

TITLE 15
UNIFORM PROBATE CODE

CHAPTER 1
GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

PART 1.
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

15-1-101. SHORT TITLE. This act shall be known and may be cited as the uniform probate code.

[I.C., sec. 15-1-101, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-102. PURPOSES -- RULE OF CONSTRUCTION. (a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of his property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;

(4) to facilitate use and enforcement of certain trusts;

(5) to make uniform the law among the various jurisdictions.

[I.C., sec. 15-1-102, as added by 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 1, p. 319.]

15-1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

[I.C., sec. 15-1-103, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-104. SEVERABILITY. If any provision of this code or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

[I.C., sec. 15-1-104, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-105. CONSTRUCTION AGAINST IMPLIED REPEAL. This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

[I.C., sec. 15-1-105, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-106. EFFECT OF FRAUD AND EVASION. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this

code or if fraud is used to avoid or circumvent the provisions or purposes of this code, 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) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

[I.C., sec. 15-1-106, as added by 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 2, p. 319.]

15-1-107. EVIDENCE AS TO DEATH OR STATUS. In proceedings under this code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by this code. In addition, the following rules relating to determination of death and status are applicable:

(a) 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* proof of the fact, place, date and time of death and the identity of the decedent;

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person 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;

(c) A person who is absent for a continuous period of five (5) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

[I.C., sec. 15-1-107, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-108. 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 (1) 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.

[I.C., sec. 15-1-108, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-109. SATISFACTION OF PECUNIARY DEVISES OR TRANSFERS BY DISTRIBUTION IN KIND. (1) Whenever a personal representative or a trustee satisfies a pecuniary devise or transfer in trust by a distribution in kind with assets at their value for federal estate tax purposes, such fiduciary, in order to implement such a devise or transfer in trust, must, unless the governing instrument provides otherwise, distribute assets, including cash, fairly rep-

resentative of appreciation or depreciation in all of the property so available for distribution in satisfaction of such pecuniary devise or transfer.

[(2)] (b) Subsection (1) of this section is not intended to imply that the present law of this state, relating to selection of assets by fiduciaries in the circumstances herein described, has been otherwise than as set forth herein, but is a statement of the fiduciary principles applicable to such fiduciaries.

[15-1-109, added 1999, ch. 306, sec. 1, p. 763.]

PART 2.
DEFINITIONS

15-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of chapter 3 of this code.

(2) "Augmented estate" means the estate described in section [15-2-202](#), Idaho Code.

(3) "Beneficiary," as it relates to trust beneficiaries, 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 and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) "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, other tax obligations arising from activities or transactions of the estate, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Community property" is as defined in section [32-906](#), Idaho Code.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person and includes limited conservators as described by section [15-5-420](#), Idaho Code.

(8) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents, minors, incapacitated and disabled persons. This court in this state is known as the district court.

(9) "Determination of heirship of community property" shall mean that determination required by the provisions of section [15-3-303](#), Idaho Code, upon an application for informal probate not accompanied by presentation of a will.

(10) "Determination of heirship" shall mean that determination of heirship required by section [15-3-409](#), Idaho Code, upon a finding of intestacy.

(11) "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.

(12) "Devisee" means any 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.

(13) "Disability," with respect to an individual, means any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(14) "Distributee" means any person who has received property of a decedent from his 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 his 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 purpose of this provision "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Emancipated minor" shall mean any male or female who has been married.

(16) "Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code 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 [15-2-403](#), Idaho Code.

(18) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(19) "Foreign personal representative" means a personal representative of another jurisdiction.

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

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and includes limited guardians as described by section [15-5-304](#), Idaho Code, but excludes one who is merely a guardian ad litem.

(22) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" is as defined in section [15-5-101](#), Idaho Code.

(24) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected per-

son which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. 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. In a guardianship or conservatorship proceeding, it also includes any governmental agency paying or planning to pay benefits to the ward or protected person and any public or charitable agency that regularly concerns itself with methods for preventing unnecessary or overly intrusive court intervention in the affairs of persons for whom protective orders may be sought and that seeks to participate in the proceedings.

(26) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(29) "Minor" means a male under eighteen (18) years of age or a female under eighteen (18) years of age.

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

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(32) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(33) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(34) "Person" means an individual, a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(35) "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.

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

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

(38) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(39) "Protected person" is as defined in section 15-5-101, Idaho Code.

(40) "Protective proceeding" is as defined in section 15-5-101, Idaho Code.

(41) "Quasi-community property" is the property defined by section 15-2-201, Idaho Code.

(42) "Registrar" refers to magistrates or judges of the district court who shall perform the functions of registrar as provided in section 15-1-307, Idaho Code.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, 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.

(44) "Separate property" is as defined in section [32-903](#), Idaho Code.

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

(46) "Settlor" includes grantor, trustor, and words of similar import.

(47) "Special administrator" means a personal representative as described by sections [15-3-614](#) through [15-3-618](#), Idaho Code.

(48) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

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

(50) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(51) "Supervised administration" refers to the proceedings described in part 5, chapter 3, of this code.

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

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It 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. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 6 of this code, custodial arrangements pursuant to [chapter 8, title 68](#), Idaho Code, 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.

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

(55) "Ward" is as defined in section [15-5-101](#), Idaho Code.

(56) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

[15-1-201, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487; am. 1972, ch. 201, sec. 1, p. 510; am. 1973, ch. 167, sec. 3, p. 319; am. 1982, ch. 285, sec. 2, p. 719; am. 1997, ch. 113, sec. 1, p. 275; am. 2001, ch. 294, sec. 1, p. 1036; am. 2002, ch. 233, sec. 1, p. 666; am. 2003, ch. 139, sec. 1, p. 404; am. 2004, ch. 55, sec. 1, p. 253; am. 2006, ch. 163, sec. 1, p. 484; am. 2007, ch. 68, sec. 1, p. 174; am. 2007, ch. 71, sec. 1, p. 189.]

