

Uniform Trust and Estate Statutes

Thomas P. Gallanis

2015–2016 Edition

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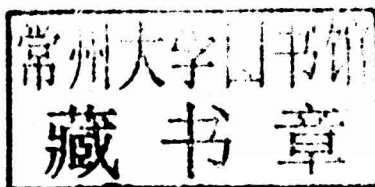
UNIFORM TRUST AND ESTATE STATUTES

2015–2016 Edition

by

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PRESS

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PREFACE

This book contains the full statutory texts of the principal Uniform Acts pertaining to trusts and estates. It also reproduces the official comments for the substantive articles of the Uniform Probate Code (Articles II and VI); for the Uniform Trust Code; and for most of the other Uniform Acts. The statutes are arranged into three parts.

Part One, Probate Statutes, primarily contains the Uniform Probate Code (UPC), incorporating all subsequent amendments. The subsequent amendments include technical amendments adopted in 2014.

Part One also contains the United Kingdom Inheritance (Provision for Family and Dependants) Act 1975, as amended by the Family Law Act 1996 and the Civil Partnership Act 2004. The broad discretion that the Act devolves upon the court in the distribution of decedents' estates provides a striking contrast with the emphasis on fixed shares in the UPC's arrangements for intestate succession and elective shares.

Part Two of this book, devoted to Trust Statutes, begins with the Uniform Trust Code (originally enacted in 2000). The text incorporates all subsequent amendments to this Code. The most recent amendments were adopted in 2010 and refined in 2011, and include § 113 on insurable interests.

This book no longer contains the Uniform Trustee Powers Act, the substance of which has been recodified within the Uniform Trust Code.

Part Two also contains the Uniform Principal and Income Act (1997, with amendments in 2008), the Uniform Prudent Investor Act (1994), and the Uniform Custodial Trust Act (1987).

Part Three, containing other Uniform and Model Acts, is chronologically organized – most recent to least recent – and contains the Uniform Fiduciary Access to Digital Assets Act (2014); the Uniform Powers of Appointment Act (2013); the Uniform Premarital and Marital Agreements Act (2012); the Model Protection of Charitable Assets Act (2011); the Revised Uniform Anatomical Gift Act (2006); the Uniform Prudent Management of Institutional Funds Act (2006); the Uniform Parentage Act (2000, with 2002 amendments); the Uniform Health-Care Decisions Act (1993); the Uniform Simultaneous Death Act (1993); the Uniform Fraudulent Transfer Act (1984); the Uniform Transfers to Minors Act (1983, with 1986 amendments); and the Model Marital Property Act (1983).

To make the book more useful, interspersed are some selected provisions from former versions of various Uniform Acts, especially former versions of UPC Article II. Also interspersed are a few provisions from the new Restatements — the Restatement (Third) of Trusts and the Restatement (Third) of Property: Wills and Other Donative Transfers. These insertions are positioned immediately below the comparable provisions of the current text and, to prevent confusion, are set off in a bordered format.

Uniform Acts and Restatements are copyrighted respectively by the Uniform Law Commission and the American Law Institute. Gratitude is extended to these organizations for granting permission to reproduce these Acts and Restatement provisions.

It is a pleasure to thank Professors John H. Langbein and Lawrence W. Waggoner, who compiled and edited this book through 2009-2010, and my administrative assistant, Amanda Bibb, for her help in the preparation of the camera-ready pages.

Thomas P. Gallanis

March 2015

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PART ONE: PROBATE STATUTES

Uniform Probate Code (1969, with Subsequent Amendments)

United Kingdom Inheritance (Provision for Family and Dependents) Act 1975
(as amended by the Family Law Act 1996 and the Civil Partnership Act 2004)

UNIFORM PROBATE CODE

OFFICIAL TEXT
WITH AMENDMENTS THROUGH 2014

Official Text and Comments Approved by the National Conference of Commissioners on
Uniform State Laws

AN ACT

Relating to affairs of decedents, missing persons, protected persons, minors, incapacitated persons and certain others and constituting the Uniform Probate Code; consolidating and revising aspects of the law relating to wills and intestacy and the administration and distribution of estates of decedents, missing persons, protected persons, minors, incapacitated persons and certain others; ordering the powers and procedures of the court concerned with the affairs of decedents and certain others; providing for the validity and effect of certain non-testamentary transfers, contracts and deposits which relate to death and appear to have testamentary effect; providing certain procedures to facilitate enforcement of testamentary and other trusts; making uniform the law with respect to decedents and certain others; and repealing inconsistent legislation.

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PART 1
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

§ 1-101. **Short Title.** This [act] shall be known and may be cited as the Uniform Probate Code.

§ 1-102. **Purposes; Rule of Construction.**

(a) This [code] shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this [code] are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of his property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;

(4) to facilitate use and enforcement of certain trusts;

(5) to make uniform the law among the various jurisdictions.

§ 1-103. **Supplementary General Principles of Law Applicable.** Unless displaced by the particular provisions of this [code], the principles of law and equity supplement its provisions.

§ 1-104. **Severability.** If any provision of this [code] or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the [code] which can be given effect without the invalid provision or application, and to this end the provisions of this [code] are declared to be severable.

