

UNIFORM PROBATE CODE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill makes changes to the Uniform Probate Code in response to a proposal by the National Commission on Uniform State Laws.

Highlighted Provisions:

This bill:

- ▶ provides for cost of living adjustments to certain amounts in the Probate Code;
- ▶ requires the Administrative Office of the Courts to adjust and maintain a listing of the amounts each year;
- ▶ increases amounts throughout the Probate Code;
- ▶ clarifies the division of a decedent's estate and adds one more level of heirs before escheat;
- ▶ adopts a provision to coordinate with the Uniform Trust Code to allow the court to reform the terms of a document to conform it to the author's intent;
- ▶ allows the court to modify the terms of a document to achieve the author's tax objectives to coordinate with the Uniform Trust Code;
- ▶ makes a change to the Uniform Trust Code, allowing the transacting of trust business in the name of the trust; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

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- 35 75-2-102, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 36 75-2-103, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 37 75-2-104, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 38 75-2-106, as repealed and reenacted by Laws of Utah 1998, Chapter 39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- 40 75-2-402, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 41 75-2-403, as repealed and reenacted by Laws of Utah 1998, Chapter 39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- 49 75-2-108, as repealed and reenacted by Laws of Utah 1998, Chapter 39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 of
57 a nominee or nominees of the trust company. The trust company shall be liable for the acts of
58 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 index
70 reported by a federal authority. If no such index is reported, the term means the substitute
71 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 is
77 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 any
80 increase or decrease produced by the computation is not a multiple of \$100, the increase or
81 decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but
82 for the purpose of Section 75-2-405, the periodic installment amount is the lump sum amount
83 divided by 12. If the CPI for 2009 is changed by the Bureau of Labor Statistics, the reference
84 base index shall be revised using the rebasing factor reported by the Bureau of Labor Statistics,
85 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 security
106 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
107 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
108 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
109 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
110 appointment, and a person in whose favor a power of attorney or a power held in any
111 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 a
126 protected person.

127 (8) "Court" means any of the courts of record in this state having jurisdiction in matters
128 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 from
144 a personal representative is a distributee of the personal representative. For purposes of this
145 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
146 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 in
151 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 as
164 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 persons
173 by an officer of the court acting as a registrar for probate of a will or appointment of a personal
174 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 or
199 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. A
217 "minor protected person" means a minor for whom a conservator has been appointed because
218 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 or
226 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 commonly
228 known as a security, or any certificate of interest or participation, any temporary or interim
229 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
230 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, including
253 the death of another individual, nor is considered to have predeceased an event under Section
254 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
255 "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 funds,
267 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,
268 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,
269 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
270 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 "minor
274 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, or
286 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 of
323 a person who may represent and bind the person represented under this section is the consent
324 of, and is binding on, the person represented unless the person represented objects to the
325 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 is
339 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 Subsection
347 75-2-106(2);

348 (b) if there is no surviving descendant, to the decedent's parents equally if both survive,
349 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 both
362 are deceased, the descendants taking per capita at each generation as defined in Subsection
363 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 has:

371 (i) one deceased spouse who has one or more descendants who survive the decedent,

372 the estate or part of the estate passes to that spouse's descendants who survive the decedent, the

373 descendants taking per capita at each generation as defined in Subsection 75-2-106(4); or

374 (ii) more than one deceased spouse who has one or more descendants who survive the

375 decedent, an equal share of the estate or part of the estate passes to each set of descendants, the

376 descendants taking per capita at each generation as defined in Subsection 75-2-106(4).

377 (2) For purposes of Subsections (1)(a), (b), (c), [and] (d), (e), and (f) any nonprobate

378 transfer, as defined in Section 75-2-205, received by an heir is [chargeable against the intestate

379 share of such heir] added to the probate estate in calculating the intestate heirs' shares and is

380 conclusively treated as an advancement under Section 75-2-109 to the heir in determining the

381 heir's share.

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

383 **75-2-104. Requirement of survival by 120 hours -- Individual in gestation.**

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

386 (a) An individual born before a decedent's death who fails to survive the decedent by

387 120 hours is considered to have predeceased the decedent [for purposes of homestead

388 allowance, exempt property, and intestate succession, and the decedent's heirs are determined

389 accordingly]. If it is not established by clear and convincing evidence that an individual [who

390 would otherwise be an heir] born before the decedent's death survived the decedent by 120

391 hours, it is considered that the individual failed to survive for the required period. [This

392 section is not to be applied if]

393 (b) An individual in gestation at a decedent's death is considered to be living at the

394 decedent's death if the individual lives 120 hours after birth. If it is not established by clear and

395 convincing evidence that an individual in gestation at the decedent's death lived 120 hours after

396 birth, it is considered that the individual failed to survive for the required period.

397 (2) This section does not apply if its application would [result in a taking of intestate

398 estate by] cause the estate to pass to the state under Section 75-2-105.

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

400 **75-2-106. Definitions -- Per capita at each generation -- Terms in governing**
401 **instruments.**

402 (1) As used in this section:

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

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

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

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

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

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

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

419 (3) (a) If, under Subsection 75-2-103(1)(c) or (d), a decedent's intestate estate or a part
420 thereof passes "per capita at each generation" to the descendants of the decedent's deceased
421 parents or either of them or to the descendants of the decedent's deceased paternal or maternal
422 grandparents or either of them, the estate or part thereof is divided into as many equal shares as
423 there are:

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

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

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

430 (c) The remaining shares, if any, are combined and then divided in the same manner

431 among the surviving descendants of the deceased descendants as if the surviving descendants
 432 who were allocated a share and their surviving descendants had predeceased the decedent.

