1   **UTAH UNIFORM PROBATE CODE - NOTICE,**

2   **PARTIES, REPRESENTATION AMENDMENTS**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Lyle W. Hillyard**

6   AN ACT RELATING TO THE UNIFORM PROBATE CODE; ADOPTING LANGUAGE

7   FROM THE PROPOSED UNIFORM TRUST ACT CLARIFYING NOTICE, CONSENT, AND

8   REPRESENTATION REQUIREMENTS FOR INTER VIVOS AND TESTAMENTARY

9   TRUSTS.

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

11   AMENDS:

12   **75-1-403**, as last amended by Chapter 142, Laws of Utah 1999

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

14   Section 1. Section **75-1-403** is amended to read:

15   **75-1-403.   Pleadings -- When parties bound by others -- Notice.**

16   In formal proceedings involving inter vivos or testamentary trusts [or]<u>, including</u>

17   <u>proceedings to modify or terminate a trust,</u> estates of decedents, minors, protected persons, or

18   incapacitated persons, and in judicially supervised settlements, the following apply:

19   (1) Interests to be affected shall be described in pleadings which give reasonable

20   information to owners by name or class, by reference to the instrument creating the interests, or

21   in <u>any</u> other appropriate manner.

22   (2) Persons are bound by orders binding others in the following cases:

23   (a) [~~Orders binding the sole holder or all co-holders of a power of revocation or a~~

24   ~~presently-exercisable general power of appointment, including one in the form of a power of~~

25   ~~amendment, bind other persons to the extent their interests (as objects, takers in default, or~~

26   ~~otherwise)~~] <u>To the extent there is no conflict of interest between the holder of a general</u>

27   <u>testamentary power of appointment and the persons represented with respect to a particular</u>

28 question or dispute, the holder may represent and bind persons whose interests, as permissible

29 appointees, takers in default, or otherwise, are subject to the power.

30   (b) To the extent there is no conflict of interest between [them or among persons

31 represented, orders binding a conservator] the representative and the person represented with

32 respect to a particular question or dispute:

33   (i) a conservator may represent and bind the person whose estate he controls; [orders

34 binding]

35   (ii) a guardian may represent and bind the ward if no conservator of [his estate has been

36 appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will

37 establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in

38 proceedings involving creditors or other third parties; and orders binding a personal representative]

39 the ward's estate has been appointed;

40   (iii) an agent having authority to do so may represent and bind the principal;

41   (iv) a trustee may represent and bind the beneficiaries of the trust;

42   (v) a personal representative of a decedent's estate may represent and bind persons

43 interested in the [undistributed assets of a decedent's estate in actions or proceedings by or against

44 the estate. If there is no conflict of interest and] estate; and

45   (vi) if no conservator or guardian has been appointed, a parent may represent [his minor]

46 and bind the parent's minor or unborn child.

47   (c) [An unborn or unascertained person who is not otherwise represented is bound by an

48 order to the extent his interest is adequately represented by another party] Unless otherwise

49 represented, a minor, incapacitated or unborn person, or a person whose identity or location is

50 unknown and not reasonably ascertainable, may be represented and bound by another person

51 having a substantially identical interest [in the proceeding] with respect to the particular question

52 or dispute, but only to the extent there is no conflict of interest between the representative and the

53 person represented.

54   (3) Notice is required as follows:

55   (a) Notice as prescribed by Section 75-1-401 shall be given to every interested person [or

56 to one who can bind an interested person as described in Subsection (2)(a) or (2)(b)]. Notice may

57 be given both to a person and to another who may bind him.

58   [(b) Notice is given to unborn or unascertained persons, who are not represented under

59 Subsection (2)(a) or (2)(b), by giving notice to all known persons whose interests in the

60 proceedings are substantially identical to those of the unborn or unascertained persons.]

61   (b) Whenever notice to a person is required or permitted under this chapter, notice to

62 another person who may represent and bind the person represented under this section constitutes

63 notice to the person represented.

64   (4) [At any point in a proceeding, a] Even if there is representation under this section, if

65 the court determines that representation of the interest might otherwise be inadequate, the court

66 may appoint a guardian ad litem to represent the interest of [a minor, an], and approve an

67 agreement on behalf of, a minor, incapacitated[,] or unborn[, or unascertained] person, or a person

68 whose identity or [address is unknown, if the court determines that representation of the interest

69 otherwise would be inadequate] location is unknown.

70   (5) If not precluded by conflict of [interests] interest, a guardian ad litem may be appointed

71 to represent several persons or interests. [The court shall set out its reasons for appointing a

72 guardian ad litem as a part of the record of the proceeding] In approving an agreement, a guardian

73 ad litem may consider general family benefit accruing to the living members of the family of the

74 person represented.

75   (6) Whenever consent may be given by a person pursuant to this chapter, the consent of

76 a person who may represent and bind the person represented under this section is the consent of,

77 and is binding on, the person represented unless the person represented objects to the

78 representation before the consent would otherwise become effective.

Legislative Review Note
as of   2-8-00 12:19 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel