

Administering the Estate: The Collision of Estate Planning and Real Property Law - A Cautionary Tale

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MATERIALS



SALT LAKE CITY | LEHI | OGDEN | ST. GEORGE | LAS VEGAS

Tips for Avoiding Estate Pitfalls

- **Make sure the trust is funded!** Otherwise probate will generally be required and one of the advantages of the trust will be lost.
 - **Do some research before transferring a business interests to the trust.**
 - Many Operating Agreements and Shareholder Agreements have transfer restrictions that require an owner to obtain consent of the other members/shareholders prior to transferring their ownership in the company. Check the governing documents before making the transfer – the consequences of failing to abide by transfer restrictions could include voiding the transfer, causing the trust to be an unadmitted assignee with no voting rights in the company, or causing the ownership interest to be subject to a buyout by the other members/shareholders.
 - If the company has made an election to be taxed as an S-corp, ensure that the trust is structured to be a qualified S-corp shareholder and has provisions to ensure that after the client’s death, the trust will not jeopardize the company’s S-election.
 - **Transfer real estate to the trust.**
 - Any real estate that is owned solely by an individual, no matter the value, requires probate to be transferred out of a decedent’s name in Utah.
 - Make sure to include the name and address of the trustee and the name and date of the trust. See Utah Code §75-7-816.
 - Make sure to find out what out-of-state real estate the client has, and have it transferred to the trust as well. Otherwise, probate may be required in multiple states upon the client’s death.
 - **Transfer water rights and water shares to the trust.** If you are not familiar with water law, involve someone who is to ensure that it is done right.
- **Double check on death beneficiaries of retirement accounts, life insurance policies, annuities, etc.**
 - Clients often do not have a clear recollection of who they named on the beneficiary designation forms years ago, and these should be double checked to ensure that assets are going where they intend them to go.
 - Although the will and revocable trust may be up to date, those documents do not control the disposition of assets that have beneficiaries associated with them such as IRAs, life insurance, annuities and payable on death accounts. This can result in unintended and/or disproportionate distributions to some heirs.
 - If the client wants to name the trust as the beneficiary of retirement accounts, ensure that the trust is structured to allow for the retirement account distributions to be made over time and will not trigger a taxable event. The trust needs to be structured to ensure that it meets the IRS “see-through” trust rules.
- **Plan for the succession of a family business, ranch, cabin, etc.**
 - These types of assets often cause significant contention in families and should be given special consideration in the estate plan.
 - If the estate plan simply requires everything to be divided equally among the children with no special instructions related to the family business, the ranch, the

- cabin, the family home, or other assets with value that extends far beyond the actual monetary value of the property, disputes and hard feelings can easily arise.
- If the estate plan requires land to be divided, ensure that the plan for subdividing the property and segregating the water rights is feasible. For example, ensure that it will comply with zoning and subdivision laws. If any subdividing of property would result in a landlocked parcel, provide for any necessary easements.
 - Ensure that rights and licenses are included in the plan (e.g., grazing rights if a ranch is being transferred).
 - **Discuss any intra-family loans and gifts with the client, and determine how they should be treated at death.**
 - Whether or not the loans should be forgiven at death should be addressed in the estate plan.
 - Whether or not a lifetime gift should be considered an advancement on a recipient's inheritance should be addressed in the estate plan.
 - **Check for bank accounts with a child named as a co-owner.**
 - Too often, clients add a child as a co-owner on their bank accounts to help pay bills. This results in the child inheriting 100% of the account at the client's death, and causes other problems such as gift tax issues and subjecting the account to the child's creditors.
 - A better option is to use a Power of Attorney to transact business on the account, or to add the child as an authorized signer rather than a co-owner on the account.
 - **Do not use a traditional AB trust unless the client really needs it.** Traditional AB trusts that divide the assets into a survivor's trust and a credit shelter trust on the first spouse's death will likely result in higher income taxes for the heirs after both spouses die by reducing the step-up in basis that the assets receive. Special consideration should be given before using this structure.
 - **Advise clients to fill out their tangible personal property lists!** Children often fight over the little things. If the client has promised something to someone, have them include it in their personal property list so the gift will be binding.
 - **Give special consideration to second marriages**
 - Second marriages are one of the most significant indicators of inheritance conflict. A prenuptial or a postnuptial agreement can minimize conflict at death by clearly stating the relative entitlements of spouses and other beneficiaries, such as children not of the marriage.
 - One of the biggest causes of stress in a second marriage comes from the children. Children are often suspicious and worried that the new spouse might take advantage of their parent, and a proper estate plan can help alleviate those concerns.
 - **Either create or advise the client to create a financial statement to assist their heirs in locating their assets.**
 - **Advise the client to have their estate plan reviewed every 3-5 years to account for changes in their family, financial circumstances, health, the law, etc.**
 - Laws change.
 - Family circumstances change – like the death or divorce of a child or the illness, addiction or incapacitation of any beneficiary.
 - Financial situations change.