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

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

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

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

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

444 ~~[(4)]~~ (5) Any reference to this section found in a governing instrument for the
 445 definitions of "per stirpes," "by representation," or "by right of representation" shall be
 446 considered a reference to Section 75-2-709.

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

448 **75-2-202. Elective share -- Supplemental elective share amount -- Effect of**
 449 **election on statutory benefits -- Nondomiciliary.**

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

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

460 (3) If the right of election is exercised by or on behalf of the surviving spouse, the
 461 surviving spouse's homestead allowance, exempt property, and family allowance, if any, are

462 charged against, and are not in addition to, the elective-share and supplemental elective-share
463 amounts.

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

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

468 **75-2-402. Homestead allowance.**

469 A decedent's surviving spouse is entitled to a homestead allowance of [~~\$15,000~~]
470 \$22,500. If there is no surviving spouse, each minor child and each dependent child of the
471 decedent is entitled to a homestead allowance amounting to [~~\$15,000~~] \$22,500 divided by the
472 number of minor and dependent children of the decedent. The homestead allowance is exempt
473 from and has priority over all claims of the estate. Unless otherwise provided by the will or
474 governing instrument, the homestead allowance is chargeable against any benefit or share
475 passing to the surviving spouse, minor, or dependent child, by the will of the decedent, by
476 intestate succession, by way of elective share, and by way of nonprobate transfers as defined in
477 Sections 75-2-205 and 75-2-206.

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

479 **75-2-403. Exempt property.**

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

493 no surviving spouse, to the decedent's children, by the will of the decedent, by intestate
494 succession, by way of elective share, and by way of nonprobate transfers as defined in Sections
495 75-2-205 and 75-2-206.

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

497 **75-2-405. Source, determination, and documentation.**

498 (1) If the estate is otherwise sufficient, property specifically devised may not be used to
499 satisfy rights to homestead allowance or exempt property. Subject to this restriction, the
500 surviving spouse, guardians of minor children, or children who are adults may select property
501 of the estate as homestead allowance and exempt property. The personal representative may
502 make those selections if the surviving spouse, the children, or the guardians of the minor
503 children are unable or fail to do so within a reasonable time or there is no guardian of a minor
504 child. The personal representative may execute an instrument or deed of distribution to
505 establish the ownership of property taken as homestead allowance or exempt property. The
506 personal representative may determine the family allowance in a lump sum not exceeding
507 [~~\$18,000~~] \$27,000 or periodic installments not exceeding [~~\$1,500~~] \$2,250 per month for one
508 year, and may disburse funds of the estate in payment of the family allowance and any part of
509 the homestead allowance payable in cash. The personal representative or an interested person
510 aggrieved by any selection, determination, payment, proposed payment, or failure to act under
511 this section may petition the court for appropriate relief, which may include a family allowance
512 other than that which the personal representative determined or could have determined.

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

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

518 **75-2-805. Reformation to correct mistakes.**

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

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

524 **75-2-806. Modification to achieve transferor's tax objectives.**

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

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

529 **75-7-814. Specific powers of trustee.**

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

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

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

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

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

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

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

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

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

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

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

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

554 (h) with respect to an interest in real property, construct, or make ordinary or

555 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
556 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
557 develop land, dedicate land to public use or grant public or private easements, and make or
558 vacate plats and adjust boundaries;

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

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

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

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

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

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

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

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

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

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

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

585 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of

586 the trust, and other expenses incurred in the administration of the trust;

587 (p) exercise elections with respect to federal, state, and local taxes;

588 (q) select a mode of payment under any employee benefit or retirement plan, annuity,

589 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the

590 right to indemnification for expenses and against liabilities, and take appropriate action to

591 collect the proceeds;

592 (r) make loans out of trust property, including loans to a beneficiary on terms and

593 conditions the trustee considers to be fair and reasonable under the circumstances, and the

594 trustee has a lien on future distributions for repayment of those loans;

595 (s) pledge trust property to guarantee loans made by others to the beneficiary;

596 (t) appoint a trustee to act in another jurisdiction with respect to trust property located

597 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the

598 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so

599 appointed;

600 (u) pay an amount distributable to a beneficiary who is under a legal disability or who

601 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or

602 applying it for the beneficiary's benefit, or by:

603 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a

604 conservator, the beneficiary's guardian;

605 (ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform

606 Transfers to Minors Act;

607 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial

608 trustee, paying it to an adult relative or other person having legal or physical care or custody of

609 the beneficiary, to be expended on the beneficiary's behalf; or

610 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the

611 beneficiary's continuing right to withdraw the distribution;

612 (v) on distribution of trust property or the division or termination of a trust, make

613 distributions in divided or undivided interests, allocate particular assets in proportionate or

614 disproportionate shares, value the trust property for those purposes, and adjust for resulting

615 differences in valuation;

616 (w) resolve a dispute concerning the interpretation of the trust or its administration by

617 mediation, arbitration, or other procedure for alternative dispute resolution;

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

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

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

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

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

627 (i) selecting the agent;

628 (ii) establishing the scope and terms of the delegation consistent with the purposes of
629 the trust; and

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

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

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

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

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

644 Section 16. **Repealer.**

645 This bill repeals:

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

Legislative Review Note
as of 1-27-10 5:37 PM

Office of Legislative Research and General Counsel

S.B. 118 - Uniform Probate Code Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will affect those parties involved in probate.
