



AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-811, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose -- rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

- (a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
- (b) discover and make effective the intent of a decedent in distribution of the decedent's property;
- (c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;
- (d) facilitate use and enforcement of certain trusts; and
- (e) make uniform the law among the various jurisdictions.

Section 2. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may 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.

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(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 clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) 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;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) 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, and 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:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 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) (a) "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 that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's 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 ~~section~~ code.

(11) "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.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, 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.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's 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 purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

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

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

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

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

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "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. The term 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.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners 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 co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

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

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

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as

security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "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.

(34) "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 chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "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.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(43)~~(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(44)~~(45) "Settlement", in reference to a decedent's estate, includes the full process of administration,

distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(45)~~(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

~~(46)~~(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(47)~~(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(48)~~(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

~~(49)~~(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

~~(50)~~(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~(51)~~(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(52)~~(54) "Testator" includes an individual of either sex.

~~(53)~~(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

~~(54)~~(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(55)~~(57) "Ward" means an individual described in 72-5-101.

~~(56)~~(58) "Will" includes codicil and any testamentary instrument that merely appoints an executor,

revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 4. Section 72-1-201, MCA, is amended to read:

"72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

- (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;
- (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who

is subject to the laws of this state; ~~and~~

- (3) incapacitated persons and minors in this state; and

- (4) survivorship and related accounts in this state."

Section 5. Section 72-1-208, MCA, is amended to read:

"72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, ~~a formal proceeding for determination of heirship, and any other proceeding as may be provided for by law~~ and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(2) If there is no right to trial by jury under subsection (1) 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."

Section 6. Section 72-1-302, MCA, is amended to read:

"72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice."

Section 7. Section 72-1-303, MCA, is amended to read:

"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

- (1) Interests to be affected must be described in pleadings that give reasonable information to owners

by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate the conservator controls;

(B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

(C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; **and**

(D) personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may represent the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind the person.

(b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a) or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a

minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Section 8. Section 72-2-112, MCA, is amended to read:

"72-2-112. Share of spouse. The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first ~~\$200,000~~ \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first ~~\$100,000~~ \$150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 9. Section 72-2-114, MCA, is amended to read:

"72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is ~~considered~~ deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is ~~considered~~ deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115."

Section 10. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 11. Section 72-2-118, MCA, is amended to read:

"72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period."

Section 12. Parent barred from inheriting in certain circumstances. (1) A parent is barred from inheriting from or through a child of the parent if:

(a) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Section 13. Definitions. In [sections 13 through 22]:

(1) As used in sections other than [section 17], "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under [section 17].

(2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) "Property" includes values subject to a beneficiary designation.

(8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(9) "Transfer," as it relates to a transfer by or of the decedent, includes:

- (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;
- (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and
- (c) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in [section 17(2)(b)] that the decedent conferred on a nonadverse party.

Section 14. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in [sections 13 through 22], to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in [sections 19 and 21(1)(a)], and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under [section 21(3) and (4)] is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in [section 21(3) and (4)].

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take

an elective share in property in this state is governed by the law of the decedent's domicile at death.

Section 15. Composition of the augmented estate. (1) Subject to [section 20], the value of the augmented estate, to the extent provided in [sections 16, 17, 18, and 19], consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

- (a) the decedent's net probate estate;
- (b) the decedent's nonprobate transfers to others;
- (c) the decedent's nonprobate transfers to the surviving spouse; and
- (d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse were married to each other:	The percentage is:
Less than 1 year	3%
1 year but less than 2 years	6%
2 years but less than 3 years	12%
3 years but less than 4 years	18%
4 years but less than 5 years	24%
5 years but less than 6 years	30%
6 years but less than 7 years	36%
7 years but less than 8 years	42%
8 years but less than 9 years	48%
9 years but less than 10 years	54%
10 years but less than 11 years	60%
11 years but less than 12 years	68%
12 years but less than 13 years	76%
13 years but less than 14 years	84%

14 years but less than 15 years	92%
15 years or more	100%

Section 16. Decedent's net probate estate. The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

Section 17. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under [section 16], of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(a) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person

other than the decedent's estate or surviving spouse.

