Title 75. Utah Uniform Probate Code

Chapter 1
General Provisions, Definitions, and Probate Jurisdiction of Court

Part 1
Short Title, Construction, and General Provisions

75-1-101 Short title.
This title shall be known and may be cited as the "Utah Uniform Probate Code."

Enacted by Chapter 150, 1975 General Session

75-1-102 Purposes -- Rule of construction.
(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.
(2) The underlying purposes and policies of this code are:
(a) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
(b) To discover and make effective the intent of a decedent in distribution of his property;
(c) To promote a speedy and efficient system for administering the estate of the decedent and making distribution to his successors;
(d) To facilitate use and enforcement of certain trusts; and
(e) To make uniform the law among the various jurisdictions.

Enacted by Chapter 150, 1975 General Session

75-1-103 Supplementary general principles of law applicable.
Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Enacted by Chapter 150, 1975 General Session

75-1-104 Severability.
If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Enacted by Chapter 150, 1975 General Session

75-1-105 Construction against implied repeal.
This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Enacted by Chapter 150, 1975 General Session

75-1-106 Effect of fraud and evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Enacted by Chapter 150, 1975 General Session

75-1-107 Evidence of death or status.

(1) In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:
  (a) Death occurs when an individual is determined to be dead as provided in Title 26, Chapter 34, Uniform Determination of Death Act.
  (b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.
  (c) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
  (d) In the absence of prima facie evidence of death under Subsection (1)(b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
  (e) An individual whose death is not established under Subsection (1)(a), (b), (c) or (d) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
  (f) In the absence of evidence disputing the time of death stated on a document described in Subsection (1)(b) or (c), a document described in Subsection (1)(b) or (c) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.
(2) The right and duty to control the disposition of a deceased person shall be governed by Sections 58-9-601 through 58-9-604.

Amended by Chapter 49, 2003 General Session

75-1-108 Acts by holder of general power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation,

are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

Enacted by Chapter 150, 1975 General Session

75-1-109 Duty to comply with environmental laws -- Definitions.

(1) From the inception of the trust or estate, a fiduciary shall have the following powers, without court authorization, which it may use in its sole discretion to comply with environmental law:
  (a) to inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;
  (b) to take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;
  (c) to refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate;
  (d) to settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;
  (e) to disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or
  (f) to decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.
(2) For purposes of this section "environmental law" means any federal, state, or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" means any substance defined as hazardous or toxic or which is otherwise regulated by any environmental law.
(3) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary shall not be personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be considered to create any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.
(4) This section applies to all estates and trusts in existence upon and created after July 1, 1991.
(5) No exercise by a fiduciary of any of the powers granted in this section shall constitute a transaction which is affected by a substantial conflict of interest on the part of the fiduciary.

Enacted by Chapter 133, 1991 General Session

75-1-110 Cost of living adjustment of certain dollar amounts.

(1) In this section:

(a) "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U), U.S. City Average, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index adopted by the Administrative Office of the Courts.

(b) "Reference base index" means the CPI for calendar year 2009.

(2) The dollar amounts stated in Subsection 75-2-202(2) and Sections 75-2-102, 75-2-402, 75-2-403, and 75-2-405 apply to the estate of a decedent who died in or after 2010, but for the estate of a decedent who died after 2011, these dollar amounts shall be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of $100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of $100, but for the purpose of Section 75-2-405, the periodic installment amount is the lump sum amount divided by 12. If the CPI for 2009 is changed by the Bureau of Labor Statistics, the reference base index shall be revised using the rebasing factor reported by the Bureau of Labor Statistics, or other comparable data if a rebasing factor is not reported.

(3) Before February 1, 2011, and before February 1 of each succeeding year, the Administrative Office of the Courts shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in 2011, of each dollar amount as increased or decreased under this section.

Enacted by Chapter 93, 2010 General Session

Part 2
Definitions

75-1-201 General definitions.

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

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

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

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in

beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

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

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

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

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

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

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

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

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

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

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

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

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

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

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

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

(19) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.
(21) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.
(22) "Incapacitated" or "incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
(a) receive and evaluate information;
(b) make and communicate decisions; or
(c) provide for necessities such as food, shelter, clothing, health care, or safety.
(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.
(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.
(25) "Issue" of a person means descendant as defined in Subsection (9).
(26) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
(27) "Lease" includes an oil, gas, or other mineral lease.
(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
(29) "Minor" means a person who is under 18 years of age.
(30) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.
(32) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.
(33) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose

relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

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

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

(36)

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

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

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

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

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

(40) "Protected person" means a person for whom a conservator has been appointed. A "minor protected person" means a minor for whom a conservator has been appointed because of minority.

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

(42) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

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

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

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

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

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

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

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

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

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

(52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."
(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
(54) "Testator" includes an individual of either sex.
(55) "Trust" includes a health savings account, as defined in Section 223, Internal Revenue Code, any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
(56) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.
(57) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
(58) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Amended by Chapter 364, 2013 General Session

Part 3
Scope, Jurisdiction, and Courts

75-1-301 Territorial application.

Except as otherwise provided in this code, this code applies to:
(1) The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;
(2) The property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state;
(3) Incapacitated persons and minors in this state;
(4) Survivorship and related accounts in this state; and
(5) Trusts subject to administration in this state.

Amended by Chapter 30, 1992 General Session

75-1-302 Subject matter jurisdiction.

(1) To the full extent permitted by the Constitution of Utah, the court has jurisdiction over all subject matter relating to:
  (a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;
  (b) protection of minors and incapacitated persons; and
  (c) trusts.
(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Enacted by Chapter 150, 1975 General Session

75-1-303 Venue -- Multiple proceedings -- Transfer -- Orders and hearings.
(1) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.
(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided; and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.
(3) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.
(4) The judge of the court in which any proceeding under this code is pending may make any order relating to the proceeding in chambers at any place in his district, and the order shall have the same force and effect as if made by the court sitting in the proper county. The hearing of any matter requiring notice shall be had at the time and place appointed or at the time to which the same may be postponed, except that where there is no contest or where all the parties consent, the hearing may be had at any place within the judicial district in which the matter is pending.

Enacted by Chapter 150, 1975 General Session

75-1-304 Practice in court.
Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

Enacted by Chapter 150, 1975 General Session

75-1-305 Records and certified copies.
The clerk of the court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Enacted by Chapter 150, 1975 General Session

75-1-306 Jury trial.

(1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a statutory or constitutional right to trial by jury.

(2) If there is no right to trial by jury under Subsection (1) of this section or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

Enacted by Chapter 150, 1975 General Session

75-1-307 Registrar.

The registrar shall be a judge of the court.

Enacted by Chapter 150, 1975 General Session

75-1-308 Appeals.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the rules applicable to the appeals to the Supreme Court in equity cases from the court of general jurisdiction, except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.

Enacted by Chapter 150, 1975 General Session

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

Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; and penalties for perjury may follow deliberate falsification therein.

Enacted by Chapter 150, 1975 General Session

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

When not otherwise prescribed in this code, the court, or the Supreme Court on appeal from the court, may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate as justice may require.

Enacted by Chapter 150, 1975 General Session

75-1-311 Consent to jurisdiction.

By submitting an application for informal probate or appointment or a petition for formal probate, adjudication of intestacy, or appointment the applicant or petitioner subjects himself to the jurisdiction of the court in all matters arising under this code. Notice of any proceeding sought

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

Amended by Chapter 194, 1977 General Session

75-1-312 Alternative resolution of disputes.

(1) A will, trust, or power of attorney may include a provision, enforceable by a court, that requires the resolution of disputes between or among beneficiaries and fiduciaries of the will, trust, or power of attorney, or any combination of those persons or entities, outside of a court of record.
(2) The resolution of disputes outside the court may include any procedure, writing, or agreement, not contrary to or prohibited by law, found or referred to in a will, trust, or power of attorney, the purpose of which is to resolve disputes between or among the beneficiaries and fiduciaries of a will, trust, or power of attorney, or any combination of those persons or entities, outside of a court of record.
(3) Unless terms in a dispute resolution procedure, writing, or agreement require binding arbitration, nothing in the writing or agreement shall prevent beneficiaries or fiduciaries, upon satisfaction of the required terms of the dispute resolution procedure, writing, or agreement, from seeking resolution of unresolved disputes in a court of record.

Enacted by Chapter 369, 2013 General Session

Part 4
Notice, Parties, and Representation in Estate Litigation and Other Matters

75-1-401 Notice -- Method and time of giving.

(1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10 consecutive days immediately preceding the time set for the hearing in at least three public places in the county, one of which must be at the courthouse of the county and:
  (a)
    (i) by the clerk mailing a copy thereof at least 10 days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post-office address given in the demand for notice, if any, or at the person's office or place of residence, if known; or
    (ii) by delivering a copy thereof to the person being notified personally at least 10 days before the time set for the hearing; and
  (b) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing:
    (i) at least once a week for three consecutive weeks a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing; and
    (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.
(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Amended by Chapter 90, 2010 General Session

75-1-402 Notice -- Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may waive notice for his minor child.

Enacted by Chapter 150, 1975 General Session

75-1-403 Pleadings -- Notice.

In formal proceedings involving inter vivos or testamentary trusts, including proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:
(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in any other appropriate manner.
(2) Notice is required as follows:
  (a) Notice as prescribed by Section 75-1-401 shall be given to every interested person. Notice may be given both to a person and to another who may bind him.
  (b) Whenever notice to a person is required or permitted under this chapter, notice to another person who may represent and bind the person represented under this section constitutes notice to the person represented.
(3) Persons are bound by orders binding others in the following cases:
  (a) To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to a particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.
  (b) To the extent there is no conflict of interest between the representative and the person represented with respect to a particular question or dispute:
    (i) a conservator may represent and bind the person whose estate he controls;
    (ii) a guardian may represent and bind the ward if no conservator of the ward's estate has been appointed;
    (iii) an agent having authority to do so may represent and bind the principal;
    (iv) a trustee may represent and bind the beneficiaries of the trust;
    (v) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
    (vi) if no conservator or guardian has been appointed, a parent may represent and bind the parent's minor or unborn child.
  (c) Unless otherwise represented, a minor, incapacitated or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

(4) Even if there is representation under this section, if the court determines that representation of the interest might otherwise be inadequate, the court may appoint a guardian ad litem to represent the interest of, and approve an agreement on behalf of, a minor, incapacitated or unborn person, or a person whose identity or location is unknown.
(5) If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. In approving an agreement, a guardian ad litem may consider the general family benefit accruing to the living members of the family of the person represented.
(6) Whenever consent may be given by a person pursuant to this chapter, the consent of a person who may represent and bind the person represented under this section is the consent of, and is binding on, the person represented unless the person represented objects to the representation before the consent would otherwise become effective.

Amended by Chapter 93, 2010 General Session

75-1-404 Publication in newspapers.

Newspapers shall publish all notices of proceedings under the code under the heading "Probate, Guardianship, Conservator and Trust Notices. Consult clerk of the court or the respective signers for further information." These notices shall be published as often during the prescribed period as the paper is regularly issued, unless otherwise provided by law or directed by the court, and as far as possible in one column in the alphabetical order of the surnames of decedents, wards, incapacitated persons, and creators of trusts.

Enacted by Chapter 150, 1975 General Session

Chapter 2
Intestate Succession and Wills

Part 1
Intestate Succession

75-2-101 Intestate succession.

(1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as provided in this title, except as modified by the decedent's will.
(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-102 Intestate share of spouse.

(1) The intestate share of a decedent's surviving spouse is:
  (a) the entire intestate estate if:

(i) no descendant of the decedent survives the decedent; or
(ii) all of the decedent's surviving descendants are also descendants of the surviving spouse;
(b) the first $75,000, plus 1/2 of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.
(2) For purposes of Subsection (1)(b), if the intestate estate passes to both the decedent's surviving spouse and to other heirs, then any nonprobate transfer, as defined in Section 75-2-206, received by the surviving spouse is added to the probate estate in calculating the intestate heirs' shares and is conclusively treated as an advancement under Section 75-2-109 in determining the spouse's share.

Amended by Chapter 93, 2010 General Session

75-2-103 Share of heirs other than surviving spouse.
(1) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:
(a) to the decedent's descendants per capita at each generation as defined in Subsection 75-2-106(2);
(b) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;
(c) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);
(d) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:
(i) half to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation as defined in Subsection 75-2-106(3); and
(ii) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation as defined in Subsection 75-2-106(3);
(e) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the same manner as the half described in Subsection (1)(d);
(f) if there is no taker under Subsection (1)(a), (b), (c), (d), or (e), but the decedent has:
(i) one deceased spouse who has one or more descendants who survive the decedent, the estate or part of the estate passes to that spouse's descendants who survive the decedent, the descendants taking per capita at each generation as defined in Subsection 75-2-106(4); or
(ii) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part of the estate passes to each set of descendants, the descendants taking per capita at each generation as defined in Subsection 75-2-106(4).

(2) For purposes of Subsections (1)(a), (b), (c), (d), (e), and (f) any nonprobate transfer, as defined in Section 75-2-205, received by an heir is added to the probate estate in calculating the intestate heirs' shares and is conclusively treated as an advancement under Section 75-2-109 to the heir in determining the heir's share.

Amended by Chapter 93, 2010 General Session
Amended by Chapter 324, 2010 General Session

75-2-104 Requirement of survival by 120 hours -- Individual in gestation.

(1) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in Subsection (2), the following rules apply:
  (a) An individual born before a decedent's death who fails to survive the decedent by 120 hours is considered to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period.
  (b) An individual in gestation at a decedent's death is considered to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is considered that the individual failed to survive for the required period.
(2) This section does not apply if its application would cause the estate to pass to the state under Section 75-2-105.

Amended by Chapter 93, 2010 General Session

75-2-105 No taker.

If there is no taker under the provisions of this chapter, the intestate estate passes to the state for the benefit of the state school fund.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-106 Definitions -- Per capita at each generation -- Terms in governing instruments.

(1) As used in this section:
  (a) "Deceased descendant," "deceased parent," or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under Section 75-2-104.
  (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under Section 75-2-104.
(2)
  (a) If, under Subsection 75-2-103(1)(a), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:
    (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and
    (ii) deceased descendants in the same generation who left surviving descendants, if any.
  (b) Each surviving descendant in the nearest generation is allocated one share.

(c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(3)

(a) If, under Subsection 75-2-103(1)(c) or (d), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share.

(c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(4)

(a) If, under Subsection 75-2-103(1)(e), a decedent's intestate estate or a part of the estate passes "per capita at each generation" to the descendants of the decedent's deceased spouse, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased spouse that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share.

(c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(5) Any reference to this section found in a governing instrument for the definitions of "per capita," "per stirpes," "by representation," "share and share alike," "to the survivor of them," or "by right of representation" shall be considered a reference to Section 75-2-709.

Amended by Chapter 350, 2011 General Session

75-2-107 Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Enacted by Chapter 150, 1975 General Session

75-2-109 Advancements.

(1) If an individual dies intestate as to all or a portion of his estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(a) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of Subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3)

(a) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

(b) If the amount of the advancement exceeds the share of the heir receiving the same, the heir is not required to refund any part of the advancement.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-110 Debts to decedent.

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-111 Alienage.

No individual is disqualified to take as an heir because the individual or an individual through whom he claims is or has been an alien.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-112 Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-113 Individuals related to decedent through two lines.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-114 Parent and child relationship.

(1) Except as provided in Subsections (2) and (3), for purposes of intestate succession by, through, or from a person, an individual is the child of the individual's natural parents, regardless of their marital status. The parent and child relationship may be established as provided in Title 78B, Chapter 15, Utah Uniform Parentage Act.

(2) An adopted individual is the child of the adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent.

(3) Inheritance from or through a child by either natural parent or the child's kindred is precluded unless that natural parent has openly treated the child as the natural parent's, and has not refused to support the child.

Amended by Chapter 142, 2014 General Session

Part 2
Elective Share of Surviving Spouse

75-2-201 Definitions.

As used in this part:

(1) "Decedent's nonprobate transfers to others," as used in sections other than Section 75-2-205, means the amounts that are included in the augmented estate under Section 75-2-205.

(2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in himself, his creditors, his estate, or creditors of his estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) "Probate estate" means property that would pass by intestate succession if the decedent died without a valid will.

(8) "Property" includes values subject to a beneficiary designation.

(9) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) "Transfer," as it relates to a transfer by or of the decedent, includes:

(a) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(c) an exercise, release, or lapse of a general power of appointment that the decedent created in himself and of a power described in Subsection 75-2-205(2)(b) that the decedent conferred on a nonadverse party.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-202 Elective share -- Supplemental elective share amount -- Effect of election on statutory benefits -- Nondomicilary.

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

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

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are charged against, and are not in addition to, the elective-share and supplemental elective-share amounts.

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

Amended by Chapter 93, 2010 General Session

75-2-203 Composition of the augmented estate.

Subject to Section 75-2-208 which provides for exclusions, valuation, and overlapping application, the value of the augmented estate, to the extent provided in Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute the decedent's net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, and the surviving spouse's property and nonprobate transfers to others.

Repealed and Re-enacted by Chapter 39, 1998 General Session

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

Unless excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

Amended by Chapter 142, 1999 General Session

75-2-205 Decedent's nonprobate transfers to others.

Unless excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under Section 75-2-204, of any of the types described in this section, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of the property described in this Subsection (1).

(a)

(i) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment.

(ii) The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b)

(i) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship.

(ii) The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c)

(i) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship.

(ii) The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(d)

(i) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds.

(ii) The amount included:

(A) is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(B) may not exceed the greater of the cash surrender value of the policy immediately prior to the death of the decedent or the amount of premiums paid on the policy during the decedent's life.

(2) Property transferred in any of the forms described in this Subsection (2) by the decedent during marriage:

(a)

(i) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death.

(ii) An irrevocable transfer in trust which includes a restriction on transfer of the decedent's interest as settlor and beneficiary as described in Section 25-6-14.

(iii) The amount included is the value of the fraction of the property to which the right or restriction related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b)

(i) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate.

(ii) The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either

case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iii) If the power is a power over both income and property and Subsection (2)(b)(ii) produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the types described in this Subsection (3).

(a)

(i) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under Subsection (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated until the decedent's death.

(ii) The amount included is the value of the property that would have been included under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.

(iii)

(A) As used in this Subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise.

(B) With respect to a power described in Subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b)

(i) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under Subsection (1)(d) had the transfer not occurred.

(ii) The amount included:

(A) is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(B) may not exceed the greater of the cash surrender value of the policy immediately prior to the death of the decedent or the amount of premiums paid on the policy during the decedent's life.

(c)

(i) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse.

(ii) The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded $10,000.

Amended by Chapter 3, 2003 Special Session 2
Amended by Chapter 3, 2003 Special Session 2

75-2-206 Decedent's nonprobate transfers to the surviving spouse.

Excluding property passing to the surviving spouse under the federal Social Security system, any death benefits paid to the surviving spouse under any state workers' compensation law, and property excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

(3) all other property that would have been included in the augmented estate under Subsection 75-2-205(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

Amended by Chapter 243, 2008 General Session

75-2-207 Surviving spouse's property and nonprobate transfers to others -- Included property -- Time of valuation.

(1) Except to the extent included in the augmented estate under Section 75-2-204 or 75-2-206 or excluded under Section 75-2-208, the value of the augmented estate includes the value of:

(a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal Social Security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under Subsection (1)(a)(i) or (ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of Subsections (1)(a)(i) and (ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of Subsection (1)(b), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under Subsection 75-2-205(1)(d) are not valued as if the spouse were deceased.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

Repealed and Re-enacted by Chapter 39, 1998 General Session

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

(1) The value of any separate property of the decedent or the decedent's surviving spouse is excluded from the augmented estate even if it otherwise would be included in the augmented estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property if:
  (a) owned at the date of the most recent marriage of the decedent and the decedent's surviving spouse;
  (b) acquired by gift or disposition at death from a person other than the decedent or the decedent's surviving spouse;
  (c) acquired in exchange for or with the proceeds of other separate property;
  (d) designated as separate property by written waiver under Section 75-2-213; or
  (e) acquired as a recovery for personal injury but only to the extent attributable to expenses paid or otherwise satisfied from separate property.
(2) Income attributable to investment, rental, licensing or other use of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.
(3) Appreciation in the value of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.
(4) Except as provided in this Subsection (4), any increase in the value of separate property due to improvements to or the reduction in debt owed against separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property. An amount equal to any payment for improvements to or the reduction in debt owed against separate property of the decedent made during the most recent marriage of the decedent and the decedent's surviving spouse from the joint or commingled funds of the decedent and the decedent's surviving spouse, or from the separate property of the surviving spouse, shall not be separate property to the extent of the amount actually paid for the improvements or the amount actually paid for the reduction in debt, including principal, interest, and other payments under the note, owed against separate property. The amount that is determined not to be separate property may not exceed the value of the separate property.
(5) All property of the decedent or the decedent's surviving spouse, whether or not commingled, is rebuttably presumed not to be separate property.
(6) The value of any property is excluded from the decedent's nonprobate transfers to others:
  (a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or
  (b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.
(7) The value of property:
  (a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is reduced in each category by enforceable claims against the included property; and
  (b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.
(8) In case of overlapping application to the same property of the section or subsections of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Amended by Chapter 142, 1999 General Session

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

(1) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:
  (a) amounts included in the augmented estate under Section 75-2-204 that pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under Section 75-2-206;
  (b) amounts included in the augmented estate under Section 75-2-207;
  (c) the value at the decedent's death of the decedent's separate property, as defined in Section 75-2-208, that passes or has passed from the decedent to the decedent's surviving spouse by reason of the decedent's death, whether by testate or intestate succession or by nonprobate transfer at the decedent's death; and
  (d) the surviving spouse's homestead allowance, exempt property, and family allowance, if any.

(2) If, after the application of Subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under Subsection 75-2-205(3)(a) or (c), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(3) If, after the application of Subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

Amended by Chapter 142, 1999 General Session

75-2-210 Personal liability of recipients.

(1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to him or to pay the value of the amount for which he is liable.

(2) If any section or subsection of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in Section 75-2-209, to the person who would have been entitled to it were that section or subsection not preempted.

Enacted by Chapter 39, 1998 General Session

75-2-211 Proceeding for elective share -- Time limit.

(1) Except as provided in Subsection (2), the election shall be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in Subsection (2), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective-share, if the petition is filed more than nine months after the decedent's death.

(2) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under Sections 75-2-209 and 75-2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been under Sections 75-2-209 and 75-2-210 had relief been secured against all persons subject to contribution.

(5) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of Utah or other jurisdictions.

Enacted by Chapter 39, 1998 General Session

75-2-212 Right of election personal to surviving spouse -- Incapacitated surviving spouse -- Custodial trust.

(1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under Subsection 75-2-211(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under Subsections 75-2-209(2) and (3) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse shall qualify on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to the predeceased spouse's heirs under Section 75-2-711.

Enacted by Chapter 39, 1998 General Session

75-2-213 Waiver of right to elect and of other rights.

(1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) he did not execute the waiver voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, he:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property

of the other and a renunciation by each of all benefits that would otherwise pass to him from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

Enacted by Chapter 39, 1998 General Session

75-2-214 Protection of payors and other third parties.

(1) Although under Section 75-2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(2) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under Subsection 75-2-211(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under Subsection 75-2-211(1) or, if filed, the demand for an elective share is withdrawn under Subsection 75-2-211(3), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this part.

Enacted by Chapter 39, 1998 General Session

Part 3
Spouse and Children Unprovided for in Wills

75-2-301 Entitlement of spouse -- Premarital will.

(1) If a testator's surviving spouse married the testator after the testator executed his will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he would have received if the testator had died intestate as to that portion of the

testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under Section 75-2-603 or 75-2-604 to such a child or to a descendant of such a child, unless:

(a) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under Section 75-2-603 or 75-2-604 to a descendant of such a child, abate as provided in Section 75-3-902.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-302 Omitted children.

(1) Except as provided in Subsection (2), if a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when he executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in Subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this section, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Neither Subsection (1)(a) nor Subsection (1)(b) applies if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by Subsection (1)(a), devises made by the will abate under Section 75-3-902.

Amended by Chapter 324, 2010 General Session

Part 4
Exempt Property and Allowances

75-2-401 Exempt property and allowances -- Applicable law.

This part applies to the estate of a decedent who dies domiciled in Utah. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in Utah are governed by the law of the decedent's domicile at death.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-402 Homestead allowance.

A decedent's surviving spouse is entitled to a homestead allowance of $22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims of the estate. Unless otherwise provided by the will or governing instrument, the homestead allowance is chargeable against any benefit or share passing to the surviving spouse, minor, or dependent child, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206.

Amended by Chapter 93, 2010 General Session

75-2-403 Exempt property.

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $15,000, or if there is not $15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. Unless otherwise provided by the will or governing instrument,

the exempt property allowance is chargeable against any benefit or share passing to the surviving spouse, if any, or if there is no surviving spouse, to the decedent's children, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206.

Amended by Chapter 93, 2010 General Session

75-2-404 Family allowance.

(1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(2) Unless otherwise provided by the will or governing instrument, the family allowance is chargeable against any benefit or share passing to the surviving spouse or minor children, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-405 Source, determination, and documentation.

(1) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $27,000 or periodic installments not exceeding $2,250 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under Subsection 75-2-212(2).

Amended by Chapter 93, 2010 General Session

Part 5
Wills

75-2-501 Who may make will.
An individual 18 or more years of age who is of sound mind may make a will.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-502 Execution -- Witnessed wills -- Holographic wills.
(1) Except as provided in Subsection (2) and in Sections 75-2-503, 75-2-506, and 75-2-513, a will shall be:
  (a) in writing;
  (b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
  (c) signed by at least two individuals, each of whom signed within a reasonable time after he witnessed either the signing of the will as described in Subsection (1)(b) or the testator's acknowledgment of that signature or acknowledgment of the will.
(2) A will that does not comply with Subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
(3) Intent that the document constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-503 Writings intended as wills.
Although a document or writing added upon a document was not executed in compliance with Section 75-2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:
(1) the decedent's will;
(2) a partial or complete revocation of the will;
(3) an addition to or an alteration of the will; or
(4) a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-504 Self-proved will.
(1) A will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs, whether or not that

officer is also a witness to the will, and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

State of _____
County of _____
Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this ____ day of _____.

(Signed) _____

_____

(Official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

State of _____
County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator was at that time 18 years or age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this ____ day of _____.

(Signed) _____

_____

(Official capacity of officer)

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

(4) The notarization of will provisions of this section preempt conflicting provisions in other sections of the Utah Code whether the will was executed prior to or after July 1, 1998.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-505 Who may witness.

(1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-506 Choice of law as to execution.

A written will is valid if executed in compliance with Section 75-2-502 or 75-2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-507 Revocation by writing or by act.

(1) A will or any part thereof is revoked:

(a) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(b) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subsection, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will," whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent

with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-508 Revocation by change of circumstances.

Except as provided in Sections 75-2-803 and 75-2-804, a change of circumstances does not revoke a will or any part of it.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-509 Revival of revoked will.

(1) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under Subsection 75-2-507(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under Subsection 75-2-507(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-510 Incorporation by reference.

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-511 Testamentary additions to trusts.

(1) A will may validly devise property to the trustee of a trust established or to be established:

(a) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(b) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(2) Unless the testator's will provides otherwise, property devised to a trust described in Subsection (1) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.
(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-512 Events of independent significance.

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-513 Separate writing identifying devise of certain types of tangible personal property.

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing shall be signed by the testator and shall describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-514 Contracts concerning succession.

(1) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 1998, may be established only by:
  (a) provisions of a will stating material provisions of the contract;
  (b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
  (c) a writing signed by the decedent evidencing the contract.
(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Enacted by Chapter 39, 1998 General Session

75-2-515 Penalty clause for contest.

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Enacted by Chapter 39, 1998 General Session

Part 6
Rules of Construction for Wills

75-2-601 Scope.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-602 Will construed to pass all property and after-acquired property.

A will is construed to pass all property the testator owns at death and all property acquired by the estate after the testator's death.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-603 Definitions -- Antilapse -- Deceased devisee -- Class gifts -- Substitute gifts.

(1) As used in this section:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed his will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under Section 75-2-702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in Subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take per capita at each generation the property to which the devisee would have been entitled had the devisee survived the testator.
(b) Except as provided in Subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next-of-kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendant's of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this Subsection (2)(b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.
(c) For the purposes of Section 75-2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are, in the absence of clear and convincing evidence, a sufficient indication of an intent contrary to the application of this section.
(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by Subsection (2)(a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.
(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

Amended by Chapter 324, 2010 General Session

75-2-604 Failure of testamentary provision.
(1) Except as provided in Section 75-2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.
(2) Except as provided in Section 75-2-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-605 Increase in securities -- Accessions.
(1) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(a) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;
(b) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or
(c) securities of the same organization acquired as a result of a plan of reinvestment.
(2) Distributions in cash before death with respect to a described security are not part of the devise.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-606 Nonademption of specific devises -- Unpaid proceeds of sale, condemnation, or insurance -- Sale by conservatory or agent.
(1) A specific devisee has a right to the specifically devised property in the testator's estate at death and:
(a) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;
(b) any amount of a condemnation award for the taking of the property unpaid at death;
(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;
(d) property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;
(e) real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property; and
(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by Subsections (1)(a) through (e).
(2) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.
(3) The right of a specific devisee under Subsection (2) is reduced by any right the devisee has under Subsection (1).
(4) For the purposes of the references in Subsection (2) to a conservator, Subsection (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.
(5) For the purposes of the references in Subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:
(a) "incapacitated principal" means a principal who is an incapacitated person;
(b) no adjudication of incapacity before death is necessary; and
(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

Amended by Chapter 324, 2010 General Session

75-2-607 Nonexoneration.

