

Representative Merlynn T. Newbold proposes the following substitute bill:

1 **RIGHTS OF CREDITORS AGAINST TRUST**

2 **PROPERTY**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Merlynn T. Newbold**

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

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

11 ENACTS:

12 **75-7-308**, Utah Code Annotated 1953

13 **75-7-309**, Utah Code Annotated 1953

14 **75-7-310**, Utah Code Annotated 1953

15 **75-7-311**, Utah Code Annotated 1953

16 **75-7-312**, Utah Code Annotated 1953

17 **75-7-313**, Utah Code Annotated 1953

18 **75-7-314**, Utah Code Annotated 1953

19 **75-7-315**, Utah Code Annotated 1953

20 **75-7-316**, Utah Code Annotated 1953

21 **75-7-317**, Utah Code Annotated 1953

22 **75-7-318**, Utah Code Annotated 1953

23 **75-7-319**, Utah Code Annotated 1953

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

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



26 **75-7-308. Notice to creditors.**

27 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish
28 a notice to creditors once a week for three successive weeks in a newspaper of general circulation
29 in the county where the settlor resided at the time of death, providing the trustee's name and
30 address and notifying creditors of the deceased settlor to present their claims within three months
31 after the date of the first publication of the notice or be forever barred.

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

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

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

40 **75-7-309. Limitations on presentation of claims.**

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

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

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

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

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

57 beneficiaries of the deceased settlor, unless presented as follows:

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

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

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

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

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

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

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

70 **75-7-310. Manner of presentation of claims.**

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

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

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

87 (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be

88 commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the
89 case of a claim which is not presently due or which is contingent or unliquidated, the trustee may
90 consent to an extension of the 60-day period, or to avoid injustice, the court, on petition, may order
91 an extension of the 60-day period, but in no event may the extension run beyond the applicable
92 statute of limitations.

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

94 **75-7-311. Classification of claims.**

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

97 (a) reasonable funeral expenses;

98 (b) costs and expenses of administration;

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

100 (d) reasonable and necessary medical and hospital expenses of the last illness of the
101 deceased settlor, including compensation of persons attending him, and medical assistance if

102 Section 26-19-13.5 applies;

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

104 (f) all other claims.

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

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

108 **75-7-312. Allowance of claims.**

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

119 allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days
120 after the time for original presentation of the claim has expired, this failure has the effect of a
121 notice of allowance.

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

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

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

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

134 **75-7-313. Payment of claims.**

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

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

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

149 (b) the payment was made, due to the negligence or willful fault of the trustee, in a way

150 that deprived the injured claimant of his priority.

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

152 **75-7-314. Secured claims.**

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

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

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

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

163 **75-7-315. Claims not due and contingent -- unliquidated claims.**

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

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

170 (a) if the claimant consents, he may be paid the present or agreed value of the claim, taking
171 any uncertainty into account; or

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

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

176 **75-7-316. Counterclaims.**

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

181 excess.

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

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

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

187 **75-7-317. Execution and levies prohibited.**

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

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

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

193 **75-7-318. Compromise of claims.**

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

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

198 **75-7-319. Encumbered assets.**

199 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien,
200 or other security interest, the trustee may pay the encumbrance or any part thereof, renew or extend
201 any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in
202 satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has
203 presented a claim, if it appears to be in the best interest of the deceased settlor's estate.

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