- **Upon the death of a client, assist with the estate administration.**
 - If the decedent owned any real property or over \$100,000 of other assets in their individual name without death beneficiaries, file a probate to appoint a Personal Representative to administer the estate.
 - Inform the client that a Personal Representative named in a Will has no authority to act until a court has appointed them (most clients do not understand this)
 - Get plenty of death certificates!
 - Have the Personal Representative/Trustee keep track of payments made on behalf of the estate and time spent administering the estate for compensation purposes
 - Notify Social Security, Medicare/Medicaid, and other agencies as appropriate
 - Prepare inventory, list of accounts, and list of debts
 - Publish notice to creditors
 - Prepare and record any necessary affidavit of death of trustee or affidavit of death of joint tenant
 - Arrange for final income tax return and estate tax return, as necessary
 - Draft and record any deeds needed to transfer real property and water rights to beneficiaries
 - Submit Records of Conveyance following the transfer of any water rights
 - Draft and submit, file, or record any other transfer documents as necessary

ESTATE ADMINISTRATION

1. If the decedent owned any real property (including water rights) in their individual name, file a probate to appoint a Personal Representative to administer the estate.
 - If this is not done within three years, any will that the decedent had becomes essentially null and void and assets pass through the intestate rules.
 - A personal representative can still be appointed after this time by filing a petition to determine heirs and appoint a personal representative.
 - Assets may still be distributed as stipulated in the will if the appropriate waivers and disclaimers are filed with the court.
2. Prepare and record any necessary affidavit of death of trustee or affidavit of death of joint tenant
 - An affidavit of death should be recorded in every county in which the decedent owned property in their individual name or as the trustee of a trust
 - A different death certificate (not just a copy) must be attached to each affidavit
3. Draft and record any deeds needed to transfer real property and water rights to beneficiaries
 - Double check that all names, tax i.d. numbers, metes and bounds descriptions, and water rights numbers are correct
 - If recording deeds for water rights, record both in the county in which the water rights are used and the county in which they originate
4. Submit Records of Conveyance following the transfer of any water rights
 - Attach all required documents, including deeds and, if necessary, maps

INFORMAL PROBATE (within 3 years)

DETERMINATION OF HEIRS (after 3 years)

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of [Name of Decedent] Deceased.</p>	<p>APPLICATION FOR INFORMAL PROBATE OF WILL AND INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE</p> <p>Probate No. _____ Honorable _____</p>
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APPLICANT, [Name of Applicant], respectfully states and represents to the Registrar as follows:

1. Applicant's interest in this matter is that of [OPTIONS: a) an heir of the decedent, b) a child of the decedent, c) a devisee under the decedent's will, d) the spouse of the decedent, e) a creditor of the decedent, f) a person having priority for appointment as personal representative, g) a person having a property right in or a claim against the decedent's estate, and/or h) a fiduciary representing an interested person.]
2. The decedent, [name of decedent], died on _____, 20____, at the age of _____ years. [See Death Certificate, attached hereto as Exhibit A. [if available]]

3. Venue is proper because at the time of death the decedent [**OPTIONS:** a) was domiciled in this county, or b) was domiciled in _____ County, _____, but owned property located in this county.]

4. The names and addresses of the spouse, children, heirs, and devisees of the decedent, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by Applicant are as follows: [or attached hereto as Schedule A]

Name	Address	Age (If Minor)	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. Applicant is not aware of the appointment of a personal representative in this state or elsewhere whose appointment has not been terminated.

6. Applicant has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere [. . . other than the demand(s) received by and on file with the Court].

7. The time limit for formal probate and appointment has not expired because not more than three years have passed since the decedent's death. [**ANOTHER OPTION:** More than three years have passed since the decedent's death, but tardy probate and appointment are authorized because: [**OPTIONS:** a) a previous proceeding, initiated within such three-year period, was dismissed because of doubt about the decedent's death, the decedent died prior to the initiation of the previous proceeding, and applicant has not delayed unduly in initiating this proceeding; b) not more than three years have passed since the duly appointed conservator of the decedent's estate became able to establish the decedent's death; 3) the decedent was not a

resident of this state, and the will to which this application relates has been previously probated, and a prior appointment of a personal representative has been made in the state of the decedent's domicile, or 4) the will to which this application relates was previously informally probated within the last twelve months in _____, and a prior appointment of a personal representative has been made in _____.]

8. Administration of the estate will be [**OPTIONS:** a) under the will of the decedent dated _____, ____; or b) by intestacy.] [If under a will, use sections 9-12.]

9. The decedent's last will, dated _____, ____, is in the possession of Applicant or Applicant's attorney, a copy of which accompanies this application via the Court's electronic filing system, attached as Exhibit _____. [**OTHER OPTIONS:** a) A copy of the decedent's will, dated _____, ____, has been filed with the court's electronic filing system, and the original is now in the possession of Applicant or Applicant's attorney; b) The original of the decedent's will, dated _____, ____, accompanies this application; c) The original of the decedent's will, dated _____, ____, is in the possession of the Court; d) An authenticated copy of the will of the decedent, dated _____, _____, and of the statement or order probating it in the State of _____, accompany this application; e) The original of the decedent's will is lost, destroyed, or otherwise unavailable, but its contents are described in Exhibit ____ attached hereto and incorporated herein by reference.]

10. Applicant believes that the will which is the subject of this application was validly executed.

11. Having exercised reasonable diligence, Applicant is unaware of any instrument revoking the will which is the subject of this application and believes that such will is the decedent's last will.

12. To the best of Applicant's knowledge, the will to which this application relates is not part of a known series of testamentary instruments (other than wills or codicils), the latest of which does not expressly revoke the former.

13. The person whose appointment as personal representative is sought is [OPTIONS: a) Applicant; b) _____, whose address is _____.]
[He/she] is qualified to act as such and has priority because [OPTIONS: a) there is no person with a higher or equal priority for appointment; b) each person with higher or equal priority for appointment has failed to request appointment or to nominate another for appointment; c) each person with higher or equal priority for appointment has renounced the right to appointment and has renounced the right to nominate another to appointment, and all such renunciations have been filed with the Court; or d) each person with higher or equal priority for appointment has renounced the right to appointment or has nominated the person whose appointment is sought herein, and all such renunciations and/or nominations have been filed with the Court.] The status in which such person seeks appointment is as [OPTIONS: a) the person nominated in, or pursuant to the exercise of a power conferred by, the decedent's will; b) the personal representative appointed by the Court of the decedent's domicile; c) the surviving spouse and a devisee of the decedent; d) a devisee of the decedent; e) the surviving spouse of the decedent; f) an heir of the decedent; g) a creditor of the decedent; or h) a nominee of a person named above.]