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-608 Exercise of power of appointment.

In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if:

(1) the power is a general power and the creating instrument does not contain a gift if the power is not exercised; or
(2) the testator's will manifests an intention to include the property subject to the power.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-609 Ademption by satisfaction.

(1) Property a testator gave in his lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if:
  (a) the will provides for deduction of the gift;
  (b) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or
  (c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.
(2) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.
(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 75-2-603 and 75-2-604, unless the testator's contemporaneous writing provides otherwise.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-610 Marital deduction formulas -- Wills.

For estates of decedents dying after December 31, 1981, where a decedent's will executed before September 13, 1981, contains a formula expressly providing that the decedent's spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, this formula shall be construed as referring to the unlimited marital deduction allowable by federal law as amended by Section 403(a) of the Economic Recovery Tax Act of 1981.

Amended by Chapter 21, 1999 General Session

75-2-611 Direction to pay taxes in will.

A general direction in a will to pay all taxes imposed as a result of a testator's death or similar language shall not be construed to include taxes imposed on a "generation skipping transfer" under Section 2601 of the Internal Revenue Code of 1986 (or any successor or amended section of similar content) unless the testator shall express an intention that these taxes be paid out of his estate by reference to the generation skipping tax or otherwise.

Repealed and Re-enacted by Chapter 39, 1998 General Session

Part 7
Rules of Construction for Governing Instruments

75-2-701 Scope.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-702 Requirement of survival by 120 hours -- Under probate code or governing instrument -- Co-owners -- Exceptions -- Protection of payors, third parties, and bona fide purchasers -- Personal liability of recipient.

(1) Except as provided in Subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in Subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) Except as provided in Subsection (4), if:

(a) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; and

(b) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival of the event or the specified period shall be established by clear and convincing evidence;

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under Section 75-2-1203 or to become invalid under Section 75-2-1203; but survival shall be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival shall be established by clear and convincing evidence.

(5)

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under Subsection (5)(a) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6)

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Amended by Chapter 301, 2003 General Session

75-2-703 Choice of law as to meaning and effect of governing instrument.

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, Elective Share of Surviving Spouse, the provisions relating to exempt property and allowances described in Part 4, Exempt Property and Allowances, or any other public policy of this state otherwise applicable to the disposition.

Enacted by Chapter 39, 1998 General Session

75-2-704 Power of appointment -- Meaning of specific reference requirement.

If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

Enacted by Chapter 39, 1998 General Session

75-2-705 Class gifts construed to accord with intestate succession.

(1) Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles," "aunts," "nieces," or "nephews," are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers," "sisters," "nieces," or "nephews," are construed to include both types of relationships.

(2) In addition to the requirements of Subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of Subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

Enacted by Chapter 39, 1998 General Session

75-2-706 Definitions -- Life insurance -- Retirement plan -- Account with POD designation -- Transfer-on-death registration -- Deceased beneficiary -- Substitute gift -- Protection of payors and bona fide purchasers -- Personal liability of recipient.

(1) As used in this section:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary shall survive the decedent and includes:
(i) a class member if the beneficiary designation is in the form of a class gift; and
(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.
(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.
(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he survived the decedent.
(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.
(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under Section 75-2-702.
(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:
(a) Except as provided in Subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.
(b) Except as provided in Subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of the body," "heirs," "next-of-kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.
(c) For the purposes of Section 75-2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me," or in a beneficiary designation to "my surviving children," are, in the absence of clear and convincing evidence, a sufficient indication of an intent contrary to the application of this section.
(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by Subsection (2)(a) or (b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.
(3)
(a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift

under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim shall be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(4)

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Enacted by Chapter 39, 1998 General Session

75-2-707 Definitions -- Survivorship with respect to future interests under terms of trust -- Substitute takers.

(1) As used in this section:

(a) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had he survived the distribution date.

(d) "Distribution date" with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under Section 75-2-702.

(2) A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in Subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in Subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next-of-kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this subsection, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of Section 75-2-701, words of survivorship attached to a future interest are, in the absence of clear and convincing evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by Subsection (2)(a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, after the application of this section, there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and
(b) if no taker is produced by the application of Subsection (3)(a), the property passes to the transferor's heirs under Section 75-2-711.

Enacted by Chapter 39, 1998 General Session

75-2-708 Class gifts to "descendants," "issue," or "heirs of the body" -- Form of distribution if none specified.

If a class gift in favor of "descendants," "issue," or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

Enacted by Chapter 39, 1998 General Session

75-2-709 Definitions -- Representation -- Per capita at each generation -- Per stirpes.

(1) As used in this section:
(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under Section 75-2-702.
(b) "Distribution date," with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
(c) "Surviving ancestor," "surviving child," or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under Section 75-2-702.
(2) If an applicable statute or a governing instrument calls for property to be distributed or taken "per capita at each generation," the property is divided into as many equal shares as there are:
(a) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants; and
(b) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.
(3) If a governing instrument calls for property to be distributed or taken "per stirpes," "by representation," or "by right of representation," the property is divided into as many equal shares as there are:
(a) surviving children of the designated ancestor; and
(b) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) If a governing instrument calls for property to be distributed or taken "per capita," "share and share alike," or "to the survivor of them," the property is divided into as many equal shares as there are living persons named on the distribution date.
(5) For the purposes of Subsections (2) and (3), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

Amended by Chapter 350, 2011 General Session

75-2-710 Worthier-title doctrine abolished.

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs-at-law," "next-of-kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

Enacted by Chapter 39, 1998 General Session

75-2-711 Interests in "heirs" and like.

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs," "heirs-at-law," "next-of-kin," "relatives," or "family," or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

Enacted by Chapter 39, 1998 General Session

Part 8
General Provisions

75-2-801 Disclaimer of property interests -- Time -- Form -- Effect -- Waiver and bar -- Remedy not exclusive -- Application.

(1) A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding:
  (a) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or
  (b) any restriction or limitation on the right to disclaim contained in the governing instrument.
  For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a person with a disability, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.
(2) The following rules govern the time when a disclaimer shall be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer shall be filed in the district court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer shall be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant or tenant by the entireties may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entireties devolving to the surviving joint tenant or tenant by the entireties, if the joint tenancy or tenancy by the entireties was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit under it.

(d) If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the county recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer shall:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent thereof; and

(c) be signed by the disclaimant.

(4) The effects of a disclaimer are:

(a) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed, or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate

or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.

(b) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

(5) The right to disclaim property or an interest therein is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or a benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(7) An interest in property that exists on July 1, 1998, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after July 1, 1998.

Amended by Chapter 366, 2011 General Session

75-2-802 Effect of divorce, annulment, and decree of separation.

(1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of Part 1, Intestate Succession, Part 2, Elective Share of Surviving Spouse, Part 3, Spouse and Children Unprovided for in Wills, and Part 4, Exempt Property and Allowances, and Section 75-3-203, a surviving spouse does not include:

(a) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(b) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Repealed and Re-enacted by Chapter 39, 1998 General Session

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

(1) As used in this section:
  (a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.
  (b) "Disqualifying homicide" means a homicide established by a preponderance of the evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5, Offenses Against the Person, except automobile homicide, applying the same principles of culpability and defenses as in Title 76, Utah Criminal Code, including but not limited to Chapter 2, Principles of Criminal Responsibility.
  (c) "Governing instrument" means a governing instrument executed by the decedent.
  (d) "Killer" means a person who commits a disqualifying homicide.
  (e) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate himself in place of his killer and whether or not the decedent then had capacity to exercise the power.
(2) An individual who commits a disqualifying homicide of the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his intestate share.
(3) The killing of the decedent by means of a disqualifying homicide:
  (a) revokes any revocable:
    (i) disposition or appointment of property made by the decedent to the killer in a governing instrument;
    (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and
    (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and
  (b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.
(4) A severance under Subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.
(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.
(6) A wrongful acquisition of property or interest by one who kills another under circumstances not covered by this section shall be treated in accordance with the principle that one who kills cannot profit from his wrong.

(7) The court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual has committed a disqualifying homicide of the decedent. If the court determines that, under that standard, the individual has committed a disqualifying homicide of the decedent, the determination conclusively establishes that individual as having committed a disqualifying homicide for purposes of this section, unless the court finds that the act of disinheritance would create a manifest injustice. A judgment of criminal conviction for a disqualifying homicide of the decedent, after all direct appeals have been exhausted, conclusively establishes that the convicted individual has committed the disqualifying homicide for purposes of this section.

(8)

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a disqualifying homicide, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of a claimed forfeiture or revocation under Subsection (8)(a) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9)

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Amended by Chapter 270, 2006 General Session

75-2-804 Definitions -- Revocation of probate and nonprobate transfers by divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona fide purchasers -- Personal liability of recipient -- No revocation by other changes of circumstances.

(1) As used in this section:

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

(b) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 75-2-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate another in place of the individual's former spouse or in place of the individual's former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument, which nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(3) A severance under Subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which are

relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in Section 75-2-803 effects a revocation.

(7)

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of the divorce, annulment, or remarriage under Subsection (7)(a) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8)

(a) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit, nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the

amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Amended by Chapter 264, 2013 General Session

75-2-805 Reformation to correct mistakes.

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Enacted by Chapter 93, 2010 General Session

75-2-806 Modification to achieve transferor's tax objectives.

To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

Enacted by Chapter 93, 2010 General Session

Part 9
Custody and Deposit of Wills

75-2-901 Deposit of will with court in testator's lifetime.

A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will shall be sealed and kept confidential. During the testator's lifetime, a deposited will shall be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request; or the court may deliver the will to the appropriate court.

Repealed and Re-enacted by Chapter 39, 1998 General Session

75-2-902 Duty of custodian of will -- Liability.

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate or to an appropriate court. A person who wilfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

Repealed and Re-enacted by Chapter 39, 1998 General Session

Part 10
Honorary Trusts

75-2-1001 Honorary trusts -- Trusts for pets.

(1) Subject to Subsection (3), if a trust is for a specific lawful noncharitable purpose or for a lawful noncharitable purpose to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years but no longer whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this Subsection (2) and Subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of Subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of Subsection (3)(b)(i) or (ii), to the transferor's heirs under Section 75-2-711.

(c) For the purposes of Section 75-2-707, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred, if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under Subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

Amended by Chapter 131, 2003 General Session

Part 12
Statutory Rule Against Perpetuities

75-2-1201 Statutory Rule Against Perpetuities.
This part is known as the "Statutory Rule Against Perpetuities."

Amended by Chapter 301, 2003 General Session

75-2-1202 Uniformity of application and construction.
This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

Enacted by Chapter 39, 1998 General Session

75-2-1203 Validity of nonvested property interest -- Validity of general power of appointment subject to a condition precedent -- Validity of nongeneral or testamentary power of appointment -- Effect of certain "later-of" type language.

(1) A nonvested property interest is invalid unless within 1,000 years after the interest's creation the interest vests or terminates.
(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless within 1,000 years after the general power of appointment's creation the power of appointment is irrevocably exercised or terminates.
(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless within 1,000 years after its creation the power of appointment is irrevocably exercised or terminates.
(4) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds 1,000 years after if, in measuring a period from the creation of a trust or other property arrangement, the language:
  (a) seeks to disallow the vesting or termination of any interest or trust beyond;
  (b) seeks to postpone the vesting or termination of any interest or trust until; or
  (c) seeks to operate in effect in any similar fashion upon, the later of:
    (i) the expiration of a period of time not exceeding 1,000 years; or
    (ii) the expiration of a period of time that exceeds or might exceed 1,000 years.
(5) If a nongeneral power of appointment is exercised to create a new presently exercisable general power of appointment, all property interests subject to that new presently exercisable general power of appointment are invalid unless, within 1,000 years after the creation of the new presently exercisable general power of appointment, the property interests that are subject to the new presently exercisable general power of appointment vest or terminate.
(6) If a nongeneral power of appointment is exercised to create a new or successive nongeneral power of appointment or a new or successive testamentary general power of appointment, all property interests subject to the exercise of that new or successive nongeneral or testamentary general power of appointment are invalid unless, within 1,000 years from the time of creation of the original instrument or conveyance creating the original nongeneral power of appointment that is exercised to create a new or successive nongeneral or testamentary general power of appointment, the property interests that are subject to the new or successive nongeneral or testamentary general power of appointment vest or terminate.

Amended by Chapter 364, 2013 General Session

75-2-1204 When nonvested property interest or power of appointment created.

(1) Except as provided in Subsections (2) and (3) and in Section 75-2-1207, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(a) a nonvested property interest; or

(b) a property interest subject to a power of appointment described in Section 75-2-1203, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this title, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Amended by Chapter 364, 2013 General Session

75-2-1205 Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 1,000 years allowed by Section 75-2-1203 if:

(1) a nonvested property interest or a power of appointment becomes invalid under Section 75-2-1203;

(2) a class gift is not but might become invalid under Section 75-2-1203 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by Section 75-2-1203 can vest but not within 1,000 years after its creation.

Amended by Chapter 301, 2003 General Session

75-2-1206 Exclusions from statutory rule against perpetuities.

Section 75-2-1203 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) a premarital or postmarital agreement;

(b) a separation or divorce settlement;

(c) a spouse's election;

(d) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) a contract to make or not to revoke a will or trust;

(f) a contract to exercise or not to exercise a power of appointment;

(g) a transfer in satisfaction of a duty of support; or

(h) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
(3) a power to appoint a fiduciary;
(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;
(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or
(8) a property interest or arrangement subjected to a time limit under Section 75-2-1001.

Enacted by Chapter 39, 1998 General Session

75-2-1206.5 Savings provision.

A property interest that becomes invalid pursuant to Section 75-2-1203 upon the expiration of the 1,000-year period shall be distributed as follows:
(1) If the property interest is payable to one person, it shall be distributed to that person. If the property interest is payable to more than one person, it shall be distributed to the persons to whom the property interest is then payable:
  (a) in the shares to which the persons are entitled; or
  (b) equally among all persons who are entitled to shares if not specified.
(2) If the property interest is payable in the discretion of a trustee and is payable to one person, it shall be distributed to that person. If the property interest is payable to more than one person, it shall be distributed to the persons eligible to receive it:
  (a) in the shares to which the persons are entitled; or
  (b) equally among all persons who are entitled to shares if not specified.
(3) When there is no person then living to whom a property interest may be distributed under Subsection (1) or (2), it shall be payable to one or more organizations described in 26 U.S.C. 2055(a) Internal Revenue Code, or successor provisions and in the shares or proportions that the trustee or trustees then acting may determine.

Enacted by Chapter 301, 2003 General Session

75-2-1207 Prospective application.

(1)
  (a) Except as extended by Subsection (2), this section applies to a nonvested property interest or a power of appointment that is created on or after December 31, 2003.

(b) For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when:
(i) the power is irrevocably exercised; or
(ii) a revocable exercise becomes irrevocable.
(2) If a nonvested property interest or a power of appointment was created before December 31, 2003, and is determined in a judicial proceeding, commenced on or after December 31, 2003, to violate Utah's rule against perpetuities as that rule existed before December 31, 2003, a court upon the petition of an interested person may reform the disposition:
(a) in the manner that most closely approximates the transferor's manifested plan of distribution; and
(b) that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.
(3) Section 75-2-1203 applies to a trust instrument or conveyance executed on or after December 31, 2003, if the trust instrument or conveyance creates a contingent power of appointment or nonvested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment.

Amended by Chapter 3, 2003 Special Session 2
Amended by Chapter 3, 2003 Special Session 2

75-2-1208 Rule against perpetuities does not apply.
The common law rule against perpetuities does not apply in this state.

Amended by Chapter 301, 2003 General Session

75-2-1209 Real estate conveyed to a trust under the Statutory Rule Against Perpetuities.
On or after the effective date, when title to real property is granted to the trustee of a trust governed by Title 75, Chapter 2, Part 12, Statutory Rule Against Perpetuities, the terms of the trust, provisions regarding the appointment of successor trustees, and the names and addresses of successor trustees must be disclosed in accordance with Section 75-7-816.

Amended by Chapter 89, 2004 General Session

Part 13
Transition Provisions

75-2-1301 Transitional provisions.
(1) On July 1, 1998:
(a) Any act done in any proceeding and any right accrued before July 1, 1998, is not impaired by the provisions of this title.
(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1997, the provisions shall remain in force with respect to that right.
(2) Any rule of construction or presumption provided in these provisions applies to governing instruments executed before July 1, 1997, unless there is a finding of a contrary intent.

Enacted by Chapter 39, 1998 General Session

Chapter 2a
Advance Health Care Directive Act

75-2a-101 Title.

This chapter is known as the "Advance Health Care Directive Act."

Enacted by Chapter 31, 2007 General Session

75-2a-102 Intent statement.

(1) The Legislature finds:
- (a) developments in health care technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of life;
- (b) an adult should have the clear legal choice to:
  - (i) accept or reject health care, even if rejecting health care will result in death sooner than death would be expected to occur if rejected health care were started or continued;
  - (ii) be spared unwanted procedures; and
  - (iii) be permitted to die with a maximum of dignity and function and a minimum of pain;
- (c) Utah law should:
  - (i) provide an adult with a legal tool to designate a health care agent and express preferences about health care options to go into effect only after the adult loses the ability to make or communicate health care decisions, including decisions about end-of-life care; and
  - (ii) promote an advance health care directive system that can be administered effectively within the health care system;
- (d) surrogate decisions made on behalf of an adult who previously had capacity to make health care decisions, but who has lost health care decision making capacity should be based on:
  - (i) input from the incapacitated adult, to the extent possible under the circumstances;
  - (ii) specific preferences expressed by the adult prior to the loss of health care decision making capacity;
  - (iii) the surrogate's understanding of the adult's health care preferences; and
  - (iv) the surrogate's understanding of what the adult would have wanted under the circumstances; and
- (e) surrogate decisions made on behalf of an adult who has never had health care decision making capacity should be made on the basis of the adult's best interest.

(2) In recognition of the dignity and privacy that each adult is entitled to expect, and to protect the right of an adult to refuse to be treated without the adult's consent, the Legislature declares that this state recognizes the right to make binding advance health care directives directing health care providers to:
- (a) provide life sustaining medically indicated health care;
- (b) withhold or withdraw health care; or
- (c) provide health care only to the extent set forth in an advance health care directive.

Amended by Chapter 107, 2008 General Session

75-2a-103 Definitions.

As used in this chapter:

(1) "Adult" means a person who is:
  (a) at least 18 years of age; or
  (b) an emancipated minor.

(2) "Advance health care directive":
  (a) includes:
    (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or
    (ii) an expression of preferences about health care decisions;
  (b) may take one of the following forms:
    (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or
    (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and
  (c) does not include a life with dignity order.

(3) "Agent" means a person designated in an advance health care directive to make health care decisions for the declarant.

(4) "APRN" means a person who is:
  (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(d);
  (b) an independent practitioner;
  (c) acting under a consultation and referral plan with a physician; and
  (d) acting within the scope of practice for that person, as provided by law, rule, and specialized certification and training in that person's area of practice.

(5) "Best interest" means that the benefits to the person resulting from a treatment outweigh the burdens to the person resulting from the treatment, taking into account:
  (a) the effect of the treatment on the physical, emotional, and cognitive functions of the person;
  (b) the degree of physical pain or discomfort caused to the person by the treatment or the withholding or withdrawal of treatment;
  (c) the degree to which the person's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the person by subjecting the person to humiliation and dependency;
  (d) the effect of the treatment on the life expectancy of the person;
  (e) the prognosis of the person for recovery with and without the treatment;
  (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and
  (g) the religious beliefs and basic values of the person receiving treatment, to the extent these may assist the decision maker in determining the best interest.

(6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular person as agent.

(7) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.

(8) "Default surrogate" means the adult who may make decisions for an individual when either:
  (a) an agent or guardian has not been appointed; or
  (b) an agent is not able, available, or willing to make decisions for an adult.

(9) "Emergency medical services provider" means a person who is licensed, designated, or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act.

(10) "Generally accepted health care standards":

(a) is defined only for the purpose of:
(i) this chapter and does not define the standard of care for any other purpose under Utah law; and
(ii) enabling health care providers to interpret the statutory form set forth in Section 75-2a-117; and
(b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:
(i) will not prevent or reduce the deterioration in the health or functional status of a person;
(ii) will not prevent the impending death of a person; or
(iii) will impose more burden on the person than any expected benefit to the person.
(11) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect a person's physical or mental condition.
(12) "Health care decision":
(a) means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider;
(b) includes:
(i) selection and discharge of a health care provider and a health care facility;
(ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and
(iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
(c) does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision.
(13) "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including:
(a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;
(b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and
(c) the ability to communicate a decision.
(14) "Health care facility" means:
(a) a health care facility as defined in Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and
(b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.
(15) "Health care provider" is as defined in Section 78B-3-403, except that it does not include an emergency medical services provider.
(16)
(a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.
(b) "Life sustaining care" does not include care provided for the purpose of keeping a person comfortable.
(17) "Life with dignity order" means an order, designated by the Department of Health under Section 75-2a-106(5)(a), that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the person to whom the order relates.
(18) "Minor" means a person who:

(a) is under 18 years of age; and
(b) is not an emancipated minor.
(19) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.
(20) "Physician assistant" means a person licensed as a physician assistant under Title 58, Chapter 70a, Physician Assistant Act.
(21) "Reasonably available" means:
(a) readily able to be contacted without undue effort; and
(b) willing and able to act in a timely manner considering the urgency of the circumstances.
(22) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:
(a) specific preferences expressed by the adult:
(i) when the adult had the capacity to make health care decisions; and
(ii) at the time the decision is being made;
(b) the surrogate's understanding of the adult's health care preferences;
(c) the surrogate's understanding of what the adult would have wanted under the circumstances; and
(d) to the extent that the preferences described in Subsections (22)(a) through (c) are unknown, the best interest of the adult.
(23) "Surrogate" means a health care decision maker who is:
(a) an appointed agent;
(b) a default surrogate under the provisions of Section 75-2a-108; or
(c) a guardian.

Amended by Chapter 99, 2009 General Session

75-2a-104 Capacity to make health care decisions -- Presumption -- Overcoming presumption.
(1) An adult is presumed to have:
(a) health care decision making capacity; and
(b) capacity to make or revoke an advance health care directive.
(2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must:
(a) find that the adult lacks health care decision making capacity;
(b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and
(c) make a reasonable effort to communicate the determination to:
(i) the adult;
(ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and
(iii) if the adult has a surrogate, any known surrogate.
(3)
(a) An adult who is found to lack health care decision making capacity in accordance with Subsection (2) may, at any time, challenge the finding by:
(i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's finding; or

(ii) orally informing the health care provider that the adult disagrees with the finding.
(b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
(c) A surrogate informed of a challenge to a finding under this section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:
(i) any other health care providers involved in the adult's care; and
(ii) the health care facility, if any, in which the adult is receiving care.
(d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding under Subsection (3)(a).
(e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.
(4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity.
(5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.
(6) A physician assistant may not make a finding described in Subsection (2), unless the physician assistant is permitted to make the finding under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.

Amended by Chapter 99, 2009 General Session

75-2a-105 Capacity to complete an advance health care directive.
(1) An adult is presumed to have the capacity to complete an advance health care directive.
(2) An adult who is found to lack health care decision making capacity under the provisions of Section 75-2a-104:
(a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75-2a-117, or any other substantially similar form expressing a health care preference; and
(b) may retain the capacity to appoint an agent and complete Part I of the form created in Section 75-2a-117.
(3) The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent:
(a) whether the adult has expressed over time an intent to appoint the same person as agent;
(b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and
(c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.

Amended by Chapter 107, 2008 General Session

75-2a-106 Emergency medical services -- Life with dignity order.

(1) A life with dignity order may be created by or on behalf of a person as described in this section.
(2) A life with dignity order shall, in consultation with the person authorized to consent to the order pursuant to this section, be prepared by:
(a) the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the life with dignity order relates; or
(b) a health care provider who:
(i) is acting under the supervision of a person described in Subsection (2)(a); and
(ii) is:
(A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;
(B) a physician assistant, licensed under Title 58, Chapter 70a, Physician Assistant Act;
(C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; or
(D) another health care provider, designated by rule as described in Subsection (10).
(3) A life with dignity order shall be signed:
(a) personally, by the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the life with dignity order relates; and
(b)
(i) if the person to whom the life with dignity order relates is an adult with health care decision making capacity, by:
(A) the person; or
(B) an adult who is directed by the person to sign the life with dignity order on behalf of the person;
(ii) if the person to whom the life with dignity order relates is an adult who lacks health care decision making capacity, by:
(A) the surrogate with the highest priority under Section 75-2a-111;
(B) the majority of the class of surrogates with the highest priority under Section 75-2a-111; or
(C) a person directed to sign the order by, and on behalf of, the persons described in Subsection (3)(b)(ii)(A) or (B); or
(iii) if the person to whom the life with dignity order relates is a minor, by a parent or guardian of the minor.
(4) If a life with dignity order relates to a minor and directs that life sustaining treatment be withheld or withdrawn from the minor, the order shall include a certification by two physicians that, in their clinical judgment, an order to withhold or withdraw life sustaining treatment is in the best interest of the minor.
(5) A life with dignity order:
(a) shall be in writing, on a form approved by the Department of Health;
(b) shall state the date on which the order was made;
(c) may specify the level of life sustaining care to be provided to the person to whom the order relates; and
(d) may direct that life sustaining care be withheld or withdrawn from the person to whom the order relates.
(6) A health care provider or emergency medical service provider, licensed or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, is immune from civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:
(a) complying with a life with dignity order in good faith; or
(b) providing life sustaining treatment to a person when a life with dignity order directs that the life sustaining treatment be withheld or withdrawn.

(7) To the extent that the provisions of a life with dignity order described in this section conflict with the provisions of an advance health care directive made under Section 75-2a-107, the provisions of the life with dignity order take precedence.
(8) An adult, or a parent or guardian of a minor, may revoke a life with dignity order by:
(a) orally informing emergency service personnel;
(b) writing "void" across the form;
(c) burning, tearing, or otherwise destroying or defacing:
(i) the form; or
(ii) a bracelet or other evidence of the life with dignity order;
(d) asking another adult to take the action described in this Subsection (8) on the person's behalf;
(e) signing or directing another adult to sign a written revocation on the person's behalf;
(f) stating, in the presence of an adult witness, that the person wishes to revoke the order; or
(g) completing a new life with dignity order.
(9)
(a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks health care decision making capacity may only revoke a life with dignity order if the revocation is consistent with the substituted judgment standard.
(b) Except as provided in Subsection (9)(c), a surrogate who has authority under this section to sign a life with dignity order may revoke a life with dignity order, in accordance with Subsection (9)(a), by:
(i) signing a written revocation of the life with dignity order; or
(ii) completing and signing a new life with dignity order.
(c) A surrogate may not revoke a life with dignity order during the period of time beginning when an emergency service provider is contacted for assistance, and ending when the emergency ends.
(10)
(a) The Department of Health shall adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(i) create the forms and systems described in this section; and
(ii) develop uniform instructions for the form established in Section 75-2a-117.
(b) The Department of Health may adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a life with dignity order.
(c) The Department of Health may assist others with training of health care professionals regarding this chapter.
(11) A physician assistant may not prepare or sign a life with dignity order, unless the physician assistant is permitted to prepare or sign the life with dignity order under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.

Amended by Chapter 99, 2009 General Session

75-2a-107 Advance health care directive -- Appointment of agent -- Powers of agent -- Health care directions.
(1)
(a) An adult may make an advance health care directive in which the adult may:
(i) appoint a health care agent or choose not to appoint a health care agent;
(ii) give directions for the care of the adult after the adult loses health care decision making capacity;

(iii) choose not to give directions;
(iv) state conditions that must be met before life sustaining treatment may be withheld or withdrawn;
(v) authorize an agent to consent to the adult's participation in medical research;
(vi) nominate a guardian;
(vii) authorize an agent to consent to organ donation;
(viii) expand or limit the powers of a health care agent; and
(ix) designate the agent's access to the adult's medical records.
(b) An advance health care directive may be oral or written.
(c) An advance health care directive shall be witnessed by a disinterested adult. The witness may not be:
(i) the person who signed the directive on behalf of the declarant;
(ii) related to the declarant by blood or marriage;
(iii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
(iv) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
(A) a life insurance policy;
(B) a trust;
(C) a qualified plan;
(D) a pay on death account; or
(E) a transfer on death deed;
(v) entitled to benefit financially upon the death of the declarant;
(vi) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
(vii) directly financially responsible for the declarant's medical care;
(viii) a health care provider who is:
(A) providing care to the declarant; or
(B) an administrator at a health care facility in which the declarant is receiving care; or
(ix) the appointed agent.
(d) The witness to an oral advance health care directive shall state the circumstances under which the directive was made.
(2) An agent appointed under the provisions of this section may not be a health care provider for the declarant, or an owner, operator, or employee of the health care facility at which the declarant is receiving care unless the agent is related to the declarant by blood, marriage, or adoption.

