

1 HOUSE BILL NO. 452

2 INTRODUCED BY B. MERCER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNIFORM LAWS RELATED TO TRUSTS
5 AND PROBATE; CLARIFYING THE REQUIREMENTS OF A PERSONAL REPRESENTATIVE REGARDING
6 INVENTORY AND APPRAISAL OF A DECEDENT'S PROPERTY; PROVIDING DEFINITIONS; CLARIFYING
7 REQUIREMENTS FOR PROVIDING NOTICE; CLARIFYING PARTIES TREATED AS QUALIFIED
8 BENEFICIARIES OF CHARITABLE TRUSTS; CLARIFYING THE TERMS AND CONDITIONS THAT AFFECT
9 THE VALIDITY OF A NONJUDICIAL SETTLEMENT AGREEMENT; CLARIFYING THAT FOR PURPOSES OF
10 MODIFYING AN IRREVOCABLE TRUST BY THE CONSENT OF THE QUALIFIED BENEFICIARIES, A
11 SPENDTHRIFT PROVISION IN THE TRUST INSTRUMENT IS NOT PRESUMED TO CONSTITUTE A
12 MATERIAL PURPOSE OF THE TRUST; AND AMENDING SECTIONS 72-1-103, 72-3-607, 72-38-109, 72-38-
13 110, 72-38-111, AND 72-38-411, MCA."

14

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

16

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

18 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent
19 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in
20 chapters 1 through 6, the following definitions apply:

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

24 (2) "Application" means a written request to the clerk for an order of informal probate or
25 appointment under chapter 3, part 2.

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

27 (a) a trust beneficiary, includes a person who has any present or future interest, vested or
28 contingent, and also includes the owner of an interest by assignment or other transfer;

- 1 (b) a charitable trust, includes any person entitled to enforce the trust;
- 2 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:
- 3 (i) an account with POD designation or a security registered in beneficiary form (TOD); or
- 4 (ii) any other nonprobate transfer at death; and
- 5 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a
- 6 trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of
- 7 attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- 8 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:
- 9 (a) an account with POD designation or a security registered in beneficiary form (TOD); or
- 10 (b) any other nonprobate transfer at death.
- 11 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate
- 12 succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a
- 13 foster child, a grandchild, or any more remote descendant.
- 14 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the
- 15 decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that
- 16 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses
- 17 and expenses of administration.
- 18 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or
- 19 protected person to specific assets alleged to be included in the estate.
- 20 (7) "Clerk" or "clerk of court" means the clerk of the district court.
- 21 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
- 22 person.
- 23 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs
- 24 of decedents.
- 25 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with
- 26 the relationship of parent and child at each generation being determined by the definition of child and parent
- 27 contained in this code.
- 28 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property

1 and when used as a verb means to dispose of real or personal property by will.

2 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3,
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
4 is the devisee and the beneficiaries are not devisees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under
11 circumstances that entitle one or more to the whole of the property on the death of the other or others but
12 excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to
13 that party's contribution.

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

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

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

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

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

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

24 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died
25 without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship
26 is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

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

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

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

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

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

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

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

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

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

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

19 (45) "Settlement", in reference to a decedent's estate, includes the full process of administration,
20 distribution, and closing.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (57) "Verification" has the meaning provided in 25-4-203 and may be proved by an unsworn written
20 verification in accordance with 1-6-105.

21 ~~(57)~~(58) "Ward" means an individual described in 72-5-101.

22 ~~(58)~~(59) "Will" includes codicil and any testamentary instrument that merely appoints an executor,
23 revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual
24 or class to succeed to property of the decedent passing by intestate succession."
25

26 **Section 2.** Section 72-3-607, MCA, is amended to read:

27 **"72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative
28 who is not a special administrator or a successor to another representative who has previously discharged this

1 duty shall prepare an inventory of probate property owned by the decedent at the time of the decedent's death,
2 listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as
3 of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference
4 to the item.