14. No bond is required under Section §75-3-603 of the Utah Uniform Probate Code. [ANOTHER OPTION: A bond is required because a) a bond has been requested prior to appointment, by an interested party, or b) a written demand for a bond has been filed in accordance with U.C.A. §75-3-605.]

[If a bond is required, complete the following:]

[Character and estimated value of the decedent's property:

Real Property \$ _____

Personal Property \$ _____

Annual income from real
and personal property \$ _____

SUBTOTAL _____

Secured Claims (_____)

Assets deposited in
domestic financial
institutions with
restrictions on withdrawal (_____)

TOTAL \$ _____]

WHEREFORE, APPLICANT REQUESTS THAT:

1. Notice be given as required by law.
2. The decedent's will, dated _____, ____, be informally probated.
3. [Name of proposed P.R.] be informally appointed personal representative of the estate of the decedent, to act without bond. [OR: with bond in the amount of \$_____.]
4. Upon qualification and acceptance, letters testamentary be issued.

DATED: _____, 20____. _____
(Name) _____
(Address) _____

Telephone: (____) _____

DATED: _____, 20____. **[Law Firm]**
By: _____
(Name) _____
(Address) _____

Telephone: (____) _____

VERIFICATION

STATE OF UTAH)
 : **SS**
COUNTY OF _____)

Applicant, being sworn, says that the facts set forth in the foregoing application are true, accurate, and complete to the best of applicant's knowledge and belief.

(Name) _____
Applicant

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20____.

NOTARY PUBLIC

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of [Name of Decedent] Deceased.</p>	<p>STATEMENT OF INFORMAL PROBATE OF WILL AND INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE</p> <p>Probate No. _____ Honorable _____</p>
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Upon consideration of the Application for Informal Probate of Will and Informal Appointment of Personal Representative filed by [Name of Applicant] on _____, 20____, the Registrar [Court] finds that:

1. The application is complete.
2. Applicant has made oath or affirmation that the statements contained in the application are true to the best of Applicant's knowledge and belief.
3. Applicant appears from the application to be an interested person as defined by the Utah Uniform Probate Code.
4. The decedent, [name of decedent], died on _____, 20____, domiciled in _____ County, _____.
5. On the basis of the statements in the application, venue is proper.

6. Any required notice has been given or waived.

7. **OPTIONS:** a) On the basis of the statements in the application, the decedent died intestate; or b) A copy of the original, duly executed, and apparently unrevoked will, dated _____, _____, has been presented to the Court. [If there is a will, use sections 8-9.]

8. On the basis of the statements in the application, the will to which the application relates is not part of a known series of testamentary instruments (other than wills or codicils), the latest of which does not expressly revoke the former.

9. On the basis of the statements in the application, neither the will to which the application relates nor any other will of the decedent has been the subject of a previous probate order in this state.

10. It appears from the application that the time limit for informal probate and appointment has not expired.

11. The application does not indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the law of this state, and which is not filed for probate in this Court.

12. On the basis of the statements in the application, no personal representative has been appointed in this state or elsewhere.

13. Based on the statements in the application, the person whose appointment as personal representative is sought is qualified to act as personal representative and has priority entitling said person to the appointment.

14. Bond is not required. [**OR:** Bond is required in the amount of \$_____.]

15. The applicable time period within which no action can be taken on an application for informal probate and appointment has elapsed.

THEREFORE:

1. [If there is a will] The will of the decedent, dated _____, _____, is hereby informally probated.
2. [Name of proposed P.R.] is hereby appointed personal representative of the estate of the decedent, to act without bond. [**OR:** with bond in the amount of \$_____.]
3. Upon qualification and acceptance, letters testamentary shall be issued.

**THIS ORDER TO BECOME FINAL UPON THE COURT AFFIXING ITS
ELECTRONIC SIGNATURE AND SEAL ABOVE**

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of [Name of Decedent] Deceased.</p>	<p>PETITION FOR ORDER DETERMINING HEIRS AND FOR APPOINTMENT OF PERSONAL REPRESENTATIVE</p> <p>Probate No. _____ Honorable _____</p>
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Petitioner, [name of petitioner], states and represents to the Court that:

1. Petitioner's interest in this matter is that of [**OPTIONS:** a) an heir of the decedent, b) a child of the decedent, c) a devisee under the decedent's will, d) the spouse of the decedent, e) a creditor of the decedent, f) a person having priority for appointment as personal representative, g) a person having a property right in or a claim against the decedent's estate, and/or h) a fiduciary representing an interested person.]

2. The decedent, [name of decedent], died on _____, at the age of _____ (____) years. [See Death Certificate, attached hereto as Exhibit A. [if available]]

3. Venue is proper because at the time of death the decedent [**OPTIONS:** a) was domiciled in this county, or b) was domiciled in _____ County, _____, but owned property located in this county.]

4. The decedent's estate was never probated and cannot now be probated because more than three (3) years have passed since the decedent's death (Utah Code §75-3-107).