Amended by Chapter 107, 2008 General Session

75-2a-108 Default surrogates.
(1)
(a) Any member of the class described in Subsection (1)(b) may act as an adult's surrogate if:
(i)
(A) the adult has not appointed an agent;
(B) an appointed agent is not reasonably available; or
(C) a guardian has not been appointed; and
(ii) the member of the class described in Subsection (1)(b) is:
(A) over 18 years of age;
(B) has health care decision making capacity;

(C) is reasonably available; and
(D) has not been disqualified by the adult or a court.
(b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the following classes of the adult's family, in descending order of priority, may act as the adult's surrogate:
(i) the adult's spouse, unless the adult is divorced or legally separated; or
(ii) the following family members:
(A) a child;
(B) a parent;
(C) a sibling;
(D) a grandchild; or
(E) a grandparent.
(c) A person described in Subsection (1)(b), may not direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult.
(d) A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed.
(2) If the family members designated in Subsection (1)(b) are not reasonably available to act as a surrogate, a person who is 18 years of age or older, other than those designated in Subsection (1) may act as a surrogate if the person:
(a) has health care decision making capacity;
(b) has exhibited special care and concern for the patient;
(c) knows the patient and the patient's personal values; and
(d) is reasonably available to act as a surrogate.
(3) The surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of a class who:
(a) have an equal or higher priority and are not acting as surrogate; and
(b) can be readily contacted.
(4) A health care provider shall comply with the decision of a majority of the members of the highest priority class who have communicated their views to the provider if:
(a) more than one member of the highest priority class assumes authority to act as default surrogate;
(b) the members of the class do not agree on a health care decision; and
(c) the health care provider is informed of the disagreement among the members of the class.
(5)
(a) An adult may at any time disqualify a default surrogate, including a member of the adult's family, from acting as the adult's surrogate by:
(i) a signed writing;
(ii) personally informing a witness of the disqualification; or
(iii) informing the surrogate of the disqualification.
(b) Disqualification of a surrogate is effective even if the adult has been found to lack health care decision making capacity.
(6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a default surrogate, the health care provider may:
(a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or
(b) seek a ruling from the court under Section 75-2a-120.

(7) A health care provider may seek a ruling from a court pursuant to Section 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are inconsistent with an adult patient's wishes or preferences.

Amended by Chapter 107, 2008 General Session

75-2a-109 Effect of current health care preferences -- When a surrogate may act.

(1) An adult with health care decision making capacity retains the right to make health care decisions as long as the adult has health care decision making capacity as defined in Section 75-2a-103. For purposes of this chapter, the inability to communicate through speech does not mean that the adult lacks health care decision making capacity.
(2) An adult's current health care decisions, however expressed or indicated, always supersede an adult's prior decisions or health care directives.
(3) Unless otherwise directed in an advance health care directive, an advance health care directive or the authority of a surrogate to make health care decisions on behalf of an adult:
  (a) is effective only after a physician, physician assistant, or APRN makes a determination of incapacity as provided in Section 75-2a-104;
  (b) remains in effect during any period of time in which the declarant lacks capacity to make health care decisions; and
  (c) ceases to be effective when:
    (i) a declarant disqualifies a surrogate or revokes the advance health care directive;
    (ii) a health care provider finds that the declarant has health care decision making capacity;
    (iii) a court issues an order invalidating a health care directive; or
    (iv) the declarant has challenged the finding of incapacity under the provisions of Subsection 75-2a-104(3).

Amended by Chapter 99, 2009 General Session

75-2a-110 Surrogate decision making -- Scope of authority.

(1) A surrogate acting under the authority of either Section 75-2a-107 or 75-2a-108 shall make health care decisions in accordance with:
  (a) the adult's current preferences, to the extent possible;
  (b) the adult's written or oral health care directions, if any; or
  (c) the substituted judgment standard.
(2) A surrogate acting under authority of Sections 75-2a-107 and 75-2a-108:
  (a) may not admit the adult to a licensed health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over the objection of the adult; and
  (b) may make health care decisions, including decisions to terminate life sustaining treatment for the adult patient in accordance with Subsection (1).
(3) A surrogate acting under authority of this section is not subject to civil or criminal liability or claims of unprofessional conduct for surrogate health care decisions made:
  (a) in accordance with this section; and
  (b) in good faith.

Amended by Chapter 107, 2008 General Session

75-2a-111 Priority of decision makers.

(1) The following is the order of priority of those authorized to make health care decisions on behalf of an adult who has been found to lack health care decision making capacity under Section 75-2a-104:
  (a) a health care agent appointed by an adult under the provisions of Section 75-2a-107 unless the agent has been disqualified by:
    (i) the adult; or
    (ii) a court of law;
  (b) a court-appointed guardian; or
  (c) the highest priority default surrogate acting under authority of Section 75-2a-108.
(2) A health care provider or health care facility obtaining consent for health care from a surrogate shall make a reasonable effort to identify and obtain consent from the surrogate with the highest priority.

Amended by Chapter 107, 2008 General Session

75-2a-112 Decisions by guardian.
(1) A court-appointed guardian shall comply with an adult's advance health care directive and may not revoke the adult's advance health care directive unless the court, for cause, expressly revokes the adult's directive.
(2) A health care decision of an agent takes precedence over that of a guardian, in the absence of a court order to the contrary.
(3) Except as provided in Subsections (1) and (2), a health care decision made by a guardian for the adult patient is effective without judicial approval.
(4) A guardian is not subject to civil or criminal liability or to claims of unprofessional conduct for a surrogate health care decision made:
  (a) in good faith; and
  (b) in accordance with Section 75-2a-110.

Amended by Chapter 107, 2008 General Session

75-2a-113 Personal representative status.
A surrogate becomes a personal representative for an adult under the Health Insurance Portability and Accountability Act of 1996 when:
(1) the adult has been found to lack health care decision making capacity under Section 75-2a-104;
(2) the adult grants current authority to the surrogate either:
  (a) in writing; or
  (b) by other expression before a witness who is not the surrogate or agent; or
(3) the court appoints a guardian authorized to make health care decisions on behalf of the adult.

Amended by Chapter 107, 2008 General Session

75-2a-114 Revocation of directive.
(1) An advance directive may be revoked at any time by the declarant by:
  (a) writing "void" across the document;
  (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke;
  (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);

(d) a written revocation of the directive signed and dated by:
(i) the declarant; or
(ii) an adult:
(A) signing on behalf of the declarant; and
(B) acting at the direction of the declarant; or
(e) an oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years or older and who is not:
(i) related to the declarant by blood or marriage;
(ii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
(iii) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
(A) a life insurance policy;
(B) a trust;
(C) a qualified plan;
(D) a pay on death account; or
(E) a transfer on death deed;
(iv) entitled to benefit financially upon the death of the declarant;
(v) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
(vi) directly financially responsible for the declarant's medical care;
(vii) a health care provider who is:
(A) providing care to the declarant; or
(B) an administrator at a health care facility in which the declarant is receiving care; or
(viii) the adult who will become agent or default surrogate after the revocation.
(2) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes the designation of a spouse as an agent, unless:
(a) otherwise specified in the decree; or
(b) the declarant has affirmed the intent to retain the agent subsequent to the annulment, divorce, or legal separation.
(3) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

Amended by Chapter 107, 2008 General Session

75-2a-115 Notification to health care provider -- Obligations of health care providers -- Liability.

(1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility is not assigned to a health care provider or health care facility by state or federal law, to notify or provide for notification to a health care provider and a health care facility of:
(a) the existence of a health care directive;
(b) the revocation of a health care directive;
(c) the existence or revocation of appointment of an agent or default surrogate;
(d) the disqualification of a default surrogate; or
(e) the appointment or revocation of appointment of a guardian.
(2)
(a) A health care provider or health care facility is not subject to civil or criminal liability or to claims of unprofessional conduct for failing to act upon a health care directive, a revocation of a health care directive, or a disqualification of a surrogate until the health care provider or

health care facility has received an oral directive from an adult or a copy of a written directive or revocation of the health care directive, or the disqualification of the surrogate.

(b) A health care provider and health care facility that is notified under Subsection (1) shall include in the adult patient's medical record:

(i) the health care directive or a copy of it, a revocation of a health care directive, or a disqualification of a surrogate; and

(ii) the date, time, and place in which any written or oral notice of the document described in this Subsection (2)(b) is received.

(3) A health care provider or health care facility acting in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision made by an adult with health care decision making capacity;

(b) complying with a health care decision made by a surrogate apparently having authority to make a health care decision for a person, including a decision to withhold or withdraw health care;

(c) declining to comply with a health care decision of a surrogate based on a belief that the surrogate then lacked authority;

(d) declining to comply with a health care decision of an adult who lacks decision making capacity;

(e) seeking a judicial determination, or requiring a surrogate to obtain a judicial determination, under Section 75-2a-120 of:

(i) the validity of a health care directive;

(ii) the validity of directions from a surrogate or guardian;

(iii) the decision making capacity of an adult who challenges a physician's finding of incapacity; or

(iv) the authority of a guardian or surrogate; or

(f) complying with an advance health care directive and assuming that the directive was valid when made, and has not been revoked or terminated.

(4)

(a) Health care providers and health care facilities shall:

(i) cooperate with a person authorized under this chapter to make written directives concerning health care;

(ii) unless the provisions of Subsection (4)(b) apply, comply with:

(A) a health care decision of an adult; and

(B) a health care decision made by the highest ranking surrogate then authorized to make health care decisions for an adult, to the same extent as if the decision had been made by the adult;

(iii) before implementing a health care decision made by a surrogate, make a reasonable attempt to communicate to the adult on whose behalf the decision is made:

(A) the decision made; and

(B) the identity of the surrogate making the decision.

(b) A health care provider or health care facility may decline to comply with a health care decision if:

(i) in the opinion of the health care provider:

(A) the adult who made the decision lacks health care decision making capacity;

(B) the surrogate who made the decision lacks health care decision making capacity;

(C) the health care provider has evidence that the surrogate's instructions are inconsistent with the adult's health care instructions, or, for a person who has always lacked health care decision making capacity, that the surrogate's instructions are inconsistent with the best interest of the adult; or

(D) there is reasonable doubt regarding the status of a person claiming the right to act as a default surrogate, in which case the health care provider shall comply with Subsection 75-2a-108(6); or

(ii) the health care provider declines to comply for reasons of conscience.

(c) A health care provider or health care facility that declines to comply with a health care decision in accordance with Subsection (4)(b) must:

(i) promptly inform the adult and any acting surrogate of the reason for refusing to comply with the health care decision;

(ii) make a good faith attempt to resolve the conflict; and

(iii) provide continuing care to the patient until the issue is resolved or until a transfer can be made to a health care provider or health care facility that will implement the requested instruction or decision.

(d) A health care provider or health care facility that declines to comply with a health care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the adult to a health care provider or health care facility that will carry out the requested health care decisions.

(e) A health care facility may decline to follow a health care decision for reasons of conscience under Subsection (4)(b)(ii) if:

(i) the health care decision is contrary to a policy of the facility that is expressly based on reasons of conscience;

(ii) the policy was timely communicated to the adult and an adult's surrogate;

(iii) the facility promptly informs the adult, if possible, and any surrogate then authorized to make decisions for the adult;

(iv) the facility provides continuing care to the adult until a transfer can be made to a health care facility that will implement the requested instruction or decision; and

(v) unless an adult or surrogate then authorized to make health care decisions for the adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the adult to another health care facility that will carry out the instructions or decisions.

(5) A health care provider and health care facility:

(a) may not require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care; and

(b) shall comply with all state and federal laws and regulations governing advance health care directives.

Amended by Chapter 107, 2008 General Session

75-2a-116 Presumption of validity of directive.

(1) A health care directive executed under this chapter is presumed valid and binding.

(2) Health care providers and health care facilities, in the absence of notice to the contrary, shall presume that a declarant who executed a health care directive, whether or not in the presence of a health care provider, had the required decision making capacity at the time the declarant signed the directive. The fact a declarant executed a health care directive shall not be construed as an indication that the declarant was suffering from mental illness or lacked decision making capacity.

Enacted by Chapter 31, 2007 General Session

75-2a-117 Optional form.

(1) The form created in Subsection (2), or a substantially similar form, is presumed valid under this chapter.

(2) The following form is presumed valid under Subsection (1):

Utah Advance Health Care Directive

(Pursuant to Utah Code Section 75-2a-117)

Part I: Allows you to name another person to make health care decisions for you when you cannot make decisions or speak for yourself.

Part II: Allows you to record your wishes about health care in writing.

Part III: Tells you how to revoke or change this directive.

Part IV: Makes your directive legal.

_____

My Personal Information

Name: _____

Street Address: _____

City, State, Zip Code:

_____

Telephone: _____ Cell Phone: _____

Birth date: _____

_____

Part I: My Agent (Health Care Power of Attorney)

A. No Agent

If you do not want to name an agent: initial the box below, then go to Part II; do not name an agent in B or C below. No one can force you to name an agent.

_____ I do not want to choose an agent.

B. My Agent

Agent's Name:

_____

Street Address:

_____

City, State, Zip Code:

_____

Home Phone: ( ) _____ Cell Phone: ( ) _____ Work Phone: ( ) _____

C. My Alternate Agent

This person will serve as your agent if your agent, named above, is unable or unwilling to serve.

Alternate Agent's Name:

_____

Street Address:

_____

City, State, Zip Code:

_____

Home Phone: ( ) _____ Cell Phone: ( ) _____ Work Phone: ( ) _____

D. Agent's Authority

If I cannot make decisions or speak for myself (in other words, after my physician or another authorized provider finds that I lack health care decision making capacity under Section

75-2a-104 of the Advance Health Care Directive Act), my agent has the power to make any health care decision I could have made such as, but not limited to:

- Consent to, refuse, or withdraw any health care. This may include care to prolong my life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.
- Hire and fire health care providers.
- Ask questions and get answers from health care providers.
- Consent to admission or transfer to a health care provider or health care facility, including a mental health facility, subject to any limits in paragraphs E and F of Part I.
- Get copies of my medical records.
- Ask for consultations or second opinions.

My agent cannot force health care against my will, even if a physician has found that I lack health care decision making capacity.

E. Other Authority

My agent has the powers below ONLY IF I initial the "yes" option that precedes the statement. I authorize my agent to:

YES _____ NO _____ Get copies of my medical records at any time, even when I can speak for myself.

YES _____ NO _____ Admit me to a licensed health care facility, such as a hospital, nursing home, assisted living, or other facility for long-term placement other than convalescent or recuperative care.

F. Limits/Expansion of Authority

I wish to limit or expand the powers of my health care agent as follows:

_____

_____

G. Nomination of Guardian

Even though appointing an agent should help you avoid a guardianship, a guardianship may still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a guardianship is ever necessary.

YES _____ NO _____ I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date of this instrument, I become incapacitated.

H. Consent to Participate in Medical Research

YES _____ NO _____ I authorize my agent to consent to my participation in medical research or clinical trials, even if I may not benefit from the results.

I. Organ Donation

YES _____ NO _____ If I have not otherwise agreed to organ donation, my agent may consent to the donation of my organs for the purpose of organ transplantation.

Part II: My Health Care Wishes (Living Will)

I want my health care providers to follow the instructions I give them when I am being treated, even if my instructions conflict with these or other advance directives. My health care providers should always provide health care to keep me as comfortable and functional as possible. Choose only one of the following options, numbered Option 1 through Option 4, by placing your initials before the numbered statement. Do not initial more than one option. If you do not wish

to document end-of-life wishes, initial Option 4. You may choose to draw a line through the options that you are not choosing.

Option 1

_____ Initial

I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent about my health care wishes. I trust my agent to make the health care decisions for me that I would make under the circumstances.

Additional Comments:

_____

Option 2

_____ Initial

I choose to prolong life. Regardless of my condition or prognosis, I want my health care team to try to prolong my life as long as possible within the limits of generally accepted health care standards.

Other:

_____

Option 3

_____ Initial

I choose not to receive care for the purpose of prolonging life, including food and fluids by tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care and routine medical care that will keep me as comfortable and functional as possible, even if that care may prolong my life.

If you choose this option, you must also choose either (a) or (b), below.

_____ Initial

(a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life-sustaining care.

If you selected (a), above, do not choose any options under (b).

_____ Initial

(b) My health care provider should withhold or withdraw life-sustaining care if at least one of the following initialed conditions is met:

_____ I have a progressive illness that will cause death.

_____ I am close to death and am unlikely to recover.

_____ I cannot communicate and it is unlikely that my condition will improve.

_____ I do not recognize my friends or family and it is unlikely that my condition will improve.

_____ I am in a persistent vegetative state.

Other:

_____

Option 4

_____ Initial

I do not wish to express preferences about health care wishes in this directive.

Other:

_____

Additional instructions about your health care wishes:

_____

_____

If you do not want emergency medical service providers to provide CPR or other life sustaining measures, you must work with a physician or APRN to complete an order that reflects your wishes on a form approved by the Utah Department of Health.

Part III: Revoking or Changing a Directive

I may revoke or change this directive by:

1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this document or directing another person to do the same on my behalf;
2. Signing a written revocation of the directive, or directing another person to sign a revocation on my behalf;
3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years of age or older; will not be appointed as my agent in a substitute directive; will not become a default surrogate if the directive is revoked; and signs and dates a written document confirming my statement; or
4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the most recent one applies.)

Part IV: Making My Directive Legal

I sign this directive voluntarily. I understand the choices I have made and declare that I am emotionally and mentally competent to make this directive. My signature on this form revokes any living will or power of attorney form, naming a health care agent, that I have completed in the past.

_____

Date

_____

Signature

_____

City, County, and State of Residence

I have witnessed the signing of this directive, I am 18 years of age or older, and I am not:

1. related to the declarant by blood or marriage;
2. entitled to any portion of the declarant's estate according to the laws of intestate succession of any state or jurisdiction or under any will or codicil of the declarant;
3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or transfer on death deed that is held, owned, made, or established by, or on behalf of, the declarant;
4. entitled to benefit financially upon the death of the declarant;
5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
6. directly financially responsible for the declarant's medical care;
7. a health care provider who is providing care to the declarant or an administrator at a health care facility in which the declarant is receiving care; or
8. the appointed agent or alternate agent.

_____ _____

Signature of Witness Printed Name of Witness

_____ _____ _____ _____

Street Address City State Zip Code

If the witness is signing to confirm an oral directive, describe below the circumstances under which the directive was made.

_____

_____

Amended by Chapter 99, 2009 General Session

75-2a-118 Illegal destruction or falsification of health care directive.

(1) A person is guilty of a class B misdemeanor if the person:
(a) willfully conceals, cancels, defaces, obliterates, or damages a health care directive of another without the declarant's consent; or
(b) falsifies, forges, or alters a health care directive or a revocation of the health care directive of another person.
(2) A person is guilty of criminal homicide if:
(a) the person:
(i) falsifies or forges the health care directive of an adult; or
(ii) willfully conceals or withholds personal knowledge of:
(A) the existence of a health care directive;
(B) the revocation of a health care directive; or
(C) the disqualification of a surrogate; and
(b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life sustaining procedures contrary to the wishes of a declarant resulting in the death of the declarant.

Amended by Chapter 107, 2008 General Session

75-2a-119 Health care directive effect on insurance policies.
(1) If an adult makes a health care directive under this chapter, the health care directive does not affect in any manner:
(a) the obligation of any life or medical insurance company regarding any policy of life or medical insurance;
(b) the sale, procurement, or issuance of any policy of life or health insurance; or
(c) the terms of any existing policy.
(2)
(a) Notwithstanding any terms of an insurance policy to the contrary, an insurance policy is not legally impaired or invalidated in any manner by:
(i) withholding or withdrawing life sustaining procedures; or
(ii) following directions in a health care directive executed as provided in this chapter.
(b) Following health care instructions in a health care directive does not constitute legal cause for failing to pay life or health insurance benefits. Death that occurs after following the instructions of an advance health care directive or a surrogate's instructions does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit.
(3)
(a) The following may not require an adult to execute a directive or to make any particular choices or entries in a directive under this chapter as a condition for being insured for or receiving health care or life insurance contract services:
(i) a health care provider;
(ii) a health care facility;
(iii) a health maintenance organization;
(iv) an insurer issuing disability, health, or life insurance;
(v) a self-insured employee welfare or benefit plan;
(vi) a nonprofit medical service corporation or mutual nonprofit hospital service corporation; or
(vii) any other person, firm, or entity.
(b) Nothing in this chapter:
(i) may be construed to require an insurer to insure risks otherwise considered by the insurer as not a covered risk;

(ii) is intended to impair or supersede any other legal right or legal responsibility which an adult may have to effect the withholding or withdrawal of life sustaining procedures in any lawful manner; or
(iii) creates any presumption concerning the intention of an adult who has not executed a health care directive.

Amended by Chapter 107, 2008 General Session

75-2a-120 Judicial relief.

A district court may enjoin or direct a health care decision, or order other equitable relief based on a petition filed by:
(1) a patient;
(2) an agent of a patient;
(3) a guardian of a patient;
(4) a default surrogate of a patient;
(5) a health care provider of a patient;
(6) a health care facility providing care for a patient; or
(7) an individual who meets the requirements of Section 75-2a-108.

Enacted by Chapter 31, 2007 General Session

75-2a-121 Reciprocity -- Application of former provisions of law.

Unless otherwise provided in the health care directive:
(1) a health care provider or health care facility may, in good faith, rely on any health care directive, power of attorney, or similar instrument:
(a) executed in another state; or
(b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2, Part 11, Personal Choice and Living Will Act;
(2) a health care directive executed under the provisions of this chapter shall be governed pursuant to the provisions of this chapter that were in effect at that time, unless it appears from the directive that the declarant intended the current provisions of this chapter to apply; and
(3) the health care directive described in Subsection (1) is presumed to comply with the requirements of this chapter.

Amended by Chapter 107, 2008 General Session

75-2a-122 Effect of act.

The Advance Health Care Directive Act created in this chapter does not:
(1) create a presumption concerning the intention of an adult who has not made or who has revoked an advance health care directive;
(2) authorize mercy killing, assisted suicide, or euthanasia; or
(3) authorize the provision, withholding, or withdrawal of health care, to the extent prohibited by the laws of this state.

Amended by Chapter 107, 2008 General Session

75-2a-123 Pregnancy.

(1) A health care directive that provides for the withholding or withdrawal of life sustaining procedures has no force during the course of a declarant's pregnancy.
(2) Subsection (1) does not negate the appointment of a health care agent during the course of a declarant's pregnancy.

Amended by Chapter 107, 2008 General Session

75-2a-124 Provisions cumulative with existing law.
The provisions of this chapter are cumulative with existing law regarding a person's right to consent or refuse to consent to medical treatment and do not impair any existing rights or responsibilities that a health care provider, a person, including a minor or incapacitated person, or a person's family or surrogate may have in regard to the provision, withholding or withdrawal of life sustaining procedures under the common law or statutes of the state.

Amended by Chapter 107, 2008 General Session

75-2a-125 Severability.
If any one or more provision, section, subsection, sentence, clause, phrase, or word of this chapter, or the application of this chapter to any person or circumstance, is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Enacted by Chapter 107, 2008 General Session

Chapter 2b
Uniform Disposition of Community Property Rights At Death Act

75-2b-101 Title.
This chapter is known as the "Uniform Disposition of Community Property Rights at Death Act."

Enacted by Chapter 132, 2012 General Session

75-2b-102 Application.
This chapter applies to the disposition at death of the following property acquired by a married person:
(1) all personal property, wherever situated:
  (a) which was acquired as or became, and remained, community property under the laws of another jurisdiction;
  (b) all or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or
  (c) traceable to that community property; and
(2) all or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or

which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

Enacted by Chapter 132, 2012 General Session

75-2b-103 Rebuttable presumptions.

In determining whether this chapter applies to specific property, the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property, is presumed to have been acquired as or to have become, and remained, property to which this chapter applies; and

(2) real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this chapter applies.

Enacted by Chapter 132, 2012 General Session

75-2b-104 Disposition upon death.

Upon the death of a married person, 1/2 of the property to which this chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. Property to which this chapter applies may not reduce, be subject to, or be used in calculating, the surviving spouse's elective share under this title.

Enacted by Chapter 132, 2012 General Session

75-2b-105 Perfection of title of surviving spouse.

If the title to any property to which this chapter applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. Any action to perfect title shall be brought by the surviving spouse or the surviving spouse's successors in interest within four months after written notification is received from the decedent's personal representative, or the successor trustee of the decedent's revocable trust, informing the surviving spouse of the limitations period. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this chapter applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

Enacted by Chapter 132, 2012 General Session

75-2b-106 Perfection of title of personal representative, heir or devisee.

If the title to any property to which this chapter applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is

property to which this chapter applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

Enacted by Chapter 132, 2012 General Session

75-2b-107 Purchaser for value or lender.

(1) If a surviving spouse has apparent title to property to which this chapter applies, a purchaser for value or a lender taking a security interest in the property, takes the purchaser or lender's interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.
(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this chapter applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser or lender's interest in the property free of any rights of the surviving spouse.
(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.
(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

Enacted by Chapter 132, 2012 General Session

75-2b-108 Creditor's rights.

This chapter does not affect rights of creditors with respect to property to which this chapter applies.

Enacted by Chapter 132, 2012 General Session

75-2b-109 Acts of married persons.

This chapter does not prevent married persons from severing or altering their interests in property to which this chapter applies.

Enacted by Chapter 132, 2012 General Session

75-2b-110 Limitations on testamentary disposition.

This chapter does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

Enacted by Chapter 132, 2012 General Session

75-2b-111 Uniformity of application and construction.

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

Enacted by Chapter 132, 2012 General Session

Chapter 3
Probate of Wills and Administration

Part 1
General Provisions

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

The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person his real and personal property devolves to persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, rights of creditors, elective share of the surviving spouse, and administration.

Enacted by Chapter 150, 1975 General Session

75-3-102 Necessity of order of probate for will.

Except as provided in Section 75-3-1201, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if both:

(1) no court proceeding concerning the succession or administration of the estate was commenced during the time period for testacy proceedings; and

(2) either the devisee or the devisee's successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Amended by Chapter 364, 2013 General Session

75-3-103 Necessity of appointment for administration.

Except as otherwise provided in Title 75, Chapter 4, Foreign Personal Representatives - Ancillary Administration, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

Enacted by Chapter 150, 1975 General Session

75-3-104 Claims against decedent -- Necessity of administration.

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Chapter 3, Probate of Wills and Administration. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in Section 75-3-1004 or from a former personal representative individually liable as

provided in Section 75-3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

Enacted by Chapter 150, 1975 General Session

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

(1) Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this chapter and may petition the court for orders in formal proceedings within the court's jurisdiction, including, but not limited to those described in this chapter. The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with Section 75-1-401. Persons notified are bound though less than all interested persons may have been given notice.

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

Enacted by Chapter 150, 1975 General Session

75-3-106 Scope of proceedings -- Proceedings independent -- Exception.

(1) Unless supervised administration as described in Part 5, Supervised Administration, is involved:

(a) Each proceeding before the court or registrar is independent of any other proceeding involving the same estate.

(b) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this chapter, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(c) Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives.

(d) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

Enacted by Chapter 150, 1975 General Session

75-3-107 Probate and testacy proceedings -- Ultimate time limit -- Presumption and order of intestacy.

(1) No informal probate proceeding or formal testacy proceeding, other than a proceeding to probate a will previously probated at the testator's domicile, may be commenced more than three years after the decedent's death, except:

(a) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding.

(b) Appropriate probate or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
(c) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death.
(2) The limitations provided in Subsection (1) do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the date on which a testacy proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.
(3) If no will is probated within three years from death, the presumption of intestacy is final and the court shall upon filing a proper petition enter an order to that effect.
(4) Notwithstanding the time restriction in Subsection (1), the court has continuing jurisdiction to:
(a) determine what property was owned by the decedent at the time of death; and
(b) appoint, formally or informally, a personal representative or special administrator to administer the decedent's estate.

Amended by Chapter 142, 2014 General Session

75-3-108 Statutes of limitation on decedent's cause of action.

No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death shall apply to bar a cause of action surviving the decedent's death sooner than 12 months after death. A cause of action which, but for this section, would have been barred less than 12 months after death, is barred after 12 months unless tolled.

