



30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **7-5-9**, as last amended by Laws of Utah 1998, Chapter 39
- 33 **75-1-201**, as last amended by Laws of Utah 2009, Chapter 278
- 34 **75-1-403**, as last amended by Laws of Utah 2004, Chapter 89
- 35 **75-2-102**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 36 **75-2-103**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 37 **75-2-104**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 38 **75-2-106**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 39 **75-2-202**, as last amended by Laws of Utah 1999, Chapter 142
- 40 **75-2-402**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 41 **75-2-403**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 42 **75-2-405**, as enacted by Laws of Utah 1998, Chapter 39
- 43 **75-7-814**, as enacted by Laws of Utah 2004, Chapter 89

44 ENACTS:

- 45 **75-1-110**, Utah Code Annotated 1953
- 46 **75-2-805**, Utah Code Annotated 1953
- 47 **75-2-806**, Utah Code Annotated 1953

48 REPEALS:

- 49 **75-2-108**, as repealed and reenacted by Laws of Utah 1998, Chapter 39



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

52 Section 1. Section **7-5-9** is amended to read:

53 **7-5-9. Registration of investment in name of nominee -- Records -- Possession of**  
54 **investment.**

55 (1) A trust company may cause any security, as defined in ~~[Subsection]~~ Section  
56 75-1-201~~[(43)]~~, held in its agency or fiduciary capacity to be registered and held in the name  
57 of a nominee or nominees of the trust company. The trust company shall be liable for the acts

58 of any such nominee with respect to any investment so registered. Investments other than  
59 securities held in the name of a nominee on June 30, 1981, may continue to be held in that  
60 manner.

61 (2) The records of the trust company shall at all times show the ownership of any such  
62 investment, which investment shall be in the possession or control of the trust company and be  
63 kept separate and apart from the assets of the trust company.

64 Section 2. Section **75-1-110** is enacted to read:

65 **75-1-110. Cost of living adjustment of certain dollar amounts.**

66 (1) In this section:

67 (a) "CPI" means the Consumer Price Index (Annual Average) for All Urban  
68 Consumers (CPI-U), U.S. City Average, reported by the Bureau of Labor Statistics, United  
69 States Department of Labor or its successor or, if the index is discontinued, an equivalent  
70 index reported by a federal authority. If no such index is reported, the term means the  
71 substitute index adopted by the Administrative Office of the Courts.

72 (b) "Reference base index" means the CPI for calendar year 2009.

73 (2) The dollar amounts stated in Subsection 75-2-202(2) and Sections 75-2-102,  
74 75-2-402, 75-2-403, and 75-2-405 apply to the estate of a decedent who died in or after 2010,  
75 but for the estate of a decedent who died after 2011, these dollar amounts shall be increased or  
76 decreased if the CPI for the calendar year immediately preceding the year of death exceeds or  
77 is less than the reference base index. The amount of any increase or decrease is computed by  
78 multiplying each dollar amount by the percentage by which the CPI for the calendar year  
79 immediately preceding the year of death exceeds or is less than the reference base index. If  
80 any increase or decrease produced by the computation is not a multiple of \$100, the increase  
81 or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100,  
82 but for the purpose of Section 75-2-405, the periodic installment amount is the lump sum  
83 amount divided by 12. If the CPI for 2009 is changed by the Bureau of Labor Statistics, the  
84 reference base index shall be revised using the rebasing factor reported by the Bureau of Labor  
85 Statistics, or other comparable data if a rebasing factor is not reported.

86           (3) Before February 1, 2011, and before February 1 of each succeeding year, the  
87 Administrative Office of the Courts shall publish a cumulative list, beginning with the dollar  
88 amounts effective for the estate of a decedent who died in 2011, of each dollar amount as  
89 increased or decreased under this section.

90           Section 3. Section **75-1-201** is amended to read:

91           **75-1-201. General definitions.**

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

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

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

101           (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any  
102 present or future interest, vested or contingent, and also includes the owner of an interest by  
103 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to  
104 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a  
105 beneficiary of an insurance or annuity policy, of an account with POD designation, of a  
106 security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or  
107 similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary  
108 designated in a governing instrument," includes a grantee of a deed, a devisee, a trust  
109 beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default  
110 of a power of appointment, and a person in whose favor a power of attorney or a power held in  
111 any individual, fiduciary, or representative capacity is exercised.

