

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

8 **LONG TITLE**

9 **General Description:**

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

16 ▶ clarifies when a health savings account is established in relation to the account
17 holder's federal income tax year.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **75-1-201**, as last amended by Laws of Utah 2004, Chapter 89

25 **75-7-401**, as repealed and reenacted by Laws of Utah 2004, Chapter 89

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

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

29 **75-1-201. General definitions.**

30 Subject to additional definitions contained in the subsequent chapters that are
31 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in
32 this code:

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

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

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

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

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

57 (6) "Claims," in respect to estates of decedents and protected persons, includes

58 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
59 and liabilities of the estate which arise at or after the death of the decedent or after the
60 appointment of a conservator, including funeral expenses and expenses of administration.

61 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
62 a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

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

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

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

85 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs

86 are subject to this title as originally constituted and as it exists from time to time during
87 administration.

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

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

91 (17) "Foreign personal representative" means a personal representative of another
92 jurisdiction.

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

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

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

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

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

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

113 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,

114 beneficiaries, and any others having a property right in or claim against a trust estate or the
115 estate of a decedent, ward, or protected person. It also includes persons having priority for
116 appointment as personal representative, other fiduciaries representing interested persons, a
117 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
118 incapacitated. The meaning as it relates to particular persons may vary from time to time and
119 shall be determined according to the particular purposes of, and matter involved in, any
120 proceeding.

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

122 (26) "Joint tenants with the right of survivorship" and "community property with the
123 right of survivorship" includes coowners of property held under circumstances that entitle one
124 or more to the whole of the property on the death of the other or others, but excludes forms of
125 coownership registration in which the underlying ownership of each party is in proportion to
126 that party's contribution.

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

128 (28) "Letters" includes letters testamentary, letters of guardianship, letters of
129 administration, and letters of conservatorship.

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

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

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

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

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

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

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

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

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

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

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

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

154 (40) "Protected person" means a person for whom a conservator has been appointed.
155 A "minor protected person" means a minor for whom a conservator has been appointed
156 because of minority.

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

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

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

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

169 (45) "Special administrator" means a personal representative as described in Sections

170 75-3-614 through 75-3-618.

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

175 (47) "Successor personal representative" means a personal representative, other than a
176 special administrator, who is appointed to succeed a previously appointed personal
177 representative.

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

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

182 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
183 Registration Act, means that an individual has neither predeceased an event, including the
184 death of another individual, nor is considered to have predeceased an event under Section
185 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
186 "survivor," and "surviving."

187 (51) "Testacy proceeding" means a proceeding to establish a will or determine
188 intestacy.

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

190 (53) "Trust" includes a health savings account, as defined in Section 223, Internal
191 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and
192 however created. The term also includes a trust created or determined by judgment or decree
193 under which the trust is to be administered in the manner of an express trust. The term
194 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal
195 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,
196 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts
197 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,

198 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security
199 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,
200 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
201 arrangement under which a person is nominee or escrowee for another.

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

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

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

210 Section 2. Section **75-7-401** is amended to read:

211 **75-7-401. Methods of creating trust.**

212 (1) A trust may be created by:

213 [~~(1)~~] (a) transfer of property to another person as trustee during the settlor's lifetime or
214 by will or other disposition taking effect upon the settlor's death;

215 [~~(2)~~] (b) declaration by the owner of property that the owner holds identifiable
216 property as trustee; or

217 [~~(3)~~] (c) exercise of a power of appointment in favor of a trustee.

218 (2) A health savings account is established on the first day an individual is covered by
219 a high deductible health plan, as defined in Section 223 of the Internal Revenue Code. The
220 health savings account shall be opened with a trustee or custodian within the time prescribed
221 by law, without extensions, for filing a federal income tax return for that year. A health
222 savings account is established regardless of a transfer of cash or other property to the account
223 and, unless required by the trustee or custodian, it is not necessary for any party to sign a
224 health savings account trust or custodial agreement regarding the health savings account.