Enacted by Chapter 150, 1975 General Session

75-3-109 Letters upon several estates jointly.

(1) Upon petition by any person interested in two or more estates, the court may, after notice and hearing, grant letters upon these estates jointly if administration has not commenced with respect to any such estate and if:
(a) All or any part of the estate of one decedent has descended from another decedent; or
(b) Two or more decedents held any property during their lifetimes as tenants-in-common and if the persons entitled under the wills of these decedents or under the law of intestate succession to receive the estates of these decedents are the same.
(2) If letters are granted upon two or more estates jointly under this section, these estates shall be administered the same as if they were but one estate except that claims may be enforced only against the estate to which they relate.

Enacted by Chapter 194, 1977 General Session

Part 2
Venue for Probate and Administration - Priority to Administer - Demand for Notice

75-3-201 Venue for first and subsequent estate proceedings -- Location of property.

(1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:
  (a) In the county where the decedent had his domicile at the time of his death.
  (b) If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.
(2) Venue for all subsequent proceedings involving administration and distribution of decedent's estates is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Subsection (3) of this section or in Section 75-1-303.
(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.
(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides, or if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

Enacted by Chapter 150, 1975 General Session

75-3-202 Appointment or testacy proceedings -- Conflicting claim of domicile in another state.

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the formal testacy or appointment proceeding in this state.

Enacted by Chapter 150, 1975 General Session

75-3-203 Priority among persons seeking appointment as personal representative.

(1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:
  (a) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;
  (b) the surviving spouse of the decedent who is a devisee of the decedent;
  (c) other devisees of the decedent;
  (d) the surviving spouse of the decedent;
  (e) other heirs of the decedent;
  (f) 45 days after the death of the decedent, any creditor.
(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in Subsection (1) apply except that:

(a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
(b) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than one-half of the probable distributable value, or, in default of this accord, any suitable person.

(3) A person entitled to letters under Subsections (1)(b) through (1)(f) and a person aged 18 and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment in informal proceedings. When two or more persons share a priority, any one or more of them who do not renounce may nominate another to act or apply for appointment in formal proceedings. Before appointing fewer than all persons who share a priority and who have not renounced or nominated another, the court must determine that those sharing the priority, although given notice of the formal proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian, except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of one who does not have priority under Subsection (1) or priority resulting from renunciation or nomination determined pursuant to this section may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:
(a) under the age of 21;
(b) a person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

Amended by Chapter 226, 1983 General Session

75-3-204 Demand for notice of order or filing concerning decedent's estate.

Any interested person desiring notice of any order or filing pertaining to a decedent's estate may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made

or accepted without notice as prescribed in Section 75-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

Amended by Chapter 226, 1983 General Session

Part 3
Informal Probate and Appointment Proceedings

75-3-301 Informal probate or appointment proceedings -- Application -- Contents.

(1) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the appropriate information required under this section.

(2) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(a) a statement of the interest of the applicant;

(b) the name and date of death of the decedent, the decedent's age, the county and state of the decedent's domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(c) if the decedent was not domiciled in the state at the time of the decedent's death, a statement showing venue;

(d) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated; and

(e) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(3) An application for informal probate of a will shall state the following in addition to the statements required by Subsection (2):

(a) that the original of the decedent's last will:

(i) is in the possession of the court;

(ii) was filed with the court's electronic filing system and is now in the possession of the applicant or the applicant's attorney; or

(iii) is an authenticated copy of a will probated in another jurisdiction accompanies the application or was filed with the court's electronic filing system and the authenticated copy is now in the possession of the applicant or the applicant's attorney;

(b) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will; and

(d) that the time limit for informal probate as provided in this chapter has not expired either because three years or less have passed since the decedent's death, or if more than three years have passed since the decedent's death, circumstances as described by Section 75-3-107 authorizing tardy probate have occurred.

(4) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate, state the name, address and priority for appointment of the person whose appointment is sought, state whether or not bond is required, and, if required, unless specified by the will, state the estimated value of the personal and real estate of the decedent and of the income expected from the personal and real estate during the next year.

(5) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by Subsection (2):

(a) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under Section 75-1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(b) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 75-3-203;

(c) If bond is required, the estimated value of the personal and real estate of the decedent and of the income expected from the personal and real estate during the next year.

(6) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(7) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Subsection 75-3-610(3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded, except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Amended by Chapter 142, 2014 General Session

75-3-302 Informal probate -- Duty of registrar -- Effect of informal probate.

After receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by Section 75-3-303 shall issue a written statement of informal probate if at least 10 days have elapsed since the date of the notice required by Section 75-3-306, or if at least 120 hours have elapsed since the decedent's death and all persons entitled to notice under Section 75-3-306 have waived such notice in writing. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

Amended by Chapter 194, 1977 General Session

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

(1) In an informal proceeding for original probate of a will, the registrar shall determine whether:
  (a) the application is complete;
  (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
  (c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201(24);
  (d) on the basis of the statements in the application, venue is proper;
  (e) an original, duly executed and apparently unrevoked will was presented to the court for electronic storage and electronic filing and is now in the possession of the applicant or the applicant's attorney, or is in the registrar's possession;
  (f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and
  (g) it appears from the application that the time limit for original probate has not expired.
(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in Subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.
(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.
(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.
(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection (1) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Amended by Chapter 364, 2013 General Session

75-3-304 Informal probate -- Unavailable in certain cases.

Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

Enacted by Chapter 150, 1975 General Session

75-3-305 Informal probate -- Registrar not satisfied.

If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 75-3-303 and 75-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

Enacted by Chapter 150, 1975 General Session

75-3-306 Informal probate -- Notice requirements.

(1) The moving party must give notice as described by Section 75-1-401 of his application for informal probate:
  (a) To any person demanding it pursuant to Section 75-3-204.
  (b) To any personal representative of the decedent whose appointment has not been terminated.
(2) Upon receipt of an application for informal probate of a will, the clerk shall give written notice of the application to the heirs and devisees who have not waived notice. The notice shall include the name and address of the applicant, the name and location of the court in which the application was filed, the date on which the application was filed, and a statement to the effect that the requested probate will be granted after the elapse of 10 days from the date of the notice. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees at his address as shown on the application. The failure of an heir or devisee to object to the granting of the probate within the prescribed period of time shall not affect his right to petition the court to set the probate aside under Section 75-3-401.

Amended by Chapter 194, 1977 General Session

75-3-307 Informal appointment proceedings -- Delay in order -- Duty of registrar -- Effect of appointment.

(1) After receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 75-3-614, the registrar, after making the findings required by Section 75-3-308, shall appoint the applicant subject to qualification and acceptance, if at least 10 days have elapsed since the date of the notice required by Section 75-3-310, or if at least 120 hours have elapsed since the decedent's death and all persons entitled to notice under Section 75-3-310 have waived this notice in writing; but if the decedent was a nonresident, the registrar shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.
(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created by it, is subject to termination as provided in Sections 75-3-608 through 75-3-612, but is not subject to retroactive vacation.

Amended by Chapter 194, 1977 General Session

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

(1) In informal appointment proceedings, the registrar shall determine whether:
  (a) the application for informal appointment of a personal representative is complete;
  (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
  (c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201(24);
  (d) on the basis of the statements in the application, venue is proper;
  (e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
  (f) any notice required by Section 75-3-204 has been given; and

(g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

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

Amended by Chapter 39, 1998 General Session

75-3-309 Informal appointment proceedings -- Registrar not satisfied.

If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 75-3-307 and 75-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

Enacted by Chapter 150, 1975 General Session

75-3-310 Informal appointment proceedings -- Notice requirements.

(1) The moving party must give notice as described by Section 75-1-401 of his intention to seek an appointment informally:

(a) To any person demanding it pursuant to Section 75-3-204.

(b) To any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) Upon receipt of an application for an informal appointment the clerk shall give written notice of the application to the heirs and devisees who have not waived notice. The notice shall include the name and address of the person whose appointment is sought, the name and location of the court in which the application was filed, the date on which the application was filed, and a statement to the effect that the appointment will be made after the elapse of 10 days from the date of the notice. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees at his address as shown on the application. The failure of an heir or devisee to object to the appointment within the prescribed period of time shall not affect his right to petition the court to set the appointment aside under Section 75-3-414.

Amended by Chapter 194, 1977 General Session

75-3-311 Informal appointment unavailable in certain cases.

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

Enacted by Chapter 150, 1975 General Session

Part 4

Formal Testacy and Appointment Proceedings

75-3-401 Formal testacy proceedings -- Nature -- When commenced.

(1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in Subsection 75-3-402(1) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Subsection 75-3-402(3) for an order that the decedent died intestate.

(2) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

Amended by Chapter 194, 1977 General Session

75-3-402 Formal testacy or appointment proceedings -- Petition -- Contents.

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, shall be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in Subsection 75-3-301(2) and the statements required by Subsections 75-3-301(3)(b) and (c), and, if the petition requests appointment of a personal representative, the statements required by Subsection 75-3-301(4); and

(c) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or was presented to the court for electronic storage or electronic filing and is not in the possession of the petitioner or the petitioner's attorney.

(2) If the original will is not in the possession of the court, has not been presented to the court for electronic storage or electronic filing, does not accompany the petition, and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also shall state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(3) A petition for adjudication of intestacy and appointment of an administrator in intestacy shall request a judicial finding and order that the decedent left no will and, determining the heirs, contain the statements required by Subsections 75-3-301(2) and 75-3-301(5) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by Subsection 75-3-301(5)(b) may be omitted.

Amended by Chapter 364, 2013 General Session

75-3-403 Formal testacy proceeding -- Notice of hearing on petition.

(1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by Section 75-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 75-3-204. Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Enacted by Chapter 150, 1975 General Session

75-3-404 Formal testacy proceedings -- Written objections to probate.

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

Enacted by Chapter 150, 1975 General Session

75-3-405 Formal testacy proceedings -- Uncontested cases -- Hearings and proof.

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 75-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one

of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

Enacted by Chapter 150, 1975 General Session

75-3-406 Formal testacy proceedings -- Contested cases -- Testimony of attesting witnesses.

(1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

Enacted by Chapter 150, 1975 General Session

75-3-407 Formal testacy proceedings -- Burdens in contested cases.

(1) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Except in cases where a presumption is operable, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. Where one or more presumptions are operable, the ultimate burden of persuasion shall be determined in accordance with the Utah Rules of Evidence.

(2) If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

Amended by Chapter 179, 1992 General Session

75-3-408 Formal testacy proceedings -- Will construction -- Effect of final order in another jurisdiction.

A final order of a court of another state determining testacy, the validity, or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

Enacted by Chapter 150, 1975 General Session

75-3-409 Formal testacy proceedings -- Order -- Foreign will.

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by Section 75-3-107, it shall determine

the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 75-3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

Enacted by Chapter 150, 1975 General Session

75-3-410 Formal testacy proceedings -- Probate of more than one instrument.

If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 75-3-412.

Enacted by Chapter 150, 1975 General Session

75-3-411 Formal testacy proceedings -- Partial intestacy.

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

Enacted by Chapter 150, 1975 General Session

75-3-412 Formal testacy proceedings -- Effect of order -- Vacation.

(1) Subject to appeal and subject to vacation as provided in this section and in Section 75-3-413, a formal testacy order under this part, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice of it, except by publication.

(b) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.

(c) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.
(d) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Subsection 75-3-403(2) was made.
(2) If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.
(3) A petition for vacation under either Subsections (1)(a) or (b) must be filed prior to the earlier of the following time limits:
(a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.
(b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 75-3-107 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.
(c) Twelve months after the entry of the order sought to be vacated.

Enacted by Chapter 150, 1975 General Session

75-3-413 Formal testacy proceedings -- Vacation of order for other cause.

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

Enacted by Chapter 150, 1975 General Session

75-3-414 Formal proceedings concerning appointment of personal representative.

(1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 75-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Subsection 75-3-301(2) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.
(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under

Section 75-3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 75-3-611.

Amended by Chapter 194, 1977 General Session

Part 5
Supervised Administration

75-3-501 Nature of proceeding.

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

Enacted by Chapter 150, 1975 General Session

75-3-502 Petition -- Order.

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(1) If the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration.
(2) If the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate.
(3) In other cases if the court finds that supervised administration is necessary under the circumstances.

Amended by Chapter 30, 1992 General Session

75-3-503 Effect on other proceedings.

(1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.
(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by Section 75-3-401.
(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

Enacted by Chapter 150, 1975 General Session

75-3-504 Powers of personal representative.

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

Enacted by Chapter 150, 1975 General Session

75-3-505 Interim orders -- Distribution and closing orders.

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under Section 75-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

Enacted by Chapter 150, 1975 General Session

Part 6
Personal Representative - Appointment, Control, and Termination of Authority

75-3-601 Qualification.

Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

Enacted by Chapter 150, 1975 General Session

75-3-602 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Enacted by Chapter 150, 1975 General Session

75-3-603 Bond not required -- Exceptions.

(1) No bond is required of a personal representative appointed in formal or informal proceedings, except:
  (a) upon the appointment of a special administrator without notice having been given;
  (b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond;
  (c) when bond is requested prior to appointment, by an interested party; or
  (d) when bond is required under Section 75-3-605. No bond is required of any personal representative who is exempted from bond under Title 7, Financial Institutions Act.
(2) A bond required pursuant to this section may be dispensed with upon a determination by the court that it is not necessary.

Amended by Chapter 258, 2015 General Session

75-3-604 Bond amount -- Security -- Procedure -- Reduction.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal and real estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk, or give other suitable security, in an amount not less than the estimate reduced by the amount of secured claims against such property. The clerk shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 75-6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

Enacted by Chapter 150, 1975 General Session

75-3-605 Demand for bond by interested person.

If bond is excused as provided in Section 75-3-603, any person apparently having an interest in the estate worth in excess of $5,000, or any unsecured creditors having a claim in excess of $5,000, may make a written demand that a personal representative give bond. The demand shall be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or withdraws the demand. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

Amended by Chapter 21, 1985 General Session

75-3-606 Terms and conditions of bonds.

(1) The following requirements and provisions apply to any bond required by this part:
  (a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
  (b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
  (c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.
  (d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
  (e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Enacted by Chapter 150, 1975 General Session

75-3-607 Order restraining personal representative.

(1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.
(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.
(3) Upon petition made by any guardian, conservator, protected person, ward, creditor, or other person interested in the estate as an heir, devisee or otherwise, against any person suspected of having concealed, embezzled, or smuggled, laid away or disposed of any money, goods, or chattels of the decedent or to have in his possession or subject to his knowledge, any deeds, conveyances, bonds, contracts, or other writings, or any personal estate, or any other claim or demand or any last will of the decedent, the court may cite the suspected person to appear before it and may examine and proceed with him on the charge; and if on such examination it appears that he has wrongful possession of any such items, the court may order the delivery of the same to the personal representative, guardian, or conservator.

Amended by Chapter 194, 1977 General Session

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

Termination of appointment of a personal representative occurs as indicated in Sections 75-3-609 through 75-3-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates his authority to represent the estate in any pending or future proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-609 Termination of appointment -- Death or disability.

The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

Enacted by Chapter 150, 1975 General Session

75-3-610 Termination of appointment -- Voluntary.

(1) An appointment of a personal representative terminates as provided in Section 75-3-1003, one year after the filing of a closing statement.
(2) An order closing an estate as provided in Section 75-3-1001 or 75-3-1002 terminates an appointment of a personal representative.
(3) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Enacted by Chapter 150, 1975 General Session

75-3-611 Termination of appointment by removal -- Cause -- Procedure.

(1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in Section 75-3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, correct maladministration, or preserve the estate. If removal is ordered, the court also shall

direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists:

(a) When removal would be in the best interest of the estate.

(b) If it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment.

(c) If it is shown that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, has mismanaged the estate, or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

Enacted by Chapter 150, 1975 General Session

75-3-612 Termination of appointment -- Change of testacy status.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 75-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

Enacted by Chapter 150, 1975 General Session

75-3-613 Successor personal representative.

Part 3, Informal Probate and Appointment Proceedings, and Part 4, Formal Testacy and Appointment Proceedings, govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party; and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

Enacted by Chapter 150, 1975 General Session

75-3-614 Special administrator -- Appointment.

(1) A special administrator may be appointed:

(a) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 75-3-609;
(b) In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

Enacted by Chapter 150, 1975 General Session

75-3-615 Appointment of special administrators.
(1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the court shall prefer the appointment of the person named personal representative in the decedent's last will if available and qualified. In appropriate cases, the court may limit the powers given to the special administrator, it may appoint someone else to be special administrator, or it may otherwise act to protect the estate and interested persons.
(2) In other cases, any proper person may be appointed special administrator.

Amended by Chapter 179, 1992 General Session

75-3-616 Special administrator -- Appointed informally -- Powers and duties.
A special administrator appointed by the registrar in informal proceedings pursuant to Subsection 75-3-614(1)(a) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

Enacted by Chapter 150, 1975 General Session

75-3-617 Special administrator -- Formal proceedings -- Power and duties.
A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

Enacted by Chapter 150, 1975 General Session

75-3-618 Termination of appointment -- Special administrator.
The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 75-3-608 through 75-3-611.

Enacted by Chapter 150, 1975 General Session

Part 7
Duties and Powers of Personal Representatives

75-3-701 Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Enacted by Chapter 150, 1975 General Session

75-3-702 Priority among different letters.

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Enacted by Chapter 150, 1975 General Session

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

(1) A personal representative is a fiduciary who shall observe the standard of care applicable to trustees as described by Section 75-7-902. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue

and be sued in the courts of this state and courts of any other jurisdiction as his decedent had immediately prior to death.

Amended by Chapter 89, 2004 General Session

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

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

Amended by Chapter 110, 1988 General Session

75-3-705 Duty of personal representative -- Inventory and appraisement.

Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court.

Amended by Chapter 194, 1977 General Session

75-3-706 Employment of appraisers.

The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Enacted by Chapter 150, 1975 General Session

75-3-707 Duty of personal representative -- Supplementary inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

Enacted by Chapter 150, 1975 General Session

75-3-708 Duty of personal representative -- Possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property

or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

Enacted by Chapter 150, 1975 General Session

75-3-709 Power to avoid transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors who must pay or secure the cost and expenses of litigation.

Enacted by Chapter 150, 1975 General Session

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

Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust, however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court, unless otherwise specifically provided by this code.

Amended by Chapter 226, 1983 General Session

75-3-711 Improper exercise of power -- Breach of fiduciary duty.

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 75-3-712 and 75-3-713.

Enacted by Chapter 150, 1975 General Session

75-3-712 Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.

Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:
(1) The will or a contract entered into by the decedent expressly authorized the transaction; or
(2) The transaction is approved by the court after notice to interested persons.

Amended by Chapter 30, 1992 General Session

75-3-713 Persons dealing with personal representative -- Protection.

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 75-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Enacted by Chapter 150, 1975 General Session

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

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

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

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

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

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

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

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

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

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

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings;
(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(11) abandon property when, in the opinion of the personal representative, it is valueless, is so encumbered, or is in condition that it is of no benefit to the estate;
(12) vote stocks or other securities in person or by general or limited proxy;
(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
(15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;
(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
(19) sell or exercise stock subscription or conversion rights; and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;
(21) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
(23) sell, mortgage, or lease any real or personal property of the estate or any interest in it for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
(a) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
(c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
(25) incorporate any business or venture in which the decedent was engaged at the time of his death;
(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
(27) satisfy and settle claims and distribute the estate as provided in this code.

Amended by Chapter 30, 1992 General Session

75-3-715 Powers and duties of successor personal representative.

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

Enacted by Chapter 150, 1975 General Session

75-3-716 Co-representatives -- When joint action required.

If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of a majority is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Enacted by Chapter 150, 1975 General Session

75-3-717 Powers of surviving personal representative.

Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

Enacted by Chapter 150, 1975 General Session

75-3-718 Compensation of personal representative and attorney.

(1) A personal representative and an attorney are entitled to reasonable compensation for their services. If a petition is filed which either directly or indirectly seeks approval of the personal representative's compensation or the attorney's compensation and if no objection is filed by an interested person to the compensation requested, reasonable compensation shall be

the compensation sought in the petition. When an interested person objects to the personal representative's compensation, the court shall determine reasonable compensation for the personal representative based on the quality, quantity, and value of the services rendered to the estate and the circumstances under which those services were rendered, including the practice for other fiduciaries who are in similar circumstances to the personal representative in question. When an interested person objects to the attorney's compensation, the court shall determine reasonable compensation for the attorney.

(2) When a petition seeks approval of or objects to a personal representative's compensation or an attorney's compensation, at least 10 days before the time set for the hearing of the petition, the petitioner or the petitioner's attorney shall send a copy of the petition to all interested persons either by certified, registered, or first class mail or by hand-delivery.

(3) If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Amended by Chapter 245, 2013 General Session

75-3-719 Expenses in estate litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate all necessary expenses and disbursements, including reasonable attorney fees incurred. This provision expressly applies in a will contest to any person nominated as a personal representative in a testamentary instrument submitted in good faith.

Amended by Chapter 274, 2012 General Session

75-3-720 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Amended by Chapter 179, 1992 General Session

Part 8
Creditors' Claims

75-3-801 Notice to creditors.

(1)

(a) A personal representative, upon appointment, may publish a notice to creditors announcing the personal representative's appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred.
(b) The notice described in Subsection (1)(a) shall be published:
(i) once a week for three successive weeks in a newspaper of general circulation in the county; and
(ii) in accordance with Section 45-1-101 for three weeks.
(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 90 days from the published notice if given as provided in Subsection (1) above or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) above or a similar notice.
(3) The personal representative shall not be liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.
(4) If the estate is being administered in accordance with Section 75-3-1201, a notice to creditors may be published in an affidavit in accordance with this section by the person claiming to be the successor or the decedent.

Amended by Chapter 364, 2013 General Session

75-3-802 Statutes of limitations.

Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 75-3-804 is equivalent to commencement of a proceeding on the claim.

Amended by Chapter 194, 1977 General Session

75-3-803 Limitations on presentation of claims.

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:
(a) one year after the decedent's death; or
(b) within the time provided by Subsection 75-3-801(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-801(1) for all claims barred by publication.
(2) In all events, claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.

(3) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
  (a) a claim based on a contract with the personal representative within three months after performance by the personal representative is due; or
  (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1)(a).
(4) Nothing in this section affects or prevents:
  (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;
  (b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or
  (c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.
(5) If a personal representative has not been timely appointed in accordance with this chapter, one may be appointed for the limited purposes of Subsection (4)(b) for any claim timely brought against the decedent.

Amended by Chapter 223, 2010 General Session

75-3-804 Manner of presentation of claims.
(1) Claims against a decedent's estate may be presented as follows:
  (a) The claimant may deliver or mail to the personal representative, or the personal representative's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on either the receipt of the written statement of claim by the personal representative or the personal representative's attorney of record, or the filing of the claim with the court, whichever occurs first. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.
  (b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction to obtain payment of the claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death.
(2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

Amended by Chapter 110, 1988 General Session

75-3-805 Classification of claims.

(1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  (a) reasonable funeral expenses;
  (b) costs and expenses of administration;
  (c) debts and taxes with preference under federal law;
  (d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him, and medical assistance if Section 26-19-13.5 applies;
  (e) debts and taxes with preference under other laws of this state; and
  (f) all other claims.
(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Amended by Chapter 145, 1998 General Session

75-3-806 Allowance of claims.

(1) As to claims presented in the manner described in Section 75-3-804 and within the time limit prescribed in Section 75-3-803, the personal representative may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed, unless the claimant seeks a court ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the personal representative fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.
(2) Upon the petition of the personal representative or a claimant in a proceeding for this purpose, the court may order any claim presented to the personal representative or filed with the clerk of the court in a timely manner and not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order at the time the proceeding is commenced.
(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is a court ordered allowance of the claim.
(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing six months after the decedent's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Amended by Chapter 179, 1992 General Session

75-3-807 Payment of claims.

(1) Upon the expiration of the earliest of the time limitations provided in Section 75-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in Subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

Amended by Chapter 179, 1992 General Session

75-3-808 Individual liability of personal representative.

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-809 Secured claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; but otherwise payment is upon the basis of one of the following:

(1) If the creditor exhausts his security before receiving payment (unless precluded by other law) upon the amount of the claim allowed less the fair value of the security; or

(2) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into

money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

Amended by Chapter 30, 1992 General Session

75-3-810 Claims not due and contingent or unliquidated claims.

(1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative, or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(b) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

Enacted by Chapter 150, 1975 General Session

75-3-811 Counterclaims.

In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Enacted by Chapter 150, 1975 General Session

75-3-812 Execution and levies prohibited.

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-813 Compromise of claims.

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Enacted by Chapter 150, 1975 General Session

75-3-814 Encumbered assets.

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Amended by Chapter 194, 1977 General Session

75-3-815 Administration in more than one state -- Duty of personal representative.

(1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

Enacted by Chapter 150, 1975 General Session

75-3-816 Final distribution to domiciliary representative.

(1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

  (a) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

  (b) The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

  (c) The court orders otherwise in a proceeding for a closing order under Section 75-3-1001 or incident to the closing of a supervised administration.

(2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

Enacted by Chapter 150, 1975 General Session

Part 9
Special Provisions Relating to Distribution

75-3-901 Successors' rights if no administration.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Enacted by Chapter 150, 1975 General Session

75-3-902 Distribution -- Order in which assets appropriated -- Abatement.

(1) Except as provided in Subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:
  (a) property not disposed of by the will;
  (b) residuary devises;
  (c) general devises;
  (d) specific devises.
(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
(3) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Amended by Chapter 306, 2007 General Session

75-3-903 Right of retainer.

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

Enacted by Chapter 150, 1975 General Session

75-3-904 Interest on general pecuniary devise.

General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Enacted by Chapter 150, 1975 General Session

75-3-905 Penalty clause for contest.

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Enacted by Chapter 150, 1975 General Session

75-3-906 Distribution in kind -- Valuation -- Method.

(1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:
  (a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 75-2-403 shall receive the items selected.
  (b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:
    (i) the person entitled to the payment has not demanded payment in cash;
    (ii) the property distributed in kind is valued at fair market value as of the date of its distribution; and
    (iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.
  (c) For the purpose of valuation under Subsection (1)(b) above, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.
  (d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.
(2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to

object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

Amended by Chapter 39, 1998 General Session

75-3-907 Distribution in kind -- Evidence.

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

Enacted by Chapter 150, 1975 General Session

75-3-908 Distribution -- Right or title of distributee.

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

Enacted by Chapter 150, 1975 General Session

75-3-909 Improper distribution -- Liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Enacted by Chapter 150, 1975 General Session

75-3-910 Purchasers from distributees protected.

If property distributed in kind or a security interest therein is acquired for value in good faith and without notice of any adverse claim by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from the distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this section, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

Enacted by Chapter 194, 1977 General Session

75-3-911 Partition for purpose of distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Enacted by Chapter 150, 1975 General Session

75-3-912 Private agreements among successors to decedent binding on personal representative.

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing contained in this section relieves trustees of any duties owed to beneficiaries of trusts.

Enacted by Chapter 150, 1975 General Session

75-3-913 Distributions to trustee.

(1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the qualified beneficiaries as provided in Section 75-7-811.
(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves; and he may withhold distribution until the court has acted.
(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by Subsections (1) and (2).

Amended by Chapter 89, 2004 General Session

75-3-914 Disposition of unclaimed assets.

(1) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, but otherwise to the state treasurer for the benefit of the state school fund.
(2) The money received by the state treasurer shall be paid to the person entitled on proof of his right to it or, if the state treasurer refuses or fails to pay, the person may petition the court which appointed the personal representative, whereupon the court upon notice to the state treasurer may determine the person entitled to the money and order the treasurer to pay it to him. No

interest is allowed thereon, and the heir, devisee, or claimant shall pay all costs and expenses incident to the proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-915 Distribution to person under disability.

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

Enacted by Chapter 150, 1975 General Session

75-3-916 Apportionment of estate taxes.

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

(2) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. If the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the method described in the will or other dispositive instrument controls.

(3)
- (a) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county in which the decedent was domiciled at death shall determine the apportionment of the tax upon the petition of the person required to pay the tax.
- (b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in Subsection (2), because of special circumstances, it may direct the apportionment in the manner it finds equitable.
- (c) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate concerning the determination of the amount and apportionment of the tax shall be apportioned as provided in Subsection (2) and charged and collected as a part of the tax

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

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

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

(4)

(a) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession and distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

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

(5)

(a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

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

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

(e) To the extent that property passing to or in trust for a surviving spouse or child or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in Subsection (2), and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of

1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) Subject to this section, a fiduciary acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

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

Amended by Chapter 226, 1983 General Session

75-3-917 Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009.

(1) A will or trust of a decedent who dies after December 31, 2009 and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "generation-skipping transfer tax exemption" or "GST exemption," or that measures a share of an estate or trust based on the amount that can pass free of federal estate or generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

(a) This provision may not apply with respect to a will or trust executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(b) The reference to January 1, 2011 in Subsection (1) shall, if the federal estate and generation-skipping transfer tax becomes effective before that date, refer instead to the first date on which the tax becomes legally effective.