112           (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of  
113 an insurance or annuity policy, of an account with POD designation, of a security registered in

114 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or  
115 other nonprobate transfer at death.

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

119 (6) "Claims," in respect to estates of decedents and protected persons, includes  
120 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,  
121 and liabilities of the estate which arise at or after the death of the decedent or after the  
122 appointment of a conservator, including funeral expenses and expenses of administration.  
123 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of  
124 a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

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

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

140 (13) "Distributee" means any person who has received property of a decedent from his  
141 personal representative other than as a creditor or purchaser. A testamentary trustee is a

142 distributee only to the extent of distributed assets or increment thereto remaining in his hands.  
143 A beneficiary of a testamentary trust to whom the trustee has distributed property received  
144 from a personal representative is a distributee of the personal representative. For purposes of  
145 this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will,  
146 to the extent of the devised assets.

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

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

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

153 (17) "Foreign personal representative" means a personal representative of another  
154 jurisdiction.

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

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

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

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

168 (22) "Incapacitated person" means any person who is impaired by reason of mental  
169 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic

170 intoxication, or other cause, except minority, to the extent of lacking sufficient understanding  
171 or capacity to make or communicate responsible decisions.

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

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

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

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

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

190 (28) "Letters" includes letters testamentary, letters of guardianship, letters of  
191 administration, and letters of conservatorship.

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

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

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

197 (32) "Organization" includes a corporation, limited liability company, business trust,

198 estate, trust, partnership, joint venture, association, government or governmental subdivision  
199 or agency, or any other legal or commercial entity.

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

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

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

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

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

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

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

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

216 (40) "Protected person" means a person for whom a conservator has been appointed.  
217 A "minor protected person" means a minor for whom a conservator has been appointed  
218 because of minority.

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

220 (42) "Record" means information that is inscribed on a tangible medium or that is  
221 stored in an electronic or other medium and is retrievable in perceivable form.

222 [~~(42)~~] (43) "Registrar" refers to the official of the court designated to perform the  
223 functions of registrar as provided in Section 75-1-307.

224 [~~(43)~~] (44) "Security" includes any note, stock, treasury stock, bond, debenture,  
225 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title



226 or lease or in payments out of production under such a title or lease, collateral trust certificate,  
227 transferable share, voting trust certificate, and, in general, any interest or instrument  
228 commonly known as a security, or any certificate of interest or participation, any temporary or  
229 interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to  
230 or purchase, any of the foregoing.

231 ~~[(44)]~~ (45) "Settlement," in reference to a decedent's estate, includes the full process of  
232 administration, distribution, and closing.

233 (46) "Sign" means, with present intent to authenticate or adopt a record other than a  
234 will:

235 (a) to execute or adopt a tangible symbol; or

236 (b) to attach to or logically associate with the record an electronic symbol, sound, or  
237 process.

238 ~~[(45)]~~ (47) "Special administrator" means a personal representative as described in  
239 Sections 75-3-614 through 75-3-618.

240 ~~[(46)]~~ (48) "State" means a state of the United States, the District of Columbia, the  
241 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of  
242 the United States, or a Native American tribe or band recognized by federal law or formally  
243 acknowledged by a state.

244 ~~[(47)]~~ (49) "Successor personal representative" means a personal representative, other  
245 than a special administrator, who is appointed to succeed a previously appointed personal  
246 representative.

247 ~~[(48)]~~ (50) "Successors" means persons, other than creditors, who are entitled to  
248 property of a decedent under the decedent's will or this title.

249 ~~[(49)]~~ (51) "Supervised administration" refers to the proceedings described in Title 75,  
250 Chapter 3, Part 5, Supervised Administration.

251 ~~[(50)]~~ (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD  
252 Security Registration Act, means that an individual has neither predeceased an event,  
253 including the death of another individual, nor is considered to have predeceased an event

254 under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives,"  
255 "survived," "survivor," and "surviving."

256 [~~(51)~~] (53) "Testacy proceeding" means a proceeding to establish a will or determine  
257 intestacy.