5. The names and addresses of heirs of the decedent, and the ages of those who are minors, who are also the interested parties to whom notice of the hearing on this matter should be given pursuant to Utah Code §75-1-401(1), are as follows: [or attached hereto as Schedule A]

Name	Address	Age (If Minor)	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. At the time of the decedent's death, the decedent owned an interest in the following described property, located in _____ County, Utah:

[insert legal description]

7. There are no other assets known to petitioner subject to administration in the State of Utah.

[8. [If surviving spouse] At the time of the decedent's death, distribution of the decedent's estate was governed by the provisions of Utah Code §75-2-102, which then provided as follows: "(1) The intestate share of the surviving spouse is: [Note – quote the statute. It has changed over the years, however, so use the version that was current at the time of death.]]

[ALTERNATE 8, if no surviving spouse] At the time of the decedent's death, distribution of the decedent's estate was governed by the provisions of Utah Code §75-2-103, which then provided as follows: "1) the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent: a) to the decedent's descendants per capita at each generation as defined in §75-2-106(2)." [Note – quote the statute. It has changed over the years, however, so use the version that was current at the time of death.]

[9. The decedent left no issue who are not also the issue of the surviving spouse/petitioner.]

[10. The value of the decedent's interest in the above-described property was less than \$75,000 at the time of his/her death.]

11. The appointment of a Personal Representative is necessary to finalize the transfer of property to heirs.

12. The person whose appointment as personal representative is sought is [OPTIONS: a) the petitioner; b) _____, whose address is _____.]

[He/she] is qualified to act as such and has priority because [OPTIONS: a) there is no person with a higher or equal priority for appointment; b) each person with higher or equal priority for appointment has failed to request appointment or to nominate another for appointment; c) each person with higher or equal priority for appointment has renounced the right to appointment and has renounced the right to nominate another to appointment, and all such renunciations have been filed with the Court; or d) each person with higher or equal priority for appointment has renounced the right to appointment or has nominated the person whose appointment is sought herein, and all such renunciations and/or nominations have been filed with the Court.]

14. No bond is required under Section §75-3-603 of the Utah Uniform Probate Code.

[**ANOTHER OPTION:** A bond is required because a) a bond has been requested prior to appointment, by an interested party, or b) a written demand for a bond has been filed in accordance with U.C.A. §75-3-605.] [If a bond is required, complete the following:]

[Character and estimated value of the decedent's property:

Real Property \$ _____

Personal Property \$ _____

Annual income from real
and personal property \$ _____

SUBTOTAL _____

Secured Claims (_____)

Assets deposited in
domestic financial
institutions with
restrictions on withdrawal (_____)

TOTAL \$ _____]

WHEREFORE, Petitioner requests that:

1. The Court fix a time and date of hearing.
2. Notice by given as required by law.
3. The Court enter an Order determining the heirs of the decedent and ordering that upon the death of the decedent, all of the decedent's interest in the above-described real property devolved to _____.
4. [Name of proposed P.R.] be informally appointed personal representative of the estate of the decedent, without bond [OR: with bond in the amount of \$_____.]
4. Upon qualification and acceptance, letters testamentary be issued.

DATED: _____, 20__.

(Name)_____
(Address)_____

Telephone: (____) _____

DATED: _____, 20__ **[Law Firm]**

By: _____
(Name)_____
(Address)_____

Telephone: (____) _____

VERIFICATION

STATE OF UTAH)
 : ss
COUNTY OF _____)

Petitioner, being sworn, says that the facts set forth in the foregoing petition are true, accurate, and complete to the best of petitioner's knowledge and belief.

(Name)_____
Petitioner

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20__.

NOTARY PUBLIC

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of [Name of Decedent] Deceased.</p>	<p>DETERMINATION OF HEIRS AND APPOINTMENT OF PERSONAL REPRESENTATIVE</p> <p>Probate No. _____ Honorable _____</p>
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On the ____ day of _____, 20____, came on to be heard the Petition of
[name of petitioner] for an Order determining the heirs of [name of decedent], deceased, and the
Court having considered such Petition and having heard in open court the evidence pertaining to
such Petition,

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. The Court has jurisdiction of this estate, proceeding and subject matter.
2. The time required for notice has expired.
3. All required notices have been given or waived.
4. [Name of decedent] died on _____, in _____ County, Utah.
5. Venue is proper because at the time of death the decedent was domiciled in
_____ County, Utah and/or owned property in said county.

6. The decedent's estate was never probated and cannot now be probated because more than three (3) years have passed since the decedent's death (Utah Code §75-3-107).

7. The names and addresses of heirs of the decedent, and the ages of those who are minors, are as follows: [or attached hereto as Schedule A]

Name	Address	Age (If Minor)	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. At the time of the decedent's death, the decedent owned an interest in the following described property, located in _____ County, Utah:

[insert legal description]

9. There are no other known assets subject to administration in the State of Utah.

[10. At the time of the decedent's death, distribution of the decedent's estate was governed by the provisions of Utah Code §75-2-102, which then provided as follows:

“(1) The intestate share of the surviving spouse is: . . . [Note – quote the statute. It has changed over the years, however, so use the version that was current at the time of death.]

[ALTERNATE 10. At the time of the decedent's death, distribution of the decedent's estate was governed by the provisions of Utah Code §75-2-103, which then provided as follows:

“(1) the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent: a) to the decedent's descendants per capita at each generation as defined in §75-2-106(2).” [Note – quote the statute. It has changed over the years, however, so use the version that was current at the time of death.]

[11. The decedent left no issue who are not also the issue of his surviving spouse.]

[12. The value of the decedent's interest in the above-described property was less than \$75,000 at the time of his death.]

