

UNIFORM PROBATE CODE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO THE UNIFORM PROBATE CODE; ENACTING THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES; REPEALING AND REENACTING CHAPTER 2 PROVISIONS AND ENACTING RELATED PROVISIONS; PROVIDING TRANSITIONAL LANGUAGE; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 7-5-1**, as last amended by Chapter 161, Laws of Utah 1997
- 7-5-9**, as last amended by Chapter 6, Laws of Utah 1982
- 26-19-2**, as last amended by Chapter 79, Laws of Utah 1996
- 31A-22-415**, as enacted by Chapter 242, Laws of Utah 1985
- 58-31-13**, as last amended by Chapter 297, Laws of Utah 1993
- 58-67-601**, as enacted by Chapter 248, Laws of Utah 1996
- 62A-3-306**, as last amended by Chapter 130, Laws of Utah 1996
- 75-3-303**, as enacted by Chapter 150, Laws of Utah 1975
- 75-3-308**, as enacted by Chapter 150, Laws of Utah 1975
- 75-3-906**, as enacted by Chapter 150, Laws of Utah 1975
- 75-5-102**, as last amended by Chapter 194, Laws of Utah 1977
- 75-6-106**, as last amended by Chapter 194, Laws of Utah 1977
- 75-7-401**, as enacted by Chapter 150, Laws of Utah 1975
- 78-11-6.5**, as enacted by Chapter 113, Laws of Utah 1991

ENACTS:

- 75-2-208**, Utah Code Annotated 1953
- 75-2-209**, Utah Code Annotated 1953
- 75-2-210**, Utah Code Annotated 1953
- 75-2-211**, Utah Code Annotated 1953

- 75-2-212**, Utah Code Annotated 1953
- 75-2-213**, Utah Code Annotated 1953
- 75-2-214**, Utah Code Annotated 1953
- 75-2-405**, Utah Code Annotated 1953
- 75-2-514**, Utah Code Annotated 1953
- 75-2-515**, Utah Code Annotated 1953
- 75-2-702**, Utah Code Annotated 1953
- 75-2-703**, Utah Code Annotated 1953
- 75-2-704**, Utah Code Annotated 1953
- 75-2-705**, Utah Code Annotated 1953
- 75-2-706**, Utah Code Annotated 1953
- 75-2-707**, Utah Code Annotated 1953
- 75-2-708**, Utah Code Annotated 1953
- 75-2-709**, Utah Code Annotated 1953
- 75-2-710**, Utah Code Annotated 1953
- 75-2-711**, Utah Code Annotated 1953
- 75-2-1201**, Utah Code Annotated 1953
- 75-2-1202**, Utah Code Annotated 1953
- 75-2-1203**, Utah Code Annotated 1953
- 75-2-1204**, Utah Code Annotated 1953
- 75-2-1205**, Utah Code Annotated 1953
- 75-2-1206**, Utah Code Annotated 1953
- 75-2-1207**, Utah Code Annotated 1953
- 75-2-1208**, Utah Code Annotated 1953
- 75-2-1301**, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 75-1-107**, as last amended by Chapter 30, Laws of Utah 1992
- 75-1-201**, as last amended by Chapter 261, Laws of Utah 1991

- 75-2-101**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-102**, as last amended by Chapter 110, Laws of Utah 1988
- 75-2-103**, as last amended by Chapter 30, Laws of Utah 1992
- 75-2-104**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-105**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-106**, as last amended by Chapter 194, Laws of Utah 1977
- 75-2-108**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-109**, as last amended by Chapter 30, Laws of Utah 1992
- 75-2-110**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-111**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-112**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-113**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-114**, as enacted by Chapter 226, Laws of Utah 1983
- 75-2-201**, as last amended by Chapter 155, Laws of Utah 1988
- 75-2-202**, as last amended by Chapter 194, Laws of Utah 1977
- 75-2-203**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-204**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-205**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-206**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-207**, as last amended by Chapter 194, Laws of Utah 1977
- 75-2-301**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-302**, as last amended by Chapter 110, Laws of Utah 1988
- 75-2-401**, as last amended by Chapter 110, Laws of Utah 1988
- 75-2-402**, as last amended by Chapter 110, Laws of Utah 1988
- 75-2-403**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-404**, as last amended by Chapter 245, Laws of Utah 1979
- 75-2-501**, as enacted by Chapter 150, Laws of Utah 1975
- 75-2-502**, as enacted by Chapter 150, Laws of Utah 1975

