

**PROBATE LAW AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John L. Valentine**

House Sponsor: Val L. Peterson

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**LONG TITLE**

**General Description:**

This bill clarifies definitions used for governing instruments in probate.

**Highlighted Provisions:**

This bill:

- ▶ clarifies definitions by providing specific cross references to existing definitions for governing instruments;

- ▶ adds the terms "share and share alike" and "to the survivor of them" to the definitions of terms used in governing instruments; and

- ▶ provides how specific terms used in a governing instrument control how property is divided.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**75-2-106**, as last amended by Laws of Utah 2010, Chapter 93

**75-2-709**, as enacted by Laws of Utah 1998, Chapter 39

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

Section 1. Section **75-2-106** is amended to read:

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

30 **instruments.**

31 (1) As used in this section:

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

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

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

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

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

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

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

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

53 (i) surviving descendants in the generation nearest the deceased parents or either of  
54 them, or the deceased grandparents or either of them, that contains one or more surviving  
55 descendants; and

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

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

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

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

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

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

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

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

73 (5) Any reference to this section found in a governing instrument for the definitions of  
74 "per capita," "per stirpes," "by representation," "share and share alike," "to the survivor of  
75 them," or "by right of representation" shall be considered a reference to Section 75-2-709.

76 Section 2. Section **75-2-709** is amended to read:

77 **75-2-709. Definitions -- Representation -- Per capita at each generation -- Per**  
78 **stirpes.**

79 (1) As used in this section:

80 (a) "Deceased child" or "deceased descendant" means a child or a descendant who  
81 either predeceased the distribution date or is considered to have predeceased the distribution  
82 date under Section 75-2-702.

83 (b) "Distribution date," with respect to an interest, means the time when the interest is  
84 to take effect in possession or enjoyment. The distribution date need not occur at the beginning  
85 or end of a calendar day, but can occur at a time during the course of a day.

86 (c) "Surviving ancestor," "surviving child," or "surviving descendant" means an  
87 ancestor, a child, or a descendant who neither predeceased the distribution date nor is  
88 considered to have predeceased the distribution date under Section 75-2-702.

89 (2) If an applicable statute or a governing instrument calls for property to be distributed  
90 or taken "per capita at each generation," the property is divided into as many equal shares as  
91 there are:

92 (a) surviving descendants in the generation nearest to the designated ancestor which  
93 contains one or more surviving descendants; and

94 (b) deceased descendants in the same generation who left surviving descendants, if  
95 any. Each surviving descendant in the nearest generation is allocated one share. The  
96 remaining shares, if any, are combined and then divided in the same manner among the  
97 surviving descendants of the deceased descendants as if the surviving descendants who were  
98 allocated a share and their surviving descendants had predeceased the distribution date.

99 (3) If a governing instrument calls for property to be distributed or taken "per stirpes,"  
100 "by representation," or "by right of representation," the property is divided into as many equal  
101 shares as there are:

102 (a) surviving children of the designated ancestor; and

103 (b) deceased children who left surviving descendants. Each surviving child, if any, is  
104 allocated one share. The share of each deceased child with surviving descendants is divided in  
105 the same manner, with subdivision repeating at each succeeding generation until the property is  
106 fully allocated among surviving descendants.

107 (4) If a governing instrument calls for property to be distributed or taken "per capita,"  
108 "share and share alike," or "to the survivor of them," the property is divided into as many equal  
109 shares as there are living persons named on the distribution date.

110 [~~4~~] (5) For the purposes of Subsections (2) and (3), an individual who is deceased and  
111 left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor  
112 who is a descendant of the designated ancestor is not entitled to a share.