13. Upon the death of the decedent, all of the decedent's interest in the above-described real property devolved to _____.

14. [Name of proposed P.R.], as Personal Representative, shall have all authority necessary to execute any documents on behalf the estate of the decedent, and to transfer all assets of the estate, if any, to _____.

**THIS ORDER TO BECOME FINAL UPON THE COURT AFFIXING ITS
ELECTRONIC SIGNATURE AND SEAL ABOVE**

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

In the Matter of the Estate of [Name of Decedent] Deceased.	ACCEPTANCE OF APPOINTMENT Probate No. _____ Honorable _____
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The undersigned hereby accepts appointment to the office of personal representative of the estate of the above named decedent and agrees to perform and discharge the trust of said office. The undersigned hereby submits personally to the jurisdiction of this Court in any proceeding relating to the estate that may be instituted by an interested person as defined by the Utah Uniform Probate Code.

DATED: _____, 20____. _____
(Name) _____
(Address) _____

Telephone: (____) _____

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of <u>[Name of Decedent]</u> Deceased.</p>	<p>LETTERS TESTAMENTARY Probate No. _____ Honorable _____</p>
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1. [Name of P.R.] was duly appointed and qualified as Personal Representative of the estate of the above-named decedent on the ____ day of _____, 20____, by the Registrar [Court], with all authority pertaining thereto. [. . . except _____.]

2. Administration of the estate is unsupervised.

These letters are issued to evidence the appointment, qualification, and authority of the said personal representative.

**THESE LETTERS TO BECOME FINAL UPON THE COURT AFFIXING ITS
ELECTRONIC SIGNATURE AND SEAL ABOVE**

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

In the Matter of the Estate of [Name of Decedent] Deceased.	ANNOUNCEMENT OF APPOINTMENT AND NOTICE TO CREDITORS Probate No. _____ Honorable _____
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TO: [Newspaper of General Circulation in County:

You will please publish the following announcement of appointment and notice to creditors once a week for three successive weeks and on the public legal notice website established pursuant to Utah Code §45-1-101 for three weeks:

**ANNOUNCEMENT OF APPOINTMENT
AND NOTICE TO CREDITORS**

Estate of [name of decedent], Deceased

Probate No. _____

[Name of P.R.], whose address is _____, _____, _____, has been appointed Personal Representative of the above-entitled estate. Creditors of the estate are hereby notified to (1) deliver or mail their written claims to the personal representative at the address above; (2) deliver or mail their written claims to the personal representative[s attorney of record, _____, at the following address: _____;

or (3) file their written claims with the Clerk of the District Court in _____ County, or otherwise present their claims as required by Utah law within three months after the date of the first publication of this notice or be forever barred.

Date of first publication: _____.

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

<p>In the Matter of the Estate of [Name of Decedent] Deceased.</p>	<p>WAIVER OF NOTICE Probate No. _____ Honorable _____</p>
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1. With regard to the above estate, the undersigned is [OPTIONS: a) an interested person; b) a fiduciary for _____, an interested person; c) an attorney representing _____, an interested person; d) an attorney representing _____, a fiduciary for _____, an interested person; e) a parent of _____, who is a minor and an interested person, and for whom no guardian or conservator has been appointed, and with whom the undersigned has no conflict of interest; f) a person who has previously demanded notice pursuant to U.C.A. §75-3-204; g) a duly authorized officer of _____, an interested person; or h) a duly authorized officer of _____, a fiduciary for _____, an interested person.

2. The undersigned hereby waives notice of all petitions, applications, and filings concerning the above estate. [OR: The undersigned hereby waives notice of the following petitions, applications, and filings:

(a) Application for Informal Probate.

- (b) Application for Informal Appointment of Personal Representative.
- (c) Inventory.
- (d) Verified Statement of Personal Representative Closing Administration.
- (e) Petition for Final Settlement and Distribution and Estate Closing Order.
- (f) _____
- (g) _____]

3. Notice of matters not referred to above shall be given to [**OPTIONS:** a) the undersigned; and/or b) the undersigned’s attorney, whose name and address are set forth above.

[NOTE: if notice is to be given to attorney, the waiver must be signed by an interested person or his fiduciary. See U.C.A. §75-1-401(1).]

DATED: _____, 20____. _____
 (Name) _____
 (Address) _____

 Telephone: (____) _____

NOTE: An “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 the decedent which may be affected by the proceeding, and also includes persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. See U.C.A. §75-1-201(20).

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY,
STATE OF UTAH, PROBATE DIVISION

In the Matter of the Estate of [Name of Decedent] Deceased.	RENUNCIATION/NOMINATION Probate No. _____ Honorable _____
---------------------------------------------------------------------------	--------------------------------------------------------------------------------

The undersigned, _____, hereby renounces the right to appointment as personal representative of the estate of the above-named decedent, and [OPTIONS: a) nominates _____, whose address is _____, as personal representative of the estate of the above-named decedent; or b) renounces the right to nominate another to appointment as personal representative.]