258 [~~(52)~~] (54) "Testator" includes an individual of either sex.

259 [~~(53)~~] (55) "Trust" includes a health savings account, as defined in Section 223,  
260 Internal Revenue Code, any express trust, private or charitable, with additions thereto,  
261 wherever and however created. The term also includes a trust created or determined by  
262 judgment or decree under which the trust is to be administered in the manner of an express  
263 trust. The term excludes other constructive trusts, and it excludes resulting trusts,  
264 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,  
265 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors  
266 Act, business trusts providing for certificates to be issued to beneficiaries, common trust  
267 funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services  
268 Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of  
269 paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of  
270 any kind, and any arrangement under which a person is nominee or escrowee for another.

271 [~~(54)~~] (56) "Trustee" includes an original, additional, and successor trustee, and  
272 cotrustee, whether or not appointed or confirmed by the court.

273 [~~(55)~~] (57) "Ward" means a person for whom a guardian has been appointed. A  
274 "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

275 [~~(56)~~] (58) "Will" includes codicil and any testamentary instrument which merely  
276 appoints an executor, revokes or revises another will, nominates a guardian, or expressly  
277 excludes or limits the right of an individual or class to succeed to property of the decedent  
278 passing by intestate succession.

279 Section 4. Section **75-1-403** is amended to read:

280 **75-1-403. Pleadings -- Notice.**

281 In formal proceedings involving inter vivos or testamentary trusts, including

282 proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or  
283 incapacitated persons, and in judicially supervised settlements, the following apply:

284 (1) Interests to be affected shall be described in pleadings which give reasonable  
285 information to owners by name or class, by reference to the instrument creating the interests,  
286 or in any other appropriate manner.

287 (2) Notice is required as follows:

288 [~~(2)~~] (a) Notice as prescribed by Section 75-1-401 shall be given to every interested  
289 person. Notice may be given both to a person and to another who may bind him.

290 (b) Whenever notice to a person is required or permitted under this chapter, notice to  
291 another person who may represent and bind the person represented under this section  
292 constitutes notice to the person represented.

293 (3) Persons are bound by orders binding others in the following cases:

294 (a) To the extent there is no conflict of interest between the holder of a general  
295 testamentary power of appointment and the persons represented with respect to a particular  
296 question or dispute, the holder may represent and bind persons whose interests, as permissible  
297 appointees, takers in default, or otherwise, are subject to the power.

298 (b) To the extent there is no conflict of interest between the representative and the  
299 person represented with respect to a particular question or dispute:

300 (i) a conservator may represent and bind the person whose estate he controls;

301 (ii) a guardian may represent and bind the ward if no conservator of the ward's estate  
302 has been appointed;

303 (iii) an agent having authority to do so may represent and bind the principal;

304 (iv) a trustee may represent and bind the beneficiaries of the trust;

305 (v) a personal representative of a decedent's estate may represent and bind persons  
306 interested in the estate; and

307 (vi) if no conservator or guardian has been appointed, a parent may represent and bind  
308 the parent's minor or unborn child.

309 (c) Unless otherwise represented, a minor, incapacitated or unborn person, or a person

310 whose identity or location is unknown and not reasonably ascertainable, may be represented  
311 and bound by another person having a substantially identical interest with respect to the  
312 particular question or dispute, but only to the extent there is no conflict of interest between the  
313 representative and the person represented.

314 (4) Even if there is representation under this section, if the court determines that  
315 representation of the interest might otherwise be inadequate, the court may appoint a guardian  
316 ad litem to represent the interest of, and approve an agreement on behalf of, a minor,  
317 incapacitated or unborn person, or a person whose identity or location is unknown.

318 (5) If not precluded by conflict of interest, a guardian ad litem may be appointed to  
319 represent several persons or interests. In approving an agreement, a guardian ad litem may  
320 consider the general family benefit accruing to the living members of the family of the person  
321 represented.

322 (6) Whenever consent may be given by a person pursuant to this chapter, the consent  
323 of a person who may represent and bind the person represented under this section is the  
324 consent of, and is binding on, the person represented unless the person represented objects to  
325 the representation before the consent would otherwise become effective.

