

## **CHAPTER 32-23 DECLARATORY JUDGMENTS**

### **32-23-01. Court of record may enter a declaratory judgment.**

A court of record within its jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

### **32-23-02. Power to construe contracts, statutes, and wills.**

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and may obtain a declaration of rights, status, or other legal relations thereunder.

### **32-23-03. Construction before or after breach.**

A contract may be construed either before or after there has been a breach thereof.

### **32-23-04. Rights in trust or estate determined.**

Any person interested as or through a personal representative, trustee, guardian, conservator, or other fiduciary, creditor, devisee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a mentally ill or deficient person, or an insolvent, may have a declaration of rights or legal relations in respect thereto:

1. To ascertain any class of creditors, devisees, heirs, next of kin, or others;
2. To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
3. To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

### **32-23-05. Enumeration not exclusive.**

The enumeration of powers in sections 32-23-02, 32-23-03, and 32-23-04 does not limit or restrict the exercise of the general powers conferred in section 32-23-01, in any proceeding in which declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

### **32-23-06. Entering of declaratory judgment discretionary with court - Exception.**

The court may refuse to render or enter a declaratory judgment or decree if such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. However, the court shall render or enter a declaratory judgment or decree in an action brought by or against an insurance company to determine liability of the insurance company to the insured to defend, or duty to defend, although the insured's liability for the loss may not have been determined.

### **32-23-07. Review of declaratory judgment.**

All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

### **32-23-08. Supplemental relief.**

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

**32-23-09. Trial of issue of fact.**

When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

**32-23-10. Costs.**

In any proceeding under this chapter, the court may make such award of costs as may seem equitable and just.

**32-23-11. Parties.**

When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties, and a declaration may not prejudice the rights of persons not parties to the proceeding. In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party, and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must be served with a copy of the proceeding and is entitled to be heard. Any trade or professional association authorized to do, and doing, business in the state and whose members are licensed and regulated by state or federal agencies has standing to bring an action for declaratory judgment to determine any question of construction or validity of any statute, ordinance, resolution, rule, or regulation that threatens to injure its members.

**32-23-12. Construction of chapter.**

This chapter is remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be construed and administered liberally.

**32-23-13. Definition of person.**

The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, limited liability company, joint-stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.