

TITLE 30.1
UNIFORM PROBATE CODE

CHAPTER 30.1-01
SHORT TITLE - CONSTRUCTION - GENERAL PROVISIONS - DEFINITIONS

30.1-01-01. (1-101) Short title.

This title shall be known and may be cited as the Uniform Probate Code.

30.1-01-02. (1-102) Purposes - Rule of construction.

1. This title shall be liberally construed and applied to promote its underlying purposes and policies.
2. The underlying purposes and policies of this title are:
 - a. To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons.
 - b. To discover and make effective the intent of a decedent in distribution of the decedent's property.
 - c. To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors.
 - d. To facilitate the use and enforcement of certain trusts.
 - e. To make uniform the law among the various jurisdictions.

30.1-01-03. (1-106) Effect of fraud and evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this title, or if fraud is used to avoid or circumvent the provisions or purposes of this title, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during the decedent's lifetime which affects the succession of the decedent's estate.

30.1-01-04. (1-107) Evidence of death or status.

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

1. Death occurs when an individual is determined to be dead under chapter 23-06.3.
2. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death, and the identity of the decedent.
3. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
4. In the absence of prima facie evidence of death under subsection 2 or 3, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
5. An individual whose death is not established under this section, who is absent for a continuous period of five years, during which the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
6. In the absence of evidence disputing the time of death stated on a document described in subsection 2 or 3, a document described in subsection 2 or 3 that states a time of death one hundred twenty hours or more after the time of death of another

individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

30.1-01-05. (1-108) Acts by holder of general power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

30.1-01-06. (1-201) General definitions.

Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

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. "Alternative resource plan" means an alternative plan to guardianship which uses available support services and arrangements acceptable to the alleged incapacitated person. The term includes the use of support services such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, home and community-based care, human service zones, developmental disability services, powers of attorney, durable powers of attorney, health care directives, supported decisionmaking, representative and protective payees, and licensed congregate care facilities.
3. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
4. "Augmented estate" means the estate described in section 30.1-05-02.
5. "Beneficiary", as it relates to 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; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate transfer at death; and, as it relates to 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, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
6. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate transfer at death.
7. "Child" includes an individual entitled to take as a child under this title 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.
8. "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 which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
9. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.

10. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.
11. "Descendant" of an individual means all 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 title.
12. "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.
13. "Devisee" means a person designated in a will to receive a devise. 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.
14. "Disability" means cause for a protective order as described in section 30.1-29-01.
15. "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 thereto 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 the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
16. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
17. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
18. "Expert examiner" means:
 - a. A licensed physician;
 - b. A psychiatrist;
 - c. A licensed psychologist trained in a clinical program;
 - d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
 - e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.
19. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
20. "Foreign personal representative" means a personal representative appointed by another jurisdiction.
21. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
22. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
23. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.
24. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
25. "Incapacitated person" means any adult individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the individual lacks capacity to make or communicate responsible decisions

concerning the individual's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or if the incapacity endangers the individual's health or safety.

26. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
27. "Interested person" includes:
 - a. Except as provided under section b:
 - (1) Heirs and devisees;
 - (2) Children;
 - (3) Spouses;
 - (4) Creditors;
 - (5) Beneficiaries;
 - (6) Any individual having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person;
 - (7) Person having priority for appointment as personal representative; and
 - (8) Other fiduciaries representing interested persons.
 - b. For purposes of guardianships and conservatorships:
 - (1) The petitioner for appointment of the guardian;
 - (2) The spouse, parent, adult children, or siblings of the ward, protected person, or an adult relative if a spouse, parent, adult child, sibling, or protected person cannot be found;
 - (3) An adult individual who has lived with a ward or a protected person for a period of more than six months;
 - (4) An attorney for the ward or protected person;
 - (5) A representative payee for the ward or protected person; and
 - (6) Any other person designated by the court.

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.

28. "Issue" of an individual means descendant as defined in subsection 11.
29. "Joint tenants with the right of survivorship" and "community property 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.
30. "Lease" includes an oil, gas, or other mineral lease.
31. "Least restrictive form of intervention" includes only the limitations necessary to provide the needed care and services for a guardianship, and the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.
32. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
33. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity and includes limited conservators as described by section 30.1-29-20.
34. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity and includes limited guardians as described by section 30.1-28-04.
35. "Minor" means a person who is under eighteen years of age.
36. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
37. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

38. "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
39. "Parent" includes any individual entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
40. "Payer" 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.
41. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity.
42. "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.
43. "Petition" means a written request to the court for an order after notice.
44. "Proceeding" includes action at law and suit in equity.
45. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
46. "Protected person" means a minor or other individual for whom a conservator or limited conservator has been appointed, or other protective order has been made.
47. "Protective proceeding" means a proceeding under section 30.1-29-01 to determine that an individual cannot effectively manage or apply the individual's estate to necessary ends, either because the individual lacks the ability or is otherwise inconvenienced, or because the individual is a minor, and to secure administration of the individual's estate by a conservator or other appropriate relief.
48. "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.
49. "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic medication by a clear and unequivocal response.
50. "Security" includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, 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 or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, 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.
51. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
52. "Sign" means, with present intent to authenticate or adopt a record other than a will, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.
53. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
54. "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.
55. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
56. "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
57. "Supervised administration" refers to the proceedings described in chapter 30.1-16.

- 58. "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections 30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".
- 59. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 60. "Trust" includes an express trust, private or charitable, with additions thereto, 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 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and 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.
- 61. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 62. "Visitor" means an individual, in guardianship proceedings, who is trained in nursing, social work, medical care, mental health care, or rehabilitation and is an employee or special appointee of the court with no personal interest in the proceedings.
- 63. "Ward" means an individual for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
- 64. "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.