(2) A proceeding to determine whether the decedent intended that the references under Subsection (1) be construed with respect to the law as it existed after December 31, 2009, shall be filed within 12 months of the date of death of the testator or grantor. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

Enacted by Chapter 223, 2010 General Session

Part 10
Closing Estates

75-3-1001 Formal proceedings terminating administration -- Testate or intestate -- Order of general protection.

(1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

Enacted by Chapter 150, 1975 General Session

75-3-1002 Formal proceedings terminating testate administration -- Order construing will without adjudicating testacy.

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate

which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and to adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of Section 75-3-1001.

Enacted by Chapter 150, 1975 General Session

75-3-1003 Closing estates -- By sworn statement of personal representative -- Waiver of accountings.

(1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings when all of the distributees of the estate consent in writing, a personal representative may close an estate by filing with the court no earlier than four months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative, or a prior personal representative whom the personal representative has succeeded, has:
  (a) determined that the time limitation for presentation of creditors' claims has expired;
  (b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and
  (c) sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.
(2) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.
(3) Any accounting required under this section or either Section 75-3-1001 or 75-3-1002 may be waived when all of the distributees of the estate consent in writing to the waiver.

Amended by Chapter 179, 1992 General Session

75-3-1004 Liability of distributees to claimants.

After assets of an estate have been distributed and subject to Section 75-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the

time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Amended by Chapter 194, 1977 General Session

75-3-1005 Limitations on proceedings against personal representative.

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Enacted by Chapter 150, 1975 General Session

75-3-1006 Limitations on actions and proceedings against distributees.

(1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is barred at the later of:
  (a) as to a claim by a creditor of the decedent, one year after the decedent's death; and
  (b) as to any other claimant and any heir or devisee, at the later of:
    (i) three years after the decedent's death; or
    (ii) one year after the time of distribution thereof.
(2) This section does not bar an action to recover property or value received as the result of fraud.

Amended by Chapter 179, 1992 General Session

75-3-1007 Certificate discharging liens securing fiduciary performance.

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

Enacted by Chapter 150, 1975 General Session

75-3-1008 Subsequent administration.

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

appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

Enacted by Chapter 150, 1975 General Session

Part 11
Compromise of Controversies

75-3-1101 Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

Enacted by Chapter 150, 1975 General Session

75-3-1102 Procedure for securing court approval of compromise.

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, may make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

Amended by Chapter 30, 1992 General Session

Part 12
Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

75-3-1201 Collection of personal property by affidavit.

(1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate subject to administration, wherever located, less liens and encumbrances, does not exceed $100,000;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit and the security as provided in Subsection (1).

(3) The Motor Vehicle Division of the State Tax Commission shall transfer title of not more than four boats, motor vehicles, trailers, or semitrailers, registered under Title 41, Motor Vehicles, or Title 73, Water and Irrigation, from the decedent to the successor or successors upon presentation of an affidavit as provided in Subsection (1) and upon payment of the necessary fees, except that in lieu of that language in Subsection (1)(a) the affidavit shall state that the value of the entire estate subject to administration, wherever located, other than those motor vehicles, trailers, or semitrailers, less liens and encumbrances, does not exceed $100,000.

Amended by Chapter 316, 2007 General Session

75-3-1202 Effect of affidavit.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled to it. In such event, in addition to recovering the property, the person to whom an affidavit is delivered shall, in the discretion of the court, be liable for damages to the claimant for an amount up to three times the value of the personal property plus costs of suit and reasonable attorneys' fees. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

Amended by Chapter 226, 1983 General Session

75-3-1203 Small estates -- Summary administrative procedure.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary

medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 75-3-1204.

Enacted by Chapter 150, 1975 General Session

75-3-1204 Small estates -- Closing by sworn statement of personal representative.

(1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of Section 75-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating:
  (a) the nature and value of the estate's assets at the time of distribution;
  (b) that to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;
  (c) that the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and
  (d) that the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of administration to the distributees whose interests are affected.
(2) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.
(3) A closing statement filed under this section has the same effect as one filed under Section 75-3-1003.

Amended by Chapter 110, 1988 General Session

Chapter 4
Foreign Personal Representatives - Ancillary Administration

Part 1
Definitions

75-4-101 Definitions.

As used in this chapter:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in Chapter 3, Probate of Wills and Administration.
(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in Chapter 3, Probate of Wills and Administration, and excludes foreign personal representatives who acquire the power of a local personal representative under Section 75-4-205.

(3) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

Enacted by Chapter 150, 1975 General Session

Part 2
Powers of Foreign Personal Representatives

75-4-201 Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:
(1) the date of the death of the nonresident decedent;
(2) that no local administration, or application or petition therefor, is pending in this state;
(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

Amended by Chapter 30, 1992 General Session

75-4-202 Payment or delivery discharges.

Payment or delivery made in good faith on the basis of the proof of authority and affidavit under Section 75-4-201 releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

Enacted by Chapter 150, 1975 General Session

75-4-203 Resident creditor notice.

Payment or delivery under Section 75-4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

Enacted by Chapter 150, 1975 General Session

75-4-204 Proof of authority -- Bond.

If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

Enacted by Chapter 150, 1975 General Session

75-4-205 Powers.

A domiciliary foreign personal representative who has complied with Section 75-4-204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally. The provisions of this section shall not apply to persons other than individuals acting as foreign personal representatives unless the state of the principal place of business of such foreign personal representative provides substantially similar provisions applicable to personal representatives from this state.

Enacted by Chapter 150, 1975 General Session

75-4-206 Power of representatives in transition.

The power of a domiciliary foreign personal representative under Section 75-4-201 or 75-4-205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 75-4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

Enacted by Chapter 150, 1975 General Session

75-4-207 Ancillary and other local administrations -- Provisions governing.

In respect to a nonresident decedent, the provisions of Chapter 3, Probate of Wills and Administration, govern proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

Enacted by Chapter 150, 1975 General Session

Part 3
Jurisdiction Over Foreign Representatives

75-4-301 Jurisdiction by act of foreign personal representative.

A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(1) filing authenticated copies of his appointment as provided in Section 75-4-204;
(2) receiving payment of money or taking delivery of personal property under Section 75-4-201; or
(3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under Subsection (2) is limited to the money or value of personal property collected.

Amended by Chapter 30, 1992 General Session

75-4-302 Jurisdiction by act of decedent.

In addition to jurisdiction conferred by Section 75-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Enacted by Chapter 150, 1975 General Session

75-4-303 Service on foreign personal representative.

(1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, and requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.
(2) If service is made upon a foreign personal representative as provided in Subsection (1) above he shall be allowed at least 30 days within which to appear or respond.

Enacted by Chapter 150, 1975 General Session

Part 4
Judgments and Personal Representative

75-4-401 Effect of adjudication for or against personal representative.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

Enacted by Chapter 150, 1975 General Session

Chapter 5
Protection of Persons Under Disability and Their Property

Part 1
General Provisions

75-5-101 Jurisdiction of subject matter -- Consolidation of proceedings.

(1) The court has jurisdiction over protective proceedings and guardianship proceedings.
(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Enacted by Chapter 150, 1975 General Session

75-5-102 Facility of payment or delivery.

(1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $10,000 per annum, by paying or delivering the money or property to:
  (a) the minor, if he is married or if payment to the minor is expressly authorized by statute;
  (b) any person having the care and custody of the minor with whom the minor resides; or
  (c) a guardian of the minor.
(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.
(3) The persons, other than the minor, receiving money or property for a minor are obligated to apply the money to the support and education of the minor and may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor. Any balance not so used and any property received for the minor must be turned over to the minor when he attains majority.
(4) Persons receiving money under this section on behalf of a minor shall have the power to settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.
(5) Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Amended by Chapter 198, 2004 General Session

75-5-103 Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

Enacted by Chapter 150, 1975 General Session

75-5-104 Power of court to appoint guardian ad litem not affected.

Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to represent the interests of any minor interested in any suit or matter pending before it.

Enacted by Chapter 150, 1975 General Session

75-5-105 Bond of guardian.

A guardian coming into the possession or control of funds or other property of a minor or incapacitated person may be required by the court to furnish a bond in an amount and under the conditions as set forth for conservators in Sections 75-5-411 and 75-5-412.

Enacted by Chapter 150, 1975 General Session

Part 2
Guardians of Minors

75-5-201 Status of guardian of minor -- General.

(1)
(a) A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a local school board under Section 53A-2-202, or upon appointment by the court.
(b) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

(2)
(a) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in the state of Utah until reviewed and approved by a Utah court.
(b) The procedure for obtaining approval of a guardianship under Subsection (2)(a) shall be identical to the procedure required under this part for obtaining a court appointment of a guardian.

Amended by Chapter 124, 1998 General Session

75-5-202 Appointment of guardian of minor.

(1) The parent of a minor may appoint a guardian of an unemancipated minor by will, as provided in this section, or by other written instrument as provided in Section 75-5-202.5.
(2) Subject to the rights of the minor and others under Section 75-5-203, an appointment by will or written instrument becomes effective upon filing the guardian's acceptance in the court in which the will is probated or the document is filed, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated.
(3) If both parents are dead, an effective appointment by the parent who died later has priority.
(4) This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.
(5) Upon acceptance of appointment, written notice of acceptance shall be given by the guardian to the minor and to the person having his care, or to his nearest adult relative.

Amended by Chapter 41, 1985 General Session

75-5-202.5 Appointment of guardian by written instrument.

(1) The parent of an unemancipated minor may appoint a guardian by written instrument designating the guardian. An appointment by written instrument becomes effective where:
(a) the written instrument is filed with the petition for appointment of guardian in the court having probate jurisdiction in the county of residence of the last parent to die, if death occurred in the state, and otherwise in the court having probate jurisdiction in the county in which the minor resides in the state; and
(b) the person appointed as guardian filed in the court having jurisdiction an affidavit of acceptance which states:
(i) the name, address, and age, or birthday if known, of the minor;
(ii) the name, address, and telephone number of the appointee-guardian;

(iii) the names of the parents of the minor and that both are dead or that any surviving parent has been adjudged incapacitated;
(iv) the name of the parent who was last to die and the county where that parent resided at the date of his death;
(v) that the appointee-guardian knows of no other appointment of a guardian which supersedes the appointment by written instrument;
(vi) that the appointee-guardian accepts the appointment.
(2) The latest document appointing a guardian, whether will or written instrument, which is executed by the last parent to die has priority.
(3) Upon acceptance of an appointment, written notice of acceptance shall be given by the guardian to the minor, if he is 14 years of age or older, and to the person having his care or to his nearest adult relative.
(4) For purposes of this chapter, "instrumental" refers to a written instrument as described in this section.

Enacted by Chapter 41, 1985 General Session

75-5-203 Objection to appointment.

Any person interested in the welfare of a minor, or a minor of 14 years or older, may file with the court in which the will is probated or the written instrument is filed a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude, after a hearing on the objection, appointment by the court in a proper proceeding of the testamentary or instrumental nominee, or any other suitable person.

Amended by Chapter 41, 1985 General Session

75-5-204 Court appointment of guardian of minor -- Conditions for appointment.

The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

Amended by Chapter 41, 1985 General Session

75-5-205 Court appointment of guardian of minor -- Venue.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

Enacted by Chapter 150, 1975 General Session

75-5-206 Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.

(1)

(a) The court may appoint as guardian any person whose appointment would be in the best interests of the minor.
(b) In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.
(2) Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
(3) The court may deny the appointment of a guardian for a minor of school age if it finds that:
(a) if the minor is older than 11 years of age:
(i) the minor has not secured a certificate from the local police authority in the jurisdiction where the minor has lived during the past two years stating that there have been no criminal charges filed against the minor and the minor is not the subject of a criminal investigation in that jurisdiction and given a copy of the certificate to the superintendent of the school district in which the minor would attend school in Utah; or
(ii) a release has not been given by or on behalf of the minor to the superintendent of the school district in which the minor would attend school in Utah within a reasonable time prior to the guardianship hearing, allowing the superintendent full access to all criminal records of the minor in those jurisdictions outside the state where the minor has resided during the previous two years, which release remains part of the minor's school records together with verification of residence for the previous two years, except that information disclosed in the criminal records may not be made a part of the minor's school record;
(b) the school district has proven by a preponderance of the evidence that the primary purpose for the guardianship is to avoid the payment of tuition, which a school district may assess against a nonresident for attendance at a Utah public school; or
(c) after consideration of relevant evidence, including any presented by the school district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.
(4) If a school district files an objection for reasons described in Subsection (3)(b), and the court does not find in favor of the school district, the court may award the petitioner attorney fees and costs if the court finds that the school district's arguments lack a reasonable basis in law or fact.

Amended by Chapter 392, 2010 General Session

75-5-207 Court appointment of guardian of minor -- Procedure.
(1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by Section 75-1-401 to:
(a) the minor, if the minor is 14 years of age or older;
(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
(c) any living parent of the minor;
(d) any guardian appointed by the will or written instrument of the parent of the minor who died last; and
(e) the school district in which the petitioner resides and a representative of the school district may participate in the hearing.
(2)
(a) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of Sections 75-5-204 and 75-5-206

have been met, and the welfare and best interests of the minor will be served by the requested appointment, it may make the appointment.
(b) In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.
(3)
(a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor.
(b) The authority of a temporary guardian may not last longer than six months.
(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Amended by Chapter 156, 1995 General Session

75-5-208 Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

Amended by Chapter 41, 1985 General Session

75-5-209 Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.

(1) For purposes of this section, "residual parental rights and duties" is as defined in Section 78A-6-105.
(2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's unemancipated minor, including the powers and responsibilities described in Subsection (3).
(3) A guardian of a minor:
(a) must take reasonable care of the personal effects of the guardian's ward;
(b) must commence protective proceedings if necessary to protect other property of the guardian's ward;
(c) subject to Subsection (4)(b), may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of a:
(i) statutory benefit or insurance system;
(ii) private contract;
(iii) devise;
(iv) trust;
(v) conservatorship; or
(vi) custodianship;
(d) subject to Subsection (4)(b), may receive money or property of the ward paid or delivered by virtue of Section 75-5-102;
(e) except as provided in Subsection (4)(c), must exercise due care to conserve any excess money or property described in Subsection (3)(d) for the ward's future needs;

(f) unless otherwise provided by statute, may institute proceedings to compel the performance by any person of a duty to:
(i) support the ward; or
(ii) pay sums for the welfare of the ward;
(g) is empowered to:
(i) facilitate the ward's education, social, or other activities; and
(ii) subject to Subsection (4)(d), authorize medical or other professional care, treatment, or advice;
(h) may consent to the:
(i) marriage of the guardian's ward, if specifically authorized by a court to give this consent; or
(ii) adoption of the guardian's ward if the:
(A) guardian of the ward is specifically authorized by a court to give this consent; and
(B) parental rights of the ward's parents have been terminated; and
(i) must report the condition of the minor and of the minor's estate that has been subject to the guardian's possession or control:
(i) as ordered by court on petition of any person interested in the minor's welfare; or
(ii) as required by court rule.
(4)
(a) Notwithstanding Subsection (2), a guardian of a minor is not:
(i) legally obligated to provide from the guardian's own funds for the ward; and
(ii) liable to third persons by reason of the guardian's relationship for acts of the ward.
(b) Sums received under Subsection (3)(c) or (d):
(i) may not be used for compensation for the services of a guardian, except as:
(A) approved by court order; or
(B) determined by a duly appointed conservator other than the guardian; and
(ii) shall be applied to the ward's current needs for support, care, and education.
(c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the ward, the excess shall be paid over at least annually to the conservator.
(d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.
(5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.
(6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:
(a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;
(b) intervene in the adoption; and
(c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78B-6-110(11).
(7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Amended by Chapter 3, 2008 General Session

75-5-210 Termination of appointment of guardian -- General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and

assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Enacted by Chapter 150, 1975 General Session

75-5-211 Proceedings subsequent to appointment -- Venue.

(1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of an appointment by will or written instrument was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.
(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-212 Resignation or removal proceedings.

(1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.
(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.
(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

Enacted by Chapter 150, 1975 General Session

Part 3
Guardians of Incapacitated Persons

75-5-301 Appointment of guardian for incapacitated person.

(1) The parent of an incapacitated person may by will, or by written instrument as provided in Section 75-5-202.5, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, or where the written instrument is filed, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority

unless it is terminated by the denial of probate in formal proceedings. A provision contained in a person's will or written instrument appointing a guardian of his minor children is not to be considered to be an appointment of a guardian of an incapacitated adult child unless it appears from the will that this was the testator's intention.

(2) The spouse of a married incapacitated person may by will or written instrument appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or the written instrument is filed. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated or the written instrument was filed, of written objection to the appointment by the person for whom a testamentary or instrumental appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the nominee named by will or written instrument or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Amended by Chapter 41, 1985 General Session

75-5-302 Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Enacted by Chapter 150, 1975 General Session

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

(1) The incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated. If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition. If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.

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

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

(b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or
(c) upon an express finding of good cause, the court orders otherwise.
(4) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.
(5)
(a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.
(b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:
(i) fourth stage Alzheimer's Disease;
(ii) extended comatosis; or
(iii)
(A) an intellectual disability; and
(B) an intelligence quotient score under 25.
(c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.
(d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:
(i) the person is the biological or adopted child of the petitioner;
(ii) the value of the person's entire estate does not exceed $20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
(iii) the person appears in court with the petitioner;
(iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner; and
(v) the court is satisfied that counsel is not necessary in order to protect the interests of the person.

Amended by Chapter 400, 2016 General Session

75-5-304 Findings -- Limited guardianship preferred -- Order of appointment.
(1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.
(2) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.

(3) A guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Amended by Chapter 104, 1988 General Session

75-5-305 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the ward. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

Amended by Chapter 194, 1977 General Session

75-5-306 Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 75-5-307. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Amended by Chapter 194, 1977 General Session

75-5-307 Removal or resignation of guardian -- Termination of incapacity.

(1) On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian as provided in Section 75-5-303. The court is not required to appoint an attorney to represent the ward if the case is uncontested and the ward's incapacity is not at issue.

Amended by Chapter 274, 2012 General Session

75-5-308 Visitor in guardianship proceeding.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-309 Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:
  (a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;
  (b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;
  (c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found; and
  (d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person.
(2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.
(3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Amended by Chapter 104, 1988 General Session

75-5-310 Emergency guardians.

(1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.
(2) The court shall, in all cases in which an emergency guardian is appointed, hold a hearing within 14 days pursuant to Section 75-5-303.

Amended by Chapter 142, 2014 General Session

75-5-310.5 Temporary guardians.

(1) If, after notice and hearing as required by Section 75-5-303, the court finds good cause, the court may:
  (a) appoint a temporary guardian;

(b) convert an emergency guardian to a temporary guardian if an emergency guardian has been appointed under Section 75-5-310; or
(c) appoint a different person as temporary guardian to replace an emergency guardian appointed under Section 75-5-310.
(2) Unless the allegedly incapacitated person has already obtained counsel in this proceeding or an attorney has been already appointed for the person, the court shall appoint an attorney to represent the person in the proceeding.
(3) Until a full hearing and further order of the court, the temporary guardian shall be charged with the care and custody of the ward and may not permit the ward to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.
(4) A temporary guardian may be removed at any time, and shall obey all orders and make any reports required by the court.
(5) A temporary guardian has all of the powers and duties of a permanent guardian as set forth in Section 75-5-312.

Enacted by Chapter 142, 2014 General Session

75-5-311 Who may be guardian -- Priorities.
(1) As used in this section:
(a) "Specialized care professional" means a person who is certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification or similar organization.
(b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.
(2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)
on this _____ day of _____

_____
(Signature)

(3) Except as provided in Subsection (2), persons who are not disqualified have priority for appointment as guardian in the following order:
(a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (2), if the incapacitated person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;
(b) the spouse of the incapacitated person;
(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;
(e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
(f) a person nominated by the person who is caring for him or paying benefits to him;
(g) a specialized care professional, so long as the specialized care professional does not:
(i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or
(ii) otherwise have a conflict of interest in providing those services; or
(h) any competent person or suitable institution.

Amended by Chapter 364, 2013 General Session

75-5-312 General powers and duties of guardian -- Penalties.
(1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.
(2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.
(3) In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:
(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.
(b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.
(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
(d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.
(e) If no conservator for the estate of the ward has been appointed, the guardian may:
(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;
(ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and
(iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but the guardian may not use funds from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult. The guardian shall exercise care to conserve any excess for the ward's needs.
(f)
(i) A guardian is required to report the condition of the ward and of the estate which has been subject to the guardian's possession or control, as required by the court or court rule.

(ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
(A) the guardian's own observations; or
(B) information from the ward's physician or other medical care providers.
(iii) A guardian is required to immediately notify all interested persons of the ward's death.
(iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party.
(v) The guardian shall, for all estates in excess of $50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than $50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information. The forms for both the informal report for estates under $50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council. This annual report shall be examined and approved by the court. If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.
(vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
(vii) The guardian shall also render an annual accounting of the status of the person to the court which shall be included in the petition or the informal annual report as required under Subsection (3)(f). If a fee is paid for an accounting of an estate, no fee shall be charged for an accounting of the status of a person.
(viii) If a guardian:
(A) makes a substantial misstatement on filings of annual reports;
(B) is guilty of gross impropriety in handling the property of the ward; or
(C) willfully fails to file the report required by this subsection, after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed $5,000. The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.
(ix) These provisions and penalties governing annual reports do not apply if the guardian is the parent of the ward.
(x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-309.
(g) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and the guardian shall account to the conservator for funds expended.

(4)
(a) A court may, in the order of appointment, place specific limitations on the guardian's power.
(b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.
(c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).
(5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Amended by Chapter 293, 2016 General Session

75-5-312.5 Association between an adult ward and a relative of the adult ward.
(1) As used in this section:
(a) "Associate" or "association" means:
(i) visitation of an adult ward by a relative or qualified acquaintance; or
(ii) communication between an adult ward and a relative or qualified acquaintance in any form, including by telephone, mail, or electronic communication.
(b) "Qualified acquaintance" means an individual, other than a relative of the adult ward, who:
(i) has established a significant, mutual friendship with the adult ward; or
(ii) is clergy in the adult ward's religion or religious congregation.
(c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling, step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.
(2)
(a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.
(b) If an adult ward is unable to express consent to visitation by a relative or a qualified acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a prior relationship between the adult ward and the relative or qualified acquaintance of the adult ward.
(c) A guardian may not permit a relative or qualified acquaintance of an adult ward to associate with the adult ward:
(i) if a court order prohibits the association;
(ii) in a manner prohibited by court order; or
(iii) if the adult ward expresses a desire to not associate with the relative or qualified acquaintance.
(3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue an order:
(a) prohibiting or placing conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward; or
(b) granting the guardian the authority to prohibit or place conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward.
(4) A guardian may, at any time after the initial guardianship proceeding, petition the court to issue an order described in Subsection (3) or to rescind or modify an order described in Subsection (3).

(5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward may, at any time after the initial guardianship proceeding, petition the court to rescind or modify an order described in Subsection (3).
(6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a qualified acquaintance of the adult ward may do one or more of the following, as applicable:
(a) petition the court to issue an order to show cause why the guardian should not be held in contempt of court;
(b) seek an injunction to enforce compliance by the guardian with the law and any applicable court order; or
(c) petition the court to have the guardian removed as guardian of the adult ward.
(7) For a hearing on a petition filed under this section, a court:
(a) may appoint a court visitor to meet with the adult ward to determine the wishes of the adult ward regarding association;
(b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and the relative or qualified acquaintance;
(c) shall preserve the right of the adult ward to be present at the hearing; and
(d) may order supervised visitation by the relative or qualified acquaintance before the hearing.
(8) A court may not enter an order prohibiting or placing restrictions on association between an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance of the evidence that:
(a) the adult ward desires the prohibition or restriction;
(b) if the adult ward had the capacity to make a knowing and intelligent decision regarding the association, the adult ward would prohibit the association or impose the restriction; or
(c) the prohibition or restriction is the least restrictive means necessary to protect the health or welfare of the adult ward.
(9) In making the determination described in Subsection (8), the court may consider any relevant evidence, including:
(a) the wishes of the adult ward, expressed during or before the guardianship;
(b) the history of the relationship between the adult ward and the relative or qualified acquaintance;
(c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified acquaintance; or
(d) whether a protective order was ever issued against the relative or qualified acquaintance with respect to the adult ward.
(10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:
(a) seeking an order prohibiting association or placing restrictions on association with a relative or qualified acquaintance of the adult ward;
(b) modifying an order to place additional prohibitions or restrictions on association with a relative or qualified acquaintance of the adult ward; or
(c) opposing an action described in Subsection (6)(a) or (b).
(11) The relative or qualified acquaintance shall have the burden of proof if the relative or qualified acquaintance is seeking to modify an order previously entered by a court under this section.
(12)
(a) If, in a proceeding under this section, the court finds that the petition was filed frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.
(b) If, in a proceeding under this section, the court finds that the guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:
(i) may award attorney fees to the prevailing party; and

(ii) may impose a sanction, not to exceed $1,000, against the guardian.
(c) A court shall prohibit attorney fees awarded under this section from being paid by the adult ward or the adult ward's estate.

Enacted by Chapter 293, 2016 General Session

75-5-313 Proceedings subsequent to appointment -- Venue.
(1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of an appointment by will or written instrument was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.
(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-314 Mentally incompetent veteran -- Evidence of necessity for appointment of guardian.
Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any money due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment.

Enacted by Chapter 150, 1975 General Session

75-5-315 Copies of public records furnished to veterans administration.
When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on behalf of the authorized representative of the veterans administration with a certified copy of such record.

Enacted by Chapter 150, 1975 General Session

75-5-316 Expedited guardianship proceedings.
(1)
(a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.
(b) For purposes of this section:
(i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.
(ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.

(2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.
(3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.
(4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.
(5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).
(6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct.
(7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.
(8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:
  (a) the appropriate parties have been given notice;
  (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and
  (c) it is necessary and desirable to establish the guardianship.
(9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.
(10) A petition for a limited guardianship shall include the following information:
  (a) the interest of the petitioner;
  (b) the name, age, residence, and address of the ward;
  (c) verification that the ward is a resident of the Utah State Developmental Center;
  (d) the name and address of the nearest relative of the ward; and
  (e) the reason for appointment of guardianship.
(11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:
  (a) that the ward is a resident of the Utah State Developmental Center;
  (b) the date the ward was originally admitted to the Utah State Developmental Center;
  (c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;
  (d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;
  (e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and
  (f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.
(12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:

The court finds that:
(a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;
(b) the ward is incapacitated;
(c)(named guardian) is appointed as the limited guardian of (named ward); and
(d) the guardianship is a limited guardianship solely for the purpose of:
(i) granting permission for medical and dental care on behalf of the ward; and
(ii) participation in the development and approval of the ward's individual program plan.
(13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Amended by Chapter 366, 2011 General Session

Part 4
Protection of Property of Persons Under Disability and Minors

75-5-401 Protective proceedings.
(1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:
(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's support and education and protection is necessary or desirable to obtain or provide funds.
(b) The provisions of Subsection (1)(a) may be applied to a person beyond minority up to age 21 under special circumstances as determined by the court.
(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that the person:
(a) is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and
(b) has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds.
(3) Appointment of a conservator or other protective order may not be denied solely on the basis that the person for whom the conservatorship or other protective order is sought has a valid power of attorney in effect.

Amended by Chapter 375, 2001 General Session

75-5-402 Protective proceedings -- Jurisdiction of affairs of protected persons.
After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
(2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;
(3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Amended by Chapter 30, 1992 General Session

75-5-403 Venue.

Venue for proceedings under this part is:
(1) In the county in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or
(2) If the person to be protected does not reside in this state, in any county where he has property.

Amended by Chapter 30, 1992 General Session

75-5-404 Original petition for appointment or protective order.

(1) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.
(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

Enacted by Chapter 150, 1975 General Session

75-5-405 Notice.

(1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least 10 days before the date of the hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with Section 75-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.
(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under Section 75-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in Subsection (1) above, notice shall be given in accordance with Section 75-1-401.

Enacted by Chapter 150, 1975 General Session

75-5-406 Protective proceedings -- Request for notice -- Interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-407 Procedure concerning hearing and order on original petition.

(1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for the hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has already retained counsel, the court may appoint an attorney to represent the person to be protected who then has the powers and duties of a guardian ad litem.

(3) The legal representation of the protected person by an attorney shall terminate upon the appointment of a conservator, unless:

(a) there are separate guardianship proceedings still pending before the court subsequent to the appointment of a conservator;

(b) there is a timely filed appeal of the appointment of the conservator; or

(c) upon an express finding of good cause, the court orders otherwise.

(4) If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(5) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

Amended by Chapter 364, 2013 General Session

75-5-408 Permissible court orders.

