person creates or contributes property to a trust, each person is a  
 3411            settlor of the portion of the trust property attributable to that person's contribution  
 3412            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            ~~[(h)]~~ (39) "Spendthrift provision" means a term of a trust which restrains both voluntary and  
 3415            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  
 3418            decedent under the decedent's will or Title 75, Utah Uniform Probate Code.
- 3419            ~~[(m)]~~ (42) "Terms of a trust" means:  
 3420            ~~[(i)]~~ (a) except as otherwise provided in Subsection ~~[(1)(m)(ii)]~~ (42)(b), the manifestation  
 3421            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  
 3424            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  
 3433 however created; or  
 3434 (iii) a trust created or determined by judgment or decree under which the trust is to be  
 3435 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;  
 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  
 3443 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,  
 3451 wages, profits, pensions, or employee benefits of any kind; or  
 3452 (xiv) any arrangement under which a person is nominee or escrowee for another  
 3453 person.

3454 (45) "Trustee" means an original, additional, and successor trustee, and cotrustee, whether  
 3455 or not appointed or confirmed by the court.

3456 [(n)] (46) "Trust instrument" means an instrument executed by the settlor that contains terms  
 3457 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~~  
 3461 ~~75-1-201.~~]

3462 Section 73. Section **75B-2-104**, which is renumbered from Section 75-7-104 is renumbered  
 3463 and amended to read:

3464 **[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  
 3469 reason to know ~~[it]~~ the fact.

3470 (2)(a) An organization that conducts activities through employees has notice or  
 3471 knowledge of a fact involving a trust only from the time the information was received  
 3472 by an employee having responsibility to act for the trust, or would have been brought  
 3473 to the employee's attention if the organization had exercised reasonable diligence.

3474 (b) An organization exercises reasonable diligence if ~~[it]~~ the organization maintains  
 3475 reasonable routines for communicating significant information to the employee  
 3476 having responsibility to act for the trust and there is reasonable compliance with the  
 3477 routines.

3478 (c) Reasonable diligence does not require an employee of the organization to  
 3479 communicate information unless the communication is part of the individual's regular  
 3480 duties or the individual knows a matter involving the trust would be materially  
 3481 affected by the information.

3482 Section 74. Section **75B-2-105**, which is renumbered from Section 75-7-105 is renumbered  
 3483 and amended to read:

3484 **[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  
 3486 and powers of a trustee, relations among trustees, and the rights and interests of a  
 3487 beneficiary.

3488 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any  
 3489 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,  
 3492 and 75B-3-112, the duty of a trustee to act in good faith and in accordance with the  
 3493 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  
 3495 beneficiaries;  
 3496 (d) the power of the court to modify or terminate a trust under Sections ~~[75-7-410~~  
 3497 ~~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

- 3499 described in Chapter 1, Part 3, Asset Protection Trust, and the rights of certain  
 3500 creditors and assignees to reach a trust as provided in Part 5, [~~Creditor's Claims--~~]  
 3501 Spendthrift and Discretionary Trusts;  
 3502 (f) the power of the court under Section [~~75-7-702~~] 75B-2-702 to require, dispense with,  
 3503 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  
 3506 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  
 3509 Sections [~~75-7-203 and 75-7-205~~] 75B-2-203 and 75B-2-205.

3510 Section 75. Section **75B-2-106**, which is renumbered from Section 75-7-106 is renumbered  
 3511 and amended to read:

3512 **[~~75-7-106~~] 75B-2-106 . Common law of trusts -- Principles of equity.**

3513 The common law of trusts and principles of equity supplement this chapter, except to the  
 3514 extent modified by this chapter or laws of this state.

3515 Section 76. Section **75B-2-107**, which is renumbered from Section 75-7-107 is renumbered  
 3516 and amended to read:

3517 **[~~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  
 3520 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  
 3522 validity, construction, and administration of a trust.

3523 (2) If a trust has a state law provision specifying this state, the validity, construction, and  
 3524 administration of the trust are to be governed by the laws of this state if any  
 3525 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  
 3527 provision, the validity, construction, and administration of the trust are to be governed  
 3528 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  
 3531 the trust is done in this state; or

3532 (b) the place of business where the fiduciary transacts a major portion of [its] the



3533 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  
3535 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  
3537 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  
3541 whether or not the trust complied with the laws of this state at the time of the trust's  
3542 creation or after the trust's creation.

3543 (7) Unless otherwise designated in the trust instrument, a trust is administered in this state if [  
3544 ~~it~~] the trust meets the requirements of Subsection (4).

3545 Section 77. Section **75B-2-108**, which is renumbered from Section 75-7-108 is renumbered  
3546 and amended to read:

3547 **[75-7-108] 75B-2-108 . Principal place of administration.**

3548 (1) Without precluding other means for establishing a sufficient connection with the  
3549 designated jurisdiction, the terms of a trust designating the principal place of  
3550 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  
3552 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~~]  
3555 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  
3557 trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's  
3558 principal place of administration to another state or to a jurisdiction outside of the  
3559 United States.

3560 (4)(a) The trustee shall notify the qualified beneficiaries of a proposed transfer of a  
3561 trust's principal place of administration not less than 60 days before initiating the  
3562 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  
3565 to be transferred;

3566 [~~(b)~~] (ii) the address and telephone number at the new location at which the trustee

3567 can be contacted;  
 3568 [(e)] (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  
 3571 qualified beneficiary must notify the trustee of an objection to the proposed  
 3572 transfer.

3573 (5) The authority of a trustee under this section to transfer a trust's principal place of  
 3574 administration terminates if a qualified beneficiary notifies the trustee of an objection to  
 3575 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  
 3577 may transfer some or all of the trust property to a successor trustee designated in the  
 3578 terms of the trust or appointed [~~pursuant to Section 75-7-704~~] in accordance with Section  
 3579 75B-2-704.

3580 Section 78. Section **75B-2-109**, which is renumbered from Section 75-7-109 is renumbered  
 3581 and amended to read:

3582 **[75-7-109] 75B-2-109 . Methods and waiver of notice.**

3583 (1)(a) Notice to a person under this chapter or the sending of a document to a person  
 3584 under this chapter must be accomplished in a manner reasonably suitable under the  
 3585 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,  
 3587 personal delivery, delivery to the person's last known place of residence or place of  
 3588 business, or a properly directed electronic message.

3589 (2) Notice under this chapter or the sending of a document under this chapter may be  
 3590 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~~  
 3592 ~~civil procedure~~] in accordance with the Utah Rules of Civil Procedure.

3593 Section 79. Section **75B-2-110**, which is renumbered from Section 75-7-110 is renumbered  
 3594 and amended to read:

3595 **[75-7-110] 75B-2-110 . Nonjudicial settlement agreements.**

3596 (1) [~~For purposes of~~] As used in this section, ["interested persons" means persons]  
 3597 "interested person" means a person whose consent would be required in order to achieve  
 3598 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  
 3600 may enter into a binding nonjudicial settlement agreement with respect to any matter

3601 involving a trust.

3602 (3) A nonjudicial settlement agreement is valid only to the extent [it] that the nonjudicial  
 3603 settlement agreement does not violate a material purpose of the trust and includes terms  
 3604 and conditions that could be properly approved by the court under this chapter or other  
 3605 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  
 3610 trustee of any necessary or desirable power;

3611 (d) the resignation or appointment of a trustee and the determination of a trustee's  
 3612 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  
 3616 agreement, to determine whether the representation as provided in Part 3, Representation,  
 3617 was adequate, and to determine whether the agreement contains terms and conditions the  
 3618 court could have properly approved.

3619 Section 80. Section **75B-2-111**, which is renumbered from Section 75-7-111 is renumbered  
 3620 and amended to read:

3621 **[75-7-111] 75B-2-111 . Rules of construction.**

3622 The rules of construction that apply to the interpretation of and disposition of property  
 3623 by will or other governing instrument[~~, as defined in Section 75-1-201,~~] also apply as  
 3624 appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

3625 Section 81. Section **75B-2-112**, which is renumbered from Section 75-7-112 is renumbered  
 3626 and amended to read:

3627 **[75-7-112] 75B-2-112 . Penalty provisions.**

3628 A provision in a trust instrument purporting to penalize a beneficiary by charging the  
 3629 beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for  
 3630 instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for  
 3631 instituting other proceedings relating to the trust is unenforceable if probable cause exists for  
 3632 instituting the proceedings.

3633 Section 82. Section **75B-2-113**, which is renumbered from Section 75-7-1201 is renumbered  
 3634 and amended to read:

3635 **[75-7-1201] 75B-2-113 . Foreign trustees.**

- 3636 (1) A foreign corporate trustee is required to qualify as a foreign corporation doing business  
 3637 in this state if ~~[it]~~ the foreign corporate trustee maintains the principal place of  
 3638 administration of any trust within the state.
- 3639 (2) A foreign corporate cotrustee is not required to qualify in this state solely because ~~[its]~~  
 3640 the other foreign corporate cotrustee maintains the principal place of administration in  
 3641 this state.
- 3642 (3) Unless otherwise doing business in this state, local qualification by a foreign corporate  
 3643 trustee is not required in order for the trustee to receive distribution from a local estate or  
 3644 to hold, invest in, manage, or acquire property located in this state, or maintain litigation  
 3645 if the state of the principal place of business of the foreign corporate trustee provides  
 3646 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  
 3648 for the trustee to receive distribution from a local estate or to hold, invest in, manage, or  
 3649 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  
 3651 doing business in this state.

3652 Section 83. Section **75B-2-201**, which is renumbered from Section 75-7-201 is renumbered  
 3653 and amended to read:

3654 **Part 2. Jurisdiction and Venue for Trusts**3655 **[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]~~  
 3657 over proceedings initiated by an interested party concerning the internal affairs of  
 3658 trusts.
- 3659 (b) ~~[Proceedings which may be maintained under this section are those concerning]~~ An  
 3660 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)  
 3665 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,
- 3671 including questions of construction of trust instruments;
- 3672 (vi) instruct trustees;
- 3673 (vii) determine the existence or nonexistence of any immunity, power, privilege,
- 3674 duty, or right; [~~and~~] or
- 3675 (viii) order transfer of administration of the trust to another state upon appropriate
- 3676 conditions as may be determined by the court or accept transfer of administration
- 3677 of a trust from another state to this state upon such conditions as may be imposed
- 3678 by the supervising court of the other state, unless the court in this state determines
- 3679 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

3681 court over the administration of the trust.

3682 (b) The management and distribution of a trust estate, submission of accounts and

3683 reports to beneficiaries, payment of trustee's fees and other obligations of a trust,

3684 acceptance and change of trusteeship, and other aspects of the administration of a

3685 trust shall proceed expeditiously consistent with the terms of the trust, free of judicial

3686 intervention and without order, approval or other action of any court, subject to the

3687 jurisdiction of the court as invoked by interested parties or as otherwise exercised as

3688 provided by law.

3689 Section 84. Section **75B-2-202**, which is renumbered from Section 75-7-202 is renumbered

3690 and amended to read:

3691 **[75-7-202] 75B-2-202 . Effect of administration in this state -- Consent to**

3692 **jurisdiction.**

3693 (1) The trustee submits personally to the jurisdiction of the courts of this state regarding any

3694 matter involving the trust if [-]the trustee acts as trustee of a trust administered in this

3695 state.

3696 (2)(a) To the extent of the beneficial interests in a trust administered in this state, the

3697 beneficiaries of the trust are subject to the jurisdiction of the courts of this state

3698 regarding any matter involving the trust.

3699 (b) By accepting a distribution from such a trust, the recipient submits personally to the

3700 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

3702 this state, the agent submits to the jurisdiction of the courts of this state regarding any

3703 matter involving the trust.

3704 (4) Unless otherwise designated in the trust instrument, a trust is administered in this state if  
3705 it meets the requirements of Subsection ~~[75-7-107(4)]~~ 75B-2-107(4).

3706 Section 85. Section **75B-2-203**, which is renumbered from Section 75-7-203 is renumbered  
3707 and amended to read:

3708 **~~[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  
3710 Administration, over an action involving a trust.

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

3712 Section 86. Section **75B-2-204**, which is renumbered from Section 75-7-204 is renumbered  
3713 and amended to read:

3714 **~~[75-7-204]~~ 75B-2-204 . Trust proceedings -- Dismissal of matters relating to  
3715 foreign trusts.**

3716 (1) The court may not, over the objection of a party, entertain proceedings under Section [  
3717 ~~75-7-204]~~ 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  
3721 state.

3722 (2) Notwithstanding Subsection (1), the court may entertain a proceeding regarding any  
3723 matter involving a trust if:

3724 (a) all appropriate parties could not be bound by litigation in the courts of the other state;

3725 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  
3728 to the jurisdiction of the courts of another state, or the court may grant a continuance or  
3729 enter any other appropriate order.

3730 Section 87. Section **75B-2-205**, which is renumbered from Section 75-7-205 is renumbered  
3731 and amended to read:

3732 **~~[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  
3734 in Subsection (2), a person shall bring an action involving a trust~~[, if the action is~~  
3735 ~~brought in the district court,]~~ in:

3736 (a) the county in which the trust's principal place of administration is or will be located;

3737 or  
 3738 (b) if the trust is created by a will and the estate is not yet closed, the county in which  
 3739 the decedent's estate is being administered.

3740 (2) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, and if a trust has no  
 3741 trustee, a person shall bring an action for the appointment of a trustee~~[, if the action is~~  
 3742 ~~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  
 3746 being administered.

3747 (3) This section does not apply to an action brought in the Business and Chancery Court.

3748 Section 88. Section **75B-2-301**, which is renumbered from Section 75-7-301 is renumbered  
 3749 and amended to read:

### 3750 **Part 3. Representation**

3751 **[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  
 3753 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  
 3755 binding on the person represented unless the person represented objects to the  
 3756 representation before the consent would otherwise have become effective.

3757 (3) Except as otherwise provided in [~~Sections 75-7-411 and 75B-1-302]~~ Section 75B-2-411  
 3758 and Chapter 1, Part 3, Asset Protection Trust, a person who under this part may  
 3759 represent a settlor who lacks capacity may receive notice and give a binding consent on  
 3760 the settlor's behalf.

3761 Section 89. Section **75B-2-302**, which is renumbered from Section 75-7-302 is renumbered  
 3762 and amended to read:

3763 **[75-7-302] 75B-2-302 . Representation by holder of general testamentary power**  
 3764 **of appointment.**

3765 To the extent there is no conflict of interest between the holder of a general testamentary  
 3766 power of appointment and the persons represented with respect to the particular question or  
 3767 dispute, the holder may represent and bind persons whose interests, as permissible appointees,  
 3768 takers in default, or otherwise, are subject to the power.

3769 Section 90. Section **75B-2-303**, which is renumbered from Section 75-7-303 is renumbered  
 3770 and amended to read:

3771 **[75-7-303] 75B-2-303 . Representation by fiduciaries and parents.**

3772 To the extent there is no conflict of interest between the representative and the person  
3773 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  
3775 controls;

3776 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has not  
3777 been appointed;

3778 (3) an agent having authority to act with respect to the particular question or dispute may  
3779 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  
3782 interested in the estate; and

3783 (6) a parent may represent and bind the parent's minor or unborn child if a conservator or  
3784 guardian for the child has not been appointed.

3785 Section 91. Section **75B-2-304**, which is renumbered from Section 75-7-304 is renumbered  
3786 and amended to read:

3787 **[75-7-304] 75B-2-304 . Representation by person having substantially identical**  
3788 **interest.**

3789 Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person  
3790 whose identity or location is unknown and not reasonably ascertainable, may be represented by  
3791 and bound by another having a substantially identical interest with respect to the particular  
3792 question or dispute, but only to the extent there is no conflict of interest between the  
3793 representative and the person represented.

3794 Section 92. Section **75B-2-305**, which is renumbered from Section 75-7-305 is renumbered  
3795 and amended to read:

3796 **[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  
3798 the otherwise available representation might be inadequate, the court may appoint a  
3799 guardian ad litem or other representative to receive notice, give consent, and  
3800 otherwise represent, bind, and act on behalf of a minor, incapacitated or protected  
3801 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  
3803 persons or interests.

3804 (2) A guardian ad litem or other representative may act on behalf of the individual



3805 represented with respect to any matter arising under this chapter, whether or not a  
3806 judicial proceeding concerning the trust is pending.

3807 (3) In making decisions, a guardian ad litem or other representative may consider general  
3808 benefit accruing to the living members of the individual's family.

3809 Section 93. Section **75B-2-401**, which is renumbered from Section 75-7-401 is renumbered  
3810 and amended to read:

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

3812 **[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  
3815 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  
3817 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  
3820 by a high deductible health plan, as defined in Section 223 of the Internal Revenue  
3821 Code.

3822 (b) The health savings account shall be opened with a trustee or custodian within the  
3823 time prescribed by law, without extensions, for filing a federal income tax return for  
3824 that year.

3825 (c) A health savings account is established regardless of a transfer of cash or other  
3826 property to the account and, unless required by the trustee or custodian, it is not  
3827 necessary for any party to sign a health savings account trust or custodial agreement  
3828 regarding the health savings account.

3829 Section 94. Section **75B-2-402**, which is renumbered from Section 75-7-402 is renumbered  
3830 and amended to read:

3831 **[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  
3834 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  
3836 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,  
 3844 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  
 3846 power is not exercised within a reasonable time, the power fails and the property subject  
 3847 to the power passes to the persons who would have taken the property had the power not  
 3848 been conferred.

3849 Section 95. Section **75B-2-403**, which is renumbered from Section 75-7-403 is renumbered  
 3850 and amended to read:

3851 **[75-7-403] 75B-2-403 . Trusts created in other jurisdictions.**

3852 A trust not created by will is validly created if its creation complies with the law of the  
 3853 jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which,  
 3854 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.

3858 Section 96. Section **75B-2-404**, which is renumbered from Section 75-7-404 is renumbered  
 3859 and amended to read:

3860 **[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  
 3862 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.

3864 Section 97. Section **75B-2-405**, which is renumbered from Section 75-7-405 is renumbered  
 3865 and amended to read:

3866 **[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  
 3868 or religion, the promotion of health, governmental or municipal purposes, or other  
 3869 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  
 3871 beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may  
 3872 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  
3874 be ascertained.

3875 (3) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the  
3876 trust.

3877 Section 98. Section **75B-2-406**, which is renumbered from Section 75-7-406 is renumbered  
3878 and amended to read:

3879 **[75-7-406] 75B-2-406 . Creation of trust induced by fraud, duress, or undue**  
3880 **influence.**

3881 A trust is void to the extent [its] the trust's creation was induced by fraud, duress, or  
3882 undue influence.

3883 Section 99. Section **75B-2-407**, which is renumbered from Section 75-7-407 is renumbered  
3884 and amended to read:

3885 **[75-7-407] 75B-2-407 . Evidence of oral trust.**

3886 Except as required by a statute other than this chapter, a trust need not be evidenced by a  
3887 trust instrument, but the creation of an oral trust and [its] the trust's terms may be established  
3888 only by clear and convincing evidence.

3889 Section 100. Section **75B-2-408**, which is renumbered from Section 75-7-408 is renumbered  
3890 and amended to read:

3891 **[75-7-408] 75B-2-408 . Trust for care of animal.**

3892 A trust may be created to provide for the care of a pet or animal as provided in Section  
3893 75-2-1001.

3894 Section 101. Section **75B-2-409**, which is renumbered from Section 75-7-409 is renumbered  
3895 and amended to read:

3896 **[75-7-409] 75B-2-409 . Noncharitable trust without ascertainable beneficiary.**

3897 A trust may be created for a noncharitable purpose without a definite or definitely  
3898 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by  
3899 the trustee as provided in Section 75-2-1001.

3900 Section 102. Section **75B-2-410**, which is renumbered from Section 75-7-410 is renumbered  
3901 and amended to read:

3902 **[75-7-410] 75B-2-410 . Modification or termination of trust -- Proceedings for**  
3903 **approval or disapproval.**

3904 (1) In addition to the methods of termination prescribed by Sections ~~[75-7-411 through~~  
3905 ~~75-7-414]~~ 75B-2-411 through 78B-2-414, a trust terminates to the extent the trust is  
3906 revoked or expires pursuant to [its] the trust's terms, no purpose of the trust remains to be

3907 achieved, or the purposes of the trust have become unlawful, contrary to public policy,  
3908 or impossible to achieve.

3909 (2)(a) A proceeding to approve or disapprove a proposed modification or termination  
3910 under Sections ~~[75-7-411 through 75-7-416]~~ 75B-2-411 through 78B-2-416, or trust  
3911 combination or division under Section ~~[75-7-417]~~ 75B-2-417, may be commenced by  
3912 a trustee or qualified beneficiary, and a proceeding to approve or disapprove a  
3913 proposed modification or termination under Section ~~[75-7-411]~~ 75B-2-411 may be  
3914 commenced by the settlor.

3915 (b) The settlor of a charitable trust may maintain a proceeding to modify the trust under  
3916 Section ~~[75-7-413]~~ 75B-2-413.

3917 Section 103. Section **75B-2-411**, which is renumbered from Section 75-7-411 is renumbered  
3918 and amended to read:

3919 ~~[75-7-411]~~ **75B-2-411 . Modification or termination of noncharitable irrevocable**  
3920 **trust by consent.**

3921 (1)(a) A noncharitable, irrevocable trust may be modified or terminated upon consent of  
3922 the settlor and all beneficiaries, even if the modification or termination is inconsistent  
3923 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  
3925 under a power of attorney only to the extent expressly authorized by the power of  
3926 attorney or the terms of the trust, by the settlor's conservator with the approval of the  
3927 court supervising the conservatorship if an agent is not so authorized, or by the  
3928 settlor's guardian with the approval of the court supervising the guardianship if an  
3929 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  
3931 beneficiaries if the court concludes that continuance of the trust is not necessary to  
3932 achieve any material purpose of the trust.

3933 (b) A noncharitable, irrevocable trust may be modified upon consent of all of the  
3934 beneficiaries if the court concludes that modification is not inconsistent with a  
3935 material purpose of the trust.

3936 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a material  
3937 purpose of the trust.

3938 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute the  
3939 trust property as agreed by the beneficiaries.

3940 (5) If not all of the beneficiaries consent to a proposed modification or termination of the

3941 trust under Subsection (1) or (2), the modification or termination may be approved by  
3942 the court if the court is satisfied that:

- 3943 (a) if all of the beneficiaries had consented, the trust could have been modified or  
3944 terminated under this section; and  
3945 (b) the interests of a beneficiary who does not consent will be adequately protected.

3946 Section 104. Section **75B-2-412**, which is renumbered from Section 75-7-412 is renumbered  
3947 and amended to read:

3948 **[75-7-412] 75B-2-412 . Modification or termination because of unanticipated**  
3949 **circumstances or inability to administer trust effectively.**

3950 (1)(a) The court may modify the administrative or dispositive terms of a trust or  
3951 terminate the trust if, because of circumstances not anticipated by the settlor,  
3952 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  
3954 settlor's probable intention.

3955 (2) The court may modify the administrative terms of a trust if continuation of the trust on [  
3956 its] the trust's existing terms would be impracticable or wasteful or impair the trust's  
3957 administration.

3958 (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
3959 property as directed by the court or otherwise in a manner consistent with the purposes  
3960 of the trust.

3961 Section 105. Section **75B-2-413**, which is renumbered from Section 75-7-413 is renumbered  
3962 and amended to read:

3963 **[75-7-413] 75B-2-413 . Cy pres.**

3964 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose  
3965 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;  
3968 and  
3969 (c) the court may apply cy pres to modify or terminate the trust by directing that the trust  
3970 property be applied or distributed, in whole or in part, in a manner consistent with the  
3971 settlor's charitable purposes.

3972 (2) A provision in the terms of a charitable trust that would result in distribution of the trust  
3973 property to a noncharitable beneficiary prevails over the power of the court under  
3974 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the

3975 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.

3978 Section 106. Section **75B-2-414**, which is renumbered from Section 75-7-414 is renumbered  
3979 and amended to read:

3980 **[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  
3982 property having a total value less than \$100,000 may terminate the trust if the trustee  
3983 concludes that the value of the trust property is insufficient to justify the cost of  
3984 administration.

3985 (2) The court may modify or terminate a trust or remove the trustee and appoint a different  
3986 trustee if it determines that the value of the trust property is insufficient to justify the  
3987 cost of administration.

3988 (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
3989 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.