75-2-503, as last amended by Chapter 194, Laws of Utah 1977
75-2-504, as last amended by Chapter 179, Laws of Utah 1992
75-2-505, as last amended by Chapter 194, Laws of Utah 1977
75-2-506, as enacted by Chapter 150, Laws of Utah 1975
75-2-507, as enacted by Chapter 150, Laws of Utah 1975
75-2-508, as last amended by Chapter 226, Laws of Utah 1983
75-2-509, as enacted by Chapter 150, Laws of Utah 1975
75-2-510, as enacted by Chapter 150, Laws of Utah 1975
75-2-511, as last amended by Chapter 194, Laws of Utah 1977
75-2-512, as enacted by Chapter 150, Laws of Utah 1975
75-2-513, as last amended by Chapter 194, Laws of Utah 1977
75-2-601, as enacted by Chapter 150, Laws of Utah 1975
75-2-602, as enacted by Chapter 150, Laws of Utah 1975
75-2-603, as enacted by Chapter 150, Laws of Utah 1975
75-2-604, as enacted by Chapter 150, Laws of Utah 1975
75-2-605, as enacted by Chapter 150, Laws of Utah 1975
75-2-606, as enacted by Chapter 150, Laws of Utah 1975
75-2-607, as enacted by Chapter 150, Laws of Utah 1975
75-2-608, as enacted by Chapter 194, Laws of Utah 1977
75-2-609, as enacted by Chapter 150, Laws of Utah 1975
75-2-610, as enacted by Chapter 150, Laws of Utah 1975
75-2-611, as enacted by Chapter 150, Laws of Utah 1975
75-2-701, as enacted by Chapter 150, Laws of Utah 1975
75-2-801, as enacted by Chapter 194, Laws of Utah 1977
75-2-802, as last amended by Chapter 110, Laws of Utah 1988
75-2-803, as enacted by Chapter 150, Laws of Utah 1975
75-2-804, as enacted by Chapter 150, Laws of Utah 1975
75-2-901, as last amended by Chapter 218, Laws of Utah 1994

75-2-902, as enacted by Chapter 150, Laws of Utah 1975

75-2-1001, as enacted by Chapter 150, Laws of Utah 1975

REPEALS:

75-2-612, as enacted by Chapter 150, Laws of Utah 1975

75-2-613, as enacted by Chapter 54, Laws of Utah 1982

75-2-614, as enacted by Chapter 226, Laws of Utah 1983

75-2-1002, as enacted by Chapter 150, Laws of Utah 1975

75-2-1003, as enacted by Chapter 150, Laws of Utah 1975

75-2-1005, as enacted by Chapter 150, Laws of Utah 1975

75-2-1006, as enacted by Chapter 150, Laws of Utah 1975

75-2-1007, as enacted by Chapter 150, Laws of Utah 1975

75-2-1008, as enacted by Chapter 150, Laws of Utah 1975

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

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

7-5-1. Definitions -- Allowable trust companies -- Exceptions.

(1) As used in this chapter:

(a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.

(b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in Subsection 75-1-201[(45)](53).