(1) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(a) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply

the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and the members of the minor's household.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs that the person could exercise if present and not under disability, except the power to make a will. These powers include the power to:

(i) make gifts;

(ii) convey or release the person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(iii) exercise or release the person's powers as personal representative, custodian for minors, conservator, or donee of a power of appointment;

(iv) enter into contracts;

(v) create revocable or irrevocable trusts of property of the estate that may extend beyond the person's disability or life;

(vi) exercise options of the person with a disability to purchase securities or other property;

(vii) exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(viii) exercise the person's right to an elective share in the estate of the person's deceased spouse; and

(ix) renounce any interest by testate or intestate succession or by inter vivos transfer.

(d) The court may exercise, or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power.

(2) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

(3) If the court elects to appoint a conservator under Subsection (1), the court may appoint a temporary conservator to serve until further order of the court. A temporary conservator, if appointed, has all of the powers and duties of a conservator as set forth in Sections 75-5-417, 75-5-418, 75-5-419, and 75-5-424.

Amended by Chapter 142, 2014 General Session

75-5-409 Protective arrangements and single transactions authorized.

(1) If it is established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention

of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

Amended by Chapter 194, 1977 General Session

75-5-410 Who may be appointed conservator -- Priorities.

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the court shall appoint a conservator in accordance with the protected person's most recent nomination, unless the potential conservator is disqualified or the court finds other good cause why that person should not serve as conservator. The nomination shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Conservator

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the conservator of my property in the event that after the date of this instrument I become incapacitated or have other need for protection.

Executed at _____ (city, state)
on this _____ day of _____
_____ (Signature)

(d) a person who has been nominated by the protected person, by any means other than that described in Subsection (1)(c), if the protected person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

(e) the spouse of the protected person;

(f) an adult child of the protected person;

(g) a parent of the protected person, or a person nominated by the will of a deceased parent;

(h) any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;
(i) a person nominated by the person who is caring for him or paying benefits to him.
(2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

Amended by Chapter 324, 2010 General Session

75-5-411 Bond.

Subject to the provisions of Title 7, Financial Institutions Act, relating to the bonding requirements for corporate fiduciaries, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify, unless the court dispenses with such bond for good cause shown. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities and cash deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

Amended by Chapter 194, 1977 General Session

75-5-412 Terms and requirements of bonds.

(1) The following requirements and provisions apply to any bond required under Section 75-5-411:
(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;
(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of the proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;
(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;
(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation under this code.

Enacted by Chapter 150, 1975 General Session

75-5-413 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at

his address as listed in the petition for appointment, or as thereafter reported to the court, and to his address as then known to the petitioner.

Enacted by Chapter 150, 1975 General Session

75-5-414 Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. If the court appoints the petitioner or the petitioner's nominee as conservator over the protected person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner is entitled to receive from the estate reasonable attorney fees and court costs incurred in bringing and defending the petition.

Amended by Chapter 274, 2012 General Session

75-5-415 Death, resignation, or removal of conservator.

(1) The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After the death, resignation, or removal of a conservator, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the preceding conservator.
(2) Before removing a conservator, accepting the resignation of a conservator, or ordering that a protected person's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the protected person as apply to a petition for appointment of a conservator as provided in Section 75-5-407. The court is not required to appoint an attorney to represent the ward if the case is uncontested and the protected person's capacity is not at issue.

Amended by Chapter 142, 2014 General Session

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

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

Amended by Chapter 142, 2014 General Session

75-5-417 General duty of conservator.

(1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.
(2) The conservator shall, for all estates in excess of $50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than $50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information. The forms for both the informal report for estates under $50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.
(3) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
(4)
  (a) The court may impose a fine in an amount not to exceed $5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:
    (i) makes a substantial misstatement on filings of any required annual reports;
    (ii) is guilty of gross impropriety in handling the property of the ward; or
    (iii) willfully fails to file the report required by this section.
  (b) The court may also order restitution of funds misappropriated from the estate of a ward.
  (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.
(5) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Amended by Chapter 89, 2004 General Session

75-5-418 Inventory and records.
(1) Within 90 days after appointment of a conservator, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with an oath or affirmation that it is complete and accurate so far as the conservator is informed. The estate of the protected person does not include the assets of a trust.
(2) The conservator shall provide a copy of the inventory to the protected person if the person:
  (a) can be located;
  (b) has attained the age of 14 years; and
  (c) has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.
(3) The conservator shall keep suitable administrative records and produce them upon the request of any interested person.

Amended by Chapter 274, 2012 General Session

75-5-419 Accounts.
(1) Every conservator must account to the court for the administration of the estate upon resignation or removal and at any other times the court may direct.

(2) On termination of the protected person's minority or disability, a conservator may account to the court, the former protected person, or the personal representative of the protected person.
(3) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to any liabilities concerning the matters considered in connection with the protected person's account, and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.
(4) In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

Amended by Chapter 274, 2012 General Session

75-5-420 Conservators -- Title by appointment.
(1) The appointment of a conservator vests in the conservator title as fiduciary to all property of the protected person, presently held or thereafter acquired, not including the assets of a trust, including title to any property previously held for the protected person by custodians or attorneys-in-fact, except for property held pursuant to any uniform gifts to minors act or provisions.
(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of any rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

Amended by Chapter 274, 2012 General Session

75-5-421 Recording of conservator's letters.
Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

Enacted by Chapter 150, 1975 General Session

75-5-422 Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.
Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Enacted by Chapter 150, 1975 General Session

75-5-423 Persons dealing with conservators -- Protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order as provided in Section 75-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 75-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Enacted by Chapter 150, 1975 General Session

75-5-424 Powers of conservator in administration.

(1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2, Guardians of Minors.

(2) A conservator has the power to compel the production of the protected person's estate documents, including the protected person's will, trust, power of attorney, and any advance health care directives.

(3) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(4) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation, to:

(a) collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) invest and reinvest estate assets in accordance with Subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

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

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

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

(j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
(m) vote a security, in person or by general or limited proxy;
(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
(o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
(r) borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;
(s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
(v) pay any sum distributable to a protected person or dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian, or if none, to a relative or other person with custody of the person;
(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties;
(y) act as a qualified beneficiary of any trust in which the protected person is a qualified beneficiary; and
(z) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Amended by Chapter 142, 2014 General Session

75-5-425 Distributive duties and powers of conservator.

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:
(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:
(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person;
(ii) the accustomed standard of living of the protected person and members of the protected person's household; and
(iii) other funds or sources used for the support of the protected person.
(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.
(d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.
(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20% of the income from the estate.
(3) When a person who is a minor and who has not been adjudged to have a disability under Subsection 75-5-401(2)(a) attains the age of majority, the person's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
(5) If a protected person dies, the conservator:
(a) shall:
(i) deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession;
(ii) inform the executor or a beneficiary named in the will that the conservator has done so; and
(iii) retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it;
(b) may continue to pay the obligations lawfully due against the estate and to protect the estate from waste, injury, or damages that might reasonably be foreseeable; and

(c) may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment, provided that at least 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court.

(6) Upon application for an order granting the powers of a personal representative to a conservator as provided in Subsection (5)(c) and after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Part 6, Personal Representative - Appointment, Control, and Termination of Authority, Part 7, Duties and Powers of Personal Representatives, Part 8, Creditors' Claims, Part 9, Special Provisions Relating to Distribution, and Part 10, Closing Estates, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Amended by Chapter 274, 2012 General Session

75-5-426 Enlargement or limitation of powers of conservator.

Subject to the restrictions of Subsection 75-5-408(1)(d), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by Sections 75-5-424 and 75-5-425, any power which the court itself could exercise under Subsections 75-5-408(1)(b) and 75-5-408(1)(c). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 75-5-424 and 75-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 75-5-424 or 75-5-425, the limitation shall be endorsed upon his letters of appointment.

Enacted by Chapter 150, 1975 General Session

75-5-427 Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under Subsections 75-5-425(1) and (2), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

Amended by Chapter 194, 1977 General Session

75-5-428 Claims against protected person -- Enforcement.

(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.
(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court.
(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.
(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.
(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

Amended by Chapter 306, 2007 General Session

75-5-429 Individual liability of conservator.
(1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.
(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.
(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Enacted by Chapter 150, 1975 General Session

75-5-430 Termination of proceeding.
The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

Enacted by Chapter 150, 1975 General Session

75-5-431 Payment of debt and delivery of property to foreign conservator without local proceedings.

(1) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person, may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:
  (a) That no protective proceeding relating to the protected person is pending in this state; and
  (b) That the foreign conservator is entitled to payment or to receive delivery.
(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

Enacted by Chapter 150, 1975 General Session

75-5-432 Foreign conservator -- Proof of authority -- Bond -- Powers.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

Amended by Chapter 194, 1977 General Session

75-5-433 Embezzlement of protected person's estate -- Citation to person suspected.

Upon petition made by any interested person against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the protected person, ward, or to his estate, the court may cite the suspected person to appear before it and may examine and proceed with him on the charge; and if on such examination it appears that he has wrongful possession of any such property, the court may order the delivery of the same to the conservator or guardian.

Amended by Chapter 194, 1977 General Session

Chapter 5a
Uniform Transfers to Minors Act

75-5a-101 Short title.

This part is known as the "Uniform Transfers to Minors Act."

Enacted by Chapter 272, 1990 General Session

75-5a-102 Definitions.

As used in this part:

(1) "Adult" means an individual who is 21 years of age or older.

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

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

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

(5) "Court" means the probate division of the district court for the county in which the custodian resides.

(6) "Custodial property" means:

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

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

(7) "Custodian" means a person so designated under Section 75-5a-110 or a successor or substitute custodian designated under Section 75-5a-119.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who is not yet 21 years of age.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the district of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under Section 75-5a-110.

(16) "Transferor" means a person who makes a transfer under this part.

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

Enacted by Chapter 272, 1990 General Session

75-5a-103 Scope and jurisdiction.

(1)

(a) This part applies to a transfer that refers to this part in the designation under Subsection 75-5a-110(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state, or the custodial property is located in this state.

(b) The custodianship created remains subject to this part despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this part is subject to personal jurisdiction in this state regarding any matter relating to the custodianship.

(3) A transfer that purports to be made and is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the laws of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state, or the custodial property is located in the designated state.

Enacted by Chapter 272, 1990 General Session

75-5a-104 Nomination of custodian.

(1)

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act."

(b) The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

(c) The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Subsection 75-5a-110(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 75-5a-110. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under Section 75-5a-110.

Enacted by Chapter 272, 1990 General Session

75-5a-105 Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under Section 75-5a-110.

Enacted by Chapter 272, 1990 General Session

75-5a-106 Transfer authorized by will or trust.

(1) A personal representative or trustee may make an irrevocable transfer under Section 75-5a-110 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under Section 75-5a-104 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under Section 75-5a-104, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Subsection 75-5a-110(1).

Enacted by Chapter 272, 1990 General Session

75-5a-107 Other transfer by fiduciary.

(1) Subject to Subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under Section 75-5a-110, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to Subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 75-5a-110.

(3) A transfer under Subsection 75-5a-110(1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) the transfer is authorized by the court, if it exceeds $10,000 in value.

Enacted by Chapter 272, 1990 General Session

75-5a-108 Transfer by obligor.

(1) Subject to Subsections (2) and (3), a person not subject to Section 75-5a-106 or 75-5a-107 who holds property of or owes a liquidated debt to a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor under Section 75-5a-110.

(2) If a person having the right under Section 75-5a-104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under Section 75-5a-104, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

Enacted by Chapter 272, 1990 General Session

75-5a-109 Receipt for custodial property.

A written acknowledgment of delivery by a custodian is sufficient receipt and discharge for custodial property transferred to the custodian under this part.

Enacted by Chapter 272, 1990 General Session

75-5a-110 Manner of creating custodial property and effecting transfer -- Designation of initial custodian -- Control.

(1) Custodial property is created and a transfer is made when:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form in Subsection (2);

(b) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker, or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act";

(g) an interest in any property not described in Subsections (1)(a) through (f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in Subsection (2); or

(h) contributions are made into a custodial account at the Utah Educational Savings Plan in accordance with Title 53B, Chapter 8a, Utah Educational Savings Plan.

(2) An instrument in the following form satisfies the requirements of Subsections (1)(a)(ii) and (1)(g): "Transfer Under the Uniform Transfers to Minors Act

I, ... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

.....

(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Uniform Transfers to Minors Act.

Dated: .....

.....

(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Amended by Chapter 15, 2016 General Session

75-5a-111 Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this part by the same custodian for the benefit of the same minor constitutes a single custodianship.

Enacted by Chapter 272, 1990 General Session

75-5a-112 Validity and effect of transfer.

(1) The validity of a transfer made in a manner prescribed in this part is not affected by:
  (a) failure of the transferor to comply with Subsection 75-5a-110(3) concerning possession and control;
  (b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Subsection 75-5a-110(1); or
  (c) death or incapacity of a person nominated under Section 75-5a-104 or designated under Section 75-5a-110 as custodian or the disclaimer of the office by that person.
(2) A transfer made under Section 75-5a-110 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this part. Neither the minor nor the minor's legal representative has any right, power, duty, or authority regarding the custodial property except as provided in this part.
(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this part and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this part.

Enacted by Chapter 272, 1990 General Session

75-5a-113 Care of custodial property.

(1) A custodian shall:
  (a) take control of custodial property;
  (b) register or record title to custodial property if appropriate; and
  (c) collect, hold, manage, invest, and reinvest custodial property.
(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use the skill or expertise. However, a custodian may, in his discretion and without liability to the minor or the minor's estate, retain any custodial property received from a transferor.
(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:
  (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
  (b) the life of another person in whom the minor has an insurable interest only to the extent the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.
(4)
  (a) A custodian shall at all times keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor.

(b) Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for ..... (name of minor) under the Uniform Transfers to Minors Act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is 14 years of age or older.

Enacted by Chapter 272, 1990 General Session

75-5a-114 Powers of custodian.

(1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of Section 75-5a-113.

Enacted by Chapter 272, 1990 General Session

75-5a-115 Use of custodial property.

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person, or the minor if the minor is 14 years of age or older, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Enacted by Chapter 272, 1990 General Session

75-5a-116 Custodian's expenses, compensation, and bond.

(1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under Section 75-5a-105, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in Subsection 75-5a-119(6), a custodian need not give a bond.

Enacted by Chapter 272, 1990 General Session

75-5a-117 Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:
(1) the validity of the purported custodian's designation;
(2) the propriety of, or the authority under this part for, any act of the purported custodian;
(3) the validity or propriety under this part of any instrument or instructions executed or given either by the person purporting to make transfer or by the purported custodian; or
(4) the propriety of the application of any property of the minor delivered to the purported custodian.

Enacted by Chapter 272, 1990 General Session

75-5a-118 Liability to third persons.
(1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable, if the claim is based on:
  (a) a contract entered into by a custodian acting in a custodial capacity;
  (b) an obligation arising from the ownership or control of custodial property; or
  (c) a tort committed during the custodianship.
(2) A custodian is not personally liable:
  (a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
  (b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.
(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Enacted by Chapter 272, 1990 General Session

75-5a-119 Renunciation, resignation, death, or removal of custodian -- Designation of successor custodian.
(1) A person nominated under Section 75-5a-104 or designated under Section 75-5a-110 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 75-5a-104, the person who made the nomination may nominate a substitute custodian under Section 75-5a-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Subsection 75-5a-110(1). The custodian designated has the rights of a successor custodian.
(2) A custodian at any time may designate a trust company or an adult other than a transferor under Section 75-5a-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor is 14 years of age or older and to the successor custodian and by delivering the custodial property to the successor custodian.
(4)
(a) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is 14 years of age or older, the minor may designate as successor custodian, in the manner prescribed in Subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor is not yet 14 years of age or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.
(b) If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.
(5) A custodian who declines to serve under Subsection (1) or resigns under Subsection (3), or the legal representative of a deceased or incapacitated custodian shall as soon as practicable place the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.
(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if he is 14 years of age or older, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 75-5a-105 or to require the custodian to give appropriate bond.

Amended by Chapter 71, 2005 General Session

75-5a-120 Accounting by and determination of liability of custodian.
(1) A minor who is 14 years of age or older, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:
(a) for an accounting by the custodian or the custodian's legal representative; or
(b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 75-5a-118 to which the minor or the minor's legal representative was a party.
(2) A successor custodian may petition the court for an accounting by the predecessor custodian.
(3) The court, in a proceeding under this part or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.
(4) If a custodian is removed under Subsection 75-5a-119(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Enacted by Chapter 272, 1990 General Session

75-5a-121 Termination of custodianship.
The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's becoming 21 years of age with respect to custodial property transferred under Section 75-5a-105 or 75-5a-106;
(2) the minor's attainment of majority under the laws of this state with respect to the custodial property transferred under Section 75-5a-107 or 75-5a-108; or
(3) the minor's death.

Enacted by Chapter 272, 1990 General Session

75-5a-122 Applicability.

This part applies to a transfer within the scope of Section 75-5a-103 made after its effective date if:
(1) the transfer purports to have been made under the Uniform Gifts to Minors Act; or
(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this part is necessary to validate the transfer.

Enacted by Chapter 272, 1990 General Session

75-5a-123 Effect on existing custodianships.
(1) Any transfer of custodial property as now defined in this part made before July 1, 1990, is validated notwithstanding that there was no specific authority in the Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.
(2) This part applies to all transfers made before July 1, 1990, in a manner and form prescribed in the Uniform Gifts to Minors Act, except as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1990.
(3) Sections 75-5a-102 and 75-5a-121 regarding the age of a minor for whom custodial property is held under this part do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of majority and before July 1, 1990.

Enacted by Chapter 272, 1990 General Session

Chapter 5b
Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Part 1
General Provisions

75-5b-101 Title.

This chapter is known as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

Enacted by Chapter 253, 2008 General Session

75-5b-102 Definitions.

In this chapter:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.

(3) "Emergency" means circumstances that likely will result in substantial harm to a respondent's health, safety, or welfare, and in which the appointment of a guardian is necessary because no other person has authority to and is willing to act on the respondent's behalf.

(4) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons.

(5) "Guardianship order" means an order appointing a guardian.

(6) "Guardianship proceeding" means a proceeding in which an order for the appointment of a guardian is sought or has been issued.

(7) "Home state" means the state in which the respondent was physically present for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six-month period.

(8) "Incapacitated person" means an adult for whom a guardian has been appointed.

(9) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(10) "Person," except in the terms "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(11) "Protected person" means an adult for whom a protective order has been made.

(12) "Protective order" means an order appointing a conservator or another court order related to management of an adult's property.

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

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

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

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

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

Enacted by Chapter 253, 2008 General Session

75-5b-103 International application.

A court of this state may treat a foreign country as if it were a state for the purpose of applying Part 1, General Provisions, Part 2, Jurisdiction, Part 3, Transfer of Jurisdiction, and Part 5, Miscellaneous Provisions.

Enacted by Chapter 253, 2008 General Session

75-5b-104 Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in Subsection (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Enacted by Chapter 253, 2008 General Session

75-5b-105 Cooperation between courts.

(1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) hold an evidentiary hearing;

(b) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) order that an evaluation or assessment be made of the respondent;

(d) order any appropriate investigation of a person involved in a proceeding;

(e) forward to the court of this state a certified copy of the transcript or other record of a hearing under Subsection (1)(a) or any other proceeding, any evidence otherwise produced under Subsection (1)(b), and any evaluation or assessment prepared in compliance with an order under Subsection (1)(c) or (d);

(f) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and

(g) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations Section 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in Subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Enacted by Chapter 253, 2008 General Session

75-5b-106 Taking testimony in another state.

(1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Enacted by Chapter 253, 2008 General Session

Part 2
Jurisdiction

75-5b-201 Exclusive basis -- Significant connection.

(1) This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

(2) In determining under Section 75-5b-203 and Subsection 75-5b-301(5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) the location of the respondent's property; and

(d) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationship, and receipt of services.

Enacted by Chapter 253, 2008 General Session

75-5b-202 Jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(a) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 75-5b-205;

(3) this state does not have jurisdiction under either Subsection (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under Section 75-5b-204 are met.

Enacted by Chapter 253, 2008 General Session

75-5b-203 Special jurisdiction.

(1) A court of this state lacking jurisdiction under Section 75-5b-202 has jurisdiction to do any of the following:
  (a) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;
  (b) issue a protective order with respect to real or tangible personal property located in this state; and
  (c) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 75-5b-301.
(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Enacted by Chapter 253, 2008 General Session

75-5b-204 Exclusive and continuing jurisdiction.

Except as otherwise provided in Section 75-5b-203, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Enacted by Chapter 253, 2008 General Session

75-5b-205 Declining jurisdiction if another court is a more appropriate forum.

(1) A court of this state having jurisdiction under Section 75-5b-202 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.
(2) If a court of this state declines to exercise its jurisdiction under Subsection (1), it shall either dismiss or stay the proceeding. The court may impose any other condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be promptly filed in another state.
(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:
  (a) any expressed preference of the respondent;
  (b) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
  (c) the length of time the respondent was physically located in or was a legal resident of this or another state;
  (d) the distance of the respondent from the court in each state;
  (e) the financial circumstances of the respondent's estate;
  (f) the nature and location of the evidence;
  (g) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
  (h) the familiarity of the court of each state with the facts and issues in the proceeding; and
  (i) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Enacted by Chapter 253, 2008 General Session

75-5b-206 Jurisdiction declined by reason of conduct.

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:
  (a) decline to exercise jurisdiction;
  (b) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
  (c) continue to exercise jurisdiction after considering:
    (i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
    (ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in Subsection 75-5b-205(3); and
    (iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 75-5b-202.
(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against the state or a governmental subdivision, agency, or instrumentality of the state unless authorized by law other than this chapter.

Enacted by Chapter 253, 2008 General Session

75-5b-207 Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition shall be given to those persons who would be entitled to notice of the petition if the proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is given in this state.

Enacted by Chapter 253, 2008 General Session

75-5b-208 Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state as provided in Subsection 75-5b-203(1)(a) or (b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 75-5b-202, it may proceed with the case unless a court in another state acquires jurisdiction under Section 75-5b-202 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 75-5b-202, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Enacted by Chapter 253, 2008 General Session

Part 3
Transfer of Jurisdiction

75-5b-301 Transfer of guardianship or conservatorship to another state.

(1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.
(2) Notice of a petition under Subsection (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.
(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to Subsection (1).
(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:
  (a) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
  (b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and
  (c) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.
(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:
  (a) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Subsection 75-5b-201(2);
  (b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and
  (c) adequate arrangements will be made for management of the protected person's property.
(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:
  (a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 75-5b-302; and
  (b) the documents required to terminate a guardianship or conservatorship in this state.

Enacted by Chapter 253, 2008 General Session

75-5b-302 Accepting guardianship or conservatorship transferred from another state.

(1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under Subsection (1) shall be given by the petitioner to those persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is given in this state.

(3) On the court's own motion or on request of the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection (1).

(4) The court shall issue an order provisionally granting a petition filed under Subsection (1) unless:

(a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) the guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 75-5b-301 transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Enacted by Chapter 253, 2008 General Session

Part 4
Registration and Recognition of Orders from Other States

75-5b-401 Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing certified copies of the order and letters of office as a foreign judgment in a court in any appropriate county of this state.

Enacted by Chapter 253, 2008 General Session

75-5b-402 Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order, letters of office, and any bond.

Enacted by Chapter 253, 2008 General Session

75-5b-403 Effect of registration.

(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.
(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

Enacted by Chapter 253, 2008 General Session

Part 5
Miscellaneous Provisions

75-5b-501 Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 253, 2008 General Session

75-5b-502 Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b), 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 253, 2008 General Session

75-5b-503 Transitional provision.

(1) This chapter applies to guardianship and protective proceedings begun on or after January 1, 2009.
(2)Part 1, General Provisions, Part 3, Transfer of Jurisdiction, and Part 4, Registration and Recognition of Orders from Other States and Sections 75-5b-501 and 75-5b-502 apply to proceedings begun before January 1, 2009, regardless of whether a guardianship or protective order has been issued.

Enacted by Chapter 253, 2008 General Session

Chapter 6
Nonprobate Transfers

Part 1
Multiple-Party Accounts

75-6-101 Definitions.

As used in this part:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution and includes:
  (a) a checking account;
  (b) a savings account;
  (c) a certificate of deposit;
  (d) a share account; and
  (e) other like arrangement.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation:
  (a) banks;
  (b) trust companies;
  (c) industrial banks;
  (d) savings banks;
  (e) building and loan associations;
  (f) savings and loan companies or associations; and
  (g) credit unions.

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

(5)
  (a) "Multiple-party account" means any of the following types of account:
    (i) a joint account;
    (ii) a P.O.D. account; or
    (iii) a trust account.
  (b) "Multiple-party account" does not include:
    (i) accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes; or
    (ii) accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6)

(a) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits to it made by or for the party, less all withdrawals made by or for the party which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance.
(b) "Net contribution" includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7)
(a) "Party" means a person, including a minor, who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account.
(b) A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee and includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party.
(c) "Party" includes a person identified as a trustee of an account for another whether or not a beneficiary is named.
(d) "Party" does not include any named beneficiary unless the named beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under Section 75-1-107.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on that person's death to:
(a) one or more P.O.D. payees; or
(b) one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account, including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14)
(a) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; and it is not essential that payment to the beneficiary be mentioned in the deposit agreement.
(b) A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

Amended by Chapter 92, 2004 General Session

75-6-102 Ownership as between parties and others -- Protection of financial institutions.

The provisions of Sections 75-6-103 through 75-6-105 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of Sections 75-6-108 through 75-6-113 govern the liability of financial institutions who make payments pursuant thereto, and their setoff rights.

Enacted by Chapter 150, 1975 General Session

75-6-103 Ownership during lifetime.

(1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.
(2) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (1) of this section.
(3) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (1) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

Enacted by Chapter 150, 1975 General Session

75-6-104 Right of survivorship.

(1) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 75-6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.
(2) If the account is a P.O.D. account:
  (a) On death of one of two or more original payees the rights to any sums remaining on deposit are governed by Subsection (1);
  (b) On death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account:
  (a) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by Subsection (1);
  (b) On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent; and if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.
(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.
(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Amended by Chapter 194, 1977 General Session

75-6-105 Effect of written notice to financial institution.

The provisions of Section 75-6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

Enacted by Chapter 150, 1975 General Session

75-6-106 Accounts and transfers nontestamentary.

Any transfers resulting from the application of Section 75-6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Chapter 1, General Provisions, Definitions, and Probate Jurisdiction of Court, Chapter 2, Intestate Succession and Wills, Chapter 3, Probate of Wills and Administration, and Chapter 4, Foreign Personal Representatives - Ancillary Administration, except as provided in Sections 75-2-201 through 75-2-214, and except as a consequence of, and to the extent directed by, Sections 75-6-107 and 75-3-916.

Amended by Chapter 39, 1998 General Session

75-6-107 Rights of creditors.

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a

creditor, or one acting for a minor or dependent child of the decedent; and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.

Enacted by Chapter 150, 1975 General Session

75-6-108 Financial institution protection -- Payment on signature of one party.

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

Enacted by Chapter 150, 1975 General Session

75-6-109 Financial institution protection -- Payment after death or disability -- Joint account.

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 75-6-104.

Enacted by Chapter 150, 1975 General Session

75-6-110 Financial institution protection -- Payment of P.O.D. account.

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

Enacted by Chapter 150, 1975 General Session

75-6-111 Financial institution protection -- Payment of trust account.

Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

Enacted by Chapter 150, 1975 General Session

75-6-112 Financial institution protection -- Discharge.

Payment made pursuant to Section 75-6-108, 75-6-109, 75-6-110 or 75-6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Enacted by Chapter 150, 1975 General Session

75-6-113 Financial institution protection -- Setoff -- Attachment, garnishment, and other legal process.

(1) Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the balance in any account in which the party has or had immediately before his death a present right of withdrawal.

(2) Without regard to the ownership of funds in any multiple-party account and without incurring liability for wrongful dishonor, conversion, or other liability or damage to any person, a financial institution may refuse to permit any withdrawals from the account after service on the financial institution of an attachment, garnishment, execution, or other legal process against the account. The financial institution shall not be required to pay out any part of the credit balance in the account pursuant to an attachment, garnishment, judgment, or other legal process issued in any proceeding against any one or more but less than all of the persons to whom the account is payable until the institution has been furnished with a certified copy of an order of the court determining which of the persons owned the credit balance at the time the process was served on the institution. Payment pursuant to the process in the amount specified in the court order shall be valid and release the financial institution as to any persons claiming an interest in the account.

Enacted by Chapter 150, 1975 General Session

75-6-114 Financial institution protection -- Costs and attorneys' fees.

A financial institution shall have a lien for its costs and attorneys' fees on the sums on deposit in any multiple-party account in such institution which becomes the subject of any litigation as to the rights to such sums. This lien shall attach only if the financial institution acted in good faith and with good cause.

Enacted by Chapter 150, 1975 General Session

75-6-115 Agency accounts.