(b) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the 2 year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(a) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those subsections if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the decedent's death.

Section 18. Decedent's nonprobate transfers to surviving spouse. Excluding property passing to the surviving spouse under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

(3) all other property that would have been included in the augmented estate under [section 17(1) or (2)] had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

Section 19. Surviving spouse's property and nonprobate transfers to others. (1) Except to the extent included in the augmented estate under [sections 16 or 18], the value of the augmented estate includes the value of:

(a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the

decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

Section 20. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under [sections 17, 18, or 19] is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the decedent's death.

(3) In case of overlapping application to the same property of [sections 17, 18, or 19], the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Section 21. Sources from which elective share payable. (1) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions

due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(a) amounts included in the augmented estate under [section 16] which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under [section 18];

(b) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(c) the marital-property portion of amounts included in the augmented estate under [section 19].

(2) The marital-property portion under subsection (1)(c) is computed by multiplying the value of the amounts included in the augmented estate under [section 19] by the percentage of the augmented estate set forth in the schedule in [section 15(2)] appropriate to the length of time the spouse and the decedent were married to each other.

(3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under [section 17(1) and (2)] are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests.

(4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

Section 22. Effect of premarital or marital agreement right to elect and of other rights. (1) In this

section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The agreement is enforceable without consideration.

(3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

(a) the agreement was involuntary or the result of duress;

(b) the surviving spouse did not have access to independent legal representation under subsection (4);

(c) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed, modified, or waived; or

(d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (5).

(4) A surviving spouse had access to independent legal representation if:

(a) before signing an agreement, the surviving spouse had a reasonable time to:

(i) decide whether to retain a lawyer to provide independent legal representation; and

(ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal representation.

(5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

(a) received a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the other spouse;

(b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subsection (5)(a).

(6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or

equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession or by virtue of any will executed before the waiver or property settlement.

Section 23. Section 72-2-223, MCA, is amended to read:

"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under ~~72-2-227(2)~~ and ~~(3)~~ [section 21(3) and (4)] and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under 72-2-721."

Section 24. Section 72-2-225, MCA, is amended to read:

"72-2-225. Proceeding for elective share -- time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 17], is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 17], is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under ~~72-2-227~~ [section 21]. If it appears that a fund or property included in the augmented estate

has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under ~~72-2-227~~ section 21 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 25. Section 72-2-228, MCA, is amended to read:

"72-2-228. Protection of payors and other third parties. (1) Although under ~~72-2-222~~ section 17 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable only for actions taken 2 or more business days after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any

amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section."

Section 26. Section 72-2-230, MCA, is amended to read:

"72-2-230. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of

property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in ~~72-2-227~~ [section 21], to the person who would have been entitled to it were that section or part of that section not preempted."

Section 27. Section 72-2-412, MCA, is amended to read:

"72-2-412. Homestead allowance. A decedent's surviving spouse is entitled to a homestead allowance of ~~\$20,000~~ \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to ~~\$20,000~~ \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 28. Section 72-2-413, MCA, is amended to read:

"72-2-413. Exempt property. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding ~~\$10,000~~ \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than ~~\$10,000~~ \$15,000 or if there is not ~~\$10,000~~ \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~\$10,000~~ \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share."

Section 29. Section 72-2-415, MCA, is amended to read:

"72-2-415. Source, determination, and documentation. (1) If the estate is otherwise sufficient,

property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding ~~\$18,000~~ \$27,000 or periodic installments not exceeding ~~\$1,500~~ \$2,250 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-223(2)."

Section 30. Section 72-2-613, MCA, is amended to read:

"72-2-613. Antilapse -- deceased devisee -- class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a

descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

~~(e)~~(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

~~(f)~~(f) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

~~(e)~~(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

~~(f)~~(h) "Surviving ~~devisee~~, or in the phrase "surviving ~~descendant~~ devisees" or "surviving ~~descendants~~" means ~~a devisee or a descendant~~ devisees or descendants who neither predeceased the testator nor ~~is considered~~ are deemed to have predeceased the testator under 72-2-712.

