

**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 trust will 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

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*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) Unless notice has already been given under this section, a trustee for an inter vivos trust, upon the death of the grantor, shall publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county where the trust property resides and in the county where the grantor resided, providing the trustee's name and address and notifying creditors of the estate 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,



28 notifying the creditor to present his claim within 90 days from the published notice if given as  
29 provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice,  
30 whichever is later, or be forever barred. Written notice shall be the notice described in Subsection  
31 (1) or a similar notice.

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

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

35 **75-7-309. Limitations on presentation of claims.**

36 (1) All claims against a decedent's estate which arose before the death of the decedent,  
37 including claims of the state and any subdivision of it, whether due or to become due, absolute or  
38 contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred  
39 earlier by other statute of limitations, are barred against the estate, the trustee, and the heirs and  
40 devisees of the decedent, unless presented within the time provided by Section 75-3-308 for  
41 creditors who are given actual notice, and where notice is published, within the time provided in  
42 Section 75-3-308 for all claims barred by publication.

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

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

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

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

54 (4) Nothing in this section affects or prevents:

55 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the  
56 estate;

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

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

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

62 **75-7-310. Manner of presentation of claims.**

63 (1) Claims against a decedent's estate or inter vivos trust may be presented as follows:

64 (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a  
65 written statement of the claim indicating its basis, the name and address of the claimant, and the  
66 amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with  
67 the clerk of the court. The claim is considered presented on either the receipt of the written  
68 statement of claim by the trustee or the trustee's attorney of record, or the filing of the claim with  
69 the court, whichever occurs first. If a claim is not yet due, the date when it will become due shall  
70 be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated.  
71 If the claim is secured, the security shall be described. Failure to describe correctly the security,  
72 the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the  
73 presentation made.

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

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

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

86 **75-7-311. Classification of claims.**

87 (1) If the applicable assets of the estate are insufficient to pay all claims in full, the trustee  
88 shall make payment in the following order:

89 (a) reasonable funeral expenses;

90 (b) costs and expenses of administration;

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

92 (d) reasonable and necessary medical and hospital expenses of the last illness of the  
93 decedent, including compensation of persons attending him, and medical assistance if Section  
94 26-19-13.5 applies;

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

96 (f) all other claims.

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

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

100 **75-7-312. Allowance of claims.**

101 (1) As to claims presented in the manner described in Section 75-7-310 and within the  
102 time limit prescribed in Section 75-7-309, the trustee may mail a notice to any claimant stating that  
103 the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the trustee  
104 changes the decision concerning the claim, the trustee shall notify the claimant. The trustee may  
105 not change a disallowance of a claim after the time for the claimant to file a petition for allowance  
106 or to commence a proceeding on the claim has expired and the claim has been barred. If the notice  
107 of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole  
108 or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered  
109 allowance by filing a petition for allowance in the court or by commencing a proceeding against  
110 the trustee not later than 60 days after the mailing of the notice of disallowance or partial  
111 allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days  
112 after the time for original presentation of the claim has expired, this failure has the effect of a  
113 notice of allowance.

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

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

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

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

126 **75-7-313. Individual liability of trustee.**

127 (1) Unless otherwise provided in the contract, a trustee is not individually liable on a  
128 contract properly entered into in his fiduciary capacity in the course of administration of the estate  
129 unless he fails to reveal his trustee capacity and identify the trust in the contract.

130 (2) A trustee is individually liable for obligations arising from ownership or control of the  
131 estate or for torts committed in the course of administration of the estate only if he is personally  
132 at fault.

133 (3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on  
134 obligations arising from ownership or control of the estate, or on torts committed in the course of  
135 estate administration may be asserted against the estate by proceeding against the trustee in his  
136 fiduciary capacity, whether or not the trustee is individually liable therefor.

137 (4) Issues of liability as between the estate and the trustee individually may be determined  
138 in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

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**Legislative Review Note**  
**as of 1-24-02 5:32 PM**

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

**Office of Legislative Research and General Counsel**