

RIGHTS OF CREDITORS AGAINST TRUST

PROPERTY

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Merlynn T. Newbold

This act creates new provisions relating to trusts. It provides that the creditors of a grantor of an inter vivos revocable trust may be limited to three months for the presentation of claims against the grantor's estate after his death, and provides guidelines for the notice and presentation of claims.

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

ENACTS:

75-7-308, Utah Code Annotated 1953

75-7-309, Utah Code Annotated 1953

75-7-310, Utah Code Annotated 1953

75-7-311, Utah Code Annotated 1953

75-7-312, Utah Code Annotated 1953

75-7-313, Utah Code Annotated 1953

75-7-314, Utah Code Annotated 1953

75-7-315, Utah Code Annotated 1953

75-7-316, Utah Code Annotated 1953

75-7-317, Utah Code Annotated 1953

75-7-318, Utah Code Annotated 1953

75-7-319, Utah Code Annotated 1953

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

Section 1. Section **75-7-308** is enacted to read:

75-7-308. Notice to creditors.

(1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death, providing the trustee's name and

address and notifying creditors of the deceased settlor to present their claims within three months after the date of the first publication of the notice or be forever barred.

(2) A trustee may give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present his claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) or a similar notice.

(3) The trustee shall not be liable to any creditor or to any successor of the deceased settlor for giving or failing to give notice under this section.

Section 2. Section **75-7-309** is enacted to read:

75-7-309. Limitations on presentation of claims.

(1) All claims against a deceased settlor which arose before the death of the deceased settlor, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:

(a) one year after the settlor's death; or

(b) the time provided by Subsection 75-3-308(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-308(1) for all claims barred by publication.

(2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.

(3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:

(a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or

(b) any other claim within the later of three months after it arises, or the time specified in Subsection (1).

(4) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

Section 3. Section **75-7-310** is enacted to read:

75-7-310. Manner of presentation of claims.

(1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be presented as follows:

(a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented upon the receipt of the written statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the trustee in any court where the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased settlor's estate or the trust estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the deceased settlor which were pending at the time of the deceased settlor's

death.

(2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the trustee may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition, may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

Section 4. Section **75-7-311** is enacted to read:

75-7-311. Classification of claims.

(1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to pay all claims in full, the trustee shall make payment in the following order:

(a) reasonable funeral expenses;

(b) costs and expenses of administration;

(c) debts and taxes with preference under federal law;

(d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending him, and medical assistance if Section 26-19-13.5 applies;

(e) debts and taxes with preference under other laws of this state; and

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Section 5. Section **75-7-312** is enacted to read:

75-7-312. Allowance of claims.

(1) As to claims presented in the manner described in Section 75-7-310 and within the time limit prescribed in Section 75-7-309, the trustee may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall notify the claimant. The trustee may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to

commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the trustee not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.

(2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the court may order any claim presented to the trustee or trustee's attorney in a timely manner and not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall be given to the claimant, the trustee, and those other persons interested in the trust estate as the court may direct by order at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against the trustee to enforce a claim against a deceased settlor's estate is a court-ordered allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against a trustee, allowed claims bear interest at the legal rate for the period commencing six months after the deceased settlor's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Section 6. Section **75-7-313** is enacted to read:

75-7-313. Payment of claims.

(1) Upon the expiration of the earliest of the time limitations provided in Section 75-7-309 for the presentation of claims, the trustee shall pay the claims allowed against the deceased settlor's estate in the order of priority prescribed, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for that purpose, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the trustee to pay the claim to the extent that funds of the deceased settlor's estate or trust estate are available for the payment.

(2) The trustee at any time may pay any just claim that has not been barred, with or without formal presentation, but he shall be personally liable to any other claimant whose claim is allowed and who is injured by the payment if:

(a) the payment was made before the expiration of the time limit stated in Subsection (1) and the trustee failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the trustee, in a way that deprived the injured claimant of his priority.

Section 7. Section **75-7-314** is enacted to read:

75-7-314. Secured claims.

Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders his security; but otherwise payment shall be based upon one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by another provision of the law, upon the amount of the claim allowed less the fair value of the security;
or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise, or litigation.

Section 8. Section **75-7-315** is enacted to read:

75-7-315. Claims not due and contingent -- unliquidated claims.

(1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the trust estate, and if the claim has been allowed or established by a proceeding, it shall be paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the trustee, or, on petition of the trustee or the claimant in a special proceeding for that purpose, the court, may provide for payment as follows:

(a) if the claimant consents, he may be paid the present or agreed value of the claim, taking

any uncertainty into account; or

(b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a beneficiary, or otherwise.

Section 9. Section **75-7-316** is enacted to read:

75-7-316. Counterclaims.

(1) In allowing a claim, the trustee may deduct any counterclaim which the deceased settlor's estate has against the claimant. In determining a claim against a deceased settlor's estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based.

(3) A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Section 10. Section **75-7-317** is enacted to read:

75-7-317. Execution and levies prohibited.

(1) No execution may issue upon nor may any levy be made against any property of the deceased settlor's estate under any judgment against a deceased settlor or a trustee.

(2) This section may not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

Section 11. Section **75-7-318** is enacted to read:

75-7-318. Compromise of claims.

When a claim against a deceased settlor's estate has been presented in any manner, the trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Section 12. Section **75-7-319** is enacted to read:

75-7-319. Encumbered assets.

(1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien,

or other security interest, the trustee may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be in the best interest of the deceased settlor's estate.

(2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets, provides otherwise.