Nothing in this chapter shall preclude a party to an account from adding the name of another person to such an account with the designation "agent." This agent shall have no present or future interest in the sums on deposit in such account, but the financial institution may honor requests for payment from such account by such agent, whether the principal be incapacitated or deceased at the time the payment is demanded, unless the financial institution has actual knowledge of such death or incapacity. Payments from such account by such financial institution at the request of such agent shall discharge such financial institution from all claims for amounts so paid.

Amended by Chapter 194, 1977 General Session

Part 2
Provisions Relating to Effect on Death

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

(1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust are considered nontestamentary, and this code does not invalidate the instrument or any provision:
  (a) that money or other benefits previously due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;
  (b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or
  (c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.
(2) Nothing in this section limits the rights of creditors under other laws of this state.
(3) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to these contents is determined according to rules of law without regard to the lease provisions. The contents of the repository may be delivered on request to any person who has access to the repository by the terms of the lease agreement without liability on the part of the financial institution or other person where the repository is located.
(4) Any motor vehicle, trailer, semitrailer, or boat registration in the names of two or more individuals shall be deemed to be held in joint tenancy with right of survivorship unless otherwise indicated.

Amended by Chapter 158, 1986 General Session

75-6-202 Direction to pay taxes in trust or other dispositive instrument.

A general direction in a trust or other dispositive instrument to pay all taxes imposed as a result of a decedent's death or similar language shall not be construed to include taxes imposed on a "generation skipping transfer" under Section 2601 of the Internal Revenue Code of 1954 (or any successor or amended section of similar content) unless the trustor of the trust or creator of the other dispositive instrument shall express an intention that these taxes be paid out of the property which is subject to the trust or other dispositive instrument by reference to the generation skipping tax or otherwise.

Enacted by Chapter 226, 1983 General Session

Part 3
Uniform Transfer on Death Security Registration Act

75-6-301 Title.

This part shall be known as the "Uniform Transfer on Death Security Registration Act."

Amended by Chapter 79, 1996 General Session

75-6-302 Definitions.

In this part, unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

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

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

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared

on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Amended by Chapter 79, 1996 General Session

75-6-303 Registration in beneficiary form -- Sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

Enacted by Chapter 9, 1995 General Session

75-6-304 Registration in beneficiary form -- Applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

Enacted by Chapter 9, 1995 General Session

75-6-305 Orientation of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Enacted by Chapter 9, 1995 General Session

75-6-306 Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

Enacted by Chapter 9, 1995 General Session

75-6-307 Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled

or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

Enacted by Chapter 9, 1995 General Session

75-6-308 Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Enacted by Chapter 9, 1995 General Session

75-6-309 Protection of registering entity.

(1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this part.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 75-6-307 and does so in good faith reliance on:

(a) the registration;

(b) this part; and

(c) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.

(4) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Amended by Chapter 79, 1996 General Session

75-6-310 Nontestamentary transfer on death.

(1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.

(2) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under the laws of this state.

Amended by Chapter 79, 1996 General Session

75-6-311 Terms, conditions, and forms for registration.

(1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:
  (a) registrations in beneficiary form; and
  (b) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:
  (a) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.
  (b) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.
  (c) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

Enacted by Chapter 9, 1995 General Session

75-6-312 Rules of construction.

(1) This part shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this part among states enacting it.

(2) Unless displaced by the particular provisions of this part, the principles of law and equity supplement its provisions.

Amended by Chapter 79, 1996 General Session

75-6-313 Application of part.

This part applies to registrations of securities in beneficiary form made before or after January 1, 1995, by decedents dying on or after June 30, 1995.

Amended by Chapter 79, 1996 General Session

Chapter 7
Utah Uniform Trust Code

Part 1
General Provisions

75-7-101 Title.
This chapter is known as the "Utah Uniform Trust Code."

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-102 Scope.
This chapter applies to trusts as defined in Section 75-1-201.

Enacted by Chapter 89, 2004 General Session

75-7-103 Definitions.
(1) In this chapter:
(a) "Action," with respect to an act of a trustee, includes a failure to act.
(b) "Beneficiary" means a person that:
(i) has a present or future beneficial interest in a trust, vested or contingent; or
(ii) in a capacity other than that of trustee, holds a power of appointment over trust property.
(c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Subsection 75-7-405(1).
(d) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
(e) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
(f) "Jurisdiction," with respect to a geographic area, includes a state or country.
(g) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.
(h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:
(i) is a current distributee or permissible distributee of trust income or principal; or
(ii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
(i) "Resident estate" or "resident trust"means:
(i) an estate of a decedent who at death was domiciled in this state;
(ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or
(iii) a trust administered in this state.
(j) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(k) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
(l) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer or encumbrance of a beneficiary's interest.
(m) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.
(n) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.
(2) Terms not specifically defined in this section have the meanings provided in Section 75-1-201.

Enacted by Chapter 89, 2004 General Session

75-7-104 Knowledge.
(1) Subject to Subsection (2), a person has knowledge of a fact if the person:
(a) has actual knowledge of it;
(b) has received a notice or notification of it; or
(c) from all the facts and circumstances known to the person at the time in question, has reason to know it.
(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Enacted by Chapter 89, 2004 General Session

75-7-105 Default and mandatory rules.
(1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
(2) Except as specifically provided in this chapter, the terms of a trust prevail over any provision of this chapter except:
(a) the requirements for creating a trust;
(b) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
(c) the requirement that a trust and its terms be for the benefit of its beneficiaries;
(d) the power of the court to modify or terminate a trust under Sections 75-7-410 through 75-7-416;
(e) the effect of a spendthrift provision, Section 25-6-14, and the rights of certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims - Spendthrift and Discretionary Trusts;
(f) the power of the court under Section 75-7-702 to require, dispense with, or modify or terminate a bond;

(g) the effect of an exculpatory term under Section 75-7-1008;
(h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a trustee or beneficiary;
(i) periods of limitation for commencing a judicial proceeding; and
(j) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 75-7-203 and 75-7-205.

Enacted by Chapter 89, 2004 General Session

75-7-106 Common law of trusts -- Principles of equity.

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

Enacted by Chapter 89, 2004 General Session

75-7-107 Governing law.

(1) For purposes of this section:
(a) "Foreign trust" means a trust that is created in another state or country and valid in the state or country in which the trust is created.
(b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.
(2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.
(3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.
(4) A trust shall be considered to be administered in this state if:
(a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or
(b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.
(5) If a foreign trust is administered in this state as provided in this section, the following provisions are effective and enforceable under the laws of this state:
(a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section 25-6-14;
(b) a provision that allows the trust to be perpetual; or
(c) a provision that is not expressly prohibited by the law of this state.
(6) A foreign trust that moves its administration to this state is valid whether or not the trust complied with the laws of this state at the time of the trust's creation or after the trust's creation.
(7) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection (4).

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-108 Principal place of administration.

(1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:
  (a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
  (b) all or part of the administration occurs in the designated jurisdiction.
(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.
(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
(4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:
  (a) the name of the jurisdiction to which the principal place of administration is to be transferred;
  (b) the address and telephone number at the new location at which the trustee can be contacted;
  (c) an explanation of the reasons for the proposed transfer;
  (d) the date on which the proposed transfer is anticipated to occur; and
  (e) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.
(5) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.
(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 75-7-704.

Enacted by Chapter 89, 2004 General Session

75-7-109 Methods and waiver of notice.
(1) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.
(2) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.
(3) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

Enacted by Chapter 89, 2004 General Session

75-7-110 Nonjudicial settlement agreements.
(1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
(2) Except as otherwise provided in Subsection (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.
(4) Matters that may be resolved by a nonjudicial settlement agreement include:
(a) the interpretation or construction of the terms of the trust;
(b) the approval of a trustee's report or accounting;
(c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
(d) the resignation or appointment of a trustee and the determination of a trustee's compensation;
(e) transfer of a trust's principal place of administration; and
(f) liability of a trustee for an action relating to the trust.
(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Part 3, Representation, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Enacted by Chapter 89, 2004 General Session

75-7-111 Rules of construction.

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

Enacted by Chapter 89, 2004 General Session

75-7-112 Penalty provisions.

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

Enacted by Chapter 89, 2004 General Session

Part 2
Jurisdiction of Court Concerning Trusts

75-7-201 Court -- Exclusive jurisdiction of trusts.

(1)
(a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts.
(b) Proceedings which may be maintained under this section are those concerning:
(i) the administration and distribution of trusts;
(ii) the declaration of rights; and
(iii) the determination of other matters involving trustees and beneficiaries of trusts.
(c) These include, but are not limited to proceedings to:

(i) appoint or remove a trustee;
(ii) review a trustee's fees;
(iii) review and settle interim or final accounts;
(iv) ascertain beneficiaries;
(v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments;
(vi) instruct trustees;
(vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and
(viii) order transfer of administration of the trust to another state upon appropriate conditions as may be determined by the court or accept transfer of administration of a trust from another state to this state upon such conditions as may be imposed by the supervising court of the other state, unless the court in this state determines that these conditions are incompatible with its own rules and procedures.

(2)
(a) A proceeding under this section does not result in continuing supervision by the court over the administration of the trust.
(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

Amended by Chapter 3, 2003 Special Session 2
Amended by Chapter 3, 2003 Special Session 2

75-7-202 Effect of administration in this state -- Consent to jurisdiction.

(1) The trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust if the trustee acts as trustee of a trust administered in this state.
(2) To the extent of the beneficial interests in a trust administered in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.
(3) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.
(4) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection 75-7-107(4).

Amended by Chapter 89, 2004 General Session

75-7-203 Subject matter jurisdiction.

(1) The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.
(2) The district court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.
(3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-204 Trust proceedings -- Dismissal of matters relating to foreign trusts.

(1) The court may not, over the objection of a party, entertain proceedings under Section 75-7-201 involving a trust which:
  (a) is under the continuing supervision of a foreign court;
  (b) is registered in another state; or
  (c) has a fiduciary which transacts a major portion of its trust administration in another state.
(2) Notwithstanding Subsection (1), the court may entertain a proceeding regarding any matter involving a trust if:
  (a) all appropriate parties could not be bound by litigation in the courts of the other state; or
  (b) the interests of justice would be seriously impaired.
(3) The court may condition a stay or dismissal of a proceeding on the consent of any party to the jurisdiction of the courts of another state, or the court may grant a continuance or enter any other appropriate order.

Amended by Chapter 3, 2003 Special Session 2
Amended by Chapter 3, 2003 Special Session 2

75-7-205 Venue.

(1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding involving a trust is in the county in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.
(2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this state in which a beneficiary resides, in any county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

Repealed and Re-enacted by Chapter 89, 2004 General Session

Part 3
Representation

75-7-301 Basic effect.

(1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.
(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.
(3) Except as otherwise provided in Sections 75-7-411 and 25-6-14, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-302 Representation by holder of general testamentary power of appointment.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-303 Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-304 Representation by person having substantially identical interest.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-305 Appointment of guardian ad litem or other representative.

(1) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or protected person, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.
(2) A guardian ad litem or other representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.
(3) In making decisions, a guardian ad litem or other representative may consider general benefit accruing to the living members of the individual's family.

Repealed and Re-enacted by Chapter 89, 2004 General Session

Part 4
Creation, Validity, Modification, and Termination of Trust

75-7-401 Methods of creating trust.

(1) A trust may be created by:
  (a) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
  (b) declaration by the owner of property that the owner holds identifiable property as trustee; or
  (c) exercise of a power of appointment in favor of a trustee.
(2) A health savings account is established on the first day an individual is covered by a high deductible health plan, as defined in Section 223 of the Internal Revenue Code. The health savings account shall be opened with a trustee or custodian within the time prescribed by law, without extensions, for filing a federal income tax return for that year. A health savings account is established regardless of a transfer of cash or other property to the account and, unless required by the trustee or custodian, it is not necessary for any party to sign a health savings account trust or custodial agreement regarding the health savings account.

Amended by Chapter 278, 2009 General Session

75-7-402 Requirements for creation.

(1) A trust is created only if:
  (a) the settlor has capacity to create a trust, which standard of capacity shall be the same as for a person to create a will;
  (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree authorizes the creation of a trust;
  (c) the trust has a definite beneficiary or is:
    (i) a charitable trust;
    (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or
    (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;
  (d) the trustee has duties to perform; and
  (e) the same person is not the sole trustee and sole beneficiary.
(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
(3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-403 Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:
(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or
(3) any trust property was located.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-404 Trust purposes.
A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-405 Charitable purposes -- Enforcement.
(1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
(3) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-406 Creation of trust induced by fraud, duress, or undue influence.
A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-407 Evidence of oral trust.
Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-408 Trust for care of animal.
A trust may be created to provide for the care of a pet or animal as provided in Section 75-2-1001.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-409 Noncharitable trust without ascertainable beneficiary.
A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee as provided in Section 75-2-1001.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-410 Modification or termination of trust -- Proceedings for approval or disapproval.

(1) In addition to the methods of termination prescribed by Sections 75-7-411 through 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under Sections 75-7-411 through 75-7-416, or trust combination or division under Section 75-7-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 75-7-411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 75-7-413.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-411 Modification or termination of noncharitable irrevocable trust by consent.

(1) A noncharitable, irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust, by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized, or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(2) A noncharitable, irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

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

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

(5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under Subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

(a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) the interests of a beneficiary who does not consent will be adequately protected.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-412 Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.
(3) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the court or otherwise in a manner consistent with the purposes of the trust.

Enacted by Chapter 89, 2004 General Session

75-7-413 Cy pres.
(1) Except as otherwise provided in Subsection (2), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:
  (a) the trust does not fail, in whole or in part;
  (b) the trust property does not revert to the settlor or the settlor's successors in interest; and
  (c) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.
(2) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:
  (a) the trust property is to revert to the settlor and the settlor is still living; or
  (b) fewer than 21 years have elapsed since the date of the trust's creation.

Enacted by Chapter 89, 2004 General Session

75-7-414 Modification or termination of uneconomic trust.
(1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.
(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.
(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
(4) This section does not apply to an easement for conservation or preservation.

Enacted by Chapter 89, 2004 General Session

75-7-415 Reformation to correct mistakes.
The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Enacted by Chapter 89, 2004 General Session

75-7-416 Modification to achieve settlor's tax objectives.
To achieve the settlor's tax objectives, the court may modify the terms of a trust in order to achieve the settlor's tax objectives. The court may provide that the modification has retroactive effect.

Enacted by Chapter 89, 2004 General Session

75-7-417 Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Enacted by Chapter 89, 2004 General Session

Part 5
Creditor's Claims - Spendthrift and Discretionary Trusts

75-7-501 Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section 25-6-14, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to relief as is appropriate under the circumstances.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-502 Spendthrift provisions for beneficiaries other than the settlor.

(1) A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the beneficiary is the trustee or cotrustee of the trust.
(2) A term of a trust providing that the interest of a beneficiary other than the settlor is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.
(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Enacted by Chapter 89, 2004 General Session

75-7-503 Exceptions to spendthrift provision.

(1) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.
(2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.
(3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Enacted by Chapter 89, 2004 General Session

75-7-504 Discretionary trusts -- Effect of standard.

(1) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(2) Except as otherwise provided in Subsection (3), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(a) the discretion is expressed in the form of a standard of distribution; or

(b) the trustee has abused the discretion.

(3) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(a) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(b) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(4) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

Enacted by Chapter 89, 2004 General Session

75-7-505 Creditor's claim against settlor.

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(b) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

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

(2) For purposes of this section:

(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds

the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

Enacted by Chapter 89, 2004 General Session

75-7-506 Overdue distribution.

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

Enacted by Chapter 89, 2004 General Session

75-7-507 Personal obligations of trustee.

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

Enacted by Chapter 89, 2004 General Session

75-7-508 Notice to creditors.

(1)
- (a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:
  - (i) once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death; and
  - (ii) in accordance with Section 45-1-101 for three weeks.
- (b) The notice required by Subsection (1)(a) shall:
  - (i) provide the trustee's name and address; and
  - (ii) notify creditors:
    - (A) of the deceased settlor; and
    - (B) to present their claims within three months after the date of the first publication of the notice or be forever barred from presenting the claim.

(2) A trustee shall give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present his claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) or a similar notice.

(3)
- (a) If the deceased settlor received medical assistance, as defined in Section 26-19-2, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of Health, to present any claim under Section 26-19-13.5 within 60 days from the mailing or other delivery of notice, whichever is later, or be forever barred.
- (b) If the trustee does not mail notice to the director of the Office of Recovery Services on behalf of the department in accordance with Subsection (3)(a), the department shall have one year from the death of the settlor to present its claim.

(4) The trustee is not liable to any creditor or to any successor of the deceased settlor for giving or failing to give notice under this section.

(5) The notice to creditors shall be valid against any creditor of the trust and also against any creditor of the estate of the deceased settlor.

Amended by Chapter 142, 2014 General Session

75-7-509 Limitations on presentation of claims.

(1) All claims against a deceased settlor which arose before the death of the deceased settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:
  (a) one year after the settlor's death; or
  (b) the time provided by Subsection 75-7-508(2) or (3) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-7-508(1) for all claims barred by publication.
(2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.
(3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:
  (a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or
  (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1).
(4) Nothing in this section affects or prevents:
  (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;
  (b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which he is protected by liability insurance;
  (c) collection of compensation for services rendered and reimbursement for expenses advanced by the trustee or by the attorney or accountant for the trustee of the trust estate; or
  (d) the right to recover medical assistance provided to the settlor under Title 26, Chapter19, Medical Benefits Recovery Act.

Amended by Chapter 72, 2004 General Session
Renumbered and Amended by Chapter 89, 2004 General Session
Amended by Chapter 90, 2004 General Session

75-7-510 Manner of presentation of claims.

(1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be presented as follows:
  (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented upon the receipt of the written statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature

of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the trustee in any court where the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased settlor's estate or the trust estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the deceased settlor which were pending at the time of the deceased settlor's death.

(2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the trustee may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition, may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-511 Classification of claims.

(1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to pay all claims in full, the trustee shall make payment in the following order:

(a) reasonable funeral expenses;

(b) costs and expenses of administration;

(c) debts and taxes with preference under federal law;

(d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending him, and medical assistance if Section 26-19-13.5 applies;

(e) debts and taxes with preference under other laws of this state; and

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-512 Allowance of claims.

(1) As to claims presented in the manner described in Section 75-7-510 and within the time limit prescribed in Section 75-7-509, the trustee may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall notify the claimant. The trustee may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the trustee not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.

(2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the court may order any claim presented to the trustee or trustee's attorney in a timely manner and not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall be given to the claimant, the trustee, and those other persons interested in the trust estate as the court may direct by order at the time the proceeding is commenced.
(3) A judgment in a proceeding in another court against the trustee to enforce a claim against a deceased settlor's estate is a court-ordered allowance of the claim.
(4) Unless otherwise provided in any judgment in another court entered against a trustee, allowed claims bear interest at the legal rate for the period commencing six months after the deceased settlor's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-513 Payment of claims.
(1) Upon the expiration of the earliest of the time limitations provided in Section 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed against the deceased settlor's estate in the order of priority prescribed, after making provision for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for that purpose, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the trustee to pay the claim to the extent that funds of the deceased settlor's estate or trust estate are available for the payment.
(2) The trustee at any time may pay any just claim that has not been barred, with or without formal presentation, but the trustee shall be personally liable to any other claimant whose claim is allowed and who is injured by the payment if:
  (a) the payment was made before the expiration of the time limit stated in Subsection (1) and the trustee failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
  (b) the payment was made, due to the negligence or willful fault of the trustee, in a way that deprived the injured claimant of his priority.

Renumbered and Amended by Chapter 89, 2004 General Session
Amended by Chapter 282, 2004 General Session

75-7-514 Secured claims.
Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders his security; but otherwise payment shall be based upon one of the following:
(1) if the creditor exhausts his security before receiving payment, unless precluded by another provision of the law, upon the amount of the claim allowed less the fair value of the security; or
(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise, or litigation.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-515 Claims not due and contingent or unliquidated claims.

(1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the trust estate, and if the claim has been allowed or established by a proceeding, it shall be paid in the same manner as presently due and absolute claims of the same class.
(2) In other cases the trustee, or, on petition of the trustee or the claimant in a special proceeding for that purpose, the court, may provide for payment as follows:
  (a) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account; or
  (b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a beneficiary, or otherwise.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-516 Counterclaims.
(1) In allowing a claim, the trustee may deduct any counterclaim which the deceased settlor's estate has against the claimant. In determining a claim against a deceased settlor's estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.
(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based.
(3) A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-517 Execution and levies prohibited.
(1) No execution may issue upon nor may any levy be made against any property of the deceased settlor's estate under any judgment against a deceased settlor or a trustee.
(2) This section may not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-518 Compromise of claims.
When a claim against a deceased settlor's estate has been presented in any manner, the trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-519 Encumbered assets.
(1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the

encumbrance has presented a claim, if it appears to be in the best interest of the deceased settlor's estate.

(2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets, provides otherwise.

Renumbered and Amended by Chapter 89, 2004 General Session

Part 6
Revocable Trusts

75-7-604 Capacity of settlor of revocable trust.

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

Enacted by Chapter 89, 2004 General Session

75-7-605 Revocation or amendment of revocable trust.

(1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an instrument executed before May 1, 2004.

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

(a) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) The settlor may revoke or amend a revocable trust:

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

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(ii) any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Enacted by Chapter 89, 2004 General Session

75-7-606 Settlor's powers -- Powers of withdrawal.

(1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
(2) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.
(3) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Enacted by Chapter 89, 2004 General Session

75-7-607 Limitation on action contesting validity of revocable trust -- Distribution of trust property.

(1) A person shall commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:
  (a) three years after the settlor's death; or
  (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.
(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:
  (a) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or
  (b) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.
(3) With respect to a potential contest, the trustee is only liable for actions taken two or more business days after the trustee has actual receipt of written notice from a potential contestant. The written notice shall include the name of the settlor or of the trust, the name of the potential contestant, and a description of the basis for the potential contest. The written notice shall be mailed to the trustee at the principal place of administration of the trust by registered or certified mail, return receipt requested, or served upon the trustee in the same manner as a summons in a civil action. Any other form or service of notice is not sufficient to impose liability on the trustee for actions taken pursuant to the terms of the trust.
(4) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Enacted by Chapter 89, 2004 General Session

Part 7
Office of Trustee

75-7-701 Accepting or declining trusteeship.

(1) Except as otherwise provided in Subsection (3), a person designated as trustee accepts the trusteeship:
  (a) by substantially complying with a method of acceptance provided in the terms of the trust; or
  (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.
(3) A person designated as trustee, without accepting the trusteeship, may:
  (a) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and
  (b) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Enacted by Chapter 89, 2004 General Session

75-7-702 Trustee's bond.

(1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.
(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.
(3) A regulated financial service institution qualified to do trust business in this state need not give bond, unless required by the terms of the trust. The cost of any bond shall be borne by the trust.
(4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

Enacted by Chapter 89, 2004 General Session

75-7-703 Cotrustees.

(1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.
(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
(3) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.
(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses to act after reasonable notice, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
(5) A trustee may not delegate to a cotrustee the performance of a function the settlor intended the trustees to perform jointly as determined from the terms of the trust. If one of the cotrustees is a regulated financial service institution qualified to do trust business in this state and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the regulated

financial service institution of the performance of trust investment functions shall be presumed to be in accordance with the settlor's intent unless the terms of the trust specifically provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(6) Except as otherwise provided in Subsection (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Each trustee shall exercise reasonable care to:

(a) prevent a cotrustee from committing a serious breach of trust; and

(b) compel a cotrustee to redress a serious breach of trust.

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

Enacted by Chapter 89, 2004 General Session

75-7-704 Vacancy in trusteeship -- Appointment of successor.

(1) A vacancy in a trusteeship occurs if:

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

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

(c) a trustee resigns;

(d) a trustee is disqualified or removed;

(e) a trustee dies; or

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

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

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

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

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

(c) by a person appointed by the court.

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

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

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

(c) by a person appointed by the court.

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

Enacted by Chapter 89, 2004 General Session

75-7-705 Resignation of trustee.

(1) A trustee may resign:

(a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) with the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Enacted by Chapter 89, 2004 General Session

75-7-706 Removal of trustee.
(1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
(2) The court may remove a trustee if:
  (a) the trustee has committed a serious breach of trust;
  (b) lack of cooperation among cotrustees substantially impairs the administration of the trust;
  (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
  (d) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under Subsection 75-7-1001(2) necessary to protect the trust property or the interests of the beneficiaries.

Enacted by Chapter 89, 2004 General Session

75-7-707 Delivery of property by former trustee.
(1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

Enacted by Chapter 89, 2004 General Session

75-7-708 Compensation of trustee.
If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

Enacted by Chapter 89, 2004 General Session

75-7-709 Reimbursement of expenses.
(1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:
  (a) expenses that were properly incurred in the administration of the trust; and
  (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Enacted by Chapter 89, 2004 General Session

Part 8
Duties and Powers of Trustee

75-7-801 Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

Enacted by Chapter 89, 2004 General Session

75-7-802 Duty of loyalty.

(1) A trustee shall administer the trust solely in the interests of the beneficiaries.
(2) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 75-7-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:
  (a) the transaction was authorized by the terms of the trust;
  (b) the transaction was approved by the court;
  (c) the beneficiary did not commence a judicial proceeding within the time allowed by Section 75-7-1005;
  (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 75-7-1009; or
  (e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:
  (a) the trustee's spouse;
  (b) the trustee's descendants, siblings, parents, or their spouses;
  (c) an agent of the trustee, including but not limited to an attorney, accountant, or financial advisor; or
  (d) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.
(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of Section 75-7-901. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following actions by the trustee:

(a) an agreement between the trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, conservatorship, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial service institution operated by the trustee;

(e) an advance by the trustee of money for the protection of the trust;

(f) collecting, holding, and retaining trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made, even though the assets include an asset in which the trustee is personally interested;

(g) acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(h) borrowing money to be repaid from the trust assets or otherwise;

(i) advancing money to be repaid from the assets or otherwise;

(j) employing persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee:

(i) to advise or assist the trustee in the performance of the trustee's administrative duties or perform any act of administration, whether or not discretionary; or

(ii) to act without independent investigation upon their recommendations;

(k) if a governing instrument or order requires or authorizes investment in United States government obligations, investing in those obligations, either directly or in the form of securities or other interests, in any open-end or closed-end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:

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

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

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

Enacted by Chapter 89, 2004 General Session

75-7-803 Impartiality.

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

Enacted by Chapter 89, 2004 General Session

75-7-804 Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

Enacted by Chapter 89, 2004 General Session

75-7-805 Costs of administration.

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

Enacted by Chapter 89, 2004 General Session

75-7-806 Trustee's skills.

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

Enacted by Chapter 89, 2004 General Session

75-7-807 Control and protection of trust property.

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

Enacted by Chapter 89, 2004 General Session

75-7-808 Recordkeeping and identification of trust property.

(1) A trustee shall keep adequate records of the administration of the trust.
(2) A trustee shall keep trust property separate from the trustee's own property.
(3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.
(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Enacted by Chapter 89, 2004 General Session

75-7-809 Enforcement and defense of claims.

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

Enacted by Chapter 89, 2004 General Session

75-7-810 Collecting trust property.

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

Enacted by Chapter 89, 2004 General Session

75-7-811 Duty to inform and report.

(1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, and unless otherwise provided by the terms of the trust a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

(2) Except to the extent the terms of the trust provide otherwise, a trustee:

(a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

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

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in Subsection (3); and

(d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the amount of the trustee's compensation or a fee schedule or other writing showing how the trustee's compensation was determined, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee, unless the terms of the trust provide otherwise. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

Enacted by Chapter 89, 2004 General Session

75-7-812 Discretionary powers -- Tax savings.

(1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that a rule in this section does not apply:

(a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 1, 2004; and
(b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
(3) A power whose exercise is limited or prohibited by Subsection (2) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.
(4) Subsection (2) does not apply to:
(a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on May 1, 2004, was previously allowed;
(b) any trust during any period that the trust may be revoked or amended by its settlor; or
(c) a trust if contributions to the trust qualify for the annual exclusion under Subsection 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.

Enacted by Chapter 89, 2004 General Session

75-7-813 General powers of trustee.
(1) A trustee, without authorization by the court, may exercise:
(a) powers conferred by the terms of the trust; or
(b) except as limited by the terms of the trust:
(i) all powers over the trust property which an unmarried competent owner has over individually owned property;
(ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
(iii) any other powers conferred by this chapter.
(2) The exercise of a power is subject to the fiduciary duties prescribed by this part.

Enacted by Chapter 89, 2004 General Session

75-7-814 Specific powers of trustee.
(1) Without limiting the authority conferred by Section 75-7-813, a trustee may:
(a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
(b) acquire or sell property, for cash or on credit, at public or private sale;
(c) exchange, partition, or otherwise change the character of trust property;
(d) deposit trust money in an account in a regulated financial service institution;
(e) borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
(f) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or

property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(g) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

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

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

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

(iv) deposit the securities with a depositary or other regulated financial service institution;

(h) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(i) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(j) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(k) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(l) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(m) with respect to possible liability for violation of environmental law:

(i) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(ii) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(iii) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(iv) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(v) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(n) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(o) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(p) exercise elections with respect to federal, state, and local taxes;

(q) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to

indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(r) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(s) pledge trust property to guarantee loans made by others to the beneficiary;

(t) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(u) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;

(iii) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(iv) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(v) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(w) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(y) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

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

(2) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.