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

11 (3) The personal representative shall:

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

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

16 (4) AN HEIR, DEVISEE, CREDITOR, AND ANY OTHER INTERESTED PERSON MAY WAIVE THEIR RIGHT TO
17 RECEIVE A COPY OF THE INVENTORY BY EXECUTING A WRITTEN WAIVER THAT IS DELIVERED TO THE PERSONAL
18 REPRESENTATIVE. FOR THE PURPOSES OF SUBSECTION (3)(A), THE PERSONAL REPRESENTATIVE IS CONSIDERED TO
19 HAVE SENT A COPY OF THE INVENTORY TO THE WAIVING PARTY.

20 (5) The personal representative may prepare a list of all property owned by the decedent at the
21 time of decedent's death, including both probate and nonprobate property, the fair market value and nature of
22 the decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate
23 transferee.

24 (6) Unless the court orders otherwise after notice and hearing, within 90 days of a demand by the
25 decedent's spouse who has a right to election under 72-2-232 and whose right has not expired pursuant to 72-
26 2-241, the personal representative who is not a special administrator or a successor to another representative
27 who has previously discharged this duty shall prepare a list of all property owned by the decedent at the time of
28 decedent's death, including both probate and nonprobate property, the fair market value and nature of the

1 decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate
2 transferee, in each case, to the extent known or reasonably discoverable by the personal representative, and
3 shall mail a copy of the list to the surviving spouse who has demanded it.

4 (7) The personal representative has authority to acquire information necessary to complete the
5 inventory described in subsection (1) and to complete the list described in subsections (4) (5) and (5) (6).
6 Parties providing the information requested by the personal representative are discharged from all liability for
7 doing so. The personal representative is discharged from all liability for disclosing the information necessary to
8 fulfill the personal representative's duties and for disclosing the information to the surviving spouse under
9 subsection (5)."

10

11 **Section 3.** Section 72-38-109, MCA, is amended to read:

12 **"72-38-109. Methods and waiver of notice.** (1) (a) Notice to a person under this chapter or the
13 sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable
14 under the circumstances and likely to result in receipt of the notice or document.

15 (b) Permissible methods of notice or for sending a document include first-class mail, personal
16 delivery, delivery to the person's last-known place of residence or place of business, or a properly directed
17 electronic message.

18 (c) Notice of at least 30 days prior to the event for which notice is given ~~must be~~ is considered to
19 be reasonable unless otherwise specifically provided in this chapter.

20 (2) Notice otherwise required under this chapter or a document otherwise required to be sent
21 under this chapter need not be provided to a person whose identity or location is unknown to and not
22 reasonably ascertainable by the trustee.

23 (3) Notice under this chapter or the sending of a document under this chapter may be waived by
24 the person to be notified or sent the document.

25 (4) Notice of a judicial proceeding must be given as provided in 72-38-208 through 72-38-212."
26

27 **Section 4.** Section 72-38-110, MCA, is amended to read:

28 **"72-38-110. Others treated as qualified beneficiaries.** (1) Except ~~for~~ as provided in 72-38-813,

1 whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give
2 notice to any other beneficiary who has sent the trustee a request for notice.

3 (2) A charitable organization expressly designated to receive distributions under the terms of a
4 charitable trust has the rights of a beneficiary and a qualified beneficiary under this chapter if the charitable
5 organization, on the date the charitable organization's qualification is being determined:

6 (a) is a distributee or permissible distributee of trust income or principal;

7 (b) would be a distributee or permissible distributee of trust income or principal upon the
8 termination of the interests of other distributees or permissible distributees then receiving or eligible to receive
9 distributions; or

10 (c) would be a distributee or permissible distributee of trust income or principal if the trust
11 terminated on that date.

12 (3) A person appointed to enforce a trust created for the care of an animal or another
13 noncharitable purpose as provided in 72-38-408 or 72-38-409 has the rights of a qualified beneficiary under this
14 chapter.

15 (4) With respect to a charitable trust having its principal place of administration in this state:

16 (a) The attorney general of this state has the rights of a beneficiary.

17 (b) The attorney general of this state has the following two rights of a qualified beneficiary:

18 (i) the right to request information pursuant to 72-38-813(1); and

19 (ii) the right to request a copy of the annual report pursuant to 72-38-813(3).