(c) "Trust business" does not include the following means of holding funds, assets, or other property:

- (i) funds held in a client trust account by an attorney authorized to practice law in this state;
- (ii) funds held in connection with the purchase or sale of real estate by a person authorized

to act as a real estate broker in this state;

(iii) funds or other assets held in escrow by a person authorized by the department in accordance with Chapter 22 or by the Utah Insurance Department to act as an escrow agent in this state;

(iv) funds held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;

(v) funds held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including funds held by an escrow agent for payment of taxes or insurance;

(vi) funds and other assets held in trust on an occasional or isolated basis by a person who does not represent that he is engaged in the trust business in Utah;

(vii) funds or other assets found by a court to be held in an implied, resulting, or constructive trust;

(viii) funds or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:

(A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

(B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;

(C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing business in this state, including a statement of the value of the assets to be managed. That notice need not be provided, however, if a trust company has been employed by the fiduciary to manage the assets; and

(D) in the event guardianship services are needed, the person seeking appointment as a guardian under this subsection is a specialized care professional, as that term is defined in Section 75-5-311, or a business or state agency that employs the services of one of those professionals for the purpose of caring for the incapacitated person, so long as the specialized care professional, business, or state agency does not:

(I) profit financially or otherwise from, or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

(II) otherwise have a conflict of interest in providing those services;

(ix) funds or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;

(x) funds, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or

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

(d) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:

(i) a Utah depository institution or its wholly owned subsidiary;

(ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;

(iii) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and

(iv) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

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

(3) The requirements of this chapter do not apply to:

(a) an institution authorized to engage in a trust business in another state that is engaged in

trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;

(b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or

(c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Section 2. Section **7-5-9** is amended to read:

7-5-9. Registration of investment in name of nominee -- Records -- Possession of investment.

(1) A trust company may cause any security, as defined in Subsection 75-1-201[~~(37)~~] (43), held in its agency or fiduciary capacity to be registered and held in the name of a nominee or nominees of the trust company. The trust company shall be liable for the acts of any such nominee with respect to any investment so registered. Investments other than securities held in the name of a nominee on June 30, 1981, may continue to be held in that manner.

(2) The records of the trust company shall at all times show the ownership of any such investment, which investment shall be in the possession or control of the trust company and be kept separate and apart from the assets of the trust company.

Section 3. Section **26-19-2** is amended to read:

26-19-2. Definitions.

As used in this chapter:

(1) "Employee welfare benefit plan" means a medical insurance plan developed by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income Security Act of 1974 as amended.

(2) "Estate" means, regarding a deceased recipient, all real and personal property or other assets included within a decedent's estate as defined in Section 75-1-201 and a decedent's augmented estate as defined in Section ~~[75-2-202]~~ 75-2-203.

(3) "Insurer" includes:

(a) a group health plan as defined in Subsection 607(1) of the federal Employee Retirement Income Security Act of 1974;

(b) a health maintenance organization; and

(c) any entity offering a health service benefit plan.

(4) "Medical assistance" means any funds expended by the state under Title 26, Chapter 18, Medical Assistance Act, and under Titles XVIII and XIX, federal Social Security Act.

(5) "Provider" means a person or entity who provides services to a recipient.

(6) "Recipient" means:

(a) a person who has applied for or received medical assistance from the state;

(b) the guardian, conservator, or other personal representative of a person under Subsection (6)(a) if the person is a minor or an incapacitated person; or

(c) the estate and survivors of a person under Subsection (6)(a) if the person is deceased.

(7) "State plan" means the state Medicaid program as enacted in accordance with Title XIX, federal Social Security Act.

(8) "Third party" includes:

(a) an individual, institution, corporation, public or private agency, trust, estate, insurance carrier, employee welfare benefit plan, health maintenance organization, health service organization, preferred provider organization, governmental program such as Medicare, CHAMPUS, and workers' compensation, which may be liable to pay all or part of the medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by department rule; and

(b) a spouse or a parent who:

(i) may be liable to pay all or part of the medical costs of a recipient under law or by court or administrative order; or

(ii) has been ordered to maintain health, dental, or disability insurance to cover medical expenses of a spouse or dependent child by court or administrative order.

Section 4. Section **31A-22-415** is amended to read:

31A-22-415. Simultaneous death.

Section [~~75-2-1005~~] 75-2-702 applies to all policies of life and disability insurance.