3991 Section 107. Section **75B-2-415**, which is renumbered from Section 75-7-415 is renumbered  
3992 and amended to read:

3993 **[75-7-415] 75B-2-415 . Reformation to correct mistakes.**

3994 The court may reform the terms of a trust, even if unambiguous, to conform the terms to  
3995 the settlor's intention if it is proved by clear and convincing evidence that both the settlor's  
3996 intent and the terms of the trust were affected by a mistake of fact or law, whether in  
3997 expression or inducement.

3998 Section 108. Section **75B-2-416**, which is renumbered from Section 75-7-416 is renumbered  
3999 and amended to read:

4000 **[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  
4002 order to achieve the settlor's tax objectives.

4003 (2) The court may provide that the modification has retroactive effect.

4004 Section 109. Section **75B-2-417**, which is renumbered from Section 75-7-417 is renumbered  
4005 and amended to read:

4006 **[75-7-417] 75B-2-417 . Combination and division of trusts.**

4007 After notice to the qualified beneficiaries, a trustee may combine two or more trusts into  
4008 a single trust or divide a trust into two or more separate trusts[,] if the result does not impair

4009 rights of any beneficiary or adversely affect achievement of the purposes of the trust.

4010 Section 110. Section **75B-2-501**, which is renumbered from Section 75-7-501 is renumbered  
4011 and amended to read:

4012 **Part 5. Spendthrift and Discretionary Trusts**

4013 **[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  
4015 Section 75B-1-302, the court may authorize a creditor or assignee of the beneficiary to  
4016 reach the beneficiary's interest by attachment of present or future distributions to or for  
4017 the benefit of the beneficiary or other means.

4018 (2) The court may limit the award to relief as is appropriate under the circumstances.

4019 Section 111. Section **75B-2-502**, which is renumbered from Section 75-7-502 is renumbered  
4020 and amended to read:

4021 **[75-7-502] 75B-2-502 . Spendthrift provisions for beneficiaries other than the**  
4022 **settlor.**

4023 (1) A spendthrift provision for a beneficiary other than the settlor is valid only if [it] the  
4024 spendthrift provision restrains both voluntary and involuntary transfer of a beneficiary's  
4025 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  
4027 subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both  
4028 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  
4030 provision and, except as otherwise provided in this part, a creditor or assignee of the  
4031 beneficiary may not reach the interest or a distribution by the trustee before its receipt by  
4032 the beneficiary.

4033 Section 112. Section **75B-2-503**, which is renumbered from Section 75-7-503 is renumbered  
4034 and amended to read:

4035 **[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  
4038 been entered in this or another state.

4039 (b) "Civil accounts receivable" means the same as that term is defined in Section  
4040 77-32b-102.

4041 (c) [~~"Civil restitution of judgment"~~] "Civil judgment of restitution" means the same as  
4042 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.  
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  
4046 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  
4048 support or maintenance;
- 4049 (b) a judgment creditor who has provided services for the protection of a beneficiary's  
4050 interest in the trust;
- 4051 (c) a victim who has a judgment requiring the beneficiary to pay restitution in  
4052 accordance with Title 77, Chapter 38b, Crime Victims Restitution Act, or similar  
4053 provision in another state; or
- 4054 (d) the Office of State Debt Collection, created in Section 63A-3-502, for collecting  
4055 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  
4057 to the extent a statute of this state or federal law so provides.
- 4058 Section 113. Section **75B-2-504**, which is renumbered from Section 75-7-504 is renumbered  
4059 and amended to read:
- 4060 **[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  
4062 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  
4064 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is  
4065 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  
4069 discretion:
- 4070 (a) a distribution may be ordered by the court to satisfy a judgment or court order against  
4071 the beneficiary for support or maintenance of the beneficiary's child, spouse, or  
4072 former spouse; and
- 4073 (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such  
4074 amount as is equitable under the circumstances but not more than the amount the  
4075 trustee would have been required to distribute to or for the benefit of the beneficiary  
4076 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  
4078 against a trustee for an abuse of discretion or failure to comply with a standard for  
4079 distribution.

4080 Section 114. Section **75B-2-505**, which is renumbered from Section 75-7-505 is renumbered  
4081 and amended to read:

4082 **[75-7-505] 75B-2-505 . Creditor's claim against settlor.**

4083 Regardless of whether the terms of a trust contain a spendthrift provision, the following  
4084 rules apply:

4085 (1)(a) During the lifetime of the settlor, the property of a revocable trust is subject to the  
4086 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  
4088 particular settlor may reach may not exceed the settlor's interest in the portion of the  
4089 trust attributable to that settlor's contribution.

4090 (2)(a) With respect to an irrevocable trust other than an irrevocable trust that meets the  
4091 requirements of [~~Section 75B-1-302~~] Chapter 1, Part 3, Asset Protection Trust, a  
4092 creditor or assignee of the settlor may reach the maximum amount that can be  
4093 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  
4095 irrevocable trust that meets the requirements of [~~Section 75B-1-302~~] Chapter 1, Part  
4096 3, Asset Protection Trust, the amount a creditor or assignee of a particular settlor may  
4097 reach may not exceed the settlor's interest in the portion of the trust attributable to  
4098 that settlor's contribution.

4099 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the  
4100 creditor's claim from an irrevocable trust solely because the trustee may make a  
4101 discretionary distribution reimbursing the settlor for income tax liability of the settlor  
4102 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  
4107 which liabilities will be paid, the property of a trust that was revocable at the settlor's  
4108 death, but not property received by the trust as a result of the death of the settlor which  
4109 is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the  
4110 settlor's creditors, costs of administration of the settlor's estate, the expenses of the

4111 settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse  
4112 and children to the extent the settlor's probate estate is inadequate to satisfy those claims,  
4113 costs, expenses, and allowances.

4114 Section 115. Section **75B-2-506**, which is renumbered from Section 75-7-506 is renumbered  
4115 and amended to read:

4116 **[75-7-506] 75B-2-506 . Overdue distribution.**

4117 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
4118 beneficiary may reach a mandatory distribution of income or principal, including a distribution  
4119 upon termination of the trust, if the trustee has not made the distribution to the beneficiary  
4120 within a reasonable time after the required distribution date.

4121 Section 116. Section **75B-2-507**, which is renumbered from Section 75-7-507 is renumbered  
4122 and amended to read:

4123 **[75-7-507] 75B-2-507 . Personal obligations of trustee.**

4124 Trust property is not subject to personal obligations of the trustee, even if the trustee  
4125 becomes insolvent or bankrupt.

4126 Section 117. Section **75B-2-508**, which is renumbered from Section 75-7-508 is renumbered  
4127 and amended to read:

4128 **[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  
4130 publish a notice to creditors:

4131 (i) once a week for three successive weeks in a newspaper of general circulation in  
4132 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  
4139 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  
4141 of the deceased settlor, notifying the creditor to present the creditor's claim within 90  
4142 days from the published notice if given as provided in Subsection (1) or within 60  
4143 days from the mailing or other delivery of the notice, whichever is later, or be forever  
4144 barred.

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  
4147 26B-3-1001, at any time after the age of 55, the trustee for an inter vivos revocable  
4148 trust, upon the death of the settlor, shall mail or deliver written notice to the Director  
4149 of the Office of Recovery Services, on behalf of the Department of Health and  
4150 Human Services, to present any claim under Section 26B-3-1013 within 60 days from  
4151 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  
4153 on behalf of the ~~[department]~~ Department of Health and Human Services in  
4154 accordance with Subsection (3)(a), the ~~[department]~~ Department of Health and  
4155 Human Services shall have one year from the death of the settlor to present ~~[its]~~ the  
4156 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  
4158 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  
4160 any creditor of the estate of the deceased settlor.

4161 Section 118. Section **75B-2-509**, which is renumbered from Section 75-7-509 is renumbered  
4162 and amended to read:

4163 **[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  
4165 settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated,  
4166 founded on contract, tort, or other legal basis, if not barred earlier by other statute of  
4167 limitations, are barred against the deceased settlor's estate, the trustee, the trust estate,  
4168 and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of  
4169 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  
4172 are given actual notice, and where notice is published, within the time provided in  
4173 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  
4175 also barred in this state.

4176 (3) All claims against a deceased settlor's estate or trust estate which arise at or after the  
4177 death of the settlor, whether due or to become due, absolute or contingent, liquidated or  
4178 unliquidated, founded on contract, tort, or other legal basis are barred against the

4179 deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased  
4180 settlor, unless presented as follows:

4181 (a) a claim based on a contract with the trustee within three months after performance by  
4182 the trustee is due; or

4183 (b) any other claim within the later of three months after [it] the claim arises, or the time  
4184 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  
4187 deceased settlor's estate or the trust estate;

4188 (b) to the limits of the insurance protection only, any proceeding to establish liability of  
4189 the deceased settlor or the trustee for which [he] the deceased settlor or trustee is  
4190 protected by liability insurance;

4191 (c) collection of compensation for services rendered and reimbursement for expenses  
4192 advanced by the trustee or by the attorney or accountant for the trustee of the trust  
4193 estate; or

4194 (d) the right to recover medical assistance provided to the settlor under Title 26B,  
4195 Chapter 3, Part 10, Medical Benefits Recovery.

4196 Section 119. Section **75B-2-510**, which is renumbered from Section 75-7-510 is renumbered  
4197 and amended to read:

4198 **[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  
4200 presented as follows:

4201 (a)(i) The claimant may deliver or mail to the trustee, or the trustee's attorney of  
4202 record, a written statement of the claim indicating its basis, the name and address  
4203 of the claimant, and the amount claimed.

4204 (ii) The claim is considered presented upon the receipt of the written statement of  
4205 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  
4207 stated.

4208 (iv) If the claim is contingent or unliquidated, the nature of the uncertainty shall be  
4209 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  
4212 due date of a claim not yet due does not invalidate the presentation made.

- 4213 (b)(i) The claimant may commence a proceeding against the trustee in any court  
 4214 where the trustee may be subjected to jurisdiction to obtain payment of the claim  
 4215 against the deceased settlor's estate or the trust estate, but the commencement of  
 4216 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  
 4218 against the deceased settlor which were pending at the time of the deceased  
 4219 settlor's death.

4220 (2)(a) If a claim is presented under Subsection (1)(a), [~~no proceeding thereon may~~] a  
 4221 proceeding may not be commenced more than 60 days after the trustee has mailed a  
 4222 notice of disallowance[~~;~~~~but,~~].

4223 (b) Notwithstanding Subsection (2)(a), in the case of a claim which is not presently due  
 4224 or which is contingent or unliquidated, the trustee may consent to an extension of the  
 4225 60-day period, or to avoid injustice, the court, on petition, may order an extension of  
 4226 the 60-day period, [~~but in no event may~~] except that the extension may not run beyond  
 4227 the applicable statute of limitations.

4228 Section 120. Section **75B-2-511**, which is renumbered from Section 75-7-511 is renumbered  
 4229 and amended to read:

4230 **[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  
 4232 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  
 4237 deceased settlor, including compensation of persons attending the deceased settlor,  
 4238 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  
 4242 same class[~~,~~ ~~and a~~].

4243 (3) A claim due and payable shall not be entitled to a preference over claims not due.

4244 Section 121. Section **75B-2-512**, which is renumbered from Section 75-7-512 is renumbered  
 4245 and amended to read:

4246 **[75-7-512] 75B-2-512 . Allowance of claims.**

- 4247 (1)(a) As to claims presented in the manner described in Section [~~75-7-510~~] 75B-2-510  
4248 and within the time limit prescribed in Section [~~75-7-509~~] 75B-2-509, the trustee may  
4249 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  
4251 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  
4253 to file a petition for allowance or to commence a proceeding on the claim has expired  
4254 and the claim has been barred.
- 4255 (d) If the notice of disallowance warns the claimant of the impending bar, a claim which  
4256 is disallowed in whole or in part by the trustee is barred so far as not allowed, unless  
4257 the claimant seeks a court-ordered allowance by filing a petition for allowance in the  
4258 court or by commencing a proceeding against the trustee not later than 60 days after  
4259 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  
4261 after the time for original presentation of the claim has expired, this failure has the  
4262 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  
4264 court may order any claim presented to the trustee or trustee's attorney in a timely  
4265 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  
4267 persons interested in the trust estate as the court may direct by order at the time the  
4268 proceeding is commenced.
- 4269 (3) A judgment in a proceeding in another court against the trustee to enforce a claim  
4270 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,  
4272 allowed claims bear interest at the legal rate for the period commencing six months after  
4273 the deceased settlor's date of death unless based on a contract making a provision for  
4274 interest, in which case they bear interest in accordance with that provision.