20 (c) The attorney general of this state has all of the rights of a qualified beneficiary of a charitable

21 trust if, on the date that a determination is being made as to the rights of the attorney general under this

22 subsection: (4), a charitable interest in the trust is not represented by a qualified beneficiary under subsection

23 (2).

24 ~~(i) any charitable organization:~~

25 ~~(A) is a distributee or permissible distributee of trust income or principal; or~~

26 ~~(B) would be a distributee or permissible distributee of trust income or principal if the trust terminated~~

27 ~~on that date; and~~

28 ~~(ii) no charitable organization expressly designated to receive distributions under the terms of the~~

1 charitable trust:

2 (A) ~~is a distributee or permissible distributee of trust income or principal; or~~

3 (B) ~~would be a distributee or permissible distributee of trust income or principal if the trust terminated~~
4 ~~on that date."~~

5

6 **Section 5.** Section 72-38-111, MCA, is amended to read:

7 **"72-38-111. Nonjudicial settlement agreements.** (1) For purposes of this section, "interested
8 persons" means persons whose consent would be required in order to achieve a binding settlement were the
9 settlement to be approved by the court.

10 (2) Except as otherwise provided in subsection (3), interested persons may enter into a binding
11 nonjudicial settlement agreement with respect to any matter involving a trust.

12 (3) ~~Except as provided in 72-38-411 (1), a~~ A nonjudicial settlement agreement is valid only to the
13 extent it does not violate a material purpose of the trust and includes terms and conditions that could be
14 properly approved by the court under this chapter.

15 (4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited
16 to:

17 (a) the interpretation or construction of the terms of the trust;

18 (b) the approval of a trustee's report or accounting;

19 (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any
20 necessary or desirable power;

21 (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;

22 (e) transfer of a trust's principal place of administration; and

23 (f) liability of a trustee for an action relating to the trust.

24 (5) Any interested person may request the court to approve a nonjudicial settlement agreement, to
25 determine whether the representation as provided in Title 72, chapter 38, part 3, was adequate, and to
26 determine whether the agreement contains terms and conditions the court could have properly approved."

27

28 **Section 6.** Section 72-38-411, MCA, is amended to read:

1 **"72-38-411. Modification or termination of irrevocable trust by consent.** (1) An irrevocable trust
2 may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or
3 termination is inconsistent with a material noncharitable purpose of the trust. Modification or termination of a
4 charitable trust requires the consent of the attorney general. A settlor's power to consent to a trust's
5 modification or termination may be exercised by an agent under a power of attorney only to the extent
6 expressly authorized by the power of attorney and the terms of the trust; by the settlor's conservator with the
7 approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's
8 guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a
9 conservator has not been appointed. This subsection does not apply to irrevocable trusts created before or to
10 revocable trusts that became irrevocable before October 1, 1989.

11 (2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court
12 concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An
13 irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification
14 is not inconsistent with a material purpose of the trust. Modification or termination of a charitable trust requires
15 the consent of the attorney general.

16 (3) A For the purposes of this section, a spendthrift provision in the terms of the trust is not
17 presumed to constitute a material purpose of the trust.

18 (4) Upon termination of a trust under subsection (1) or (2), the trustee shall distribute the trust
19 property as agreed by the beneficiaries. In the case of a charitable trust, the trust property must be distributed
20 in accord with the terms of the trust, and in the absence of applicable terms, consistent with the charitable
21 purposes of the trust as agreed by the attorney general and the beneficiaries or, if there are no charitable
22 organizations with the rights of a beneficiary and the termination is pursuant to subsection (1), then as agreed
23 by the settlor and the attorney general, but if the termination is pursuant to subsection (2), then as decided by
24 the court.

25 (5) If not all of the beneficiaries consent to a proposed modification or termination of the trust
26 under subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied
27 that:

28 (a) if all of the beneficiaries had consented, the trust could have been modified or terminated under

1 this section; and

2 (b) the interests of a beneficiary who does not consent will be adequately protected."

3 - END -