~~(g)~~(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise

to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this ~~subsection (b)~~ section, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise ~~only if an expressly designated devisee of the alternative devise is entitled to take under the will. if:~~

(i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation

substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 31. Section 72-2-616, MCA, is amended to read:

"72-2-616. Nonademption of specific devises -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

~~(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the~~

~~specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e):~~

(f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

- (a) "incapacitated principal" means a principal who is an incapacitated person;
- (b) no adjudication of incapacity before death is necessary; and
- (c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 32. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by 120 hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is ~~considered~~ deemed to have

predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is ~~considered~~ deemed to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item

of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 33. Section 72-2-716, MCA, is amended to read:

"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death registration -- deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.

(f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who

would take under a class gift created in the beneficiary designation.

~~(e)(g)~~ "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

~~(f)(h)~~ "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving" in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor is ~~considered~~ are deemed to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following ~~provisions~~ apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded

by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take~~. if:

(i) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor,

but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 34. Section 72-2-717, MCA, is amended to read:

"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.

(1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in

possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

~~(d)~~(e) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

~~(e)~~(f) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

~~(f)~~(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

~~(g)~~(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving" in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who neither predeceased the distribution date nor is considered are deemed to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving

descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest ~~only if an~~ if:

(i) the alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 35. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as

evidence of ownership.

(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return

receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee Retirement Income Security Act of 1974, as amended,~~ with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to

the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 36. Section 72-2-814, MCA, is amended to read:

"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse

in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital

relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person for value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or

other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee Retirement Income Security Act of 1974, as amended,~~ with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this title, the provisions of this section control. This subsection does not apply if a divorced individual designates a former spouse as personal representative of the estate subsequent to the divorce."

Section 37. 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 what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Section 38. Modification to achieve transferor's tax objectives. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

Section 39. Short title. [Sections 39 through 55] may be cited as the "Uniform Disclaimer of Property Interests Act".

Section 40. Definitions. As used in [sections 39 through 55] the following definitions apply:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the

disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

Section 41. Scope. [Sections 39 through 55] applies to disclaimers of any interest in or power over property, whenever created.

Section 42. [Sections 39 through 55] supplemented by other law. (1) Unless displaced by a provision of [sections 39 through 55], the principles of law and equity supplement [sections 39 through 55].

(2) [Sections 39 through 55] do not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than [sections 39 through 55].

Section 43. Power to disclaim -- general requirements -- when revocable. (1) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in [section 50]. In this subsection:

(a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to [section 50] or when it becomes effective as provided in [sections 44 through 49], whichever occurs later.

(6) A disclaimer made under [sections 39 through 55] is not a transfer, assignment, or release.

Section 44. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by [section 45 or 46], the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

(i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Section 45. Disclaimer of rights of survivorship in jointly held property. (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(a) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(b) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Section 46. Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Section 47. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Section 48. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Section 49. Disclaimer of power held in fiduciary capacity. (1) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Section 50. Delivery or filing. (1) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- (a) an annuity or insurance policy;
- (b) an account with a designation for payment on death;
- (c) a security registered in beneficiary form;
- (d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or
- (e) any other nonprobate transfer at death.

(2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(3) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

- (a) a disclaimer must be delivered to the personal representative of the decedent's estate; or
- (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(4) In the case of an interest in a testamentary trust:

- (a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or
- (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(5) In the case of an interest in an inter vivos trust:

- (a) a disclaimer must be delivered to the trustee then serving;

(b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or
 (c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(6) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(7) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(a) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of the county where the real property that is the subject of the disclaimer is located.

(8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Section 51. When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the

right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) the disclaimant accepts the interest sought to be disclaimed;

(b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(c) a judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than [sections 39 through 55].

(6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under [sections 39 through 55] had the disclaimer not been barred.

Section 52. Tax qualified disclaimer. Notwithstanding any other provision of [sections 39 through 55], if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under [sections 39 through 55].