326 Section 5. Section **75-2-102** is amended to read:

327 **75-2-102. Intestate share of spouse.**

328 (1) The intestate share of a decedent's surviving spouse is:

329 (a) the entire intestate estate if:

330 (i) no descendant of the decedent survives the decedent; or

331 (ii) all of the decedent's surviving descendants are also descendants of the surviving  
332 spouse;

333 (b) the first [~~\$50,000~~] \$75,000, plus 1/2 of any balance of the intestate estate, if one or  
334 more of the decedent's surviving descendants are not descendants of the surviving spouse.

335 (2) For purposes of Subsection (1)(b), if the intestate estate passes to both the  
336 decedent's surviving spouse and to other heirs, then any nonprobate transfer, as defined in  
337 Section 75-2-206, received by the surviving spouse is [~~chargeable against the intestate share of~~

338 ~~the surviving spouse]~~ added to the probate estate in calculating the intestate heirs' shares and  
339 is conclusively treated as an advancement under Section 75-2-109 in determining the spouse's  
340 share.

341 Section 6. Section **75-2-103** is amended to read:

342 **75-2-103. Share of heirs other than surviving spouse.**

343 (1) Any part of the intestate estate not passing to ~~[the]~~ a decedent's surviving spouse  
344 under Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes in  
345 the following order to the individuals ~~[designated below]~~ who survive the decedent:

346 (a) to the decedent's descendants per capita at each generation as defined in  
347 Subsection 75-2-106(2);

348 (b) if there is no surviving descendant, to the decedent's parents equally if both  
349 survive, or to the surviving parent if only one survives;

350 (c) if there is no surviving descendant or parent, to the descendants of the decedent's  
351 parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);

352 (d) if there is no surviving descendant, parent, or descendant of a parent, but the  
353 decedent is survived on both the paternal and maternal sides by one or more grandparents or  
354 descendants of grandparents[-];

355 (i) half ~~[of the estate passes]~~ to the decedent's paternal grandparents equally if both  
356 survive, or to the surviving paternal grandparent if only one survives, or to the descendants of  
357 the decedent's paternal grandparents or either of them if both are deceased, the descendants  
358 taking per capita at each generation as defined in Subsection 75-2-106(3); and ~~[the other]~~

359 (ii) half ~~[passes]~~ to the decedent's maternal ~~[relatives in the same manner; but]~~  
360 grandparents equally if both survive, to the surviving maternal grandparent if only one  
361 survives, or to the descendants of the decedent's maternal grandparents or either of them if  
362 both are deceased, the descendants taking per capita at each generation as defined in  
363 Subsection 75-2-106(3);

364 (e) if there is no surviving ~~[grandparent]~~ descendant, parent, or descendant of a  
365 [grandparent on either the paternal or] parent, but the decedent is survived by one or more

366 grandparents or descendants of grandparents on the paternal but not the maternal side, [the  
367 entire estate passes] or on the maternal but not the paternal side, to the decedent's relatives on  
368 the [other] side with one or more surviving members in the same manner as the half[-]  
369 described in Subsection (1)(d);

370 (f) if there is no taker under Subsection (1)(a), (b), (c), (d), or (e), but the decedent  
371 has:

372 (i) one deceased spouse who has one or more descendants who survive the decedent,  
373 the estate or part of the estate passes to that spouse's descendants who survive the decedent,  
374 the descendants taking per capita at each generation as defined in Subsection 75-2-106(4); or

375 (ii) more than one deceased spouse who has one or more descendants who survive the  
376 decedent, an equal share of the estate or part of the estate passes to each set of descendants, the  
377 descendants taking per capita at each generation as defined in Subsection 75-2-106(4).

378 (2) For purposes of Subsections (1)(a), (b), (c), [~~and~~] (d), (e), and (f) any nonprobate  
379 transfer, as defined in Section 75-2-205, received by an heir is [~~chargeable against the intestate~~  
380 ~~share of such heir~~] added to the probate estate in calculating the intestate heirs' shares and is  
381 conclusively treated as an advancement under Section 75-2-109 to the heir in determining the  
382 heir's share.