Section 5. Section **58-31-13** is amended to read:

58-31-13. Grounds for denial of licensure and disciplinary proceedings.

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

(2) (a) If a court of competent jurisdiction determines that a nurse is an "incapacitated person" as defined in Subsection 75-1-201[~~(18)~~] (22) or is mentally ill, the director shall suspend the license of the nurse upon entry of the judgment, regardless of the pendency of an appeal.

(b) If it appears to the board that there is reasonable cause to believe that a nurse, even though he has not been judicially determined to be incompetent, mentally incompetent, or incapable, is unable to practice nursing with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon the nurse for hearing on the sole issue of the capacity of the nurse to conduct properly the practice of nursing.

(c) For purposes of this subsection, every nurse licensed under this chapter who accepts the privilege of practicing nursing in this state is considered to have:

(i) given consent to submit to a mental or physical examination when directed in writing by the board to do so; and

(ii) waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that they constitute a privileged communication.

(d) (i) Failure of a nurse to submit to the examination when directed by the board constitutes grounds for immediate suspension of the nurse's license, unless the failure was due to circumstances beyond the control of the nurse.

(ii) The director may enter an order of suspension of the license without the taking of testimony or the presentation of evidence upon a finding of reasonable cause to believe that an order

of suspension is necessary to protect the public health, safety, or welfare.

(e) A nurse whose license is suspended under this subsection shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent practice of nursing with reasonable skill and safety to patients.

Section 6. Section **58-67-601** is amended to read:

58-67-601. Mentally incompetent or incapacitated physician.

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section [~~75-1-201~~] 75-5-303.

(b) "Mentally ill" has the same definition as in Section 62A-12-202.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.

(6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of medicine; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part.

Section 7. Section **62A-3-306** is amended to read:

62A-3-306. Emergency order authorizing protective services -- Implementation.

(1) Upon petition by the division or another interested party, a district court may issue an order authorizing the provision of protective services on an emergency basis if it finds that:

- (a) the person to be protected is a disabled or elder adult;
- (b) an emergency situation exists; and
- (c) the person to be protected does not have a guardian authorized by law to act on his behalf, or his guardian has failed or refused to act.

(2) In issuing an emergency order, the court shall order only those protective services which are necessary to remove the conditions creating the emergency, and shall specifically designate in the order the protective services which are approved, together with supporting facts.

(3) Protective services authorized by an emergency order may not include hospitalization, nursing or custodial care, or a change of residence unless the court specifically finds that the action is necessary and approves that action in its order.

(4) Protective services shall be provided through an emergency order for a period not to exceed three business days, at which time the order shall terminate unless a petition for guardianship, conservatorship, or other protective service has been initiated. If such a petition is made, the emergency order may be continued for as long as 15 days from the date the petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.

(5) In its emergency order, the court shall appoint the petitioner or another interested person as guardian, as defined in Subsection 75-1-201 [(16)] (20). That guardian has responsibility for the disabled person's welfare, and has authority to consent to the approved protective services until the expiration of the order.

(6) The issuance of an emergency order and the appointment of a guardian until the expiration of the order does not deprive the protected person of any right, except to the extent provided in the order or appointment.

(7) To implement an emergency order the court may authorize forcible entry by a law enforcement officer to the premises where the protected person is residing, for the purpose of

rendering protective services or transporting the person to another location for the provision of those services. Forcible entry under this subsection is authorized only after a showing to the court that voluntary access to the premises is not possible and that forcible entry is required.

Section 8. Section **75-1-107** is repealed and reenacted to read:

75-1-107. Evidence of death or status.

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead as provided in Title 26, Chapter 34, Uniform Determination of Death Act.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under Subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under Subsection (1), (2), (3), or (4) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in Subsection (2) or (3), a document described in Subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

Section 9. Section **75-1-201** is repealed and reenacted to read:

75-1-201. General definitions.

