

PROBATE LAW AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Val L. Peterson

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

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



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

29 **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.

Legislative Review Note
as of 9-17-10 9:01 AM

Office of Legislative Research and General Counsel