

PROBATE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill addresses probate provisions.

Highlighted Provisions:

This bill:

- ▶ addresses when certain nonvested property interests or powers of appointment are created;
- ▶ permits a court in an action related to the administration of an estate to award costs and expenses, including reasonable attorney fees, to any party to be paid by another party or from the estate that is the subject of the controversy;
- ▶ addresses when a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust; and
- ▶ make technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[75-2-1204](#), as last amended by Laws of Utah 2013, Chapter 364

[75-3-719](#), as last amended by Laws of Utah 2012, Chapter 274

[75-7-505](#), as last amended by Laws of Utah 2017, Chapters 125, 204

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

31 Section 1. Section **75-2-1204** is amended to read:

32 **75-2-1204. When nonvested property interest or power of appointment created.**

33 (1) Except as [~~provided in Subsections (2) and (3) and in~~] otherwise provided in this
34 section or Section 75-2-1207, the time of creation of a nonvested property interest or a power
35 of appointment is determined under general principles of property law.

36 (2) For purposes of this part, if there is a person who alone can exercise a power
37 created by a governing instrument to become the unqualified beneficial owner of:

38 (a) a nonvested property interest; or

39 (b) a property interest subject to a power of appointment described in Section
40 **75-2-1203**, the nonvested property interest or power of appointment is created when the power
41 to become the unqualified beneficial owner terminates.

42 (3) For purposes of this title, a nonvested property interest or a power of appointment
43 arising from a transfer of property to a previously funded trust or other existing property
44 arrangement is created when the nonvested property interest or power of appointment in the
45 original contribution was created.

46 (4) A person who exercises an initial power of appointment may provide in the
47 exercise of that power of appointment:

48 (a) for a nonvested property interest that is considered:

49 (i) created when the initial power is irrevocably exercised or when a revocable exercise
50 becomes irrevocable; and

51 (ii) not created at the time of the creation of the initial power of appointment that is
52 exercised; and

53 (b) for a further power of appointment created by the exercise of the initial power of
54 appointment that is considered:

55 (i) created when the initial power is irrevocably exercised or when a revocable exercise
56 becomes irrevocable; and

57 (ii) not created at the time of the creation of the initial power of appointment that is

58 exercised.

59 Section 2. Section **75-3-719** is amended to read:

60 **75-3-719. Costs and expenses in estate litigation.**

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

64 (b) This Subsection (1) does not apply to the Office of the Attorney General when the
65 Office of the Attorney General is a party to a judicial proceeding involving the administration
66 of an estate to protect a public or charitable interest.

67 (2) If any personal representative or person nominated as personal representative
68 defends or prosecutes any proceeding in good faith, whether successful or not, the personal
69 representative is entitled to receive from the estate [att] the necessary expenses and
70 disbursements, including reasonable attorney fees incurred. This [provision] Subsection (2)
71 expressly applies in a will contest to any person nominated as a personal representative in a
72 testamentary instrument submitted in good faith.

73 Section 3. Section **75-7-505** is amended to read:

74 **75-7-505. Creditor's claim against settlor.**

75 ~~[Whether or not]~~ Regardless of whether the terms of a trust contain a spendthrift
76 provision, the following rules apply:

77 (1) During the lifetime of the settlor, the property of a revocable trust is subject to the
78 claims of the settlor's creditors. If a revocable trust has more than one settlor, the amount the
79 creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the
80 portion of the trust attributable to that settlor's contribution.

81 (2) (a) With respect to an irrevocable trust other than an irrevocable trust that meets the
82 requirements of Section [25-6-502](#), a creditor or assignee of the settlor may reach the maximum
83 amount that can be distributed to or for the settlor's benefit.

84 (b) ~~[If the trust has]~~ With respect to an irrevocable trust that has more than one settlor,
85 other than an irrevocable trust that meets the requirements of Section [25-6-502](#), the amount

86 [the] a creditor or assignee of a particular settlor may reach may not exceed the settlor's interest
87 in the portion of the trust attributable to that settlor's contribution.

88 (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy
89 the creditor's claim from an irrevocable trust solely because the trustee may make a
90 discretionary distribution reimbursing the settlor for income tax liability of the settlor
91 attributable to the income of the irrevocable trust, when the distribution is:

- 92 (i) subject to the discretion of a trustee who is not the settlor;
- 93 (ii) subject to the consent of an advisor who is not the settlor; or
- 94 (iii) at the direction of an advisor who is not the settlor.

95 (3) After the death of a settlor, and subject to the settlor's right to direct the source from
96 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
97 not property received by the trust as a result of the death of the settlor which is otherwise
98 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
99 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
100 of remains, and statutory allowances to a surviving spouse and children to the extent the
101 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.