(a) The trustee shall exercise reasonable care, skill, and caution in:

(i) selecting the agent;

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

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

(b) In performing a delegated function, an agent has a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of this Subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(3) The trustee may exercise the powers set forth in this section and in the trust either in the name of the trust or in the name of the trustee as trustee, specifically including the right to take title, to encumber or convey assets, including real property, in the name of the trust. This Subsection (3) applies to a trustee's exercise of trust powers. After May 11, 2010, for recording purposes, the name of the trustee, the address of the trustee, and the name and date of the trust, shall be included on all recorded documents affecting real property to which the trust is a party in interest.

Amended by Chapter 93, 2010 General Session

75-7-815 Distribution upon termination.

(1) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(a) it was induced by improper conduct of the trustee; or

(b) the beneficiary, at the time of the release, did not know or had no reason to know of the beneficiary's rights or of the material facts relating to the breach.

Enacted by Chapter 89, 2004 General Session

75-7-816 Recitals when title to real property is in trust -- Failure.

(1) When title to real property is granted to a person as trustee, the terms of the trust may be given either:

(a) in the deed of transfer; or

(b) in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.

(2) If the terms of the trust are not made public as required in Subsection (1), a conveyance from the trustee is absolute in favor of purchasers for value who take the property without notice of the terms of the trust.

(3) The terms of the trust recited in the deed of transfer or the instrument recorded under Subsection (1)(b) shall include:

(a) the name of the trustee;

(b) the address of the trustee; and

(c) the name and date of the trust.

(4) Any real property titled in a trust which has a restriction on transfer described in Section 25-6-14 shall include in the title the words "asset protection trust."

Enacted by Chapter 89, 2004 General Session

75-7-817 Marital deduction formulas -- Trusts.

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

Enacted by Chapter 89, 2004 General Session

Part 9
Utah Uniform Prudent Investor Act

75-7-901 Prudent investor rule.
(1) Except as otherwise provided in Subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter. If a trustee is named on the basis of a trustee's representations of special skills or expertise, the trustee has a duty to use those special skills or expertise.
(2) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Enacted by Chapter 89, 2004 General Session

75-7-902 Standard of care -- Portfolio strategy -- Risk and return objectives.
(1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
(3) Among circumstances that a trustee shall consider in investing and managing trust assets are the following which may be relevant to the trust or its beneficiaries:
  (a) general economic conditions;
  (b) the possible effect of inflation or deflation;
  (c) the expected tax consequences of investment decisions or strategies;
  (d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
  (e) the expected total return from income and the appreciation of capital;
  (f) other resources of the beneficiaries;
  (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

Enacted by Chapter 89, 2004 General Session

75-7-903 Diversification.
A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Enacted by Chapter 89, 2004 General Session

75-7-904 Duties at inception of trusteeship.
Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Enacted by Chapter 89, 2004 General Session

75-7-905 Reviewing compliance.
Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. This section does not require a specific outcome in investing.

Enacted by Chapter 89, 2004 General Session

75-7-906 Investment direction.
(1) For purposes of this section, "investment direction" means a direction that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (2) to do any of the following with respect to an investment:
  (a) retention;
  (b) purchase;
  (c) sale;
  (d) exchange;
  (e) tender; or
  (f) any other transaction affecting ownership in the investment.
(2)
  (a) During the time period that a trust is revocable, the trustee may follow any investment direction of the settlor, including an investment direction that:
    (i) is manifestly contrary to the terms of the trust; or
    (ii) seriously breaches a fiduciary duty to the beneficiaries.
  (b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).

(3) If the terms of a trust authorize a person to give investment direction to the trustee, the person authorized to give investment direction:
(a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;
(b) is required to act in good faith with regard to:
(i) the purposes of the trust; and
(ii) the interests of the beneficiaries; and
(c) is liable for any loss that results from breach of the fiduciary duty only with respect to an investment direction that the person gives to the trustee.
(4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for any loss that results from following an investment direction if:
(a) the terms of a trust authorizes a person to give the investment direction to the trustee; and
(b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).
(5) If the terms of a trust require another person's approval or consent to an investment decision of the trustee:
(a) the person from whom approval or consent is required:
(i) is presumptively a fiduciary;
(ii) is required to act in good faith with regard to:
(A) the purposes of the trust; and
(B) the interests of the beneficiaries; and
(iii) is liable for any loss that results from breach of the fiduciary duty; and
(b) except in cases of willful misconduct or gross negligence, the trustee is not liable for any loss resulting from any act not taken as a result of the person's failure to respond to a request for approval or consent.

Enacted by Chapter 89, 2004 General Session

75-7-907 Language invoking standard of chapter.

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

Enacted by Chapter 89, 2004 General Session

Part 10
Liability of Trustees and Rights of Persons Dealing with Trustee

75-7-1001 Remedies for breach of trust.

(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
(2) To remedy a breach of trust that has occurred or may occur, the court may:

(a) compel the trustee to perform the trustee's duties;
(b) enjoin the trustee from committing a breach of trust;
(c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
(d) order a trustee to account;
(e) appoint a special fiduciary to take possession of the trust property and administer the trust;
(f) suspend the trustee;
(g) remove the trustee as provided in Section 75-7-706;
(h) reduce or deny compensation to the trustee;
(i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
(j) order any other appropriate relief.

Enacted by Chapter 89, 2004 General Session

75-7-1002 Damages for breach of trust.

(1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:
(a) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
(b) the profit the trustee made by reason of the breach.
(2) Except as otherwise provided in this Subsection (2), if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Enacted by Chapter 89, 2004 General Session

75-7-1003 Damages in absence of breach.

(1) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.
(2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Enacted by Chapter 89, 2004 General Session

75-7-1004 Attorney's fees and costs.

(1) In a judicial proceeding involving the administration of a trust, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.
(2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or not, the trustee is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred.

Enacted by Chapter 89, 2004 General Session

75-7-1005 Limitation of action against trustee.

(1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than six months after the date that the beneficiary or a person who may represent and bind the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within one year after the first to occur of:

(a) the removal, resignation, or death of the trustee;

(b) the termination of the beneficiary's interest in the trust; or

(c) the termination of the trust.

(4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

Enacted by Chapter 89, 2004 General Session

75-7-1006 Reliance on trust instrument.

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

Enacted by Chapter 89, 2004 General Session

75-7-1007 Event affecting administration or distribution.

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

Enacted by Chapter 89, 2004 General Session

75-7-1008 Exculpation of trustee.

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

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted by the trustee or fiduciary without disclosure of its existence and contents.

Enacted by Chapter 89, 2004 General Session

75-7-1009 Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Enacted by Chapter 89, 2004 General Session

75-7-1010 Limitation on personal liability of trustee.

(1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.
(2) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.
(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.
(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.
(5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory or investment committee, or in any other person or persons, including one or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.
(6) In the absence of actual knowledge or information which would cause a reasonable trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary. The provisions of this section shall not be construed to limit the fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

Enacted by Chapter 89, 2004 General Session

75-7-1011 Interest as general partner.

(1) Except as otherwise provided in Subsection (3) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, or Title 48, Chapter 2e, Utah Uniform Limited Partnership Act, as appropriate pursuant to Section 48-2e-1205.
(2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.
(3) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.
(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Amended by Chapter 412, 2013 General Session

75-7-1012 Protection of person dealing with trustee.

(1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.
(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.
(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.
(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.
(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Enacted by Chapter 89, 2004 General Session

75-7-1013 Certification of trust.

(1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:
  (a) that the trust exists and the date the trust instrument was executed;
  (b) the identity of the settlor;
  (c) the identity and address of the currently acting trustee;
  (d) the powers of the trustee in the pending transaction;
  (e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
  (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and
  (g) the name in which title to trust property may be taken.
(2) A certification of trust may be signed or otherwise authenticated by any trustee.
(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
(4) A certification of trust need not contain the dispositive terms of a trust.
(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.
(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in it are incorrect is not liable to any person for acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in demanding the trust instrument.
(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Enacted by Chapter 89, 2004 General Session

Part 11
Miscellaneous Provisions

75-7-1101 Uniformity of application and construction.
In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 89, 2004 General Session

75-7-1102 Electronic records and signatures.
The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Enacted by Chapter 89, 2004 General Session

75-7-1103 Application to existing relationships.
(1) Except as otherwise provided, this chapter applies to:
(a) all trusts created before, on, or after July 1, 2004;
(b) all judicial proceedings concerning trusts commenced on or after July 1, 2004; and
(c) judicial proceedings concerning trusts commenced before July 1, 2004 unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded section will apply.
(2) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2004 unless there is a clear indication of a contrary intent in the terms of the trust.
(3) An act done before July 1, 2004 is not affected by this chapter.
(4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2004, that statute continues to apply to the right even if it has been repealed or superseded.

Enacted by Chapter 89, 2004 General Session

Part 12
Foreign Trustees

75-7-1201 Foreign trustees.

(1) A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state.
(2) A foreign corporate cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state.
(3) Unless otherwise doing business in this state, local qualification by a foreign corporate trustee is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation if the state of the principal place of business of the foreign corporate trustee provides substantially similar provisions applicable to trustees from this state.
(4) Local qualification by a foreign trustee other than a corporation is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state or maintain litigation.
(5) Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

Enacted by Chapter 1, 2004 Special Session 4
Enacted by Chapter 1, 2004 Special Session 4

Chapter 8
Effective Date

75-8-101 Time of taking effect -- Provisions for transition.

(1) This code takes effect on July 1, 1977.
(2) Except as provided elsewhere in this code, on the effective date of this code:
  (a) This code applies to any wills of decedents dying thereafter.
  (b) The code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code.
  (c) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter.
  (d) An act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.
  (e) Any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Enacted by Chapter 150, 1975 General Session

Chapter 9
Uniform Power of Attorney Act

Part 1
General Provisions

75-9-101 Title.

This chapter is known as the "Uniform Power of Attorney Act."

Enacted by Chapter 256, 2016 General Session

75-9-102 Definitions.

In this chapter:

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and person to which an agent's authority is delegated.

(2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

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

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means the inability of an individual to manage property or business affairs because the individual:

(a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) is:

(i) missing;

(ii) detained, including incarcerated in a penal system; or

(iii) outside the United States and unable to return.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.
(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(12) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic sound, symbol, or process.
(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Enacted by Chapter 256, 2016 General Session

75-9-103 Applicability.

This chapter applies to all powers of attorney except:
(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;
(2) a power to make health care decisions;
(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and
(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Enacted by Chapter 256, 2016 General Session

75-9-104 Power of attorney is durable.

A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Enacted by Chapter 256, 2016 General Session

75-9-105 Execution of power of attorney.

(1) A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney before a notary public or other individual authorized by the law to take acknowledgments. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.
(2) If the principal resides or is about to reside in a hospital, assisted living, skilled nursing, or similar facility, at the time of execution of the power of attorney, the principal may not name any agent that is the owner, operator, health care provider, or employee of the hospital, assisted living facility, skilled nursing, or similar residential care facility unless the agent is the spouse, legal guardian, or next of kin of the principal, or unless the agent's authority is strictly limited to the purpose of assisting the principal to establish eligibility for Medicaid.
(3) A violation of Subsection (2) is a violation of Subsection 76-5-111(4)(a).

Enacted by Chapter 256, 2016 General Session

75-9-106 Validity of power of attorney.

(1) A power of attorney executed in this state on or after May 10, 2016, is valid if its execution complies with Section 75-9-105.
(2) A power of attorney executed in this state before May 10, 2016, is valid if its execution complied with the law of this state as it existed at the time of execution.
(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:
  (a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section 75-9-107; or
  (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.
(4) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. For transactions involving real property, the copy of the power of attorney may be recorded in the county where the transaction lies when attached to an affidavit of the person accepting the power of attorney.

Enacted by Chapter 256, 2016 General Session

75-9-107 Meaning and effect of power of attorney.

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Enacted by Chapter 256, 2016 General Session

75-9-108 Nomination of conservator or guardian -- Relation of agent to court appointed fiduciary.

(1) In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.
(2) If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

Enacted by Chapter 256, 2016 General Session

75-9-109 When power of attorney is effective.

(1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.
(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:
  (a) a physician that the principal is incapacitated within the meaning of Subsection 75-9-102(5)(a); or
  (b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Subsection 75-9-102(5)(b).
(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

Enacted by Chapter 256, 2016 General Session

75-9-110 Termination of power of attorney or agent's authority.
(1) A power of attorney terminates when:
  (a) the principal dies;
  (b) the principal becomes incapacitated, if the power of attorney is not durable;
  (c) the principal revokes the power of attorney;
  (d) the power of attorney provides that it terminates;
  (e) the purpose of the power of attorney is accomplished; or
  (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.
(2) An agent's authority terminates when:
  (a) the principal revokes the authority;
  (b) the agent dies, becomes incapacitated, or resigns;
  (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
  (d) the power of attorney terminates.
(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under Subsection (2), notwithstanding a lapse of time since the execution of the power of attorney.
(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.
(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.
(7) The principal may revoke or amend a power of attorney:
(a) by substantial compliance with a method provided in the terms of the power of attorney that expressly excludes all other methods for amending or revoking the power of attorney; or
(b) if the terms of the power of attorney do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear and convincing evidence of the principal's intent.

Enacted by Chapter 256, 2016 General Session

75-9-111 Coagents and successor agents.
(1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.
(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:
(a) has the same authority as that granted to the original agent; and
(b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.
(3) Except as otherwise provided in the power of attorney and Subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.
(4) An agent that has accepted appointment and that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken action.

Enacted by Chapter 256, 2016 General Session

75-9-112 Reimbursement and compensation of agent.
Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Enacted by Chapter 256, 2016 General Session

75-9-113 Agent's acceptance.
Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Enacted by Chapter 256, 2016 General Session

75-9-114 Agent's duties.

(1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
  (a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
  (b) act in good faith;
  (c) act only within the scope of authority granted in the power of attorney; and
  (d) comply with the terms of the power of attorney.
(2) Except as otherwise provided in the power of attorney or other provision of this chapter, an agent that has accepted appointment shall have no further obligation to act under the power of attorney. However, with respect to any action taken by the agent under the power of attorney, the agent shall:
  (a) act loyally for the principal's benefit;
  (b) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
  (c) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
  (d) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
  (e) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and
  (f) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
    (i) the value and nature of the principal's property;
    (ii) the principal's foreseeable obligations and need for maintenance;
    (iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
    (iv) eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.
(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.
(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.
(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.
(7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.
(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal,

an interested person as defined in Subsection 75-1-201(24) after the principal's incapacity, or upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Enacted by Chapter 256, 2016 General Session

75-9-115 Exoneration of agent.

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Enacted by Chapter 256, 2016 General Session

75-9-116 Judicial relief.

(1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) the principal or the agent;

(b) a guardian, conservator, or other fiduciary acting for the principal;

(c) a person authorized to make health care decisions for the principal;

(d) the principal's spouse, parent, or descendant;

(e) an individual who would qualify as a presumptive heir of the principal;

(f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) a governmental agency having regulatory authority to protect the welfare of the principal;

(h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) a person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

Enacted by Chapter 256, 2016 General Session

75-9-117 Agent's liability.

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

(1) restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

Enacted by Chapter 256, 2016 General Session

75-9-118 Agent's resignation -- Notice.

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to the guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) if there is no person described in Subsection (1), to:

(a) the principal's caregiver;

(b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(c) a governmental agency having authority to protect the welfare of the principal.

Enacted by Chapter 256, 2016 General Session

75-9-119 Acceptance of and reliance upon acknowledged power of attorney.

(1) For purposes of this section and Section 75-9-120, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under Section 75-9-105 that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(a) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(c) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section shall be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

(6) For purposes of this section and Section 75-9-120, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

Enacted by Chapter 256, 2016 General Session

75-9-120 Liability for Refusal to Accept Acknowledged Power of Attorney.

(1) Except as otherwise provided in Subsection (2):

(a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under Subsection 75-9-119(4) no later than seven business days after presentation of the power of attorney for acceptance;
(b) if a person requests a certification, a translation, or an opinion of counsel under Subsection 75-9-119(4), the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and
(c) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.
(2) A person is not required to accept an acknowledged power of attorney if:
(a) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;
(b) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
(c) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;
(d) a request for a certification, a translation, or an opinion of counsel under Subsection 75-9-119(4) is refused;
(e) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Subsection 75-9-119(4) has been requested or provided; or
(f) the person makes, or has actual knowledge that another person has made, a report to the Division of Aging and Adult Services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
(a) a court order mandating acceptance of the power of attorney; and
(b) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.
(4) Court proceedings under this section shall be conducted pursuant to the terms in the Uniform Probate Code governing venue and procedures.

Enacted by Chapter 256, 2016 General Session

75-9-121 Principles of law and equity.

Unless displaced by a provision of this chapter, the principles of law and equity supplement this act.

Enacted by Chapter 256, 2016 General Session

75-9-122 Laws applicable to financial institutions and entities.

This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter.

Enacted by Chapter 256, 2016 General Session

75-9-123 Remedies under other law.

The remedies under this chapter are not exclusive and do not abrogate any right or remedy under the law of this state other than this chapter.

Enacted by Chapter 256, 2016 General Session

Part 2
Authority

75-9-201 Authority that requires specific grant -- Grant of general authority.

(1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority, and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:
  (a) create, amend, revoke, or terminate an inter vivos trust;
  (b) make a gift;
  (c) create or change rights of survivorship;
  (d) create or change a beneficiary designation;
  (e) delegate authority granted under the power of attorney;
  (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
  (g) exercise fiduciary powers that the principal has authority to delegate; or
  (h) disclaim property or otherwise exercise a power of appointment.
(2) Notwithstanding a grant of authority to do an act described in Subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.
(3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in Sections 75-9-204 through 75-9-216.
(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to Section 75-9-217.
(5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.
(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.
(7) An act performed by an agent pursuant to a power of attorney has the same effect, inures to the benefit of, and binds the principal and the principal's successors in interest as if the principal had performed the act.

Enacted by Chapter 256, 2016 General Session

75-9-202 Incorporation of authority.

(1) An agent has authority described in this part if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Sections 75-9-204 through 75-9-217 or cites the section in which the authority is described.
(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in Sections 75-9-204 through 75-9-217 or a citation to a section of Sections 75-9-204 through 75-9-217 incorporates the entire section as if it were set out in full in the power of attorney.
(3) A principal may modify authority incorporated by reference.

Enacted by Chapter 256, 2016 General Session

75-9-203 Construction of authority generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in Sections 75-9-204 through 75-9-217 or that grants to an agent authority to do all acts that a principal could do pursuant to Subsection 75-9-201(3), a principal authorizes the agent, with respect to that subject, to:
(1) demand, receive, and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;
(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;
(3) execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;
(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;
(5) seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;
(6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;
(7) prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;
(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;
(9) access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and
(10) do any lawful act with respect to the subject and all property related to the subject.

Enacted by Chapter 256, 2016 General Session

75-9-204 Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:
(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;
(2)

(a) sell;
(b) exchange;
(c) convey with or without covenants, representations, or warranties;
(d) quitclaim;
(e) release;
(f) surrender;
(g) retain title for security;
(h) encumber;
(i) partition;
(j) consent to partitioning;
(k) subject to an easement or covenant;
(l) subdivide;
(m) apply for zoning or other governmental permits;
(n) plat or consent to platting;
(o) develop;
(p) grant an option concerning;
(q) lease;
(r) sublease;
(s) contribute to an entity in exchange for an interest in that entity; or
(t) otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:
(a) insuring against liability or casualty or other loss;
(b) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
(c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments; and
(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
(a) selling or otherwise disposing of stocks and bonds;
(b) exercising or selling an option, right of conversion, or similar right with respect to stocks and bonds; and
(c) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property; and

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Enacted by Chapter 256, 2016 General Session

75-9-205 Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
(2) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;
(3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
(4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;
(5) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:
  (a) insuring against liability, casualty, or other loss;
  (b) obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
  (c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
  (d) moving the property from place to place;
  (e) storing the property for hire or on a gratuitous bailment; and
  (f) using and making repairs, alterations, or improvements to the property; and
(6) change the form of title of an interest in tangible personal property.

Enacted by Chapter 256, 2016 General Session

75-9-206 Stocks and bonds.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(1) buy, sell, and exchange stocks and bonds;
(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;
(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
(4) receive certificates and other evidences of ownership with respect to stocks and bonds; and
(5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Enacted by Chapter 256, 2016 General Session

75-9-207 Commodities and options.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
(2) establish, continue, modify, and terminate option accounts.

Enacted by Chapter 256, 2016 General Session

75-9-208 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:
(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
(3) contract for services available from a financial institution, including renting or closing a safe deposit box or space in a vault;
(4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
(5) receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
(6) enter a safe deposit box or vault and withdraw or add to the contents;
(7) borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
(8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
(9) receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
(10) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
(11) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Enacted by Chapter 256, 2016 General Session

75-9-209 Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:
(1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
(2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
(3) enforce the terms of an ownership agreement;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;
(5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;
(6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;
(7) with respect to an entity or business owned solely by the principal:
(a) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;
(b) determine:
(i) the location of its operation;
(ii) the nature and extent of its business;
(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
(iv) the amount and types of insurance carried; and
(v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;
(c) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and
(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;
(8) put additional capital into an entity or business in which the principal has an interest;
(9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;
(10) sell or liquidate all or part of an entity or business;
(11) establish the value of an entity or business under a buy-out agreement to which the principal is a party;
(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and
(13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Enacted by Chapter 256, 2016 General Session

75-9-210 Insurance and annuities.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:
(1) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;
(3) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
(4) apply for and receive a loan secured by a contract of insurance or annuity;
(5) surrender and receive the cash surrender value on a contract of insurance or annuity;
(6) exercise an election;
(7) exercise investment powers available under a contract of insurance or annuity;
(8) change the manner of paying premiums on a contract of insurance or annuity;
(9) change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
(10) apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;
(11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;
(12) select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
(13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Enacted by Chapter 256, 2016 General Session

75-9-211 Estates, trusts, and other beneficial interests.
(1) In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or fund from which the principal is, may become, or claims to be entitled to a share or payment.
(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:
  (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;
  (b) demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;
  (c) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;
  (d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
  (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;
  (f) conserve, invest, disburse, or use anything received for an authorized purpose;
  (g) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and

(h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

Enacted by Chapter 256, 2016 General Session

75-9-212 Claims and litigation.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;
(2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;
(3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
(4) make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;
(5) submit to alternative dispute resolution, settle, and propose or accept a compromise;
(6) waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
(7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;
(8) pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and
(9) receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Enacted by Chapter 256, 2016 General Session

75-9-213 Personal and family maintenance.

(1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:
  (a) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:
    (i) the principal's children;
    (ii) other individuals legally entitled to be supported by the principal; and
    (iii) the individuals whom the principal has customarily supported or indicated the intent to support;

(b) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;
(c) provide living quarters for the individuals described in Subsection (1)(a) by:
(i) purchase, lease, or other contract; or
(ii) paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;
(d) provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in Subsection (1)(a);
(e) pay expenses for necessary health care and custodial care on behalf of the individuals described in Subsection (1)(a);
(f) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;
(g) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in Subsection (1)(a);
(h) maintain credit and debit accounts and open new accounts for the convenience of the individuals described in Subsection (1)(a); and
(i) continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.
(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

Enacted by Chapter 256, 2016 General Session

75-9-214 Benefits from governmental programs or civil or military service.
(1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, Medicare, and Medicaid.
(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:
(a) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Subsection 75-9-213(1)(a), and for shipment of their household effects;
(b) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
(c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;
(e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and
(f) receive the financial proceeds of a claim described in Subsection (2)(d) and conserve, invest, disburse, or use for a lawful purpose anything received.

Enacted by Chapter 256, 2016 General Session

75-9-215 Retirement plans.

(1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:
(a) an individual retirement account under Section 408, Internal Revenue Code;
(b) a Roth individual retirement account under Section 408A, Internal Revenue Code;
(c) a deemed individual retirement account under Section 408(q), Internal Revenue Code;
(d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue Code;
(e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under Section 401(a), Internal Revenue Code;
(f) a plan under Section 457(b), Internal Revenue Code; and
(g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue Code.
(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:
(a) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
(b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
(c) establish a retirement plan in the principal's name;
(d) make contributions to a retirement plan;
(e) exercise investment powers available under a retirement plan; and
(f) borrow from, sell assets to, or purchase assets from a retirement plan.

Enacted by Chapter 256, 2016 General Session

75-9-216 Taxes.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:
(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
(4) act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

Enacted by Chapter 256, 2016 General Session

75-9-217 Gifts.
(1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act (1983/1986), and a tuition savings account or prepaid tuition plan as defined under Section 529, Internal Revenue Code.
(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:
(a) make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Section 2513, Internal Revenue Code, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
(b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.
(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:
(a) the value and nature of the principal's property;
(b) the principal's foreseeable obligations and need for maintenance;
(c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
(d) eligibility for a benefit, program, or assistance under a statute or regulation; and
(e) the principal's personal history of making or joining in making gifts.

Enacted by Chapter 256, 2016 General Session

Part 3
Statutory Forms

75-9-301 Statutory form power of attorney.
A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.STATUTORY FORM POWER OF ATTORNEY
IMPORTANT INFORMATION
This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself.

The meaning of authority over subjects listed on this form is explained in Title 75, Chapter 9, Uniform Power of Attorney Act.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney, or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ name the following
(Name of Principal)

person as my agent:

Name of Agent:_____

Agent's Address:_____

Agent's Telephone Number:_____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:_____

Successor Agent's Address: _____

Successor Agent's Telephone Number:_____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Second Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in Title 75, Chapter 9, Uniform Power of Attorney Act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

(___) Real Property

(___) Tangible Personal Property

(___) Stocks and Bonds

(___) Commodities and Options

(___) Banks and Other Financial Institutions

(___) Operation of Entity or Business

(___) Insurance and Annuities

(___) Estates, Trusts, and Other Beneficial Interests

(___) Claims and Litigation

(___) Personal and Family Maintenance
(___) Benefits from Governmental Programs or Civil or Military Service
(___) Retirement Plans
(___) Taxes
(___) All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

(___) Create, amend, revoke, or terminate an inter vivos trust
(___) Make a gift, subject to the limitations of Section 75-9-217, and any special instructions in this power of attorney
(___) Create or change rights of survivorship
(___) Create or change a beneficiary designation
(___) Authorize another person to exercise the authority granted under this power of attorney
(___) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
(___) Exercise fiduciary powers that the principal has authority to delegate
(___) Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

_____
_____
_____
_____
_____
_____
_____

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate: _____
Nominee's Address:_____
Nominee's Telephone Number:_____
Name of Nominee for guardian of my person: _____
Nominee's Address: _____
Nominee's Telephone Number:_____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

_____ _____

Your Signature Date

_____

Your Name Printed

_____

_____

Your Address

_____

Your Telephone Number

State of _____

County of_____

This document was acknowledged before me on _____,

(Date)

by_____.

(Name of Principal)

_____ (Seal, if any)

Signature of Notary

My commission expires: _____

[This document prepared by:

_____

_____]

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You shall:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;
(2) the principal's revocation of the power of attorney or your authority;
(3) the occurrence of a termination event stated in the power of attorney;
(4) the purpose of the power of attorney is fully accomplished; or
(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in Title 75, Chapter 9, Uniform Power of Attorney Act. If you violate Title 75, Chapter 9, Uniform Power of Attorney Act, or act outside the authority granted, you may be liable for any damages caused by your violation. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Enacted by Chapter 256, 2016 General Session

75-9-302 Agent's certification.

The following optional form may be used by an agent to certify facts concerning a power of attorney.AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____

[County] of_____

I, _____ (Name of Agent), certify under penalty of perjury that _____(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;
(2) if the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and
(4) _____
_____
_____
_____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

_____ _____

Agent's Signature Date

_____

Agent's Name Printed

_____

_____

Agent's Address
_____
Agent's Telephone Number
This document was acknowledged before me on _____,
(Date)
by_____.
(Name of Agent)
_____ (Seal, if any)
Signature of Notary
My commission expires: _____
This document prepared by:
_____

Enacted by Chapter 256, 2016 General Session

Part 4
Miscellaneous Provisions

75-9-401 Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Enacted by Chapter 256, 2016 General Session

75-9-402 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 256, 2016 General Session

75-9-403 Effect on existing powers of attorney.

Except as otherwise provided:

(1) this chapter applies to a power of attorney created before, on, or after May 10, 2016;
(2) this chapter applies to a judicial proceeding concerning a power of attorney commenced on or after May 10, 2016;
(3) this chapter applies to a judicial proceeding concerning a power of attorney commenced before May 10, 2016, unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and
(4) an act done before May 10, 2016, is not affected by this chapter.

Enacted by Chapter 256, 2016 General Session