383 Section 7. Section **75-2-104** is amended to read:

384 **75-2-104. Requirement of survival by 120 hours -- Individual in gestation.**

385 [~~An individual~~] (1) For purposes of intestate succession, homestead allowance, and  
386 exempt property, and except as otherwise provided in Subsection (2), the following rules  
387 apply:

388 (a) An individual born before a decedent's death who fails to survive the decedent by  
389 120 hours is considered to have predeceased the decedent [~~for purposes of homestead~~  
390 allowance, exempt property, and intestate succession, and the decedent's heirs are determined  
391 accordingly]. If it is not established by clear and convincing evidence that an individual [~~who~~  
392 would otherwise be an heir] born before the decedent's death survived the decedent by 120  
393 hours, it is considered that the individual failed to survive for the required period. [~~This~~

394 ~~section is not to be applied if]~~

395 (b) An individual in gestation at a decedent's death is considered to be living at the  
396 decedent's death if the individual lives 120 hours after birth. If it is not established by clear  
397 and convincing evidence that an individual in gestation at the decedent's death lived 120 hours  
398 after birth, it is considered that the individual failed to survive for the required period.

399 (2) This section does not apply if its application would [~~result in a taking of intestate~~  
400 ~~estate by]~~ cause the estate to pass to the state under Section 75-2-105.

401 Section 8. Section **75-2-106** is amended to read:

402 **75-2-106. Definitions -- Per capita at each generation -- Terms in governing**  
403 **instruments.**

404 (1) As used in this section:

405 (a) "Deceased descendant," "deceased parent," or "deceased grandparent" means a  
406 descendant, parent, or grandparent who either predeceased the decedent or is considered to  
407 have predeceased the decedent under Section 75-2-104.

408 (b) "Surviving descendant" means a descendant who neither predeceased the decedent  
409 nor is considered to have predeceased the decedent under Section 75-2-104.

410 (2) (a) If, under Subsection 75-2-103(1)(a), a decedent's intestate estate or a part  
411 thereof passes "per capita at each generation" to the decedent's descendants, the estate or part  
412 thereof is divided into as many equal shares as there are:

413 (i) surviving descendants in the generation nearest to the decedent which contains one  
414 or more surviving descendants; and

415 (ii) deceased descendants in the same generation who left surviving descendants, if  
416 any.

417 (b) Each surviving descendant in the nearest generation is allocated one share.

418 (c) The remaining shares, if any, are combined and then divided in the same manner  
419 among the surviving descendants of the deceased descendants as if the surviving descendants  
420 who were allocated a share and their surviving descendants had predeceased the decedent.

421 (3) (a) If, under Subsection 75-2-103(1)(c) or (d), a decedent's intestate estate or a part

422 thereof passes "per capita at each generation" to the descendants of the decedent's deceased  
423 parents or either of them or to the descendants of the decedent's deceased paternal or maternal  
424 grandparents or either of them, the estate or part thereof is divided into as many equal shares  
425 as there are:

426 (i) surviving descendants in the generation nearest the deceased parents or either of  
427 them, or the deceased grandparents or either of them, that contains one or more surviving  
428 descendants; and

429 (ii) deceased descendants in the same generation who left surviving descendants, if  
430 any.

431 (b) Each surviving descendant in the nearest generation is allocated one share.

432 (c) The remaining shares, if any, are combined and then divided in the same manner  
433 among the surviving descendants of the deceased descendants as if the surviving descendants  
434 who were allocated a share and their surviving descendants had predeceased the decedent.

435 (4) (a) If, under Subsection 75-2-103(1)(e), a decedent's intestate estate or a part of the  
436 estate passes "per capita at each generation" to the descendants of the decedent's deceased  
437 spouse, the estate or part of the estate is divided into as many equal shares as there are:

438 (i) surviving descendants in the generation nearest the deceased spouse that contains  
439 one or more surviving descendants; and

440 (ii) deceased descendants in the same generation who left surviving descendants, if  
441 any.

442 (b) Each surviving descendant in the nearest generation is allocated one share.

443 (c) The remaining shares, if any, are combined and then divided in the same manner  
444 among the surviving descendants of the deceased descendants as if the surviving descendants  
445 who were allocated a share and their surviving descendants had predeceased the decedent.