Section 53. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in [section 50(7)(b)], failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Section 54. Application to existing relationships. Except as otherwise provided in [section 51], an

interest in or power over property existing on [the effective date of this act] as to which the time for delivering or filing a disclaimer under law superseded by [sections 39 through 55] has not expired may be disclaimed after [the effective date of this act].

Section 55. Relation to electronic signatures in global and national commerce act. [Sections 39 through 55] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

Section 56. Section 72-3-102, MCA, is amended to read:

"72-3-102. Necessity of order of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court."

Section 57. Section 72-3-112, MCA, is amended to read:

"72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had the decedent's domicile at the time of death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other

instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued."

Section 58. Section 72-3-122, MCA, is amended to read:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced ~~after the time period thereafter~~, if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms

of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 59. Section 72-3-131, MCA, is amended to read:

"72-3-131. ~~Compromise of controversies~~ Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties to the proceeding, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

Section 60. Section 72-3-201, MCA, is amended to read:

"72-3-201. Applications to be verified. Applications for informal probate or informal appointment must be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant."

Section 61. Section 72-3-202, MCA, is amended to read:

"72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative,

must contain the following:

- (1) a statement of the interest of the applicant;
- (2) the name and date of death of the decedent, the decedent's age, and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;
- (4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (5) a statement indicating whether the applicant has received a demand for notice or 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; and
- (6) that the time limit for informal probate or appointment as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment."

Section 62. Section 72-3-203, MCA, is amended to read:

"72-3-203. Probate and appointment under will -- additional information required. (1) An application for informal probate of a will must state the following in addition to the statements required by 72-3-202:

- (a) that the original of the decedent's last will is in the possession of the court or accompanies the application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, accompanies the application;
- (b) that the applicant to the best of the applicant's knowledge believes the will to have been validly executed;
- (c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;
- ~~(d) that the time limit for informal probate, as provided in this chapter, has not expired either because~~

~~3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.~~

(2) An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought."

Section 63. Formal testacy proceedings -- contested cases. In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

Section 64. Section 72-3-401, MCA, is amended to read:

"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (†) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative ~~or other order terminating the proceeding.~~ or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

~~(2) If a probate estate has not been closed within 3 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator."~~

Section 65. Section 72-3-404, MCA, is amended to read:

"72-3-404. Powers and duties of personal representative in supervised administration. ~~(1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.~~

~~————(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.~~

~~————(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that may be ordered by the court must be endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative."~~

Section 66. Section 72-3-502, MCA, is amended to read:

"72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) the custodial parent of a minor decedent;

(4) other devisees of the decedent;

(5) the surviving spouse of the decedent;

(6) the parent of an adult decedent who was survived by issue, none of whom is an adult;

- (6)(7) other heirs of the decedent;
- (7)(8) public administrator;
- (8)(9) 45 days after the death of the decedent, any creditor."

Section 67. Section 72-3-504, MCA, is amended to read:

"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority. (1) A person entitled to letters under 72-3-502(2) through (6) (7) may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person."

Section 68. Section 72-3-514, MCA, is amended to read:

"72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of ~~\$1,000~~ \$5,000 or any creditor having a claim in excess of ~~\$1,000~~ \$5,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for removal and appointment of a successor personal representative."

Section 69. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory -- appraisal. (1) Within 9 months after appointment, a personal representative who

is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

(2) The inventory must include a statement of the ~~full and true~~ fair market value of the decedent's interest in every item listed in the inventory. The personal representative may ~~appoint one or more~~ employ a qualified and disinterested ~~persons~~ appraiser to assist ~~the personal representative~~ in ascertaining the fair market value as of the date of the decedent's death of ~~all assets included in the estate~~ any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any ~~appraisers~~ appraiser must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to ~~interested persons~~ the following who request it: heirs, devisees, and creditors with allowed claims that have not been satisfied; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it."

Section 70. Section 72-3-611, MCA, is amended to read:

"72-3-611. No surcharge for authorized acts generally -- limitation. (1) A personal representative may 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 and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, 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 the personal representative's appointment or fitness to continue, or a supervised administration proceeding.