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

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

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

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

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

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

(6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator,

including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(21) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" means an individual described in Section 75-5-303.

(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means descendant as defined in Subsection (9).

(26) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership

registration in which the underlying ownership of each party is in proportion to that party's contribution.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(29) "Minor" means a person who is under 21 years of age.

(30) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(32) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(33) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

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

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

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

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

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

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

(39) "Property" includes both real and personal property or any interest therein and means

anything that may be the subject of ownership.

(40) "Protected person" is as defined in Section 75-5-401.

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

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

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

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

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

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

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

(50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 58, Preneed Funeral Arrangement Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

(55) "Ward" means an individual described in Section 75-5-303.

(56) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 10. Section **75-2-101** is repealed and reenacted to read:

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.

Section 11. Section **75-2-102** is repealed and reenacted to read:

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 \$50,000, 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 chargeable against the intestate share of the surviving spouse.

Section 12. Section **75-2-103** is repealed and reenacted to read:

75-2-103. Share of heirs other than surviving spouse.

(1) Any part of the intestate estate not passing to the 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 designated below 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;

(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 by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, 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 the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire

estate passes to the decedent's relatives on the other side in the same manner as the half.

(2) For purposes of Subsections (a), (b), (c), and (d), any nonprobate transfer, as defined in Section 75-2-205, received by an heir is chargeable against the intestate share of such heir.

Section 13. Section **75-2-104** is repealed and reenacted to read:

75-2-104. Requirement that heir survive decedent for 120 hours.

An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under Section 75-2-105.

Section 14. Section **75-2-105** is repealed and reenacted to read:

75-2-105. No taker.

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

Section 15. Section **75-2-106** is repealed and reenacted to read:

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

Section 16. Section **75-2-108** is repealed and reenacted to read:

75-2-108. Afterborn heirs.

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Section 17. Section **75-2-109** is repealed and reenacted to read:

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.

Section 18. Section **75-2-110** is repealed and reenacted to read:

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.

Section 19. Section **75-2-111** is repealed and reenacted to read:

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.

Section 20. Section **75-2-112** is repealed and reenacted to read:

75-2-112. Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

Section 21. Section **75-2-113** is repealed and reenacted to read:

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.

Section 22. Section **75-2-114** is repealed and reenacted to read:

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 Sections 78-45a-7, 78-45a-10, and Title 78, Chapter 45a, Uniform Act on Paternity.

(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:

(a) the relationship between the child and that natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

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

Section 23. Section **75-2-201** is repealed and reenacted to read:

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.

Section 24. Section **75-2-202** is repealed and reenacted to read:

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 1/3 of the augmented estate.

(2) If the sum of the amounts described in Section 75-2-207, Subsection 75-2-209(1)(a), 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 \$25,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$25,000, 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. Any nonprobate transfer, as provided in Section 75-2-206, received by the surviving spouse is also chargeable against 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.

Section 25. Section **75-2-203** is repealed and reenacted to read:

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.

Section 26. Section **75-2-204** is repealed and reenacted to read:

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

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.

Section 27. Section **75-2-205** is repealed and reenacted to read:

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 following types, 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:

(a) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. 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) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. 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) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. 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) 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. The amount included 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, however, the amount included 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 following forms by the decedent during marriage:

(a) 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. The amount included is the value of the fraction of the property to which the decedent's right 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) 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. 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. If the power is a power over both income and property and the preceding sentence 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 following types:

(a) 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. The amount included is the value of the property that would have been included under those subsections 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. As used in this subsection, "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, but, with respect to a power described in Subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b) 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. The amount included 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, however, the amount included 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) 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. 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.

Section 28. Section **75-2-206** is repealed and reenacted to read:

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

Excluding property passing to the surviving spouse under the federal Social Security system and 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.

Section 29. Section **75-2-207** is repealed and reenacted to read:

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.