DATED: _____, 20____. _____
(Name) _____
(Address) _____

Telephone: (____) _____

DATED: _____, 20____. _____
Attorney's signature

AFFIDAVIT OF DEATH

WHEN RECORDED, MAIL TO:

MAIL TAX NOTICE TO:

Tax ID Number: _____
[Water Rights Number:_____]

AFFIDAVIT OF SURVIVING JOINT TENANT
RE: DEATH OF JOINT TENANT

STATE OF UTAH)
)ss.
COUNTY OF _____)

[Name of surviving joint tenant], the surviving [spouse, son, daughter, etc.] of [name of decedent], and the surviving joint tenant, of legal age, being first duly sworn, declares as follows:

1. [Name of decedent], the decedent mentioned in the attached certified copy of Certificate of Death, who died _____, 20__, is the same person as [name of decedent], named as one of the parties in that certain [Quitclaim or Warranty Deed] recorded on _____, as document number _____, Book _____, Page _____, of the Official Records of _____ County, Utah, granting to [name of decedent] and [name of joint tenant], as joint tenants with full rights of survivorship, the following described property situated in _____ County, State of Utah:

Tax ID# _____

[insert metes and bounds description and water right number, if appropriate, or, if too long, attach an Exhibit A]

2. The rights of the above-named decedent, [name of decedent], as a joint tenant in the above-described parcels of property are terminated by [his/her] death.

Dated: _____, 20__.

[Name of surviving joint tenant]

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

NOTARY PUBLIC

[Attach Certified Certificate of Death]

WHEN RECORDED, MAIL TO:

MAIL TAX NOTICE TO:

Tax ID Number: _____
[Water Rights Number: _____]

AFFIDAVIT OF SUCCESSOR TRUSTEE
RE: DEATH OF TRUSTEE

STATE OF UTAH)
)ss.
COUNTY OF _____)

[Name of successor trustee], successor Trustee of the [name of trust] under agreement dated _____ (referred to as “the Trust”), of legal age, being first duly sworn, declares as follows:

1. [Name of decedent], the decedent mentioned in the attached certified copy of Certificate of Death, who died _____, 20__, is the same person as [name of decedent], Trustee of the [name of trust], under agreement dated _____ named as the Grantee on that certain [Quitclaim or Warranty] Deed dated _____, executed by _____ as Grantors, to “_____, Trustees, or their successor in trust as Trustee of the _____ Revocable Trust under agreement dated _____ [quote from the deed], recorded on _____, as document number _____, Book _____, Page _____, in the Official Records of _____ County, Utah, covering the following described properties situated in that county:

Tax ID# _____

[insert metes and bounds description and water right number, if appropriate, or, if too long, attach an Exhibit A]

2. The undersigned is the successor Trustee named in the Trust, has accepted the office of Trustee, and is now the sole Trustee of the Trust.

3. The undersigned has full authority to act as sole Trustee in all respects, including all powers under the Utah Code. As such, the undersigned has full authority to hold title to, manage, convey, and otherwise deal with the real property referred to herein.

Dated: _____, 20__.

[Name of successor trustee], Trustee

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__, by [Name of successor trustee], whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that [he/she] is the Trustee of the [name of trust] under agreement dated _____, and that the foregoing instrument was signed by proper authority, in the capacity and for the purposes stated in it.

NOTARY PUBLIC

[Attach Certified Certificate of Death]

RECORD OF CONVEYANCE

REPORT OF WATER RIGHT CONVEYANCE

\$40 Fee Rec'd by _____

Receipt # _____

USE THIS CONVEYANCE REPORT FORM WHEN 100% OF THE WATER RIGHT IS CONVEYED.

WATER RIGHT # (One and only one) _____ **EXCHANGE #** _____

Pending Change Applications _____

Non-use Expiration Date _____

SECTION A. CONVEYANCE SUMMARY

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____

2. Date Signed ___/___/___ Date Recorded ___/___/___
Book _____ Page # _____ Entry # _____

3. Grantor _____

4. Grantee(s) _____

5. Mailing Address : _____

6. E-mail Address (to be notified of ownership updates) : _____

7. Special Conditions/Information of Conveyance _____

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____

2. Date Signed ___/___/___ Date Recorded ___/___/___
Book _____ Page # _____ Entry # _____

3. Grantor _____

4. Grantee(s) _____

5. Mailing Address : _____

6. E-mail Address (to be notified of ownership updates) : _____

7. Special Conditions/Information of Conveyance _____

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____

2. Date Signed ___/___/___ Date Recorded ___/___/___
Book _____ Page # _____ Entry # _____

3. Grantor _____

4. Grantee(s) _____

5. Mailing Address : _____

6. E-mail Address (to be notified of ownership updates) : _____

7. Special Conditions/Information of Conveyance _____

REPORT OF WATER RIGHT CONVEYANCE

WATER RIGHT # _____

SECTION B. CERTIFICATION

I, _____, certify that I am authorized by Administrative Rule R655-3-7 to complete this report, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge.

Signature

Date

Phone #

FOR LICENSED PROFESSIONALS ONLY

I, _____, certify that I am licensed as _____ in the State of Utah, that my license number is _____, that I was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Records records has been made and that the attached documents evidence the ownership interest of the grantee.

Signature

Date

Phone #

Address: _____

This report is not a title opinion based on the title search made. It does not warrant or guarantee title to water rights. This report was prepared for the purpose of updating records of the Division of Water Rights.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICIAL USE ONLY

Received: _____ / _____ / _____ Filed: _____ / _____ / _____ Reviewed By: _____

Database Changed: _____ / _____ / _____ By: _____

File Changed: _____ / _____ / _____ By: _____

New File Number based on Segregation _____

Remarks: _____

AMOUNT OF WATER RIGHT RETAINED _____

No agency of the State of Utah warrants or guarantees title to certain water rights. The water right ownership information of record in the Division of Water Rights concerning this water is based on the information which has been submitted by this Report of Water Right Conveyance.

100% CONVEYANCE

The **Water Right Number and any Pending Change Application (approved or unapproved)** identifies the specific water right being conveyed with the Report of Water Right Conveyance (ROC). Give the Water Right Number, Application Number, or Claim Number (Diligence, UGWC, Certificated, etc. of the water right being conveyed).

