

§ 75-1-303. Venue--Multiple Proceedings--Transfer--Orders and Hearings

(1) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided; and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

(4) The judge of the court in which any proceeding under this code is pending may make any order relating to the proceeding in chambers at any place in his district, and the order shall have the same force and effect as if made by the court sitting in the proper county. The hearing of any matter requiring notice shall be had at the time and place appointed or at the time to which the same may be postponed, except that where there is no contest or where all the parties consent, the hearing may be had at any place within the judicial district in which the matter is pending.

§ 75-1-304. Practice in Court

Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

§ 75-1-306. Jury Trial

(1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a statutory or constitutional right to trial by jury.

(2) If there is no right to trial by jury under Subsection (1) of this section or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

§ 75-1-310. Costs--In Discretion of Court

When not otherwise prescribed in this code, the court, or the Supreme Court on appeal from the court, may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate as justice may require.

§ 75-2-515. Penalty Clause for Contest

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

§ 75-2-805. Reformation to Correct Mistakes

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

§ 75-3-108. Statutes of Limitation on Decedent's Cause of Action

No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death shall apply to bar a cause of action surviving the decedent's death sooner than 12 months after death. A cause of action which, but for this section, would have been barred less than 12 months after death, is barred after 12 months unless tolled.

§ 75-3-407. Formal Testacy Proceedings--Burdens in Contested Cases

(1) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Except in cases where a presumption is operable, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. Where one or more presumptions are operable, the ultimate burden of persuasion shall be determined in accordance with the Utah Rules of Evidence.

§ 75-3-719. Expenses in Estate Litigation

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate all necessary expenses and disbursements, including reasonable attorney fees incurred. This provision expressly applies in a will contest to any person nominated as a personal representative in a testamentary instrument submitted in good faith.

§ 75-3-802. Statutes of Limitations

Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 75-3-804 is equivalent to commencement of a proceeding on the claim.

§ 75-3-803. Limitations on Presentation of Claims

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

- (a) one year after the decedent's death; or
- (b) within the time provided by Subsection 75-3-801(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-801(1) for all claims barred by publication.

(2) In all events, claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.

(3) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (a) a claim based on a contract with the personal representative within three months after performance by the personal representative is due; or
- (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1)(a).

(4) Nothing in this section affects or prevents:

- (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;
- (b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or
- (c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

(5) If a personal representative has not been timely appointed in accordance with this chapter, one may be appointed for the limited purposes of Subsection (4)(b) for any claim timely brought against the decedent.

§ 75-3-905. Penalty Clause for Contest

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

§ 75-3-909. Improper Distribution--Liability of Distributee

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

§ 75-3-703. General Duties--Relation and Liability to Persons Interested in Estate--Standing to Sue

(1) A personal representative is a fiduciary who shall observe the standard of care applicable to trustees as described by Section 75-7-902. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and courts of any other jurisdiction as his decedent had immediately prior to death.

§ 75-3-711. Improper Exercise of Power--Breach of Fiduciary Duty

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 75-3-712 and 75-3-713.

§ 75-7-902. Standard of Care--Portfolio Strategy--Risk and Return Objectives

- (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- (3) Among circumstances that a trustee shall consider in investing and managing trust assets are the following which may be relevant to the trust or its beneficiaries:
 - (a) general economic conditions;
 - (b) the possible effect of inflation or deflation;
 - (c) the expected tax consequences of investment decisions or strategies;
 - (d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
 - (e) the expected total return from income and the appreciation of capital;
 - (f) other resources of the beneficiaries;
 - (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (5) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 75-7-1001. Remedies for Breach of Trust

(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may:

- (a) compel the trustee to perform the trustee's duties;
- (b) enjoin the trustee from committing a breach of trust;
- (c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (d) order a trustee to account;
- (e) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (f) suspend the trustee;
- (g) remove the trustee as provided in Section 75-7-706;
- (h) reduce or deny compensation to the trustee;
- (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (j) order any other appropriate relief.

§ 75-7-1004. Attorney's Fees and Costs

(1) In a judicial proceeding involving the administration of a trust, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or not, the trustee is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred.

§ 75-7-1005. Limitation of Action Against Trustee

(1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than six months after the date that the beneficiary or a person who may represent and bind the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within one year after the first to occur of:

- (a) the removal, resignation, or death of the trustee;
- (b) the termination of the beneficiary's interest in the trust; or
- (c) the termination of the trust.

(4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

§ 78B-6-401. Jurisdiction of District Courts--Form—Effect

(1) Each district court has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction. An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.

(2) The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to Utah Code Title 78B, Chapter 6, Part 4, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.