Section 30. Section **75-2-208** is enacted to read:

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

(1) The value of any separate property of the decedent or the decedent's surviving spouse is excluded from the augmented estate even if it otherwise would be included in the augmented estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property if:

(a) owned at the date of the most recent marriage of the decedent and the decedent's surviving spouse;

(b) acquired by gift or disposition at death from a person other than the decedent or the decedent's surviving spouse;

(c) acquired in exchange for or with the proceeds of other separate property;

(d) designated as separate property by written waiver under Section 75-2-213; or

(e) acquired as a recovery for personal injury but only to the extent attributable to expenses paid or otherwise satisfied from separate property.

(2) Income attributable to investment, rental, licensing or other use of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.

(3) Appreciation in the value of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.

(4) Except as provided in this subsection, 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 is rebuttably presumed not to be separate property. Separate property that has been commingled with other property that is not separate property shall be rebuttably presumed not to be separate property unless it can be shown what percentage or amount of the commingled property came from separate property, in which case the amount or percentage of commingled property will remain separate property. Property held by the decedent and the decedent's surviving spouse as joint tenants at the date of the decedent's death shall not 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.

Section 31. Section **75-2-209** is enacted to read:

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 which 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; and

(c) the aggregate value of the decedent's separate property as defined in Section 75-2-208 that passes or has passed to the surviving spouse by testate or intestate succession or by nonprobate transfer under Section 75-2-206 that are not included in the augmented estate.

(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.

Section 32. Section **75-2-210** is enacted to read:

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.

Section 33. Section **75-2-211** is enacted to read:

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.

Section 34. Section **75-2-212** is enacted to read:

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.

Section 35. Section **75-2-213** is enacted to read:

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.

Section 36. Section **75-2-214** is enacted to read:

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.

Section 37. Section **75-2-301** is repealed and reenacted to read:

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.

Section 38. Section **75-2-302** is repealed and reenacted to read:

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 (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.

Section 39. Section **75-2-401** is repealed and reenacted to read:

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.

Section 40. Section **75-2-402** is repealed and reenacted to read:

75-2-402. Homestead allowance.

A decedent's surviving spouse is entitled to a homestead allowance of \$15,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$15,000 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.

Section 41. Section **75-2-403** is repealed and reenacted to read:

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 \$10,000 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 \$10,000, or if there is not \$10,000 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 \$10,000 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.

Section 42. Section **75-2-404** is repealed and reenacted to read:

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.

Section 43. Section **75-2-405** is enacted to read:

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 \$18,000 or periodic installments not exceeding \$1,500 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).

Section 44. Section **75-2-501** is repealed and reenacted to read:

75-2-501. Who may make will.

An individual 18 or more years of age who is of sound mind may make a will.

Section 45. Section **75-2-502** is repealed and reenacted to read:

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.

Section 46. Section **75-2-503** is repealed and reenacted to read:

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.

Section 47. Section **75-2-504** is repealed and reenacted to read:

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 eighteen 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.

Section 48. Section **75-2-505** is repealed and reenacted to read:

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.

Section 49. Section **75-2-506** is repealed and reenacted to read:

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.

Section 50. Section **75-2-507** is repealed and reenacted to read:

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.

Section 51. Section **75-2-508** is repealed and reenacted to read:

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.

Section 52. Section **75-2-509** is repealed and reenacted to read:

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.

Section 53. Section **75-2-510** is repealed and reenacted to read:

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.

Section 54. Section **75-2-511** is repealed and reenacted to read:

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.

Section 55. Section **75-2-512** is repealed and reenacted to read:

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.

Section 56. Section **75-2-513** is repealed and reenacted to read:

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.

Section 57. Section **75-2-514** is enacted to read:

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.

Section 58. Section **75-2-515** is enacted to read:

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.

Section 59. Section **75-2-601** is repealed and reenacted to read:

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.

Section 60. Section **75-2-602** is repealed and reenacted to read:

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.

Section 61. Section **75-2-603** is repealed and reenacted to read:

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 (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 (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, "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 (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.

Section 62. Section **75-2-604** is repealed and reenacted to read:

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.