4275 Section 122. Section **75B-2-513**, which is renumbered from Section 75-7-513 is renumbered  
4276 and amended to read:

4277 **[~~75-7-513~~] 75B-2-513 . Payment of claims.**

- 4278 (1)(a) Upon the expiration of the earliest of the time limitations provided in Section [  
4279 ~~75-7-509~~] 75B-2-509 for the presentation of claims, the trustee shall pay the claims  
4280 allowed against the deceased settlor's estate in the order of priority prescribed, after

4281 making provision for claims already presented which have not yet been allowed or  
 4282 whose allowance has been appealed, and for unbarred claims which may yet be  
 4283 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  
 4285 been allowed but not paid as provided in this section may secure an order directing  
 4286 the trustee to pay the claim to the extent that funds of the deceased settlor's estate or  
 4287 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  
 4289 formal presentation, but the trustee shall be personally liable to any other claimant  
 4290 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)  
 4292 and the trustee failed to require the payee to give adequate security for the refund of  
 4293 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  
 4295 that deprived the injured claimant of his priority.

4296 Section 123. Section **75B-2-514**, which is renumbered from Section 75-7-514 is renumbered  
 4297 and amended to read:

4298 **[75-7-514] 75B-2-514 . Secured claims.**

4299 Payment of a secured claim shall be upon the basis of the amount allowed if the creditor  
 4300 surrenders [his] the creditor's security[;] , but otherwise payment shall be based upon one of the  
 4301 following:

4302 (1) if the creditor exhausts [his] the creditor's security before receiving payment, unless  
 4303 precluded by another provision of the law, upon the amount of the claim allowed less the  
 4304 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  
 4306 done so, upon the amount of the claim allowed less the value of the security determined  
 4307 by converting [it] the security into money according to the terms of the agreement  
 4308 pursuant to which the security was delivered to the creditor, or by the creditor and  
 4309 trustee by agreement, arbitration, compromise, or litigation.

4310 Section 124. Section **75B-2-515**, which is renumbered from Section 75-7-515 is renumbered  
 4311 and amended to read:

4312 **[75-7-515] 75B-2-515 . Claims not due and contingent or unliquidated claims.**

4313 (1) If a claim which will become due at a future time or a contingent or unliquidated claim  
 4314 becomes due or certain before the distribution of the trust estate, and if the claim has

4315 been allowed or established by a proceeding, [it] the claim shall be paid in the same  
4316 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  
4318 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  
4320 the claim, taking any uncertainty into account; or
  - 4321 (b) arrangement for future payment, or possible payment, on the happening of the  
4322 contingency or on liquidation may be made by creating a trust, giving a mortgage,  
4323 obtaining a bond or security from a beneficiary, or otherwise.

4324 Section 125. Section **75B-2-516**, which is renumbered from Section 75-7-516 is renumbered  
4325 and amended to read:

4326 **[75-7-516] 75B-2-516 . Counterclaims.**

- 4327 (1)(a) In allowing a claim, the trustee may deduct any counterclaim which the deceased  
4328 settlor's estate has against the claimant.
- 4329 (b) In determining a claim against a deceased settlor's estate, a court shall reduce the  
4330 amount allowed by the amount of any counterclaims and, if the counterclaims exceed  
4331 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  
4333 upon which the claim is based.
- 4334 (3) A counterclaim may give rise to relief exceeding in amount or different in kind from  
4335 that sought in the claim.

4336 Section 126. Section **75B-2-517**, which is renumbered from Section 75-7-517 is renumbered  
4337 and amended to read:

4338 **[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  
4340 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  
4342 liens upon real or personal property in an appropriate proceeding.

4343 Section 127. Section **75B-2-518**, which is renumbered from Section 75-7-518 is renumbered  
4344 and amended to read:

4345 **[75-7-518] 75B-2-518 . Compromise of claims.**

4346 When a claim against a deceased settlor's estate has been presented in any manner, the  
4347 trustee may, if [it] the claim appears in the best interest of the deceased settlor's estate,  
4348 compromise the claim, whether due or not due, absolute or contingent, liquidated or



4349 unliquidated.

4350 Section 128. Section **75B-2-519**, which is renumbered from Section 75-7-519 is renumbered  
4351 and amended to read:

4352 **[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,  
4354 or other security interest, the trustee may pay the encumbrance or any part thereof,  
4355 renew or extend any obligation secured by the encumbrance, or convey or transfer the  
4356 assets to the creditor in satisfaction of [his] the creditor's lien, in whole or in part,  
4357 whether or not the holder of the encumbrance has presented a claim, if it appears to be in  
4358 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  
4360 encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of  
4361 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered  
4362 assets, provides otherwise.

4363 Section 129. Section **75B-2-601**, which is renumbered from Section 75-7-604 is renumbered  
4364 and amended to read:

#### 4365 **Part 6. Revocable Trust**

4366 **[75-7-604] 75B-2-601 . Capacity of settlor of revocable trust.**

4367 The capacity required to create, amend, revoke, or add property to a revocable trust, or  
4368 to direct the actions of the trustee of a revocable trust, is the same as that required to make a  
4369 will.

4370 Section 130. Section **75B-2-602**, which is renumbered from Section 75-7-605 is renumbered  
4371 and amended to read:

4372 **[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  
4374 settlor may revoke or amend the trust.

4375 (b) This Subsection (1) does not apply to a trust created under an instrument executed  
4376 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  
4379 either spouse acting alone but may be amended only by joint action of both spouses;  
4380 and

4381 (b) to the extent the trust consists of property other than community property, each  
4382 settlor may revoke or amend the trust with regard to the portion of the trust property

- 4383           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
- 4387           is not expressly made exclusive, by:
- 4388           (i) executing a later will or codicil that expressly refers to the trust or specifically
- 4389                devises property that would otherwise have passed according to the terms of the
- 4390                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
- 4393       settlor directs.
- 4394   (5) A settlor's powers with respect to revocation, amendment, or distribution of trust
- 4395       property may be exercised by an agent under a power of attorney only to the extent
- 4396       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
- 4398       settlor may exercise a settlor's powers with respect to revocation, amendment, or
- 4399       distribution of trust property only with the approval of the court supervising the
- 4400       conservatorship or guardianship.
- 4401   (7) A trustee who does not know that a trust has been revoked or amended is not liable to
- 4402       the settlor or settlor's successors in interest for distributions made and other actions
- 4403       taken on the assumption that the trust had not been amended or revoked.

4404       Section 131. Section **75B-2-603**, which is renumbered from Section 75-7-606 is renumbered

4405 and amended to read:

4406           **[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
- 4408       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
- 4410           a trustee or a person holding an adverse interest, the trustee may follow a direction
- 4411           from the settlor and the other person holding the power to revoke even if the direction
- 4412           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
- 4414       of the beneficiaries are subject to the control of, and the duties of the trustee are owed
- 4415       exclusively to, the settlor.
- 4416   (3) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of

4417 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  
4419 the rights of a settlor of a revocable trust under this section to the extent of the property  
4420 subject to the power.

4421 Section 132. Section **75B-2-604**, which is renumbered from Section 75-7-607 is renumbered  
4422 and amended to read:

4423 **[75-7-607] 75B-2-604 . Limitation on action contesting validity of revocable trust**  
4424 **-- Distribution of trust property.**

4425 (1) A person shall commence a judicial proceeding to contest the validity of a trust that was  
4426 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  
4429 informing the person of the trust's existence, of the trustee's name and address, and of  
4430 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  
4432 trustee may proceed to distribute the trust property in accordance with the terms of  
4433 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  
4436 the trust; or

4437 ~~[(b)]~~ (ii) a potential contestant has notified the trustee of a possible judicial  
4438 proceeding to contest the trust and a judicial proceeding is commenced within 60  
4439 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  
4441 or more business days after the trustee has actual receipt of written notice from a  
4442 potential contestant.

4443 (b) The written notice shall include the name of the settlor or of the trust, the name of  
4444 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  
4446 administration of the trust by registered or certified mail, return receipt requested, or  
4447 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  
4449 for actions taken pursuant to the terms of the trust.

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

4451 distribution received.

4452 Section 133. Section **75B-2-701**, which is renumbered from Section 75-7-701 is renumbered  
4453 and amended to read:

4454 **Part 7. Office of Trustee**

4455 **[75-7-701] 75B-2-701 . Accepting or declining trusteeship.**

4456 (1) Except as otherwise provided in Subsection (3), a person designated as trustee accepts  
4457 the trusteeship:

4458 (a) by substantially complying with a method of acceptance provided in the terms of the  
4459 trust; or

4460 (b) if the terms of the trust do not provide a method or the method provided in the terms  
4461 is not expressly made exclusive, by accepting delivery of the trust property,  
4462 exercising powers or performing duties as trustee, or otherwise indicating acceptance  
4463 of the trusteeship.

4464 (2)(a) A person designated as trustee who has not yet accepted the trusteeship may  
4465 reject the trusteeship.

4466 (b) A designated trustee who does not accept the trusteeship within a reasonable time  
4467 after knowing of the designation is considered to have rejected the trusteeship.

4468 (3) A person designated as trustee, without accepting the trusteeship, may:

4469 (a) act to preserve the trust property if, within a reasonable time after acting, the person  
4470 sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks  
4471 capacity, to a qualified beneficiary; and

4472 (b) inspect or investigate trust property to determine potential liability under  
4473 environmental or other law or for any other purpose.

4474 Section 134. Section **75B-2-702**, which is renumbered from Section 75-7-702 is renumbered  
4475 and amended to read:

4476 **[75-7-702] 75B-2-702 . Trustee's bond.**

4477 (1) A trustee shall give bond to secure performance of the trustee's duties only if the court  
4478 finds that a bond is needed to protect the interests of the beneficiaries or is required by  
4479 the terms of the trust and the court has not dispensed with the requirement.

4480 (2)(a) The court may specify the amount of a bond, [its] the bond's liabilities, and  
4481 whether sureties are necessary.

4482 (b) The court may modify or terminate a bond at any time.

4483 (3)(a) A regulated financial service institution qualified to do trust business in this state  
4484 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.

4487 Section 135. Section **75B-2-703**, which is renumbered from Section 75-7-703 is renumbered  
4488 and amended to read:

4489 **[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  
4493 performance of a trustee's function unless the cotrustee is unavailable to perform the  
4494 function because of absence, illness, disqualification under other law, or other temporary  
4495 incapacity, or the cotrustee has properly delegated the performance of the function to  
4496 another trustee.

4497 (4) If a cotrustee is unavailable to perform duties because of absence, illness,  
4498 disqualification under other law, or other temporary incapacity, or if a cotrustee fails or  
4499 refuses to act after reasonable notice, and prompt action is necessary to achieve the  
4500 purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a  
4501 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  
4503 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  
4505 business in this state and the remaining cotrustees are individuals, a delegation by the  
4506 individual cotrustees to the regulated financial service institution of the performance  
4507 of trust investment functions shall be presumed to be in accordance with the settlor's  
4508 intent unless the terms of the trust specifically provide otherwise.

4509 (c) Unless a delegation was irrevocable, a trustee may revoke a delegation previously  
4510 made.

4511 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an action  
4512 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.

4516 (8) A dissenting trustee who joins in an action at the direction of the majority of the trustees  
4517 and who notified any cotrustee of the dissent at or before the time of the action is not  
4518 liable for the action unless the action is a serious breach of trust.

4519 Section 136. Section **75B-2-704**, which is renumbered from Section 75-7-704 is renumbered  
4520 and amended to read:

4521 **[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  
4529 otherwise provided in the trust.

4530 (2)(a) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be  
4531 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  
4534 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  
4539 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  
4542 distributions under the terms of the trust if the attorney general concurs in the  
4543 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  
4546 appoint an additional trustee or special fiduciary whenever the court considers the  
4547 appointment necessary for the administration of the trust.

4548 Section 137. Section **75B-2-705**, which is renumbered from Section 75-7-705 is renumbered  
4549 and amended to read:

4550 **[75-7-705] 75B-2-705 . Resignation of trustee.**

4551 (1) A trustee may resign:

- 4552 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and

4553 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  
4556 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  
4558 omissions of the trustee is not discharged or affected by the trustee's resignation.