SECTION A. CONVEYANCE SUMMARY

This section is used to provide summaries of the individual conveyance documents being reported. Space is provided to summarize up to three conveyance documents. If more than three documents are being reported, additional pages bearing Section A must be attached to the report. The documents being reported should be listed in order of effective date with the earliest document listed first and the most recent document last.

The document summaries are to be completed as follows (numbers correspond to the numbered items within Section A):

If no water right number is mentioned on the deed, is a map attached? (If you marked “Yes” this is conveyance by appurtenance. You will need to retain a Professional and a map is required. If you marked “No” – then the water right is specifically mentioned on the deed(s) and no map is required).

1. Indicate the type of document by an “X” or describe the conveyance document under “Other”.
2. Obtain this information directly from the conveyance document and County Recorder’s stamp. If the signature date and the notarization date differ, the notarization date should be used as the “date signed”.
3. Grantor: List the grantor name(s) exactly as it appears on the conveyance document. Any differences between the grantor name (s) on the document and on the State Engineer’s water right file must be rectified using appropriate documents.
4. Grantee: List grantee name(s) exactly as it appears on the conveyance document.
5. Mailing Address: List current mailing address(es) of grantee(s).
6. Email Address: This is optional and will only be used to notify new owner of update.
7. Special Conditions of Conveyance/information of conveyance: List any special conditions, which help define the intent or limits of the conveyance document. Examples of special conditions may include:
 - a) *Specific conveyance or reservation of water sources, diversion or conveyance works, or less and exceptings*
 - b) *Parcel ID #*
 - c) *Identifies part of a particular parcel by appurtenance*

SECTION B. CERTIFICATION

Complete this section with the information requested. The certification section is to be completed by the preparer. If the grantee is preparing the form as allowed under State Administrative Rule R655-3-7, completion of the lower portion (area in **bold type**) is not required.

I, (name of grantee/new owner), certify that I am authorized by Administrative Rule R655-3-7 to complete this report, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge.

If a professional was retained:

I, (name of professional retained), certify that I am licensed as (type of professional: an attorney; a professional engineer; a title insurance producer; or a professional land surveyor) in the State of Utah, that my license number is (the license number of the professional preparing the report)...

SECTION C. DIVISION OF WATER RIGHTS – FOR OFFICE USE ONLY

This section is to be completed by personnel of the State Engineer's office.

REPORT OF WATER RIGHT CONVEYANCE

\$40 Fee Rec'd by _____

Receipt # _____

USE THIS CONVEYANCE REPORT FORM WHEN ONLY A PORTION OF THE WATER RIGHT IS CONVEYED.

WATER RIGHT # (One and only one) _____ **EXCHANGE #** _____

Pending Change Applications _____

Non-use Expiration Date _____

SECTION A. CONVEYANCE SUMMARY

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____

2. Date Signed ___/___/___ Date Recorded ___/___/___

Book _____ Page # _____ Entry # _____

3. Grantor(s) _____

4. Portion of Beneficial Uses Conveyed	From Water Right	From Pending Change Applications
	Sole Supply Limit	Sole Supply Limit
Irrigation	_____ (acres)	_____ (acres)
Stockwatering	_____ (ELUs)	_____ (ELUs)
Domestic	_____ (families)	_____ (families)
Municipal	_____ (ac ft)	_____ (ac ft)
Industrial	_____ (ac ft)	_____ (ac ft)
Other _____	_____	_____

5. Diversion Limit (acre-feet) _____

6. Special Conditions of Conveyance _____

7. Grantee(s) _____

8. Mailing Address : _____

9. E-mail Address : _____

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____

2. Date Signed ___/___/___ Date Recorded ___/___/___

Book _____ Page # _____ Entry # _____

3. Grantor(s) _____

4. Portion of Beneficial Uses Conveyed	From Water Right	From Pending Change Applications
	Sole Supply Limit	Sole Supply Limit
Irrigation	_____ (acres)	_____ (acres)
Stockwatering	_____ (ELUs)	_____ (ELUs)
Domestic	_____ (families)	_____ (families)
Municipal	_____ (ac ft)	_____ (ac ft)
Industrial	_____ (ac ft)	_____ (ac ft)
Other _____	_____	_____

5. Diversion Limit (acre-feet) _____

6. Special Conditions of Conveyance _____

7. Grantee(s) _____

8. Mailing Address : _____

9. E-mail Address : _____

REPORT OF WATER RIGHT CONVEYANCE

WATER RIGHT # _____

SECTION B. CERTIFICATION

I, _____, certify that I am authorized by Administrative Rule R655-3-7 to complete this report, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge.

Signature

Date

Phone #

FOR LICENSED PROFESSIONALS ONLY

I, _____, certify that I am licensed as _____ in the State of Utah, that my license number is _____, that I was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Records records has been made and that the attached documents evidence the ownership interest of the grantee.

Signature

Date

Phone #

Address: _____

This report is not a title opinion based on the title search made. It does not warrant or guarantee title to water rights. This report was prepared for the purpose of updating records of the Division of Water Rights.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICIAL USE ONLY

Received: _____ / _____ / _____ Filed: _____ / _____ / _____ Reviewed By: _____

Database Changed: _____ / _____ / _____ By: _____

File Changed: _____ / _____ / _____ By: _____

New File Number based on Segregation _____

Remarks: _____

AMOUNT OF WATER RIGHT RETAINED _____

No agency of the State of Utah warrants or guarantees title to certain water rights. The water right ownership information of record in the Division of Water Rights concerning this water is based on the information which has been submitted by this Report of Water Right Conveyance.