446 [~~4~~] (5) Any reference to this section found in a governing instrument for the  
447 definitions of "per stirpes," "by representation," or "by right of representation" shall be  
448 considered a reference to Section 75-2-709.

449 Section 9. Section **75-2-202** is amended to read:



450           **75-2-202. Elective share -- Supplemental elective share amount -- Effect of**  
451 **election on statutory benefits -- Nondomiciliary.**

452           (1) The surviving spouse of a decedent who dies domiciled in Utah has a right of  
453 election, under the limitations and conditions stated in this part, to take an elective-share  
454 amount equal to the value of 1/3 of the augmented estate.

455           (2) If the sum of the amounts described in Subsection 75-2-209(1), and that part of the  
456 elective-share amount payable from the decedent's probate estate and nonprobate transfers to  
457 others under Subsections 75-2-209(2) and (3) is less than [~~\$25,000~~] \$75,000, the surviving  
458 spouse is entitled to a supplemental elective-share amount equal to [~~\$25,000~~] \$75,000, minus  
459 the sum of the amounts described in those sections. The supplemental elective-share amount  
460 is payable from the decedent's probate estate and from recipients of the decedent's nonprobate  
461 transfers to others in the order of priority set forth in Subsections 75-2-209(2) and (3).

462           (3) If the right of election is exercised by or on behalf of the surviving spouse, the  
463 surviving spouse's homestead allowance, exempt property, and family allowance, if any, are  
464 charged against, and are not in addition to, the elective-share and supplemental elective-share  
465 amounts.

466           (4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside  
467 Utah to take an elective share in property in Utah is governed by the law of the decedent's  
468 domicile at death.

469           Section 10. Section **75-2-402** is amended to read:

470           **75-2-402. Homestead allowance.**

471           A decedent's surviving spouse is entitled to a homestead allowance of [~~\$15,000~~]  
472 \$22,500. If there is no surviving spouse, each minor child and each dependent child of the  
473 decedent is entitled to a homestead allowance amounting to [~~\$15,000~~] \$22,500 divided by the  
474 number of minor and dependent children of the decedent. The homestead allowance is exempt  
475 from and has priority over all claims of the estate. Unless otherwise provided by the will or  
476 governing instrument, the homestead allowance is chargeable against any benefit or share  
477 passing to the surviving spouse, minor, or dependent child, by the will of the decedent, by

478 intestate succession, by way of elective share, and by way of nonprobate transfers as defined in  
479 Sections 75-2-205 and 75-2-206.

480 Section 11. Section **75-2-403** is amended to read:

481 **75-2-403. Exempt property.**

482 In addition to the homestead allowance, the decedent's surviving spouse is entitled  
483 from the estate to a value, not exceeding [~~\$10,000~~] \$15,000 in excess of any security interests  
484 therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If  
485 there is no surviving spouse, the decedent's children are entitled jointly to the same value. If  
486 encumbered chattels are selected and the value in excess of security interests, plus that of other  
487 exempt property, is less than [~~\$10,000~~] \$15,000, or if there is not [~~\$10,000~~] \$15,000 worth of  
488 exempt property in the estate, the spouse or children are entitled to other assets of the estate, if  
489 any, to the extent necessary to make up the [~~\$10,000~~] \$15,000 value. Rights to exempt  
490 property and assets needed to make up a deficiency of exempt property have priority over all  
491 claims against the estate, but the right to any assets to make up a deficiency of exempt  
492 property abates as necessary to permit earlier payment of homestead allowance and family  
493 allowance. Unless otherwise provided by the will or governing instrument, the exempt  
494 property allowance is chargeable against any benefit or share passing to the surviving spouse,  
495 if any, or if there is no surviving spouse, to the decedent's children, by the will of the decedent,  
496 by intestate succession, by way of elective share, and by way of nonprobate transfers as  
497 defined in Sections 75-2-205 and 75-2-206.