4559 Section 138. Section **75B-2-706**, which is renumbered from Section 75-7-706 is renumbered  
4560 and amended to read:

4561 **[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  
4563 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  
4567 trust;

4568 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer  
4569 the trust effectively, the court determines that removal of the trustee best serves the  
4570 interests of the beneficiaries; or

4571 (d) there has been a substantial change of circumstances or removal is requested by all  
4572 of the qualified beneficiaries, the court finds that removal of the trustee best serves  
4573 the interests of all of the beneficiaries and is not inconsistent with a material purpose  
4574 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  
4576 removing a trustee, the court may order appropriate relief under Subsection [  
4577 ~~75-7-1001(2)~~] 75B-2-1001(2) necessary to protect the trust property or the interests of  
4578 the beneficiaries.

4579 Section 139. Section **75B-2-707**, which is renumbered from Section 75-7-707 is renumbered  
4580 and amended to read:

4581 **[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  
4583 property is delivered to a successor trustee or other person entitled to it, a trustee who  
4584 has resigned or been removed has the duties of a trustee and the powers necessary to  
4585 protect the trust property.

4586 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the

4587 trust property within the trustee's possession to the cotrustee, successor trustee, or other  
4588 person entitled to [it] the trust property.

4589 Section 140. Section **75B-2-708**, which is renumbered from Section 75-7-708 is renumbered  
4590 and amended to read:

4591 **[75-7-708] 75B-2-708 . Compensation of trustee.**

4592 If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to  
4593 compensation that is reasonable under the circumstances.

4594 Section 141. Section **75B-2-709**, which is renumbered from Section 75-7-709 is renumbered  
4595 and amended to read:

4596 **[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  
4598 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  
4601 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  
4603 against trust property to secure reimbursement with reasonable interest.

4604 Section 142. Section **75B-2-801**, which is renumbered from Section 75-7-801 is renumbered  
4605 and amended to read:

4606 **Part 8. Duties and Power of Trustee**

4607 **[75-7-801] 75B-2-801 . Duty to administer trust.**

4608 Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and  
4609 in good faith, in accordance with [its] the trust's terms and purposes and the interests of the  
4610 beneficiaries, and in accordance with this chapter.

4611 Section 143. Section **75B-2-802**, which is renumbered from Section 75-7-802 is renumbered  
4612 and amended to read:

4613 **[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  
4616 Section [75-7-1012] 75B-2-1012, a sale, encumbrance, or other transaction involving the  
4617 investment or management of trust property entered into by the trustee for the trustee's  
4618 own personal account or which is otherwise affected by a conflict between the trustee's  
4619 fiduciary and personal interests is voidable by a beneficiary affected by the transaction  
4620 unless:



- 4621 (a) the transaction was authorized by the terms of the trust;
- 4622 (b) the transaction was approved by the court;
- 4623 (c) the beneficiary did not commence a judicial proceeding within the time allowed by
- 4624 Section ~~[75-7-1005]~~ 75B-2-1005;
- 4625 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released
- 4626 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
- 4628 before the person became or contemplated becoming trustee.
- 4629 (3) A sale, encumbrance, or other transaction involving the investment or management of
- 4630 trust property is presumed to be affected by a conflict between personal and fiduciary
- 4631 interests if ~~[it]~~ the sale, encumbrance, or other transaction is entered into by the trustee
- 4632 with:
- 4633 (a) the trustee's spouse;
- 4634 (b) the trustee's descendants, siblings, parents, or ~~[their spouses]~~ the spouses of the
- 4635 trustee's descendants, siblings, or parents;
- 4636 (c) an agent of the trustee, including but not limited to an attorney, accountant, or
- 4637 financial advisor; or
- 4638 (d) a corporation or other person or enterprise in which the trustee, or a person that owns
- 4639 a significant interest in the trustee, has an interest that might affect the trustee's best
- 4640 judgment.
- 4641 (4) A transaction between a trustee and a beneficiary that does not concern trust property
- 4642 but that occurs during the existence of the trust or while the trustee retains significant
- 4643 influence over the beneficiary and from which the trustee obtains an advantage is
- 4644 voidable by the beneficiary unless the trustee establishes that the transaction was fair to
- 4645 the beneficiary.
- 4646 (5) A transaction not concerning trust property in which the trustee engages in the trustee's
- 4647 individual capacity involves a conflict between personal and fiduciary interests if the
- 4648 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
- 4650 trust to which the trustee, or its affiliate, provides services in a capacity other than as
- 4651 trustee is not presumed to be affected by a conflict between personal and fiduciary
- 4652 interests if the investment complies with the prudent investor rule of Section [
- 4653 ~~75-7-901]~~ 75B-2-901.
- 4654 (b) The trustee may be compensated by the investment company or investment trust for

- 4655 providing those services out of fees charged to the trust.
- 4656 (7)(a) In voting shares of stock or in exercising powers of control over similar interests  
4657 in other forms of enterprise, the trustee shall act in the best interests of the  
4658 beneficiaries.
- 4659 (b) If the trust is the sole owner of a corporation or other form of enterprise, the trustee  
4660 shall elect or appoint directors or other managers who will manage the corporation or  
4661 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  
4664 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  
4667 guardianship of which the trustee is a fiduciary or in which a beneficiary has an  
4668 interest;
- 4669 (d) a deposit of trust money in a regulated financial service institution operated by the  
4670 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  
4673 judgment of the trustee, disposition of the assets should be made, even though the  
4674 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  
4676 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  
4680 person, including an attorney, an auditor, an investment adviser, or an agent, even if [  
4681 ~~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  
4683 duties or perform any act of administration, whether or not discretionary; or
- 4684 (ii) to act without independent investigation upon [~~their~~] the person's  
4685 recommendations;
- 4686 (k) if a governing instrument or order requires or authorizes investment in United States  
4687 government obligations, investing in those obligations, either directly or in the form  
4688 of securities or other interests, in any open-end or closed-end management type

4689 investment company or investment trust registered under the provisions of the  
4690 Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:  
4691 (i) the portfolio of the investment company or investment trust is limited to United  
4692 States government obligations, and repurchase agreements are fully collateralized  
4693 by United States government obligations; and  
4694 (ii) the investment company or investment trust takes delivery of the collateral for  
4695 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  
4697 proposed transaction that might violate this section if entered into by the trustee.

4698 Section 144. Section **75B-2-803**, which is renumbered from Section 75-7-803 is renumbered  
4699 and amended to read:

4700 **[75-7-803] 75B-2-803 . Impartiality.**

4701 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,  
4702 managing, and distributing the trust property, giving due regard to the beneficiaries' respective  
4703 interests.

4704 Section 145. Section **75B-2-804**, which is renumbered from Section 75-7-804 is renumbered  
4705 and amended to read:

4706 **[75-7-804] 75B-2-804 . Prudent administration.**

4707 (1) A trustee shall administer the trust as a prudent person would, by considering the  
4708 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.

4710 Section 146. Section **75B-2-805**, which is renumbered from Section 75-7-805 is renumbered  
4711 and amended to read:

4712 **[75-7-805] 75B-2-805 . Costs of administration.**

4713 In administering a trust, the trustee may incur only costs that are reasonable in relation to  
4714 the trust property, the purposes of the trust, and the skills of the trustee.

4715 Section 147. Section **75B-2-806**, which is renumbered from Section 75-7-806 is renumbered  
4716 and amended to read:

4717 **[75-7-806] 75B-2-806 . Trustee's skills.**

4718 A trustee who is named trustee in reliance upon the trustee's representation that the  
4719 trustee has special skills or expertise, shall use those special skills or expertise.

4720 Section 148. Section **75B-2-807**, which is renumbered from Section 75-7-807 is renumbered  
4721 and amended to read:

4722 **[75-7-807] 75B-2-807 . Control and protection of trust property.**

4723 A trustee shall take reasonable steps to take control of and protect the trust property.

4724 Section 149. Section **75B-2-808**, which is renumbered from Section 75-7-808 is renumbered  
4725 and amended to read:

4726 **[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.

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  
4730 to be designated so that the interest of the trust, to the extent feasible, appears in records  
4731 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  
4733 invest as a whole the property of two or more separate trusts.

4734 Section 150. Section **75B-2-809**, which is renumbered from Section 75-7-809 is renumbered  
4735 and amended to read:

4736 **[75-7-809] 75B-2-809 . Enforcement and defense of claims.**

4737 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims  
4738 against the trust.

4739 Section 151. Section **75B-2-810**, which is renumbered from Section 75-7-810 is renumbered  
4740 and amended to read:

4741 **[75-7-810] 75B-2-810 . Collecting trust property.**

4742 A trustee shall take reasonable steps to compel a former trustee or other person to  
4743 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to  
4744 have been committed by a former trustee, unless the terms of the trust provide otherwise.

4745 Section 152. Section **75B-2-811**, which is renumbered from Section 75-7-811 is renumbered  
4746 and amended to read:

4747 **[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  
4749 the qualified beneficiaries of the trust reasonably informed about the administration  
4750 of the trust and of the material facts necessary for ~~[them]~~ the qualified beneficiaries to  
4751 protect ~~[their]~~ the qualified beneficiaries' interests.

4752 (b) Unless unreasonable under the circumstances, and unless otherwise provided by the  
4753 terms of the trust a trustee shall promptly respond to a qualified beneficiary's request  
4754 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

4757 copy of the portions of the trust instrument which describe or affect the beneficiary's  
4758 interest;

4759 (b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of  
4760 the acceptance and of the trustee's name, address, and telephone number;

4761 (c) within 60 days after the date the trustee acquires knowledge of the creation of an  
4762 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable  
4763 trust has become irrevocable, whether by the death of the settlor or otherwise, shall  
4764 notify the qualified beneficiaries of the trust's existence, of the identity of the settlor  
4765 or settlors, of the right to request a copy of the trust instrument, and of the right to a  
4766 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  
4768 of the trustee's compensation.

4769 (3)(a) A trustee shall send to the qualified beneficiaries who request it, at least annually  
4770 and at the termination of the trust, a report of the trust property, liabilities, receipts,  
4771 and disbursements, including the amount of the trustee's compensation or a fee  
4772 schedule or other writing showing how the trustee's compensation was determined, a  
4773 listing of the trust assets and, if feasible, [~~their~~] the trust assets' respective market  
4774 values.

4775 (b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must  
4776 be sent to the qualified beneficiaries by the former trustee, unless the terms of the  
4777 trust provide otherwise.

4778 (c) A personal representative, conservator, or guardian may send the qualified  
4779 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  
4781 information otherwise required to be furnished under this section.

4782 (b) A beneficiary, with respect to future reports and other information, may withdraw a  
4783 waiver previously given.

4784 Section 153. Section **75B-2-812**, which is renumbered from Section 75-7-812 is renumbered  
4785 and amended to read:

4786 **[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,  
4788 including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall  
4789 exercise a discretionary power in good faith and in accordance with the terms and  
4790 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  
 4792 in] a requirement described in this section does not apply:
- 4793 (a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on  
 4794 the trustee a power to make discretionary distributions to or for the trustee's personal  
 4795 benefit may exercise the power only in accordance with an ascertainable standard  
 4796 relating to the trustee's individual health, education, support, or maintenance within  
 4797 the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code  
 4798 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  
 4800 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  
 4802 exercised by a majority of the remaining trustees whose exercise of the power is not  
 4803 so limited or prohibited.
- 4804 (b) If the power of all trustees is so limited or prohibited, the court may appoint a special  
 4805 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  
 4808 deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue  
 4809 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  
 4811 trust's settlor; or
- 4812 (c) a trust if contributions to the trust qualify for the annual exclusion under Subsection  
 4813 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.
- 4814 Section 154. Section **75B-2-813**, which is renumbered from Section 75-7-813 is renumbered  
 4815 and amended to read:
- 4816 **[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  
 4821 over individually owned property;
- 4822 (ii) any other powers appropriate to achieve the proper investment, management, and  
 4823 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.