PART 3.
SCOPE, JURISDICTION AND COURTS

15-1-301. TERRITORIAL APPLICATION. Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, (4) survivorship and related accounts in this state, and (5) trusts subject to administration in this state.

[I.C., sec. 15-1-301, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-303. VENUE -- MULTIPLE PROCEEDINGS -- TRANSFER. (a) Where a proceeding under this code could be maintained in more than one (1) place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, ward or trust are commenced in more than one (1) court of this state, the court in which the proceeding[s] was [were] first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice, a proceeding or file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

[I.C., sec. 15-1-303, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-305. RECORDS AND CERTIFIED COPIES. The clerk of court shall keep a single file for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

[I.C., sec. 15-1-305, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-305A. RECORDING PERMITTED -- EFFECT. Letters of personal representatives (foreign or domestic), a statement of informal probate, probated will, determination of heirship, order made in a testacy proceeding, or will otherwise admissible in evidence as provided in section 15-3-102 of this code; any deed, assignment, release or other instrument executed by an appointed personal representative of the decedent; an affidavit of a successor in interest to property of a decedent; and a decree in any testacy

proceeding in another state, any of which affect title to real property, may be recorded in the office of the county recorder of the county in which the real property affected by any such letters, statement, determination, order, document or decree is located. From the time of filing the same for record, notice is imparted to all persons of the contents thereof.

[I.C., sec. 15-1-305A, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-306. JURY TRIAL. If duly demanded, a party is entitled to trial by jury in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

[I.C., sec. 15-1-306, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-307. REGISTRAR -- POWERS. The acts and orders which this code specifies as performable by the registrar will be performed by a magistrate or district judge.

[I.C., sec. 15-1-307, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487.]

15-1-310. OATH OR AFFIRMATION ON FILED DOCUMENTS. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

[I.C., sec. 15-1-310, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-311. EXERCISE OF POWERS. Powers under this act may be exercised by the court at any time, in chambers or in open court, as may be appropriate. Powers conferred upon the registrar of wills by this act may be exercised at any time.

[I.C., sec. 15-1-311, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-312. EXECUTION OF DEED. Should any persons be entitled to a deed from a personal representative and such personal representative be discharged or disqualified or refuse to execute the same, such deed may be executed by the court authorizing such sale or distribution or the clerk of such court and shall entitle the buyer or distributee to his property.

[I.C., sec. 15-1-312, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 4.

NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

15-1-401. NOTICE -- METHOD AND TIME OF GIVING. (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(3) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made by affidavit or in any other manner permitted by the court at or before the hearing and filed in the proceeding.

[I.C., sec. 15-1-401, as added by 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 4, p. 319.]

15-1-402. NOTICE -- WAIVER. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. The appearance in court of an interested party is a waiver of notice.

[I.C., sec. 15-1-402, as added by 1971, ch. 111, sec. 1, p. 233.]

15-1-403. PLEADINGS -- WHEN PARTIES BOUND BY OTHERS -- NOTICE. In judicial proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(a) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(b) Persons are bound by orders binding others in the following cases:

(1) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one (1) in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(2) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent and bind his minor child.

(3) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(c) Notice is required as follows:

(1) Notice as prescribed by section 15-1-401 of this code shall be given to every interested person or to one who can bind an interested person as described in subsection b(1) or b(2) of this section. Notice may be given both to a person and to another who may bind him.

(2) Notice is given to unborn or unascertained persons, who are not represented under subsection b(1) or b(2) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(d) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

[I.C., sec. 15-1-403, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 5. MISCELLANEOUS PROVISIONS

15-1-501. CONSTRUCTION OF CERTAIN FORMULA CLAUSES. (1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction" or "unlimited marital deduction," or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as they apply with respect to estates of decedents dying in 2010, without regard to whether the decedent's personal representative or other fiduciary elects not to have the estate tax apply with respect to that estate. This provision shall not apply with respect to a will, trust or other instrument that manifests an intent that a contrary rule shall apply.

(2) The personal representative, trustee, other fiduciary or any affected beneficiary under the will, trust or other instrument may bring a proceeding to determine whether the decedent intended that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section. A proceeding under this section shall be commenced before January 1, 2012. In a proceeding under this section, the court may consider extrinsic evidence that contradicts the plain meaning of the will, trust or other instrument. The court shall have the power to modify a provision of the will, trust or other instrument that refers to the federal

estate tax or generation-skipping tax laws as described in subsection (1) of this section to:

- (a) Conform the terms to the decedent's intention; or
- (b) Achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention.

The court may provide that an interpretation or modification pursuant to this section shall be effective as of the decedent's date of death. A person who commences a proceeding under this section has the burden of proof, by clear and convincing evidence, in establishing the decedent's intent that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section.

(3) For purposes of this section only, interested persons may enter into a binding agreement to determine whether the decedent intended that the will, trust or other instrument should be construed in a manner other than as provided in subsection (1) of this section and to conform the terms to the decedent's intention, without court approval as provided in subsection (2) of this section. As used in the subsection, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. In the case of a trust, the agreement may be by nonjudicial settlement agreement pursuant to chapter 8, title 15, Idaho Code. Any interested person may petition the court to approve the agreement or to determine whether all interested persons are parties to the agreement, either in person or by adequate representation where permitted by law, and whether the agreement contains terms the court could have properly approved.

[15-1-501, added 2010, ch. 68, sec. 1, p. 116; am. 2011, ch. 305, sec. 1, p. 872.]