TITLE 15
UNIFORM PROBATE CODE

CHAPTER 2
INTESTATE SUCCESSION -- WILLS

PART 1.
INTESTATE SUCCESSION

15-2-101. INTESTATE ESTATE. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

[I.C., sec. 15-2-101, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-102. SHARE OF THE SPOUSE. The intestate share of the surviving spouse is as follows:

(a) As to separate property:

(1) If there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) If there is no surviving issue but the decedent is survived by a parent or parents, one-half (1/2) of the intestate estate;

(3) If there are surviving issue of the deceased spouse, one-half (1/2) of the intestate estate.

(b) As to community property:

(1) The one-half (1/2) of community property which belongs to the decedent passes to the surviving spouse.

[I.C., sec. 15-2-102, as added by 1971, ch. 111, sec. 1, p. 233; am. 2001, ch. 330, sec. 1, p. 1160.]

15-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE. The part of the intestate estate not passing to the surviving spouse under section 15-2-102 of this part, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(b) If there is no surviving issue, to his parent or parents equally;

(c) If there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one (1) or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparents on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

[I.C., sec. 15-2-103, as added by 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 5, p. 319.]

15-2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS. Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 15-2-105 of this Part.

[I.C., sec. 15-2-104, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-106. REPRESENTATION. If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one (1) share and the share of each deceased person in the same degree being divided among his issue in the same manner.

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

15-2-107. KINDRED OF HALF BLOOD. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

[I.C., sec. 15-2-107, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-108. AFTERBORN HEIRS. Relatives of the decedent conceived by natural or artificial means before his death but born within ten (10) months after the decedent's date of death, shall inherit as if they had been born in the lifetime of the decedent.

[15-2-108, as added by 1971, ch. 111, sec. 1, p. 233; am. 2005, ch. 123, sec. 1, p. 407.]

15-2-109. MEANING OF CHILD AND RELATED TERMS. If, for purposes of intestate succession, a relationship of parents and child must be established to determine succession by, through, or from a person:

(a) An adopted person is a child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent and adoption by the spouse of a natural parent has no effect on the relationship between the child and a deceased, undivorced natural parent.

(b) In cases not covered by subsection (a) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(1) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(2) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (2) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

[I.C., sec. 15-2-109, as added by 1971, ch. 111, sec. 1, p. 233; am. 1978, ch. 350, sec. 4, p. 916.]

15-2-110. ADVANCEMENTS. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. If an advancement exceeds the share of the heir, no refund is required.

[I.C., sec. 15-2-110, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-111. DEBTS TO DECEDENT. A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

[I.C., sec. 15-2-111, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-112. ALIENAGE. No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

[I.C., sec. 15-2-112, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-114. PERSONS RELATED TO DECEDENT THROUGH TWO LINES. A person who is related to the decedent through two (2) lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

[15-2-114, added 1978, ch. 350, sec. 5, p. 916.]

PART 2.
SUCCESSION OF QUASI-COMMUNITY PROPERTY -- ELECTIVE SHARE OF SURVIVING SPOUSE

15-2-201. QUASI-COMMUNITY PROPERTY. (a) Upon death of a married person domiciled in this state, one-half (1/2) of the quasi-community property shall belong to the surviving spouse and the other one-half (1/2) of such property shall be subject to the testamentary disposition of the decedent and, if not devised by the decedent, goes to the surviving spouse.

(b) Quasi-community property is all personal property, wherever situated, and all real property situated in this state which has heretofore been

acquired or is hereafter acquired by the decedent while domiciled elsewhere and which would have been the community property of the decedent and the surviving spouse had the decedent been domiciled in this state at the time of its acquisition plus all personal property, wherever situated, and all real property situated in this state, which has heretofore been acquired or is hereafter acquired in exchange for real or personal property, wherever situated, which would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired, provided that real property does not and personal property does include leasehold interests in real property, provided that quasi-community property shall include real property situated in another state and owned by a domiciliary of this state if the laws of such state permit descent and distribution of such property to be governed by the laws of this state.