(2) This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any

minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

Section 71. Section 72-3-613, MCA, is amended to read:

"72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government

obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) ~~with the consent of the heirs or devisees or the court~~, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) ~~with the consent of the heirs or devisees or the court~~, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the

personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate that the personal representative represents, nor be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.~~

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 72. Powers of personal representatives in general. (1) Until termination of his appointment

a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

(2) A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.

Section 73. Section 72-3-618, MCA, is amended to read:

"72-3-618. Persons dealing with personal representative -- protection. (1) A person who in good faith and without notice either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in ~~72-3-404(3)~~ 72-3-404, a provision in any will or order of court purporting to limit the power of a personal representative is not effective except as to persons with actual knowledge of the provision.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection expressed in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 74. Section 72-3-631, MCA, is amended to read:

"72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for services. ~~The compensation may not exceed 3% of the first \$40,000 of the value of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000 as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.~~

~~————(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative may not exceed 2% of the interest passing.~~

~~————(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation may not exceed 2% of the value of the estate, except that it may not be less than \$100.~~

~~————(4) If there is more than one personal representative, only one compensation is allowed.~~

~~————(5) The court may allow additional compensation for extraordinary services. The additional compensation may not be greater than the amount that is allowed for the original compensation.~~

~~(6)(2) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court."~~

Section 75. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, 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 and nonprobate transferees of the decedent unless presented within the earlier of the following time limitations:

- (a) within 1 year after the decedent's death; or
- (b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication.

~~(2) However, claims~~ A claim described in subsection (1) which is barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state ~~are also~~ is barred in this state.

~~(2)(3)~~ All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision of the state, 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 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

~~(3)~~(4) This section does not affect or prevent:

(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 the decedent or the personal representative 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."

Section 76. Section 72-3-815, MCA, is amended to read:

"72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative ~~with the consent of the heirs or devisees or the court~~ may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated."

Section 77. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;
or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year or property not exceeding ~~\$10,000~~ \$50,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 78. Section 72-3-1012, MCA, is amended to read:

"72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against one or more distributees. ~~A distributee is not liable to claimants~~ No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the distributee's distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the right of contribution against other distributees."

Section 79. Section 72-3-1013, MCA, is amended to read:

"72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1

year after the time of distribution ~~thereof~~, but all claims of creditors of the decedent are barred 1 year after the decedent's death.

(2) This section does not bar an action to recover property or value received as the result of fraud."

Section 80. Section 72-4-203, MCA, is amended to read:

"72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to the foreign personal representative's last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the foreign personal representative's decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign personal representative must be allowed at least 30 days within which to appear or respond."

Section 81. Section 72-6-111, MCA, is amended to read:

"72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, ~~beneficiary~~ transfer on death deed, as defined in ~~72-6-124~~ [section 84], marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will,

executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state."

Section 82. Liability of nonprobate transferees for creditor claims and statutory allowances. (1)

In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in

proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

Section 83. Short title. [Sections 83 through 100] may be cited as the "Uniform Real Property Transfer on Death Act".

Section 84. Definitions. As used in [sections 83 through 100], the following definitions apply:

- (1) "Beneficiary" means a person that receives property under a transfer on death deed.
- (2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.
- (3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this part.

(7) "Transferor" means an individual who makes a transfer on death deed.

Section 85. Applicability. [Sections 83 through 100] applies to a transfer on death deed made before, on, or after [the effective date of this act] by a transferor dying on or after [the effective date of this act].

Section 86. Nonexclusivity. [Section 83 through 100] does not affect any method of transferring property otherwise permitted under the law of this state.

Section 87. Transfer on death deed authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

Section 88. Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

Section 89. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

Section 90. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Section 91. Requirements. A transfer on death deed:

(1) except as otherwise provided in subsection (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) must be recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the property is located.

Section 92. Notice, delivery, acceptance, consideration not required. A transfer on death deed is effective without:

- (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (2) consideration.

