

1 **UTAH UNIFORM PROBATE CODE - TRUST**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Rebecca D. Lockhart**

6 **Senate Sponsor: Wayne L. Niederhauser**

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**8 LONG TITLE**

9 **General Description:**

10 This bill expands the definition of "trust" in the Uniform Probate Code to include health  
11 savings accounts.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ expands the definition of "trust" in the Uniform Probate Code to include health  
15 savings accounts as defined by the Internal Revenue Code **↔** ; **and**

15a ▶ **clarifies when a health savings account is established in relation to the account**  
15b **holder's federal income tax year** **↔** .

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **75-1-201**, as last amended by Laws of Utah 2004, Chapter 89

22a **↔ 75-7-401, as repealed and reenacted by Laws of Utah 2004, Chapter 89** **↔**

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

25 Section 1. Section **75-1-201** is amended to read:

26 **75-1-201. General definitions.**

27 Subject to additional definitions contained in the subsequent chapters that are



28 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in  
29 this code:

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

33 (2) "Application" means a written request to the registrar for an order of informal  
34 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment  
35 Proceedings.

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

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

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

54 (6) "Claims," in respect to estates of decedents and protected persons, includes  
55 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,  
56 and liabilities of the estate which arise at or after the death of the decedent or after the  
57 appointment of a conservator, including funeral expenses and expenses of administration.

58 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of

59 a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

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

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

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

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

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

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

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

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

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

97 (20) "Guardian" means a person who has qualified as a guardian of a minor or  
98 incapacitated person pursuant to testamentary or court appointment, or by written instrument as  
99 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

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

103 (22) "Incapacitated person" means any person who is impaired by reason of mental  
104 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic  
105 intoxication, or other cause, except minority, to the extent of lacking sufficient understanding  
106 or capacity to make or communicate responsible decisions.

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

110 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,  
111 beneficiaries, and any others having a property right in or claim against a trust estate or the  
112 estate of a decedent, ward, or protected person. It also includes persons having priority for  
113 appointment as personal representative, other fiduciaries representing interested persons, a  
114 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but  
115 incapacitated. The meaning as it relates to particular persons may vary from time to time and  
116 shall be determined according to the particular purposes of, and matter involved in, any  
117 proceeding.

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

119 (26) "Joint tenants with the right of survivorship" and "community property with the  
120 right of survivorship" includes coowners of property held under circumstances that entitle one

121 or more to the whole of the property on the death of the other or others, but excludes forms of  
122 coownership registration in which the underlying ownership of each party is in proportion to  
123 that party's contribution.

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

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

127 (29) "Minor" means a person who is under 18 years of age.

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

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

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

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

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

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

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

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

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

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

149 (39) "Property" includes both real and personal property or any interest therein and  
150 means anything that may be the subject of ownership.

151 (40) "Protected person" means a person for whom a conservator has been appointed. A

152 "minor protected person" means a minor for whom a conservator has been appointed because  
153 of minority.

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

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

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

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

166 (45) "Special administrator" means a personal representative as described in Sections  
167 75-3-614 through 75-3-618.

168 (46) "State" means a state of the United States, the District of Columbia, the  
169 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of  
170 the United States, or a Native American tribe or band recognized by federal law or formally  
171 acknowledged by a state.

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

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

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

179 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security  
180 Registration Act, means that an individual has neither predeceased an event, including the  
181 death of another individual, nor is considered to have predeceased an event under Section  
182 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"

183 "survivor," and "surviving."

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

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

187 (53) "Trust" includes a health savings account, as defined in Section 223, Internal  
188 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and  
189 however created. The term also includes a trust created or determined by judgment or decree  
190 under which the trust is to be administered in the manner of an express trust. The term  
191 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal  
192 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,  
193 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts  
194 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,  
195 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security  
196 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,  
197 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any  
198 arrangement under which a person is nominee or escrowee for another.

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

201 (55) "Ward" means a person for whom a guardian has been appointed. A "minor ward"  
202 is a minor for whom a guardian has been appointed solely because of minority.

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

206a **H→ Section 2. Section 75-7-401 is amended to read:**

206b **75-7-401. Methods of creating trust.**

206c **(1) A trust may be created by:**

206d **(1) (a) transfer of property to another person as trustee during the settlor's lifetime or by**  
206e **will or other disposition taking effect upon the settlor's death;**

206f **(2) (b) declaration by the owner of property that the owner holds identifiable property as**  
206g **trustee; or**

206h **(3) (c) exercise of a power of appointment in favor of a trustee.**

206i **(2) A health savings account is established on the first day an individual is covered by a**  
206j **high deductible health plan, as defined in Section 223 of the Internal Revenue Code.**

206k **The health savings account shall be opened with a trustee or custodian within the time**  
206l **prescribed by law, without extensions, for filing a federal income tax return for that year. A**  
206m **health savings account is established regardless of a transfer of cash or other property to the**  
206n **account and, unless required by the trustee or custodian, it is not necessary for any party to**  
206o **sign a health savings account trust or custodial agreement regarding the health savings**  
206p **account.** ←H

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**Legislative Review Note**  
as of 2-5-09 10:22 AM

**Office of Legislative Research and General Counsel**



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**H.B. 195 - Utah Uniform Probate Code - Trust Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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