

**Effective 9/1/2024**

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

As used in this title:

- (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
- (2) "Application" means a written request to the registrar for an order of informal probate or appointment under Chapter 3, Part 3, Informal Probate and Appointment Proceedings.
- (3)
  - (a) "Beneficiary," as it relates to trust beneficiaries, includes:
    - (i) a person who has any present or future interest, vested or contingent; and
    - (ii) the owner of an interest by assignment or other transfer.
  - (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to enforce the trust.
  - (c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a beneficiary of:
    - (i) an insurance or annuity policy;
    - (ii) an account with POD designation;
    - (iii) a security registered in beneficiary form (TOD);
    - (iv) a pension, profit-sharing, retirement, or similar benefit plan; or
    - (v) other nonprobate transfer at death.
  - (d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument, includes:
    - (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment; and
    - (ii) a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- (4) "Beneficiary designation" means a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.
- (5)
  - (a) "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved.
  - (b) "Child" does not include an individual who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- (6)
  - (a) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.
  - (b) "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- (7) "Community property with a right of survivorship" means joint tenants with the right of survivorship.
- (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
- (9) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

- (10) "Descendant" means all of an individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.
- (11) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.
- (12) "Devisee" means any person designated in a will to receive a devise. For the purposes of Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.
- (13) "Disability" means cause for a protective order as described by Section 75-5-401.
- (14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
- (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
- (16) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.
- (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- (18) "Foreign personal representative" means a personal representative of another jurisdiction.
- (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
- (20) "General personal representative" does not include a special administrator.
- (21) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
- (22)
  - (a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5.
  - (b) "Guardian" does not include a person who is merely a guardian ad litem.
- (23) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.
- (24) "Incapacitated" means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
  - (a) receive and evaluate information;
  - (b) make and communicate decisions; or
  - (c) provide for necessities such as food, shelter, clothing, health care, or safety.
- (25) "Incapacity" means incapacitated.

- (26) "Informal proceedings" mean a proceeding conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.
- (27)
- (a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.
  - (b) "Interested person" includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated.
- (28) "Issue" means a descendant of an individual.
- (29)
- (a) "Joint tenants with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other.
  - (b) "Joint tenants with the right of survivorship" does not include forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- (30) "Lease" includes an oil, gas, or other mineral lease.
- (31) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- (32) "Minor" means a person who is under 18 years old.
- (33) "Minor protected person" means a minor for whom a conservator has been appointed because of minority.
- (34) "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.
- (35) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
- (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.
- (37) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.
- (38)
- (a) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in question.
  - (b) "Parent" does not include any person who is only a stepparent, foster parent, or grandparent.
- (39) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
- (40) "Person" means an individual or an organization.
- (41) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.
- (42) "Petition" means a written request to the court for an order after notice.
- (43) "Proceeding" includes action at law and suit in equity.

- (44) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- (45) "Protected person" means a person for whom a conservator has been appointed.
- (46) "Protective proceeding" means a proceeding described in Section 75-5-401.
- (47) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (48) "Registrar" means the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.
- (49) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- (50) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- (51) "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.
- (52) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.
- (53) "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.
- (54) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- (55) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
- (56) "Supervised administration" means the proceedings described in Chapter 3, Part 5, Supervised Administration.
- (57)
  - (a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death Security Registration Act, that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702.
  - (b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and "surviving."
- (58) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- (59) "Testator" includes an individual of either sex.
- (60)
  - (a) "Trust" includes:
    - (i) a health savings account, as defined in Section 223 of the Internal Revenue Code;
    - (ii) an express trust, private or charitable, with additions thereto, wherever and however created; or
    - (iii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
  - (b) "Trust" does not include:

- (i) a constructive trust;
  - (ii) a resulting trust;
  - (iii) a conservatorship;
  - (iv) a personal representative;
  - (v) a trust account as defined in Chapter 6, Nonprobate Transfers;
  - (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors Act;
  - (vii) a business trust providing for certificates to be issued to beneficiaries;
  - (viii) a common trust fund;
  - (ix) a voting trust;
  - (x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;
  - (xi) a security arrangement;
  - (xii) a liquidation trust;
  - (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or
  - (xiv) any arrangement under which a person is nominee or escrowee for another.
- (61) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.
- (62) "Ward" means a person for whom a guardian has been appointed.
- (63) "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, 2024 General Session