Section 93. Revocation by instrument authorized -- revocation by act not permitted. (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) is one of the following:

- (i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
- (ii) an instrument of revocation that expressly revokes the deed or part of the deed;
- (iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
- (b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded

before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

- (a) revocation by a transferor does not affect the deed as to the interest of another transferor; and
- (b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

Section 94. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

- (2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;
- (3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
- (4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- (5) create a legal or equitable interest in favor of the designated beneficiary; or
- (6) subject the property to claims or process of a creditor of the designated beneficiary.

Section 95. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in [section 82], or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

Section 96. Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [sections 39 through 55], the Uniform Disclaimer of Property Interests Act.

Section 97. Liability for creditor claims and statutory allowances. A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [section 82].

Section 98. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of [sections 83 through 100] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed name

Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

Printed name

Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ [(SEAL)] _____

Signature

Date

_____ [(SEAL)] _____

Signature

Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.



How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk and recorder of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form, and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

Section 99. Optional form of revocation. The following form may be used to create an instrument of revocation under [sections 83 through 100]. The other sections of [sections 83 through 100] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

_____ [(SEAL)] _____

Signature

Date

_____ [(SEAL)] _____

Signature

Date

ACKNOWLEDGMENT

(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the office of the county clerk and recorder of each county where the property is located. The form must



be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk and recorder of deeds of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

Section 100. Prior executed and recorded beneficiary deed. Any beneficiary deed that was executed and recorded prior to [the effective date of this act] and which complied with the law in effect when it was recorded, shall be deemed to be a transfer on death deed for the purposes of [sections 83 through 100].

Section 101. Section 72-7-401, MCA, is amended to read:

"72-7-401. Disclaimer. As provided by ~~72-2-814~~ sections 47 and 48:

- (1) a powerholder may disclaim all or part of a power of appointment; and
- (2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property."

Section 102. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. (1) The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, ~~including attorney fees, the amounts~~ the amount provided for in 72-3-631 ~~and 72-3-633~~.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to

the protected person or from the protected person's estate to be paid to the public administrator as full compensation for the public administrator's services, excluding court costs and attorney fees. The total sum deducted as compensation for the public administrator may not be less than \$100."

Section 103. Directions to code commissioner. (1) The code commissioner is instructed to renumber 72-2-223, 72-2-225, 72-2-228, and 72-2-230 in accordance with the Uniform Probate Code.

(2) The code commissioner is instructed to change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2019 legislature, to reflect new section numbers assigned pursuant to this section.

Section 104. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 1, and the provisions of Title 72, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [section 2].

(3) [Sections 12 through 22] are intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [sections 12 through 22].

(4) [Sections 37 through 55] are intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [sections 37 through 55].

(5) [Section 63] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 63].

(6) [Section 72] is intended to be codified as an integral part of Title 72, chapter 3, part 6, and the provisions of Title 72, chapter 3, part 6, apply to [section 72].

(7) [Section 82] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [section 82].

(8) [Sections 83 through 100] are intended to be codified as an integral part of Title 72, chapter 6, and the provisions of Title 72, chapter 6, apply to [sections 83 through 100].

Section 105. Repealer. The following sections of the Montana Code Annotated are repealed:

72-2-215. Reporting duty of personal representative in estate involving alien heir.

- 72-2-221. Elective share.
- 72-2-222. Augmented estate.
- 72-2-224. Waiver of right to elect and of other rights.
- 72-2-226. Effect of election on statutory benefits.
- 72-2-227. Sources from which elective share payable.
- 72-2-811. Disclaimer of property interests.
- 72-3-113. Rules for determining location of property.
- 72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will.
- 72-3-633. Compensation of attorney.
- 72-6-121. Beneficiary deed -- form -- definitions.
- 72-6-123. Liability for creditor claims and statutory allowances.

- END -

I hereby certify that the within bill,
SB 0225, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 225

INTRODUCED BY S. FITZPATRICK, K. DUDIK, J. KRAUTTER, M. MCNALLY, B. MERCER

AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-811, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA.