

TITLE 15
UNIFORM PROBATE CODE

CHAPTER 8
TRUST AND ESTATE DISPUTE RESOLUTION ACT

PART 1.
PURPOSE, POWERS OF COURTS AND DEFINITIONS

15-8-101. TITLE -- PURPOSE. (1) This chapter shall be known and may be cited as either the "Trust and Estate Dispute Resolution Act" or "TEDRA."

(2) The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under [title 15](#), Idaho Code. The provisions of this chapter are intended to provide nonjudicial methods for the resolution of matters by agreement. This chapter also provides for judicial resolution of disputes if a nonjudicial resolution is not obtained that are alternatives to the other provisions for resolution of contested matters under other chapters of [title 15](#), Idaho Code. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in [title 15](#), Idaho Code, or other Idaho law.

[15-8-101, added 2005, ch. 122, sec. 1, p. 397.]

15-8-102. GENERAL POWERS OF COURTS -- INTENT -- PLENARY POWER OF THE COURT. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this chapter to administer and settle:

- (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this chapter; and
- (b) All trusts and trust matters.

(2) If this [title 15](#), Idaho Code, should in any case or under any circumstances be inapplicable, insufficient or doubtful with reference to the administration and settlement of matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

[15-8-102, added 2005, ch. 122, sec. 1, p. 398.]

15-8-103. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Matter" includes any issue, question or dispute involving:
 - (a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;
 - (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;
 - (c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with re-

spect to any other asset or property interest passing at death, that may include, without limitation, questions relating to:

- (i) The construction of wills, trusts, devolution agreements, and other writings;
 - (ii) A change of personal representative or trustee;
 - (iii) A change of the situs of a trust;
 - (iv) An accounting from a personal representative or trustee; or
 - (v) The determination of fees for a personal representative or trustee;
- (d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;
- (e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to more efficiently allocate exemptions or to achieve qualification for deductions, elections, and other tax requirements including, but not limited to, the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the Internal Revenue Code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and
- (f) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including actual joint tenancy property, property subject to a devolution agreement, or assets subject to a pay on death or transfer on death designation:
- (i) The ascertaining of any class of creditors or others for purposes of section [15-6-107](#), Idaho Code;
 - (ii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;
 - (iii) The determination of any question arising in the administration of a nonprobate asset under section [15-6-107](#), Idaho Code;
 - (iv) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under [title 15](#), Idaho Code; and
 - (v) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by section [11-604A](#)(6), Idaho Code;
- (g) The resolution of any other matter that could affect the nonprobate asset.
- (2) "Nonprobate assets" means assets that are covered by [chapter 6, title 15](#), Idaho Code.
- (3) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

- (a) The trustor if living;
- (b) The trustee;
- (c) The personal representative;
- (d) An heir;
- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
- (f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;
- (g) A guardian ad litem;
- (h) A creditor;
- (i) Any other person who has an interest in the subject of the particular proceeding;
- (j) The attorney general if required under section [67-1401](#)(5), Idaho Code;
- (k) Any duly appointed and acting legal representative of a party such as a guardian, conservator, special representative, or attorney in fact;
- (l) Where applicable, the virtual representative of any person described in this subsection (3), the giving of notice to whom would meet notice requirements as provided in section [15-8-204](#), Idaho Code; and
- (m) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under section [15-6-107](#), Idaho Code.

(4) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(5) "Representative" and other similar terms refer to a person who virtually represents another person under section [15-8-205](#), Idaho Code.

(6) "Trustee" means any acting and qualified trustee of the trust.

[15-8-103, added 2005, ch. 122, sec. 1, p. 398; am. 2007, ch. 341, sec. 1, p. 1000.]

PART 2. JUDICIAL RESOLUTION

15-8-201. PERSONS ENTITLED TO JUDICIAL PROCEEDINGS FOR DECLARATION OF RIGHTS OR LEGAL RELATIONS. (1) Any party may have a judicial proceeding for the declaration of rights or legal relations with respect to:

- (a) Any matter, as defined in section [15-8-103](#), Idaho Code;
- (b) The resolution of any other case or controversy that arises under the Idaho Code and referenced judicial proceedings under this chapter; or
- (c) The determination of the persons entitled to notice under section [15-8-204](#), Idaho Code.

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by [chapter 5, title 15](#), Idaho Code. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and pro-

cedures contained in [title 15](#), Idaho Code, or other Idaho law. The provisions of this chapter shall not apply to actions for wrongful death under any other chapter or title of Idaho Code.

[15-8-201, added 2005, ch. 122, sec. 1, p. 400.]

15-8-202. JUDICIAL PROCEEDINGS. (1) The provisions of this chapter shall control over any inconsistent provision of the Idaho rules of civil procedure.

(2) A judicial proceeding under this chapter may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset.

(3) Once commenced, the action may be consolidated with an existing proceeding or converted to a separate action upon the motion of a party for good cause shown, or by the court on its own motion.

(4) The Idaho rules of civil procedure apply to judicial proceedings under this chapter only to the extent that they are consistent with this chapter, unless otherwise provided by Idaho Code, or ordered by the court under section [15-8-102](#), Idaho Code, or provided by other applicable Idaho rules of civil procedure.

[15-8-202, added 2005, ch. 122, sec. 1, p. 400.]

15-8-203. PROCEDURAL RULES. The Idaho rules of civil procedure apply to all proceedings under part 2 of this chapter.

[15-8-203, added 2005, ch. 122, sec. 1, p. 401.]

15-8-204. NOTICE IN JUDICIAL PROCEEDINGS UNDER THIS CHAPTER REQUIRING NOTICE. (1) Subject to section [15-8-207](#), Idaho Code, in all judicial proceedings under this chapter that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least fourteen (14) days before the hearing on the petition, unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the Idaho rules of civil procedure.

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing.

[15-8-204, added 2005, ch. 122, sec. 1, p. 401.]

15-8-205. APPLICATION OF DOCTRINE OF VIRTUAL REPRESENTATION. (1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and the provisions of section [15-1-403](#), Idaho Code, and shall not be construed as limiting the application of that common law doctrine or the provisions of section [15-1-403](#), Idaho Code.

(2) Any notice requirement in this chapter is satisfied if notice is given as follows:

(a) Where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement

of the proceedings requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse, distributees, heirs, issue, or other kindred of the person; and

(c) Except as otherwise provided in this subsection (2), where an interest in an estate, trust, or nonprobate asset, or an interest that may be affected by a power of attorney, has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take upon the happening of the additional future event.

(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(4) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

[15-8-205, added 2005, ch. 122, sec. 1, p. 401.]

15-8-206. SPECIAL NOTICE. Nothing in this chapter eliminates the requirement to give notice to a person who has filed a demand for notice pursuant to section [15-3-204](#), Idaho Code.

[15-8-206, added 2005, ch. 122, sec. 1, p. 402.]

15-8-207. WAIVER OF NOTICE. Notwithstanding any other provision of this chapter, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian or conservator or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person.

[15-8-207, added 2005, ch. 122, sec. 1, p. 402.]

15-8-208. COST -- ATTORNEY'S FEES. (1) Either the district court or the court on appeal may, in its discretion, order costs, including reasonable attorney's fees, to be awarded to any party:

- (a) From any party to the proceedings;
 - (b) From the assets of the estate or trust involved in the proceedings;
 - or
 - (c) From any nonprobate asset that is the subject of the proceedings.
- The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent's estates and properties, and guardianship matters. Except as provided in section [12-117](#), Idaho Code, this section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, unless such statute specifically provides otherwise.

[15-8-208, added 2005, ch. 122, sec. 1, p. 402.]

15-8-209. APPOINTMENT OF A GUARDIAN AD LITEM. (1) The court, upon its own motion or upon request of one (1) or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, or incapacitated, or unborn, or unascertained person, or any person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in section [15-8-201](#), Idaho Code, with notice as provided in this section and section [15-8-204](#), Idaho Code.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented.

[15-8-209, added 2005, ch. 122, sec. 1, p. 402.]

15-8-210. TRIAL BY JURY. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. Any jury for any proceeding under this part 2 shall consist of six (6) jurors. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions.

[15-8-210, added 2005, ch. 122, sec. 1, p. 403.]

15-8-211. EXECUTION ON JUDGMENTS. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

[15-8-211, added 2005, ch. 122, sec. 1, p. 403.]

15-8-212. APPELLATE REVIEW. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this chapter. The review must be done in the manner and way provided by law for appeals in civil actions.

[15-8-212, added 2005, ch. 122, sec. 1, p. 403.]

PART 3.
NONJUDICIAL RESOLUTION

15-8-301. PURPOSE. The purpose of this part 3 is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.

[15-8-301, added 2005, ch. 122, sec. 1, p. 403.]

15-8-302. BINDING AGREEMENT. Sections [15-8-301](#) through [15-8-305](#), Idaho Code, shall be applicable to the resolution of any matter, as defined in section [15-8-103](#), Idaho Code, other than matters subject to [chapter 5, title 15](#), Idaho Code, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that sections [15-8-301](#) through [15-8-305](#), Idaho Code, shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of section [15-8-304](#), Idaho Code, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under section [15-8-303](#), Idaho Code, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing and the discharge of any special representative who has acted with respect to the agreement. If a party who virtually represents another person under section [15-8-205](#), Idaho Code, signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

[15-8-302, added 2005, ch. 122, sec. 1, p. 403.]

15-8-303. ENTRY OF AGREEMENT WITH COURT -- EFFECT. (1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. However, if a special representative is a party to the written agreement, the agreement or a memorandum of its terms may not be filed within thirty (30) days of the agreement's execution by all parties unless the written consent of the special representative is filed along with, or included within, the provision of such agreement or memorandum. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under section [15-8-304](#), Idaho

Code, only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust.

[15-8-303, added 2005, ch. 122, sec. 1, p. 404.]

15-8-304. JUDICIAL APPROVAL OF AGREEMENT. Within thirty (30) days of execution of the agreement by all parties, the special representative may notice a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing, the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect.

[15-8-304, added 2005, ch. 122, sec. 1, p. 404.]

15-8-305. SPECIAL REPRESENTATIVE.

(1) (a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and:

- (i) Who is a minor;
- (ii) Who is incompetent or disabled;
- (iii) Who is yet unborn or unascertained; or
- (iv) Whose identity or address is unknown.

The petition may be heard by the court without notice.

(b) In appointing the special representative, the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the personal representative or trustee and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence; provided however, the court may consider any interests that the nominating fiduciary may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one (1) person or class of persons if the interests of such persons or class are not in conflict. The petition shall be verified. The petition and order appointing the special representative may be in the following forms:

CAPTION OF CASE

PETITION FOR APPOINTMENT OF
SPECIAL REPRESENTATIVE UNDER
/SECTION 15-8-305, IDAHO CODE

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with section 15-8-305, Idaho Code, and represents to the court as follows:

1. Petitioner. Petitioner is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument.)

2. Issue Concerning (Estate) (Trust) Administration. A question concerning administration of the (estate) (trust) has arisen as to (describe issue, for example, "Related to interpretation, construction, administration, distribution.") The issues are appropriate for determination under section 15-8-305, Idaho Code.

3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen (18) years of age: (list, with status of each.)

4. Special Representative. The nominated special representative is a lawyer licensed to practice before the courts of this state or an individual with special skills or training in the administration of estates or trusts. The nominated special representative does not have an interest in the affected estate or trust and is not related to any person interested in the estate or trust. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen concerning the (estate) (trust). Petitioner believes that proceeding in accordance with the procedures permitted under sections 15-8-301 through 15-8-305, Idaho Code, would be in the best interests of the (estate) (trust) and the beneficiaries.

6. Request of Court. Petitioner requests that (....., an attorney licensed to practice in the state of Idaho,) (OR) (....., an individual with special skills or training in the administration of estates or trusts,) be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and/or unascertained beneficiaries, as provided under section 15-8-305, Idaho Code.

DATED this date of,

.....
(Petitioner or Petitioner's Legal Representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Idaho that the foregoing is true and correct.

DATED, at, Idaho.

.....
(Petitioner or other person having knowledge)

CAPTION OF CASE

ORDER FOR APPOINTMENT OF
SPECIAL REPRESENTATIVE UNDER
/SECTION 15-8-305, IDAHO CODE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that is appointed under section 15-8-305, Idaho Code, as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in section 15-8-305, Idaho Code. The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six (6) months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under section 15-8-305, Idaho Code.

DONE IN OPEN COURT this day of,

.....
JUDGE

(2) Upon appointment by the court, the special representative shall file a sworn certificate made upon penalty of perjury that he or she:

- (a) Is not interested in the estate or trust;
- (b) Is not related to any person interested in the estate or trust;
- (c) Is willing to serve; and
- (d) Will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state, or an individual with special skills or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services, which must be paid from the principal of the estate or trust whose beneficiaries are represented.

(4) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of:

- (a) The expiration of six (6) months from the date the special representative was appointed, unless the order appointing the special representative provides otherwise; or
- (b) The execution of the written agreement by all parties or their virtual representatives.

(5) Any action against a special representative must be brought before the earlier of:

- (a) One (1) year from the discharge of the special representative; or
- (b) The entry of an order by a court of competent jurisdiction under section [15-8-304](#), Idaho Code, approving the written agreement executed by all interested parties in accordance with the provisions of section [15-8-302](#), Idaho Code.

[15-8-305, added 2005, ch. 122, sec. 1, p. 404.]

CHAPTER 9
-- [REPEALED]