4826 Section 155. Section **75B-2-814**, which is renumbered from Section 75-7-814 is renumbered  
4827 and amended to read:

4828 **[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  
4831 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  
4836 financial institution that is serving as a trustee or one of [its] the financial institution's  
4837 affiliates, and mortgage or pledge trust property for a period within or extending  
4838 beyond the duration of the trust;

4839 (f) with respect to an interest in a proprietorship, partnership, limited liability company,  
4840 business trust, corporation, or other form of business or enterprise, continue the  
4841 business or other enterprise and take any action that may be taken by shareholders,  
4842 members, or property owners, including merging, dissolving, or otherwise changing  
4843 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,  
4845 including the right to:

4846 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or  
4847 continue a voting trust agreement;

4848 (ii) hold a security in the name of a nominee or in other form without disclosure of  
4849 the trust so that title may pass by delivery;

4850 (iii) pay calls, assessments, and other sums chargeable or accruing against the  
4851 securities, and sell or exercise stock subscription or conversion rights; and

4852 (iv) deposit the securities with a depository or other regulated financial service  
4853 institution;

4854 (h) with respect to an interest in real property, construct, or make ordinary or  
4855 extraordinary repairs to, alterations to, or improvements in, buildings or other  
4856 structures, demolish improvements, raze existing or erect new party walls or  
4857 buildings, subdivide or develop land, dedicate land to public use or grant public or  
4858 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  
4860 arrangement for exploration and removal of natural resources, with or without the  
4861 option to purchase or renew, for a period within or extending beyond the duration of  
4862 the trust;
- 4863 (j) grant an option involving a sale, lease, or other disposition of trust property or  
4864 acquire an option for the acquisition of property, including an option exercisable  
4865 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  
4867 trustee's agents, and beneficiaries against liability arising from the administration of  
4868 the trust;
- 4869 (l) abandon or decline to administer property of no value or of insufficient value to  
4870 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  
4873 property owned or operated by an organization in which the trustee holds or has  
4874 been asked to hold an interest, for the purpose of determining the application of  
4875 environmental law with respect to the property;
- 4876 (ii) take action to prevent, abate, or otherwise remedy any actual or potential  
4877 violation of any environmental law affecting property held directly or indirectly  
4878 by the trustee, whether taken before or after the assertion of a claim or the  
4879 initiation of governmental enforcement;
- 4880 (iii) decline to accept property into trust or disclaim any power with respect to  
4881 property that is or may be burdened with liability for violation of environmental  
4882 law;
- 4883 (iv) compromise claims against the trust which may be asserted for an alleged  
4884 violation of environmental law; and
- 4885 (v) pay the expense of any inspection, review, abatement, or remedial action to  
4886 comply with environmental law;
- 4887 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole  
4888 or in part, a claim belonging to the trust;
- 4889 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of  
4890 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



- 4893 life insurance payable to the trustee, exercise rights thereunder, including exercise of  
4894 the right to indemnification for expenses and against liabilities, and take appropriate  
4895 action to collect the proceeds;
- 4896 (r) make loans out of trust property, including loans to a beneficiary on terms and  
4897 conditions the trustee considers to be fair and reasonable under the circumstances,  
4898 and the trustee has a lien on future distributions for repayment of those loans;
- 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  
4901 the other jurisdiction, confer upon the appointed trustee all of the powers and duties  
4902 of the appointing trustee, require that the appointed trustee furnish security, and  
4903 remove any trustee so appointed;
- 4904 (u) pay an amount distributable to a beneficiary who is under a legal disability or who  
4905 the trustee reasonably believes is incapacitated, by paying [it] the amount directly to  
4906 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  
4908 not have a conservator, the beneficiary's guardian;
- 4909 (ii) paying [it] the amount to the beneficiary's custodian under Title 75A, Chapter 8,  
4910 Uniform Transfers to Minors Act;
- 4911 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial  
4912 trustee, paying [it] the amount to an adult relative or other person having legal or  
4913 physical care or custody of the beneficiary, to be expended on the beneficiary's  
4914 behalf; or
- 4915 (iv) managing [it] the amount as a separate fund on the beneficiary's behalf, subject to  
4916 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  
4918 distributions in divided or undivided interests, allocate particular assets in  
4919 proportionate or disproportionate shares, value the trust property for those purposes,  
4920 and adjust for resulting differences in valuation;
- 4921 (w) resolve a dispute concerning the interpretation of the trust or its administration by  
4922 mediation, arbitration, or other procedure for alternative dispute resolution;
- 4923 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to  
4924 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  
4926 facilitate the exercise of the trustee's powers; and

4927 (z) on termination of the trust, exercise the powers appropriate to finalize the  
4928 administration of the trust and distribute the trust property to the persons entitled to [it]  
4929 the trust.

4930 (2) A trustee may delegate investment and management functions that a prudent trustee of  
4931 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;

4934 (ii) establishing the scope and terms of the delegation consistent with the purposes of  
4935 the trust; and

4936 (iii) periodically reviewing the agent's actions to monitor the agent's performance and  
4937 compliance with the terms of the delegation.

4938 (b) In performing a delegated function, an agent has a duty to the trust to exercise  
4939 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  
4941 the beneficiaries or to the trust for the decisions or actions of the agent to whom the  
4942 function was delegated.

4943 (3)(a) The trustee may exercise the powers set forth in this section and in the trust either  
4944 in the name of the trust or in the name of the trustee as trustee, specifically including  
4945 the right to take title, to encumber or convey assets, including real property, in the  
4946 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  
4949 the trustee, and the name and date of the trust, shall be included on all recorded  
4950 documents affecting real property to which the trust is a party in interest.

4951 Section 156. Section **75B-2-815**, which is renumbered from Section 75-7-815 is renumbered  
4952 and amended to read:

4953 **[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  
4955 beneficiaries a proposal for distribution.

4956 (b) The right of any beneficiary to object to the proposed distribution terminates if the  
4957 beneficiary does not notify the trustee of an objection within 30 days after the  
4958 proposal was sent but only if the proposal informed the beneficiary of the right to  
4959 object and of the time allowed for objection.

4960 (2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee

4961 shall proceed expeditiously to distribute the trust property to the persons entitled to [it]  
 4962 the trust property, subject to the right of the trustee to retain a reasonable reserve for the  
 4963 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  
 4965 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  
 4968 the beneficiary's rights or of the material facts relating to the breach.

4969 Section 157. Section **75B-2-816**, which is renumbered from Section 75-7-816 is renumbered  
 4970 and amended to read:

4971 **[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  
 4973 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  
 4976 the trustee.

4977 (2) If the terms of the trust are not made public as required in Subsection (1), a conveyance  
 4978 from the trustee is absolute in favor of purchasers for value who take the property  
 4979 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  
 4981 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  
 4986 Section 75B-1-302 shall include in the title the words "asset protection trust."

4987 Section 158. Section **75B-2-817**, which is renumbered from Section 75-7-817 is renumbered  
 4988 and amended to read:

4989 **[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  
 4991 executed before September 13, 1981, contains a formula expressly providing that the  
 4992 decedent's spouse is to receive the maximum amount of property qualifying for the  
 4993 marital deduction allowable by federal law, this formula shall be construed as referring  
 4994 to the unlimited marital deduction allowable by federal law as amended by Section

4995 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  
4997 dispositions made by it for purposes of construing Subsection (1), and the rule of  
4998 construction of Subsection (1) shall apply unless a contrary intention is indicated by the  
4999 trust.

5000 Section 159. Section **75B-2-901**, which is renumbered from Section 75-7-901 is renumbered  
5001 and amended to read:

5002 **Part 9. Uniform Prudent Investor Act**

5003 **[75-7-901] 75B-2-901 . Prudent investor rule.**

5004 (1)(a) Except as otherwise provided in Subsection (2), a trustee who invests and  
5005 manages trust assets owes a duty to the beneficiaries of the trust to comply with the  
5006 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  
5008 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,  
5010 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  
5012 reasonable reliance on the provisions of the trust.

5013 Section 160. Section **75B-2-902**, which is renumbered from Section 75-7-902 is renumbered  
5014 and amended to read:

5015 **[75-7-902] 75B-2-902 . Standard of care -- Portfolio strategy -- Risk and return**  
5016 **objectives.**

5017 (1)(a) A trustee shall invest and manage trust assets as a prudent investor would, by  
5018 considering the purposes, terms, distribution requirements, and other circumstances  
5019 of the trust.

5020 (b) In satisfying this standard, the trustee shall exercise reasonable care, skill, and  
5021 caution.

5022 (2) A trustee's investment and management decisions respecting individual assets must be  
5023 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part  
5024 of an overall investment strategy having risk and return objectives reasonably suited to  
5025 the trust.

5026 (3) Among circumstances that a trustee shall consider in investing and managing trust  
5027 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
- 5032 portfolio, which may include financial assets, interests in closely held enterprises,
- 5033 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;
- 5037 and
- 5038 (h) an asset's special relationship or special value, if any, to the purposes of the trust or
- 5039 to one or more of the beneficiaries.

5040 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and

5041 management of trust assets.

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

5043 standards of this chapter.

5044 Section 161. Section **75B-2-903**, which is renumbered from Section 75-7-903 is renumbered

5045 and amended to read:

5046 **[75-7-903] 75B-2-903 . Diversification.**

5047 A trustee shall diversify the investments of the trust unless the trustee reasonably

5048 determines that, because of special circumstances, the purposes of the trust are better served

5049 without diversifying.

5050 Section 162. Section **75B-2-904**, which is renumbered from Section 75-7-904 is renumbered

5051 and amended to read:

5052 **[75-7-904] 75B-2-904 . Duties at inception of trusteeship.**

5053 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee

5054 shall review the trust assets and make and implement decisions concerning the retention and

5055 disposition of assets, in order to bring the trust portfolio into compliance with the purposes,

5056 terms, distribution requirements, and other circumstances of the trust, and with the

5057 requirements of this chapter.

5058 Section 163. Section **75B-2-905**, which is renumbered from Section 75-7-905 is renumbered

5059 and amended to read:

5060 **[75-7-905] 75B-2-905 . Reviewing compliance.**

5061 (1) Compliance with the prudent investor rule is determined in light of the facts and

5062 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.

5064 Section 164. Section **75B-2-906**, which is renumbered from Section 75-7-906 is renumbered  
5065 and amended to read:

5066 **[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  
5068 binding on the trustee, except for an investment direction given by a settlor as described  
5069 in Subsection (2) to do any of the following with respect to an investment:

5070 (a) retention;

5071 (b) purchase;

5072 (c) sale;

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  
5077 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  
5081 described in Subsection (2)(a).

5082 (3) If the terms of a trust authorize a person to give investment direction to the trustee, the  
5083 person authorized to give investment direction:

5084 (a) is presumptively a fiduciary only with respect to an investment direction that the  
5085 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  
5090 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  
5092 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;  
5094 and

5095 (b) the trustee acts in accordance with the investment direction given by a person  
5096 described in Subsection (4)(a).

- 5097 (5) If the terms of a trust require another person's approval or consent to an investment  
 5098 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
- 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  
 5106 any loss resulting from any act not taken as a result of the person's failure to respond  
 5107 to a request for approval or consent.

5108 Section 165. Section **75B-2-907**, which is renumbered from Section 75-7-907 is renumbered  
 5109 and amended to read:

5110 **[75-7-907] 75B-2-907 . Language invoking standard of chapter.**

5111 The following terms or comparable language in the provisions of a trust, unless  
 5112 otherwise limited or modified, authorizes any investment or strategy permitted under this  
 5113 chapter: "investments permissible by law for investment of trust funds," "legal investments,"  
 5114 "authorized investments," "using the judgment and care under the circumstances then  
 5115 prevailing that persons of prudence, discretion, and intelligence exercise in the management of  
 5116 their own affairs, not in regard to speculation but in regard to the permanent disposition of  
 5117 their funds, considering the probable income as well as the probable safety of their capital,"  
 5118 "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

5119 Section 166. Section **75B-2-1001**, which is renumbered from Section 75-7-1001 is renumbered  
 5120 and amended to read:

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

5122 **[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,  
 5128 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

- 5131 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
- 5136 a constructive trust on trust property, or trace trust property wrongfully disposed of
- 5137 and recover the property or [its] the property's proceeds; or
- 5138 (j) order any other appropriate relief.

5139 Section 167. Section **75B-2-1002**, which is renumbered from Section 75-7-1002 is renumbered

5140 and amended to read:

5141 **[~~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
- 5143 greater of:
- 5144 (a) the amount required to restore the value of the trust property and trust distributions to
- 5145 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
- 5148 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution
- 5149 from the other trustee or trustees.
- 5150 (b) A trustee is not entitled to contribution if the trustee was substantially more at fault
- 5151 than another trustee or if the trustee committed the breach of trust in bad faith or with
- 5152 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
- 5154 contribution from another trustee to the extent of the benefit received.

