

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."

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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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 (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."  
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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 receive a  
17 copy of the inventory by executing a written waiver that is delivered to the personal representative. For the  
18 purposes of subsection (3)(a), the personal representative is considered to have sent a copy of the inventory to  
19 the waiving party.

20 (4)(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 (5)(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 ~~(6)(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). Parties  
6 providing the information requested by the personal representative are discharged from all liability for doing so.  
7 The personal representative is discharged from all liability for disclosing the information necessary to fulfill the  
8 personal representative's duties and for disclosing the information to the surviving spouse under subsection  
9 (5)."

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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."

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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,