

UTAH UNIFORM PROBATE CODE

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Brian S. King

LONG TITLE

General Description:

This bill allows a personal representative to be appointed for the purpose of representing a deceased person in any proceeding to establish liability when the deceased person was protected by liability insurance and makes changes to accommodate the repeal of the Federal Estate Tax.

Highlighted Provisions:

This bill:

- ▶ removes a three-year limitation to appoint a personal representative when the deceased person was protected by liability insurance; and
- ▶ creates a stopgap provision to alleviate difficulties caused by the repeal of the Federal Estate Tax for taxable transfers occurring during 2010.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation to January 1, 2010 for Section 75-3-917 only.

Utah Code Sections Affected:

AMENDS:

75-3-803, as last amended by Laws of Utah 1992, Chapter 179

ENACTS:

75-3-917, Utah Code Annotated 1953

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

31 Section 1. Section **75-3-803** is amended to read:

32 **75-3-803. Limitations on presentation of claims.**

33 (1) All claims against a decedent's estate which arose before the death of the decedent,
34 including claims of the state and any subdivision of it, whether due or to become due, absolute
35 or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
36 barred earlier by other statute of limitations, are barred against the estate, the personal
37 representative, and the heirs and devisees of the decedent, unless presented within the earlier
38 of the following dates:

39 (a) one year after the decedent's death; or

40 (b) within the time provided by Subsection 75-3-801(2) for creditors who are given
41 actual notice, and where notice is published, within the time provided in Subsection
42 75-3-801(1) for all claims barred by publication.

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

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

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

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

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

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

57 (b) to the limits of the insurance protection only, any proceeding to establish liability

58 of the decedent or the personal representative for which he is protected by liability insurance;
59 or

60 (c) collection of compensation for services rendered and reimbursement for expenses
61 advanced by the personal representative or by the attorney or accountant for the personal
62 representative of the estate.

63 (5) If a personal representative has not been timely appointed in accordance with this
64 chapter, one may be appointed for the limited purposes of Subsection (4)(b) for any claim
65 timely brought against the decedent.

66 Section 2. Section **75-3-917** is enacted to read:

67 **75-3-917. Certain formula clauses to be construed to refer to federal estate and**
68 **generation-skipping transfer tax rules applicable to estates of decedents dying after**
69 **December 31, 2009.**

70 (1) A will or trust of a decedent who dies after December 31, 2009 and before January
71 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption,"
72 "applicable exemption amount," "generation-skipping transfer tax exemption" or "GST
73 exemption," or that measures a share of an estate or trust based on the amount that can pass
74 free of federal estate or generation-skipping transfer taxes, or that is otherwise based on a
75 similar provision of federal estate tax or generation-skipping transfer tax law, shall be
76 considered to refer to the federal estate and generation-skipping transfer tax laws as they
77 applied with respect to estates of decedents dying on December 31, 2009.

78 (a) This provision may not apply with respect to a will or trust executed or amended
79 after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the
80 decedent dies on a date on which there is no then-applicable federal estate or
81 generation-skipping transfer tax.

82 (b) The reference to January 1, 2011 in Subsection (1) shall, if the federal estate and
83 generation-skipping transfer tax becomes effective before that date, refer instead to the first
84 date on which the tax becomes legally effective.

85 (2) A proceeding to determine whether the decedent intended that the references under

86 Subsection (1) be construed with respect to the law as it existed after December 31, 2009, shall
87 be filed within 12 months of the date of death of the testator or grantor. It may be filed by the
88 personal representative or any affected beneficiary under the will or other instrument.

89 Section 3. **Retrospective operation.**

90 Section 73-3-917 of this bill has retrospective operation to January 1, 2010.