498 Section 12. Section **75-2-405** is amended to read:

499 **75-2-405. Source, determination, and documentation.**

500 (1) If the estate is otherwise sufficient, property specifically devised may not be used  
501 to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the  
502 surviving spouse, guardians of minor children, or children who are adults may select property  
503 of the estate as homestead allowance and exempt property. The personal representative may  
504 make those selections if the surviving spouse, the children, or the guardians of the minor  
505 children are unable or fail to do so within a reasonable time or there is no guardian of a minor

506 child. The personal representative may execute an instrument or deed of distribution to  
507 establish the ownership of property taken as homestead allowance or exempt property. The  
508 personal representative may determine the family allowance in a lump sum not exceeding  
509 ~~[\$18,000]~~ \$27,000 or periodic installments not exceeding ~~[\$1,500]~~ \$2,250 per month for one  
510 year, and may disburse funds of the estate in payment of the family allowance and any part of  
511 the homestead allowance payable in cash. The personal representative or an interested person  
512 aggrieved by any selection, determination, payment, proposed payment, or failure to act under  
513 this section may petition the court for appropriate relief, which may include a family  
514 allowance other than that which the personal representative determined or could have  
515 determined.

516 (2) If the right to an elective share is exercised on behalf of a surviving spouse who is  
517 an incapacitated person, the personal representative may add any unexpended portions payable  
518 under the homestead allowance, exempt property, and family allowance to the trust established  
519 under Subsection 75-2-212(2).

520 Section 13. Section **75-2-805** is enacted to read:

521 **75-2-805. Reformation to correct mistakes.**

522 The court may reform the terms of a governing instrument, even if unambiguous, to  
523 conform the terms to the transferor's intention if it is proved by clear and convincing evidence  
524 that the transferor's intent and the terms of the governing instrument were affected by a  
525 mistake of fact or law, whether in expression or inducement.

526 Section 14. Section **75-2-806** is enacted to read:

527 **75-2-806. Modification to achieve transferor's tax objectives.**

528 To achieve the transferor's tax objectives, the court may modify the terms of a  
529 governing instrument in a manner that is not contrary to the transferor's probable intention.  
530 The court may provide that the modification has retroactive effect.

531 Section 15. Section **75-7-814** is amended to read:

532 **75-7-814. Specific powers of trustee.**

533 (1) Without limiting the authority conferred by Section 75-7-813, a trustee may:

534 (a) collect trust property and accept or reject additions to the trust property from a  
535 settlor or any other person;

536 (b) acquire or sell property, for cash or on credit, at public or private sale;

537 (c) exchange, partition, or otherwise change the character of trust property;

538 (d) deposit trust money in an account in a regulated financial service institution;

539 (e) borrow money, with or without security from any financial institution, including a  
540 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge  
541 trust property for a period within or extending beyond the duration of the trust;

542 (f) with respect to an interest in a proprietorship, partnership, limited liability  
543 company, business trust, corporation, or other form of business or enterprise, continue the  
544 business or other enterprise and take any action that may be taken by shareholders, members,  
545 or property owners, including merging, dissolving, or otherwise changing the form of business  
546 organization or contributing additional capital;

547 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,  
548 including the right to:

549 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or  
550 continue a voting trust agreement;

551 (ii) hold a security in the name of a nominee or in other form without disclosure of the  
552 trust so that title may pass by delivery;

553 (iii) pay calls, assessments, and other sums chargeable or accruing against the  
554 securities, and sell or exercise stock subscription or conversion rights; and

555 (iv) deposit the securities with a depository or other regulated financial service  
556 institution;

557 (h) with respect to an interest in real property, construct, or make ordinary or  
558 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,  
559 demolish improvements, raze existing or erect new party walls or buildings, subdivide or  
560 develop land, dedicate land to public use or grant public or private easements, and make or  
561 vacate plats and adjust boundaries;

562 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other  
563 arrangement for exploration and removal of natural resources, with or without the option to  
564 purchase or renew, for a period within or extending beyond the duration of the trust;

565 (j) grant an option involving a sale, lease, or other disposition of trust property or  
566 acquire an option for the acquisition of property, including an option exercisable beyond the  
567 duration of the trust, and exercise an option so acquired;

568 (k) insure the property of the trust against damage or loss and insure the trustee, the  
569 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

570 (l) abandon or decline to administer property of no value or of insufficient value to  
571 justify its collection or continued administration;

572 (m) with respect to possible liability for violation of environmental law:

573 (i) inspect or investigate property the trustee holds or has been asked to hold, or  
574 property owned or operated by an organization in which the trustee holds or has been asked to  
575 hold an interest, for the purpose of determining the application of environmental law with  
576 respect to the property;