5155 Section 168. Section **75B-2-1003**, which is renumbered from Section 75-7-1003 is renumbered

5156 and amended to read:

5157 **[~~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
- 5159 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
- 5161 in the value of trust property or for not having made a profit.

5162 Section 169. Section **75B-2-1004**, which is renumbered from Section 75-7-1004 is renumbered

5163 and amended to read:

5164 **[~~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  
5166 and equity may require, award costs and expenses, including reasonable attorney's fees,  
5167 to any party, to be paid by another party or from the trust that is the subject of the  
5168 controversy.

5169 (2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or  
5170 not, the trustee is entitled to receive from the trust the necessary expenses and  
5171 disbursements, including reasonable attorney's fees, incurred.

5172 Section 170. Section **75B-2-1005**, which is renumbered from Section 75-7-1005 is renumbered  
5173 and amended to read:

5174 **[75-7-1005] 75B-2-1005 . Limitation of action against trustee.**

5175 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more  
5176 than six months after the date that the beneficiary or a person who may represent and  
5177 bind the beneficiary was sent a report that adequately disclosed the existence of a  
5178 potential claim for breach of trust and informed the beneficiary of the time allowed for  
5179 commencing a proceeding.

5180 (2) A report adequately discloses the existence of a potential claim for breach of trust if [it]  
5181 the report provides sufficient information so that the beneficiary or representative knows  
5182 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  
5184 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  
5189 related to the report.

5190 Section 171. Section **75B-2-1006**, which is renumbered from Section 75-7-1006 is renumbered  
5191 and amended to read:

5192 **[75-7-1006] 75B-2-1006 . Reliance on trust instrument.**

5193 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the  
5194 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach  
5195 resulted from the reliance.

5196 Section 172. Section **75B-2-1007**, which is renumbered from Section 75-7-1007 is renumbered  
5197 and amended to read:

5198 **[75-7-1007] 75B-2-1007 . Event affecting administration or distribution.**

5199 If the happening of an event, including marriage, divorce, performance of educational  
5200 requirements, or death, affects the administration or distribution of a trust, a trustee is not  
5201 liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

5202 Section 173. Section **75B-2-1008**, which is renumbered from Section 75-7-1008 is renumbered  
5203 and amended to read:

5204 **[75-7-1008] 75B-2-1008 . Exculpation of trustee.**

5205 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the  
5206 extent that [it] the term:

5207 (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless  
5208 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.

5210 Section 174. Section **75B-2-1009**, which is renumbered from Section 75-7-1009 is renumbered  
5211 and amended to read:

5212 **[75-7-1009] 75B-2-1009 . Beneficiary's consent, release, or ratification.**

5213 A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having  
5214 capacity, consented to the conduct constituting the breach, released the trustee from liability  
5215 for the breach, or ratified the transaction constituting the breach, unless at the time of the  
5216 consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of  
5217 the material facts relating to the breach.

5218 Section 175. Section **75B-2-1010**, which is renumbered from Section 75-7-1010 is renumbered  
5219 and amended to read:

5220 **[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  
5222 contract properly entered into in the trustee's fiduciary capacity in the course of  
5223 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,  
5225 or for obligations arising from ownership or control of trust property, including liability  
5226 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,  
5228 on an obligation arising from ownership or control of trust property, or on a tort  
5229 committed in the course of administering a trust, may be asserted in a judicial  
5230 proceeding against the trustee in the trustee's fiduciary capacity, whether or not the  
5231 trustee is personally liable for the claim.

5232 (4) The question of liability as between the trust estate and the trustee individually may be

5233 determined in a proceeding for accounting, surcharge, or indemnification or other  
5234 appropriate proceeding.

5235 (5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory or  
5236 investment committee, or in any other person or persons, including one or more  
5237 cotrustees to the exclusion of the trustee or to the exclusion of one or more of several  
5238 trustees, authority to direct the making or retention of any investment, the excluded  
5239 trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss  
5240 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  
5242 reasonable trustee to inquire further, no trustee shall be liable for failure to take  
5243 necessary steps to compel the redress of any breach of trust or fiduciary duty by any  
5244 predecessor personal representative, trustee, or other fiduciary.

5245 (b) The provisions of this section shall not be construed to limit the fiduciary liability of  
5246 any trustee for ~~[his]~~ the trustee's own acts or omissions with respect to the trust estate.

5247 Section 176. Section **75B-2-1011**, which is renumbered from Section 75-7-1011 is renumbered  
5248 and amended to read:

5249 **[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  
5251 the contract, a trustee who holds an interest as a general partner in a general or limited  
5252 partnership is not personally liable on a contract entered into by the partnership after the  
5253 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or  
5254 in a statement previously filed ~~[pursuant to]~~ in accordance with Title 48, Chapter 2e,  
5255 Utah Uniform Limited Partnership Act.

5256 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a  
5257 general partner is not personally liable for torts committed by the partnership or for  
5258 obligations arising from ownership or control of the interest unless the trustee is  
5259 personally at fault.

5260 (3) The immunity provided by this section does not apply if an interest in the partnership is  
5261 held by the trustee in a capacity other than that of trustee or is held by the trustee's  
5262 spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of  
5263 any of them.

5264 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
5265 personally liable for contracts and other obligations of the partnership as if the settlor  
5266 were a general partner.

5267 Section 177. Section **75B-2-1012**, which is renumbered from Section 75-7-1012 is renumbered  
5268 and amended to read:

5269 **[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  
5271 faith and for value deals with a trustee, without knowledge that the trustee is exceeding  
5272 or improperly exercising the trustee's powers is protected from liability as if the trustee  
5273 properly exercised the power.

5274 (2) A person other than a beneficiary who in good faith deals with a trustee is not required  
5275 to inquire into the extent of the trustee's powers or the propriety of ~~[their]~~ the trustee's  
5276 exercise.

5277 (3) A person who in good faith delivers assets to a trustee need not ensure ~~[their]~~ the assets'  
5278 proper application.

5279 (4) A person other than a beneficiary who in good faith assists a former trustee, or who in  
5280 good faith and for value deals with a former trustee, without knowledge that the  
5281 trusteeship has terminated is protected from liability as if the former trustee were still a  
5282 trustee.

5283 (5) Comparable protective provisions of other laws relating to commercial transactions or  
5284 transfer of securities by fiduciaries prevail over the protection provided by this section.

5285 Section 178. Section **75B-2-1013**, which is renumbered from Section 75-7-1013 is renumbered  
5286 and amended to read:

5287 **[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,  
5289 the trustee may furnish to the person a certification of trust containing the following  
5290 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  
5296 power to revoke the trust;

5297 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less  
5298 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  
 5302 amended in any manner that would cause the representations contained in the  
 5303 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  
 5306 excerpts from the original trust instrument and later amendments which designate the  
 5307 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  
 5309 the representations contained in it are incorrect is not liable to any person for acting  
 5310 and may assume without inquiry the existence of the facts contained in the  
 5311 certification.
- 5312 (b) Knowledge of the terms of the trust may not be inferred solely from the fact that a  
 5313 copy of all or part of the trust instrument is held by the person relying upon the  
 5314 certification.
- 5315 (7) A person who in good faith enters into a transaction in reliance upon a certification of  
 5316 trust may enforce the transaction against the trust property as if the representations  
 5317 contained in the certification were correct.
- 5318 (8) A person making a demand for the trust instrument in addition to a certification of trust  
 5319 or excerpts is liable for costs, expenses, attorney fees, and damages if the court  
 5320 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  
 5322 in a judicial proceeding concerning the trust.
- 5323 Section 179. Section **75B-2-1101**, which is renumbered from Section 75-7-1101 is renumbered  
 5324 and amended to read:

### 5325 **Part 11. Applicability Provisions**

#### 5326 **[75-7-1101] 75B-2-1101 . Uniformity of application and construction.**

5327 In applying and construing this chapter, consideration must be given to the need to  
 5328 promote uniformity of the law with respect to [its] this chapter's subject matter among states  
 5329 that enact [it] this chapter.

5330 Section 180. Section **75B-2-1102**, which is renumbered from Section 75-7-1102 is renumbered  
 5331 and amended to read:

#### 5332 **[75-7-1102] 75B-2-1102 . Electronic records and signatures.**

5333 The provisions of this chapter governing the legal effect, validity, or enforceability of  
 5334 electronic records or electronic signatures, and of contracts formed or performed with the use

5335 of such records or signatures, conform to the requirements of Section 102 of the Electronic  
 5336 Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7002) and supersede,  
 5337 modify, and limit the requirements of the Electronic Signatures in Global and National  
 5338 Commerce Act.

5339 Section 181. Section **75B-2-1103**, which is renumbered from Section 75-7-1103 is renumbered  
 5340 and amended to read:

5341 **[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  
 5346 court finds that application of a particular provision of this chapter would  
 5347 substantially interfere with the effective conduct of the judicial proceedings or  
 5348 prejudice the rights of the parties, in which case the particular provision of this  
 5349 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  
 5351 instruments executed before July 1, 2004, unless there is a clear indication of a contrary  
 5352 intent in the terms of the trust.

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  
 5355 that has commenced to run under any other statute before July 1, 2004, that statute  
 5356 continues to apply to the right even if [it] the right has been repealed or superseded.

5357 Section 182. Section **75B-3-101** is enacted to read:

5358 **CHAPTER 3. UNIFORM DIRECTED TRUST ACT**

5359 **75B-3-101 . Reserved.**

5360 Reserved.

5361 Section 183. Section **75B-3-102**, which is renumbered from Section 75-12-102 is renumbered  
 5362 and amended to read:

5363 **[75-12-102] 75B-3-102 . Definitions.**

5364 As used in this chapter:

5365 (1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on  
 5366 the director or trustee by the terms of the trust, this chapter, or the law of this state other  
 5367 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,  
5371 government or governmental subdivision, agency, instrumentality, or other legal entity.
- 5372 (5)(a) "Power of direction" means a power over a trust granted to a person by the terms  
5373 of the trust to the extent the power is exercisable while the person is not serving as a  
5374 trustee.
- 5375 (b) "Power of direction" includes a power over the investment, management, or  
5376 distribution of trust property or other matters of trust administration.
- 5377 (c) "Power of direction" does not include the powers described in Subsection [  
5378 ~~75-12-105(2)~~] 75B-3-105(2).
- 5379 (6) "Settlor" means the same as that term is defined in Section [~~75-7-103~~] 75B-2-103.
- 5380 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
5381 United States Virgin Islands, or any territory or insular possession subject to the  
5382 jurisdiction of the United States.
- 5383 (8) "Terms of a trust" means:
- 5384 (a) subject to Subsection (8)(b), the manifestation of the settlor's intent regarding a  
5385 trust's provisions as:
- 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) "Trust director" means a person that is granted a power of direction by the terms of a  
5393 trust to the extent the power is exercisable while the person is not serving as a trustee,  
5394 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.
- 5398 Section 184. Section **75B-3-103**, which is renumbered from Section 75-12-103 is renumbered  
5399 and amended to read:
- 5400 **[~~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  
5402 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  
 5404 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  
 5406 May 14, 2019, this chapter applies only to a decision or action occurring on or after  
 5407 the date of the change.
- 5408 (2) Without precluding other means to establish a sufficient connection with the designated  
 5409 jurisdiction in a directed trust, the terms of the trust that designate the principal place of  
 5410 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  
 5412 designated jurisdiction;
- 5413 (b) a trust director's principal place of business is located in, or a trust director is a  
 5414 resident of, the designated jurisdiction; or
- 5415 (c) all or part of the administration occurs in the designated jurisdiction.

5416 Section 185. Section **75B-3-104**, which is renumbered from Section 75-12-104 is renumbered  
 5417 and amended to read:

5418 **[75-12-104] 75B-3-104 . Common law and principles of equity.**

5419 The common law and principles of equity supplement this chapter, except to the extent  
 5420 modified by this chapter or the law of this state other than this chapter.