Section 63. Section **75-2-605** is repealed and reenacted to read:

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.

Section 64. Section **75-2-606** is repealed and reenacted to read:

75-2-606. Nonademption of specific devises -- Unpaid proceeds of sale, condemnation, or insurance -- Sale by conservatory or agent.

(1) A specific devisee has a right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by Subsections (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.

Section 65. Section **75-2-607** is repealed and reenacted to read:

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.

Section 66. Section **75-2-608** is repealed and reenacted to read:

75-2-608. Exercise of power of appointment.

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

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

Section 67. Section **75-2-609** is repealed and reenacted to read:

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.

Section 68. Section **75-2-610** is repealed and reenacted to read:

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 U.S.C. Sec. 26, 403(a), Economic Recovery Tax Act of 1981.

Section 69. Section **75-2-611** is repealed and reenacted to read:

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.

Section 70. Section **75-2-701** is repealed and reenacted to read:

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.

Section 71. Section **75-2-702** is enacted to read:

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 Subsection 75-2-1203(1)(a), (2)(a), or (3)(a) or to become invalid under Subsection 75-2-1203(1)(b), (2)(b), or (3)(b); 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 (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.

Section 72. Section **75-2-703** is enacted to read:

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.

Section 73. Section **75-2-704** is enacted to read:

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

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

Section 74. Section **75-2-705** is enacted to read:

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.

Section 75. Section **75-2-706** is enacted to read:

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.

Section 76. Section **75-2-707** is enacted to read:

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.

Section 77. Section **75-2-708** is enacted to read:

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.

Section 78. Section **75-2-709** is enacted to read:

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) 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.

Section 79. Section **75-2-710** is enacted to read:

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.

Section 80. Section **75-2-711** is enacted to read:

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.

Section 81. Section **75-2-801** is repealed and reenacted to read:

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 disabled person, 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 himself 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 him, 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.

Section 82. Section **75-2-802** is repealed and reenacted to read:

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 Parts 1, 2, 3, and 4 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.

Section 83. Section **75-2-803** is repealed and reenacted to read:

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) "Governing instrument" means a governing instrument executed by the decedent.

(c) "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 feloniously and intentionally kills 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 felonious and intentional killing of the decedent:

(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 a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from his wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether,

under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer 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 an intentional and felonious killing, 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.

Section 84. Section **75-2-804** is repealed and reenacted to read:

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 his marriage to his 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 his former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself in place of his former spouse or in place of his 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 his 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, nominating 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.

Section 85. Section **75-2-901** is repealed and reenacted to read:

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

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

Section 86. Section **75-2-902** is repealed and reenacted to read:

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

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

Section 87. Section **75-2-1001** is repealed and reenacted to read:

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 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 (a) or (b), 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 principle 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 (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 (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.

Section 88. Section **75-2-1201** is enacted to read:

Part 12. Uniform Statutory Rule Against Perpetuities

75-2-1201. Uniform Statutory Rule Against Perpetuities.

This part is known as the "Uniform Statutory Rule Against Perpetuities."

Section 89. Section **75-2-1202** is enacted to read:

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.

Section 90. Section **75-2-1203** is enacted to read:

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 -- Possibility of postdeath child disregarded -- Effect of certain "later-of" type language.

(1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under Subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives, 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 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or
 - (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

Section 91. Section **75-2-1204** is enacted to read:

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 Subsection 75-2-1203(2)(a) or (b), 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.

Section 92. Section **75-2-1205** is enacted to read:

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 90 years allowed by Subsection 75-2-1203(1)(b), (2)(b), or (3)(b) 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 Subsection 75-2-1203(1)(a) can vest but not within 90 years after its creation.

Section 93. Section **75-2-1206** is enacted to read:

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.

Section 94. Section **75-2-1207** is enacted to read:

75-2-1207. Prospective application.