§ 1-105. **Construction Against Implied Repeal.** This [code] is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

§ 1-106. **Effect of Fraud and Evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this [code] or if fraud is used to avoid or circumvent the provisions or purposes of this [code], any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

§ 1-107. **Evidence of Death or Status.** In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual [is determined to be dead under the Uniform Determination of Death Act (1978/1980)] [has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards].

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place,

date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which he [or she] has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His [or her] death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

§ 1-108. Acts by Holder of General Power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

§ 1-109. Cost of Living Adjustment of Certain Dollar Amounts.

(a) In this section:

(1) "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U): U.S. City Average—All items, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chosen by [insert appropriate state agency]; and

(2) "Reference base index" means the CPI for calendar year [insert year immediately preceding the year in which this section takes effect].

(b) The dollar amounts stated in Sections 2-102, [2-102A,] 2-202(b), 2-402, 2-403, 2-405, and 3-1201 apply to the estate of a decedent who died in or after [insert year in which this section takes effect], but for the estate of a decedent who died after [insert year after the year in which this section takes effect], these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but for the purpose of Section 2-405, the periodic installment amount is the lump-sum amount divided by 12. If the CPI for [insert year immediately before the effective date of this section] is changed by the Bureau of Labor Statistics, the reference base index must be revised using the rebasing factor reported by the Bureau of Labor Statistics, or other comparable data if a rebasing

factor is not reported.

[(c) Before February 1, [insert year after the year in which this section takes effect], and before February 1 of each succeeding year, the [insert appropriate state agency] shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in [insert year after the year in which this section takes effect], of each dollar amount as increased or decreased under this section.]

Legislative Note: To establish and maintain uniformity among the states, an enacting state that enacted the sections listed in subsection (b) before 2008 should bring those dollar amounts up to date. To adjust for inflation, these amounts were revised in 2008. Between 1990 (when these amounts were previously adjusted for inflation) and 2008, the consumer price index (CPI) increased about 50 percent. As a result, the following increases in the UPC's specific dollar amounts were adopted in 2008 and should be adopted by a state that enacted these sections before 2008:

Section 2-102(2) should be amended to change \$200,000 to \$300,000; Section 2-102(3) should be amended to change \$150,000 to \$225,000; and Section 2-102(4) should be amended to change \$100,000 to \$150,000. Section 2-102A, if enacted instead of Section 2-102, should be amended accordingly.

Section 2-201(b) should be amended to change \$50,000 to \$75,000.

Section 2-402 should be amended to change \$15,000 to \$22,500; Section 2-403 should be amended to change \$10,000 to \$15,000; and Section 2-405 should be amended to change \$18,000 to \$27,000 and to change \$1,500 to \$2,250.

A state enacting these sections after 2008 should adjust the dollar figures for changes in the cost of living that have occurred between 2008 and the effective date of the new enactment.

Comment

Automatic Adjustments for Inflation. Added in 2008, Section 1-109 operates in conjunction with the inflation adjustments of the dollar amounts listed in subsection (b) also adopted in 2008. Section 1-109 was added to make it unnecessary in the future for the ULC or individual enacting states to continue to amend the UPC periodically to adjust the dollar amounts for inflation. This section provides for an automatic adjustment of each of the above dollar amounts annually.

In each January, the Bureau of Labor Statistics of the U.S. Department of Labor reports the CPI (annual average) for the preceding calendar year. The information can be obtained by telephone (202/691-

5200) or on the Bureau's website <<http://www.bls.gov/cpi>>.

Subsection (c) tasks an appropriate state agency, such as the Department of Revenue, to issue an official cumulative list of the adjusted amounts beginning in January of the year after the effective date of the act. This subsection is bracketed because some enacting states might not have a state agency that could appropriately be assigned the task of issuing updated amounts. Such an enacting state might consider tasking the state supreme court to issue a court rule each year making the appropriate adjustment.

PART 2 DEFINITIONS

§ 1-201. General Definitions.

Subject to additional definitions contained in the subsequent [articles] that are applicable to specific [articles,] [parts,] or sections, and unless the context otherwise requires, in this Code:

(1) "Agent" includes an attorney in fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the Registrar for an order of informal probate or appointment under [Part] 3 of [Article] III.

(3) "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profitsharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profitsharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under this [code] by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" is as defined in Section 5-102.

(8) "Court" means the [..... Court or branch] in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his [or her] descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this [code].

(10) "Devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means a person designated in a will to receive a devise. For the purposes of Article III, in the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Distributee" means any person who has received property of a decedent from his [or her] personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his [or her] hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this [code] as originally constituted and as it exists from time to time during administration.

(14) "Exempt property" means that property of a decedent's estate which is described in Section 2-403.

(15) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(16) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(17) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(18) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, pension, profitsharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(19) "Guardian" is as defined in Section 5-102.

(20) "Heirs", except as controlled by Section 2-711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) "Incapacitated person" means an individual described in Section 5-102.

(22) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(23) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(24) "Issue" of an individual means descendant.

(25) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(26) "Lease" includes an oil, gas, or other mineral lease.

(27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) "Minor" has the meaning described in Section 5-102.

(29) "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.

(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his [or her] death.

(31) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government, or governmental subdivision or agency, or any other legal or commercial entity.

(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this [code] by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(33) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(34) "Person" means an individual or an organization.