

PROBATE CODE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill amends provisions of the Utah Uniform Probate Code.

Highlighted Provisions:

This bill:

- ▶ modifies how letters upon estates jointly may be granted;
- ▶ amends the definition of a qualified beneficiary; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-3-109, as enacted by Laws of Utah 1977, Chapter 194

75-3-402, as last amended by Laws of Utah 2013, Chapter 364

75-7-103, as enacted by Laws of Utah 2004, Chapter 89

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

Section 1. Section **75-3-109** is amended to read:

75-3-109. Letters upon several estates jointly.



28 (1) Upon application or petition by any person interested in two or more estates, the
29 registrar may, in an informal proceeding without a hearing, or the court may, in a formal
30 proceeding, after notice and hearing, grant letters upon these estates jointly if administration
31 has not commenced with respect to any [~~such~~] estate and if:

32 (a) all or any part of the estate of one decedent has descended from another decedent;
33 or

34 (b) two or more decedents held any property during their lifetimes as
35 tenants-in-common and if the persons entitled under the wills of these decedents or under the
36 law of intestate succession to receive the estates of these decedents are the same.

37 (2) If letters are granted upon two or more estates jointly under this section, these
38 estates shall be administered the same as if they were but one estate except that claims may be
39 enforced only against the estate to which they relate.

40 Section 2. Section **75-3-402** is amended to read:

41 **75-3-402. Formal testacy or appointment proceedings -- Petition -- Contents.**

42 (1) Petitions for formal probate of a will, or for adjudication of intestacy with or
43 without request for appointment of a personal representative, shall be directed to the court,
44 request a judicial order after notice and hearing, and contain further statements as indicated in
45 this section. A petition for formal probate of a will:

46 (a) requests an order as to the testacy of the decedent in relation to a particular
47 instrument which may or may not have been informally probated and determining the heirs;

48 (b) contains the statements required for informal applications as stated in Subsection
49 [75-3-301\(2\)](#) and the statements required by Subsections [75-3-301\(3\)\(b\)](#) and (c), and, if the
50 petition requests appointment of a personal representative, the statements required by
51 Subsection [75-3-301\(4\)](#); and

52 (c) states whether the original of the last will of the decedent is in the possession of the
53 court, accompanies the petition, or was presented to the court for electronic storage or
54 electronic filing and is [~~not~~] now in the possession of the petitioner or the petitioner's attorney.

55 (2) If the original will is not in the possession of the court, has not been presented to
56 the court for electronic storage or electronic filing, does not accompany the petition, and no
57 authenticated copy of a will probated in another jurisdiction accompanies the petition, the
58 petition also shall state the contents of the will and indicate that it is lost, destroyed, or

59 otherwise unavailable.

60 (3) A petition for adjudication of intestacy and appointment of an administrator in
61 intestacy shall request a judicial finding and order that the decedent left no will and,
62 determining the heirs, contain the statements required by Subsections 75-3-301(2) and
63 75-3-301(5) and indicate whether supervised administration is sought. A petition may request
64 an order determining intestacy and heirs without requesting the appointment of an
65 administrator, in which case, the statements required by Subsection 75-3-301(5)(b) may be
66 omitted.

67 Section 3. Section 75-7-103 is amended to read:

68 **75-7-103. Definitions.**

69 (1) In this chapter:

70 (a) "Action," with respect to an act of a trustee, includes a failure to act.

71 (b) "Beneficiary" means a person that:

72 (i) has a present or future beneficial interest in a trust, vested or contingent; or

73 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
74 property.

75 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
76 purpose described in Subsection 75-7-405(1).

77 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
78 ordinance relating to protection of the environment.

79 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
80 of the trust.

81 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

82 (g) "Power of withdrawal" means a presently exercisable general power of appointment
83 other than a power exercisable only upon consent of the trustee or a person holding an adverse
84 interest.

85 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
86 qualification is determined:

87 (i) is a ~~current~~ distributee or permissible distributee of trust income or principal; ~~or~~

88 (ii) would be a distributee or permissible distributee of trust income or principal if ~~the~~
89 ~~trust~~ the interests of the distributees described in Subsection 75-7-103(1)(h)(i) terminated on

90 that date[-] without causing the trust to terminate; or
91 (iii) would be a distributee or permissible distributee of trust income or principal if the
92 trust terminated on that date.

93 (i) "Resident estate" or "resident trust" means:
94 (i) an estate of a decedent who at death was domiciled in this state;
95 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a
96 decedent who at his death was domiciled in this state; or
97 (iii) a trust administered in this state.

98 (j) "Revocable," as applied to a trust, means revocable by the settlor without the
99 consent of the trustee or a person holding an adverse interest.

100 (k) "Settlor" means a person, including a testator, who creates, or contributes property
101 to, a trust. If more than one person creates or contributes property to a trust, each person is a
102 settlor of the portion of the trust property attributable to that person's contribution except to the
103 extent another person has the power to revoke or withdraw that portion.

104 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
105 involuntary transfer or encumbrance of a beneficiary's interest.

106 (m) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's
107 provisions as expressed in the trust instrument or as may be established by other evidence that
108 would be admissible in a judicial proceeding.

109 (n) "Trust instrument" means an instrument executed by the settlor that contains terms
110 of the trust, including any amendments thereto.

111 (2) Terms not specifically defined in this section have the meanings provided in
112 Section [75-1-201](#).

Legislative Review Note
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Office of Legislative Research and General Counsel