(1) 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 July 1, 1998. 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 the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before July 1, 1998 and is determined in a judicial proceeding, commenced on or after July 1, 1998, to violate Utah's rule against perpetuities as that rule existed before July 1, 1998, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Section 95. Section **75-2-1208** is enacted to read:

75-2-1208. Supersession.

This title supersedes the rule of the common law known as the rule against perpetuities.

Section 96. Section **75-2-1301** is enacted to read:

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.

Section 97. Section **75-3-303** is amended to read:

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

(1) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(a) the application is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201[~~(20)~~] (24);

(d) on the basis of the statements in the application, venue is proper;

(e) an original, duly executed and apparently unrevoked will is in the registrar's possession;

(f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in Subsection (4) [below], if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 have

been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection (1) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Section 98. Section **75-3-308** is amended to read:

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

- (1) In informal appointment proceedings, the registrar [~~must~~] shall determine whether:
- (a) the application for informal appointment of a personal representative is complete;
 - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
 - (c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201[~~(20)~~] (24);
 - (d) on the basis of the statements in the application, venue is proper;
 - (e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
 - (f) any notice required by Section 75-3-204 has been given; and
 - (g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(2) Unless Section 75-3-612 controls, the application [~~must~~] shall be denied if it indicates

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

Section 99. Section **75-3-906** is amended to read:

75-3-906. Distribution in kind -- Valuation -- Method.

(1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section [~~75-2-402~~] 75-2-403 shall receive the items selected.

(b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(c) For the purpose of valuation under Subsection (1)(b) above, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the

date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

Section 100. Section **75-5-102** is amended to read:

75-5-102. Facility of payment or delivery.

(1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding [~~\$5,000~~] \$10,000 per annum, by paying or delivering the money or property to:

- (a) the minor, if he is married or if payment to the minor is expressly authorized by statute;
- (b) any person having the care and custody of the minor with whom the minor resides; or
- (c) a guardian of the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor receiving money or property for a minor, are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not

so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Section 101. Section **75-6-106** is amended to read:

75-6-106. Accounts and transfers nontestamentary.

Any transfers resulting from the application of Section 75-6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Chapters 1 through 4 of this code, except as provided in Sections 75-2-201 through ~~75-2-207~~ 75-2-214, and except as a consequence of, and to the extent directed by, Sections 75-6-107 and 75-3-916.

Section 102. Section **75-7-401** is amended to read:

75-7-401. Powers of trustee conferred by trust or by law.

(1) The trustee has all powers conferred upon him by the provisions of this part unless limited in the trust instrument.

(2) An instrument which is not a trust under Subsection 75-1-201~~(45)~~ (53) may incorporate any section or subsection of this part by reference.

Section 103. Section **78-11-6.5** is amended to read:

78-11-6.5. Definition of heir.

As used in Sections 78-11-7, 78-11-8, and 78-11-12, "heirs" means:

(1) the following surviving persons:

- (a) the decedent's spouse;
- (b) the decedent's children as provided in Section ~~75-2-109~~ 75-2-114;
- (c) the decedent's natural parents, or if the decedent was adopted, then his adoptive parents;
- (d) the decedent's stepchildren who:
 - (i) are in their minority at the time of decedent's death; and
 - (ii) are primarily financially dependent on the decedent.

(2) "Heirs" means any blood relative as provided by the law of intestate succession if the decedent is not survived by a person under Subsections (1)(a), (b), or (c).

Section 104. **Repealer.**

This act repeals:

Section **75-2-612, Ademption by satisfaction.**

Section **75-2-613, Marital deduction formulas -- Wills.**

Section **75-2-614, Direction to pay taxes in will.**

Section **75-2-1002, Survival of beneficiaries.**

Section **75-2-1003, Joint tenants or tenants by the entirety.**

Section **75-2-1005, Insurance policies.**

Section **75-2-1006, Act does not apply if decedent provides otherwise.**

Section **75-2-1007, Construction of part.**

Section **75-2-1008, Death before taking effect of act.**

Section 105. **Effective date.**

This act takes effect on July 1, 1998.