577 (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation  
578 of any environmental law affecting property held directly or indirectly by the trustee, whether  
579 taken before or after the assertion of a claim or the initiation of governmental enforcement;

580 (iii) decline to accept property into trust or disclaim any power with respect to  
581 property that is or may be burdened with liability for violation of environmental law;

582 (iv) compromise claims against the trust which may be asserted for an alleged  
583 violation of environmental law; and

584 (v) pay the expense of any inspection, review, abatement, or remedial action to comply  
585 with environmental law;

586 (n) pay or contest any claim, settle a claim by or against the trust, and release, in  
587 whole or in part, a claim belonging to the trust;

588 (o) pay taxes, assessments, compensation of the trustee and of employees and agents  
589 of the trust, and other expenses incurred in the administration of the trust;

- 590 (p) exercise elections with respect to federal, state, and local taxes;
- 591 (q) select a mode of payment under any employee benefit or retirement plan, annuity,  
592 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the  
593 right to indemnification for expenses and against liabilities, and take appropriate action to  
594 collect the proceeds;
- 595 (r) make loans out of trust property, including loans to a beneficiary on terms and  
596 conditions the trustee considers to be fair and reasonable under the circumstances, and the  
597 trustee has a lien on future distributions for repayment of those loans;
- 598 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 599 (t) appoint a trustee to act in another jurisdiction with respect to trust property located  
600 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the  
601 appointing trustee, require that the appointed trustee furnish security, and remove any trustee  
602 so appointed;
- 603 (u) pay an amount distributable to a beneficiary who is under a legal disability or who  
604 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or  
605 applying it for the beneficiary's benefit, or by:
  - 606 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a  
607 conservator, the beneficiary's guardian;
  - 608 (ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform  
609 Transfers to Minors Act;
  - 610 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial  
611 trustee, paying it to an adult relative or other person having legal or physical care or custody of  
612 the beneficiary, to be expended on the beneficiary's behalf; or
  - 613 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the  
614 beneficiary's continuing right to withdraw the distribution;
  - 615 (v) on distribution of trust property or the division or termination of a trust, make  
616 distributions in divided or undivided interests, allocate particular assets in proportionate or  
617 disproportionate shares, value the trust property for those purposes, and adjust for resulting

618 differences in valuation;

619 (w) resolve a dispute concerning the interpretation of the trust or its administration by  
620 mediation, arbitration, or other procedure for alternative dispute resolution;

621 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to  
622 protect trust property and the trustee in the performance of the trustee's duties;

623 (y) sign and deliver contracts and other instruments that are useful to achieve or  
624 facilitate the exercise of the trustee's powers; and

625 (z) on termination of the trust, exercise the powers appropriate to finalize the  
626 administration of the trust and distribute the trust property to the persons entitled to it.

627 (2) A trustee may delegate investment and management functions that a prudent  
628 trustee of comparable skills could properly delegate under the circumstances.

629 (a) The trustee shall exercise reasonable care, skill, and caution in:

630 (i) selecting the agent;

631 (ii) establishing the scope and terms of the delegation consistent with the purposes of  
632 the trust; and

633 (iii) periodically reviewing the agent's actions to monitor the agent's performance and  
634 compliance with the terms of the delegation.

635 (b) In performing a delegated function, an agent has a duty to the trust to exercise  
636 reasonable care to comply with the terms of the delegation.

637 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to  
638 the beneficiaries or to the trust for the decisions or actions of the agent to whom the function  
639 was delegated.

640 (3) The trustee may exercise the powers set forth in this section and in the trust either  
641 in the name of the trust or in the name of the trustee as trustee, specifically including the right  
642 to take title, to encumber or convey assets, including real property, in the name of the trust.

643 This Subsection (3) applies to a trustee's exercise of trust powers. After May 11, 2010, for  
644 recording purposes, the name of the trustee, the address of the trustee, and the name and date  
645 of the trust, shall be included on all recorded documents affecting real property to which the

646 trust is a party in interest.

647 Section 16. **Repealer.**

648 This bill repeals:

649 Section **75-2-108, Afterborn heirs.**