5421 Section 186. Section **75B-3-105**, which is renumbered from Section 75-12-105 is renumbered  
 5422 and amended to read:

5423 **[75-12-105] 75B-3-105 . Exclusions.**

- 5424 (1) As used in this section, "power of appointment" means a power that enables a person  
 5425 acting in a nonfiduciary capacity to designate a recipient of an ownership interest in, or  
 5426 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  
 5431 trust;
- 5432 (d) a power of a beneficiary over a trust to the extent the exercise or nonexercise of the  
 5433 power affects the beneficial interest of:
- 5434 (i) the beneficiary; or
- 5435 (ii) another beneficiary represented by the beneficiary under ~~[Sections 75-7-301~~  
 5436 ~~through 75-7-305]~~ Chapter 2, Part 3, Representation, with respect to the exercise or



5437 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  
5441 objectives under the Internal Revenue Code of 1986, as amended, and any related  
5442 Internal Revenue Service regulations.

5443 (3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a  
5444 recipient of an ownership interest in, or power of appointment over, trust property that is  
5445 exercisable while the person is not serving as trustee is a power of appointment and not a  
5446 power of direction.

5447 Section 187. Section **75B-3-106**, which is renumbered from Section 75-12-106 is renumbered  
5448 and amended to read:

5449 **[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  
5451 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  
5454 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.

5456 Section 188. Section **75B-3-107**, which is renumbered from Section 75-12-107 is renumbered  
5457 and amended to read:

5458 **[75-12-107] 75B-3-107 . Limitations on trust director.**

5459 A trust director is subject to the same rules as a trustee in a like position and under  
5460 similar circumstances in the exercise or nonexercise of a power of direction or further power  
5461 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  
5463 reimbursement requirements in Section 1917 of the Social Security Act, 42 U.S.C. Sec.  
5464 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  
5466 general.

5467 Section 189. Section **75B-3-108**, which is renumbered from Section 75-12-108 is renumbered  
5468 and amended to read:

5469 **[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

5471 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  
5473 nonexercise of the power:

5474 (i) if the power is held individually, as a sole trustee in a like position and under  
5475 similar circumstances; or

5476 (ii) if the power is held jointly with a trustee or another trust director, as a cotrustee in  
5477 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  
5479 terms of the trust could vary the duty or liability of a trustee in a like position and  
5480 under similar circumstances.

5481 (2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or  
5482 otherwise authorized or permitted by law other than this chapter to provide health care in  
5483 the ordinary course of the director's business or practice of a profession, to the extent the  
5484 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  
5486 duties and liability described in this section.

5487 Section 190. Section **75B-3-109**, which is renumbered from Section 75-12-109 is renumbered  
5488 and amended to read:

5489 **~~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  
5491 a trust director's exercise or nonexercise of a power of direction or further power under  
5492 Subsection ~~[75-12-106(2)(a)]~~ 75B-3-106(2)(a), and the trustee is not liable for the action.

5493 (2) A directed trustee may not comply with a trust director's exercise or nonexercise of a  
5494 power of direction or further power under Subsection ~~[75-12-106(2)(a)]~~ 75B-3-106(2)(a)  
5495 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  
5497 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  
5500 procuring the release; or

5501 (c) at the time of the release, the director did not know the material facts relating to the  
5502 breach.

5503 (4) A directed trustee that has reasonable doubt about the directed trustee's duty under this  
5504 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  
5506 the duties and liabilities under this section.

5507 Section 191. Section **75B-3-110**, which is renumbered from Section 75-12-110 is renumbered  
5508 and amended to read:

5509 **[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  
5511 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  
5515 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  
5519 a breach of trust to the extent the breach resulted from the reliance, unless, by acting, the  
5520 trustee engages in willful misconduct.

5521 (4) A trust director that acts in reliance on information provided by a trustee or another trust  
5522 director is not liable for a breach of trust to the extent the breach resulted from the  
5523 reliance, unless, by acting, the trust director engages in willful misconduct.

5524 Section 192. Section **75B-3-111**, which is renumbered from Section 75-12-111 is renumbered  
5525 and amended to read:

5526 **[75-12-111] 75B-3-111 . No duty to monitor, inform, or advise.**

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  
5531 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  
5533 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  
5538 concerning an instance in which the director might have acted differently than a

5539 trustee or another trust director; and

5540 (b) by taking an action described in Subsection (1)(a), a trust director does not assume  
5541 the duty excluded under Subsection (1)(a).

5542 Section 193. Section **75B-3-112**, which is renumbered from Section 75-12-112 is renumbered  
5543 and amended to read:

5544 **[75-12-112] 75B-3-112 . Application to cotrustee.**

5545 The terms of a trust may relieve a cotrustee from duty and liability with respect to  
5546 another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent  
5547 that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a  
5548 trust director's power of direction under Sections ~~[75-12-109 through 75-12-111]~~ 75B-3-109  
5549 through 75B-3-111.

5550 Section 194. Section **75B-3-113**, which is renumbered from Section 75-12-113 is renumbered  
5551 and amended to read:

5552 **[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  
5554 same limitation period as described in Section ~~[75-7-1005]~~ 75B-2-1005 for an action for  
5555 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  
5557 a trust director for breach of trust that the report or accounting would have as described  
5558 in Section ~~[75-7-1005]~~ 75B-2-1005 in an action for a breach of trust against a trustee in a  
5559 like position and under similar circumstances.

5560 Section 195. Section **75B-3-114**, which is renumbered from Section 75-12-114 is renumbered  
5561 and amended to read:

5562 **[75-12-114] 75B-3-114 . Defenses in action against trust director.**

5563 In an action against a trust director for a breach of trust, the director may assert the same  
5564 defenses a trustee in a like position and under similar circumstances could assert in an action  
5565 for a breach of trust against the trustee.

5566 Section 196. Section **75B-3-115**, which is renumbered from Section 75-12-115 is renumbered  
5567 and amended to read:

5568 **[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  
5570 director submits to personal jurisdiction of the courts of this state regarding any matter  
5571 related to a power or duty of the director.

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

5573 director.

5574 Section 197. Section **75B-3-116**, which is renumbered from Section 75-12-116 is renumbered  
5575 and amended to read:

5576 **[75-12-116] 75B-3-116 . Office of trust director.**

5577 Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a  
5578 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.

5585 Section 198. Section **75B-3-117**, which is renumbered from Section 75-12-117 is renumbered  
5586 and amended to read:

5587 **[75-12-117] 75B-3-117 . Uniformity of application and construction.**

5588 In applying and construing this chapter, consideration must be given to the need to  
5589 promote uniformity of the law with respect to [its] this chapter's subject matter among states  
5590 that enact [it] this chapter.

5591 Section 199. Section **75B-3-118**, which is renumbered from Section 75-12-118 is renumbered  
5592 and amended to read:

5593 **[75-12-118] 75B-3-118 . Electronic records and signatures.**

5594 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and  
5595 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede  
5596 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of  
5597 the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

5598 Section 200. Section **78B-5-505** is amended to read:

5599 **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  
5603 or sustain health;
- 5604 (iii) benefits that the individual or the individual's dependent have received or are  
5605 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  
5610 the benefits are used by an individual or the individual's dependent to pay for that  
5611 care;
- 5612 (v) veterans benefits;
- 5613 (vi) money or property received, and rights to receive money or property for child  
5614 support;
- 5615 (vii) money or property received, and rights to receive money or property for alimony  
5616 or separate maintenance, to the extent reasonably necessary for the support of the  
5617 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  
5627 use;  
5628 (D) all wearing apparel of every individual and dependent, not including jewelry  
5629 or furs; and  
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  
5632 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  
5636 result of bodily injury of the individual or of the wrongful death or bodily injury  
5637 of another individual of whom the individual was or is a dependent to the extent  
5638 that those proceeds are compensatory;
- 5639 (xi) the proceeds or benefits of any life insurance contracts or policies paid or  
5640 payable to the debtor or any trust of which the debtor is a beneficiary upon the

- 5641 death of the spouse or children of the debtor, provided that the contract or policy  
5642 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  
5644 payable to the spouse or children of the debtor or any trust of which the spouse or  
5645 children are beneficiaries upon the death of the debtor, provided that the contract  
5646 or policy has been in existence for a continuous unexpired period of one year;
- 5647 (xiii) proceeds and avails of any unmatured life insurance contracts owned by the  
5648 debtor or any revocable grantor trust created by the debtor, excluding any  
5649 payments made on the contract during the one year immediately preceding a  
5650 creditor's levy or execution;
- 5651 (xiv) except as provided in Subsection (1)(b), and except for a judgment described in  
5652 Subsection [~~75-7-503(2)(e)~~] 75B-2-503(2)(c), any money or other assets held for  
5653 or payable to the individual as an owner, participant, or beneficiary from or an  
5654 interest of the individual as an owner, participant, or beneficiary in a fund or  
5655 account, including an inherited fund or account, in a retirement plan or  
5656 arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b),  
5657 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code, including an  
5658 owner's, a participant's, or a beneficiary's interest that arises by inheritance,  
5659 designation, appointment, or otherwise;
- 5660 (xv) the interest of or any money or other assets payable to an alternate payee under a  
5661 qualified domestic relations order as those terms are defined in Section 414(p),  
5662 Internal Revenue Code;
- 5663 (xvi) unpaid earnings of the household of the filing individual due as of the date of  
5664 the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual  
5665 median family income for the household size of the filing individual as  
5666 determined by the Utah State Annual Median Family Income reported by the  
5667 United States Census Bureau and as adjusted based upon the Consumer Price  
5668 Index for All Urban Consumers for an individual whose unpaid earnings are paid  
5669 more often than once a month or, if unpaid earnings are not paid more often than  
5670 once a month, then in the amount of 1/12 of the Utah State annual median family  
5671 income for the household size of the individual as determined by the Utah State  
5672 Annual Median Family Income reported by the United States Census Bureau and  
5673 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

- 5675 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
- 5679 rounds; and
- 5680 (xviii) money, not exceeding \$200,000, in the aggregate, that an individual deposits,
- 5681 more than 18 months before the day on which the individual files a petition for
- 5682 bankruptcy or an action is filed by a creditor against the individual, as applicable,
- 5683 in all tax-advantaged accounts for saving for higher education costs on behalf of a
- 5684 particular individual that meets the requirements of Section 529, Internal Revenue
- 5685 Code.
- 5686 (b)(i) Any money, asset, or other interest in a fund or account that is exempt from a
- 5687 claim of a creditor of the owner, beneficiary, or participant under Subsection
- 5688 (1)(a)(xiv) does not cease to be exempt after the owner's, participant's, or
- 5689 beneficiary's death by reason of a direct transfer or eligible rollover to an inherited
- 5690 individual retirement account as defined in Section 408(d)(3), Internal Revenue
- 5691 Code.
- 5692 (ii) Subsections (1)(a)(xiv) and (1)(b)(i) apply to all inherited individual retirement
- 5693 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
- 5696 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
- 5698 year before the debtor files for bankruptcy, except amounts directly rolled over
- 5699 from other funds that are exempt from attachment under this section.
- 5700 (ii) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to the
- 5701 secured creditor's interest in proceeds and avails of any matured or unmatured life
- 5702 insurance contract assigned or pledged as collateral for repayment of a loan or
- 5703 other legal obligation.
- 5704 (2)(a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans
- 5705 benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a victim
- 5706 who is a child if the person receiving the benefits has been convicted of a felony sex
- 5707 offense against the victim and ordered by the sentencing court to pay restitution to
- 5708 the victim.



- 5709 (b) The exemption from execution under this Subsection (2) shall be reinstated upon  
5710 payment of the restitution in full.
- 5711 (3) The exemptions under this section do not limit items that may be claimed as exempt  
5712 under Section 78B-5-506.
- 5713 (4)(a) The exemptions described in Subsections (1)(a)(iii), (iv), (vi), (vii), (x), (xii), (xiii),  
5714 (xiv), (xv), (xvii), and (xviii) do not apply to a civil accounts receivable or a civil  
5715 judgment of restitution for an individual who is found in contempt under Section  
5716 78B-6-317.
- 5717 (b) Subsection (4)(a) does not apply to the benefits described in Subsection (1)(a)(iii) if  
5718 the individual's dependent received, or is entitled to receive, the benefits.
- 5719 Section 201. **Repealer.**
- 5720 This bill repeals:
- 5721 Section **75-7-101, Title.**
- 5722 Section **75-12-101, Title.**
- 5723 Section 202. **Effective Date.**
- 5724 This bill takes effect on May 7, 2025.