PORTION CONVEYANCE

The **Water Right Number and any Pending Change Application (approved or unapproved)** identifies the specific water right being conveyed with the Report of Water Right Conveyance (ROC). Give the Water Right Number, Application Number, or Claim Number (Diligence, UGWC, Certificated, etc. of the water right being conveyed).

SECTION A. WATER RIGHT INTEREST CONVEYED

The numbers used herein coincide with the numbered items in this section of the form.

If no water right number is mentioned on the deed, is a map attached? (If you marked “Yes” this is conveyance by appurtenance. You will need to retain a Professional and a map is required. If you marked “No” – then the water right is specifically mentioned on the deed(s) and no map is required).

1. Indicate the type of document by an “X” or describe the conveyance document under “Other”.
2. Obtain this information directly from the conveyance document and County Recorder’s stamp. If the signature date and the notarization date differ, the notarization date should be used as the “date signed.”
3. Grantor: List the grantor name(s) exactly as it appears on the conveyance document. Any differences between the grantor name (s) on the document and on the State Engineer’s water right file must be rectified using appropriate documents.
4. Portions of Beneficial Uses Conveyed: List the sole supply limit for each use that is acquired by the grantee/new owner. If there is a change application list the sole supply limit for each use that is acquired by the grantee/new owner.
5. Diversion Limit: List any diversion amount deeded to the grantee in acre-feet. If there is a change application list the diversion amount deeded to the grantee in acre-feet. If no diversion limit is recited in the conveyance document(s), a figure can be calculated by utilizing current “duties” for the listed beneficial uses.
6. Email Address: This is optional and will only be used to notify new owner of update.
7. Special Conditions of Conveyances/information of conveyance:
 - a. List any special conditions, which help define the intent or limits of the conveyance document. Examples of special conditions may include: a) specific conveyance or reservation of water sources, diversion or conveyance works, or less and exceptings; b) Parcel ID#; c) Identifies part of a particular parcel by appurtenance.

Mapping Standards for ROC's

Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

Maps shall meet the following standards:

- Maps must be legible.
- Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.
- Maps are to state the water right number conveyed.
- Maps are to include a north arrow.
- Maps are to be drawn to scale with a graphical scale bar contained thereon.
- Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.
- At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.
- Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.
- Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.
- Maps are to show any reservations from the property including property described by language such as "less and excepting" in the overall property description.
- Each deed submitted must have a map accompanying it unless the property description in every deed is identical.
- Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

The accuracy and completeness of maps are the responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

REPORT OF WATER RIGHT CONVEYANCE REVIEW CHECKLIST

WATER RIGHT # _____

CHANGE # (PENDING/APPROVED) _____

Type of ROC: _____

Criteria	Correct		Required Corrections
	YES	NO	
Section A: (1st Conveyance Summary) * Grantor(s) (same person shown to be owner of record on the Division of Water Rights Database or Decree/Proposed Determination ownership) * Grantee(s) (New owner / owner in transit) Usually the last grantee in the chain of title would be the new owner. * Mailing Address	<input type="checkbox"/>	<input type="checkbox"/>	
Section B (100% and Portions). * New Owner must sign the ROC as the preparer (if by water deed) * If a professional must be retained, if appurtenancy needs to be established. (Authorized Professionals: Attorney, Engineer, Title Insurance Agent or Land Surveyor)	<input type="checkbox"/>	<input type="checkbox"/>	
Supporting Documentation The deeds / Assignments / Affidavits have been submitted with the ROC.	<input type="checkbox"/>	<input type="checkbox"/>	
Maps If any of the deeds fail to mention the Water Right Number a map must be submitted to establish appurtenancy.	<input type="checkbox"/>	<input type="checkbox"/>	
ROC's based on portions *New Owner(s) needs to sign under Section B (if by water deed). *Mailing Address of the new owner. *Beneficial Uses will need to be listed, shown in acre-foot, Cubic feet per second, or percentages. *Diversion Limit. *Only if a Change Application has been filed*	<input type="checkbox"/>	<input type="checkbox"/>	
Filing fee submitted? Water Right Number listed on ROC?	<input type="checkbox"/>	<input type="checkbox"/>	

Comments

ROC MAPPING REQUIREMENTS

Sections 35 T14N, R1E & Section 2, T13N, R1E

- Section, Township and Range
- Section Corner
- Water Right #
- North Arrow
- Scale
- Parcel
- Acreage
- Legends

EXAMPLE

Parcel 1 (28.1 acres) & 2 (63.3 acres) (Deed # 7240)

POU for water right # 25-6734

0 0.1 0.2mi

- Less & excepting are to be identified
- Property description changes need a new map for that deed

REPORT OF WATER RIGHT CONVEYANCE MAP REVIEW CHECKLIST

Criteria	Correct		Required Corrections
	YES	NO	
Water Right Number	<input type="checkbox"/>	<input type="checkbox"/>	
Section Corner	<input type="checkbox"/>	<input type="checkbox"/>	
Section, Township and Range	<input type="checkbox"/>	<input type="checkbox"/>	
North Arrow	<input type="checkbox"/>	<input type="checkbox"/>	
Scale	<input type="checkbox"/>	<input type="checkbox"/>	
Parcel	<input type="checkbox"/>	<input type="checkbox"/>	
Acreage	<input type="checkbox"/>	<input type="checkbox"/>	
Legend	<input type="checkbox"/>	<input type="checkbox"/>	
Less & Excepting to be Identified	<input type="checkbox"/>	<input type="checkbox"/>	