

## 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Repealed and Re-enacted by Chapter 39, 1998 General Session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 -- Minerals and mineral proceeds.**

- (1) As used in this section:
  - (a) "Mineral" means the same as that term is defined in Section 67-4a-102.
  - (b) "Mineral proceeds" means the same as that term is defined in Section 67-4a-102.
  - (c) "Operator" means the same as that term is defined in Section 40-6-2, 40-8-4, or 40-10-3, and includes any other person holding mineral proceeds of an owner.
  - (d) "Owner" means the same as that term is defined in Section 38-10-101, 40-6-2, or 40-8-4.
  - (e) "Payor" means the same as that term is defined in Section 40-6-2, and includes a person who undertakes or has a legal obligation to distribute any mineral proceeds.
- (2) If there is no taker under this chapter, the intestate estate passes upon the decedent's death to the state for the benefit of the permanent state school fund.
- (3) When minerals or mineral proceeds pass to the state pursuant to Subsection (2), the Utah School and Institutional Trust Lands Administration shall administer the interests in the minerals or mineral proceeds for the support of the common schools pursuant to Sections 53C-1-102 and 53C-1-302, but may exercise its discretion to abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.
- (4) If a probate or other proceeding has not adjudicated the state's rights under Subsection (2), the state, and the Utah School and Institutional Trust Lands Administration with respect to any minerals or mineral proceeds referenced in Subsection (3), may bring an action in district court in any district in which part of the property related to the minerals or mineral proceeds is located to quiet title the minerals, mineral proceeds, or property.
- (5) In an action brought under Subsection (4), the district court shall quiet title to the minerals, mineral proceeds, or property in the state if:
  - (a) no interested person appears in the action and demonstrates entitlement to the minerals, mineral proceeds, or property after notice has been given pursuant to Section 78B-6-1303 and in the manner described in Section 75-1-401; and
  - (b) the requirements of Section 78B-6-1315 are met.
- (6)
  - (a) If an operator, owner, or payor determines that minerals or mineral proceeds form part of a decedent's intestate estate, and has not located an heir of the decedent, the operator, owner, or payor shall submit to the Utah School and Institutional Trust Lands Administration the information in the operator's, owner's, or payor's possession concerning the identity of the decedent, the results of a good faith search for heirs specified in Section 75-2-103, the property interest from which the minerals or mineral proceeds derive, and any potential heir.
  - (b) The operator, owner, or payor shall submit the information described in Subsection (6)(a) within 180 days of acquiring the information.

Amended by Chapter 264, 2019 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 -- Nondomiciliary.**

- (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 25-6-502.
    - (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 204, 2017 General Session

**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 it was:
  - (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) subject to a presently exercisable power of appointment not created by the decedent or the decedent's spouse that is exempt under Section 75-10-502;
  - (d) acquired in exchange for or with the proceeds of other separate property;
  - (e) designated as separate property by written waiver under Section 75-2-213; or
  - (f) 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 125, 2017 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 conservator 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

**75-2-609 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

**75-2-705 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**

### **75-2-902 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. A person who wilfully fails to deliver a will is liable to a person aggrieved for 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.

Amended by Chapter 115, 2017 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

### **Part 14 Uniform Electronic Wills Act**

#### **75-2-1401 Title.**

This part is known as the "Uniform Electronic Wills Act."

Enacted by Chapter 1, 2020 Special Session 6

#### **75-2-1402 Definitions.**

As used in this part:

- (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.
- (3) "Electronic will" means a will executed electronically in compliance with Subsection 75-2-1405(1).
- (4) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (5) "Sign" means, with present intent to authenticate or adopt a record:
  - (a) to execute or adopt a tangible symbol; or
  - (b) to affix to or logically associate with the record an electronic symbol or process.
- (6)

- (a) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (b) "State" includes a federally recognized Indian tribe.
- (7) "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1403 Law applicable to electronic will -- Principles of equity.**

- (1) An electronic will is a will for all purposes of the law of this state.
- (2) The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this part.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1404 Choice of law regarding execution.**

A will executed electronically but not in compliance with Subsection 75-2-1405(1) is an electronic will under this part if executed in compliance with the law of the jurisdiction where the testator is:

- (1) physically located when the will is signed; or
- (2) domiciled or resides when the will is signed or when the testator dies.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1405 Execution of an electronic will.**

- (1) Subject to Subsection 75-2-1408(4) and except as provided in Section 75-2-1406, an electronic will shall be:
  - (a) a record that is readable as text at the time of signing under Subsection (1)(b);
  - (b) signed:
    - (i) by the testator; or
    - (ii) in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
  - (c) signed in the physical or electronic presence of the testator by at least two individuals within a reasonable time after witnessing:
    - (i) the signing of the will under Subsection (1)(b); or
    - (ii) the testator's acknowledgment of the signing of the will under Subsection (1)(b) or the testator's acknowledgment of the will.
- (2) Intent of a testator that the record under Subsection (1)(a) be the testator's electronic will may be established by extrinsic evidence.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1406 Harmless error.**

Section 75-2-503 applies to a will executed electronically.



Enacted by Chapter 1, 2020 Special Session 6

**75-2-1407 Revocation.**

- (1) An electronic will may revoke all or part of a previous will.
- (2) All or part of an electronic will is revoked by:
  - (a) a subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or
  - (b) a physical act if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1408 Electronic will attested and made self-proving at time of execution.**

- (1) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.
- (2) The acknowledgment and affidavits under Subsection (1) shall be:
  - (a) made before an officer authorized to administer oaths under law of the state in which execution occurs, regardless of whether that officer is also a witness to the electronic will; and
  - (b) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(3) The acknowledgment and affidavits under Subsection (1) shall be in substantially the following form:

I, \_\_\_\_\_, the testator, and, being sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I willingly sign this instrument or willingly direct another individual to sign this instrument for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years old or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed this instrument or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is 18 years old or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness officer:

Certificate of \_\_\_\_\_  
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  
\_\_\_\_\_

Capacity of Officer

- (4) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this part is deemed a signature of the electronic will under Subsection 75-2-1405(1).
- (5) To the extent that this section conflicts with Title 46, Chapter 1, Notaries Public Reform Act, this section supersedes Title 46, Chapter 1, Notaries Public Reform Act.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1409 Certification of paper copy.**

- (1) An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will.
- (2) If the electronic will is made self-proving, the certified paper copy of the will shall include the self-proving affidavits.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1410 Uniformity of application and construction.**

In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to the subject matter of this uniform act among states that enact this uniform act.

Enacted by Chapter 1, 2020 Special Session 6

**75-2-1411 Transitional provision.**

This part applies to the will of a decedent who dies on or after the effective date of this part.

Enacted by Chapter 1, 2020 Special Session 6