

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code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.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 Section 26B-8-132.
 - (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 330, 2023 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 for the county where the hearing is to be held, as a class A notice under Section 63G-30-102, for at least 10 days before the day of the hearing.
- (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 435, 2023 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