(c) All quasi-community property is subject to the debts of decedent.

[I.C., sec. 15-2-201, as added by 1972, ch. 201, sec. 4, p. 510.]

15-2-202. AUGMENTED ESTATE. Whenever a married person domiciled in the state has made a transfer of quasi-community property to a person other than the surviving spouse without adequate consideration and without the consent of the surviving spouse, the surviving spouse may require the transferee to restore to the decedent's estate such property, if the transferee retains such property and, if not, its proceeds or, if none, its value at the time of transfer, if:

(a) The decedent retained, at the time of his death, the possession or enjoyment of or the right to income from the property; or

(b) The decedent retained, at the time of his death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit; or

(c) The decedent held the property at the time of his death with another with the right of survivorship; or

(d) The decedent had transferred such property within two (2) years of his death to the extent that the aggregate transfers to any one (1) donee in either of the years exceeded ten thousand dollars ($10,000) or the amount of the annual exclusion for the federal gift tax set forth at 26 U.S.C. section 2503, whichever is greater.

[15-2-202, added 1972, ch. 201, sec. 4, p. 510; am. 1999, ch. 303, sec. 1, p. 760.]

15-2-203. ELECTIVE RIGHT TO QUASI-COMMUNITY PROPERTY AND AUGMENTED ESTATE. (a) The right of the surviving spouse in the augmented quasi-community property estate shall be elective and shall be limited to one-half (1/2) of the total augmented quasi-community property estate which will include, as a part of the property described in sections 15-2-201 and 15-2-202, Idaho Code, property received from the decedent and owned by the surviving spouse at the decedent's death, plus the value of such property transferred by the surviving spouse at any time during marriage to any person other than the decedent which would have been in the surviving spouse's quasi-community property augmented estate if that spouse had predeceased the decedent to the extent that the owner's transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. This shall not include

any benefits derived from the federal social security system by reason of service performed or disability incurred by the decedent and shall include property transferred from the decedent to the surviving spouse by virtue of joint ownership and through the exercise of a power of appointment also exercisable in favor of others than the surviving spouse and appointed to the surviving spouse.

(b) The elective share to the quasi-community estate thus computed shall be reduced by an allocable portion of general administration expenses, homestead allowance, exempt property and enforceable claims.

(c) Property owned by the surviving spouse at the time of the decedent's death and property transferred by the surviving spouse is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

[15-2-203, added 1978, ch. 350, sec. 2, p. 914; am. 2016, ch. 262, sec. 1, p. 682.]

15-2-204. RIGHT OF ELECTION PERSONAL. The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

[I.C., sec. 15-2-204, as added by 1972, ch. 201, sec. 4, p. 510.]

15-2-205. PROCEEDING FOR ELECTIVE SHARE -- TIME LIMIT. (a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within nine (9) months after the death of the decedent or six (6) months after the date of filing of the petition for probate, whichever is later. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 15-2-207 of this code. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

[I.C., sec. 15-2-205, as added by 1972, ch. 201, sec. 4, p. 510; am. 1973, ch. 167, sec. 6, p. 319; am. 1999, ch. 73, sec. 1, p. 196.]

15-2-206. EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE. (a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under section 15-2-207(b), Idaho Code, as if the surviving spouse had predeceased the testator.

(b) A surviving spouse is entitled to homestead allowance and exempt property whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.

[15-2-206, added 1972, ch. 201, sec. 4, p. 510; am. 2016, ch. 262, sec. 2, p. 682.]

15-2-207. LIABILITY OF OTHERS. (a) In a proceeding for an elective share, property which passes or has passed to the surviving spouse by testate or intestate succession and property included in the augmented estate which has not been renounced is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(b) The remaining amount of the elective share is equitably apportioned among beneficiaries of the will and transferees of the augmented estate in proportion to the value of their interest therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

[I.C., sec. 15-2-207, as added by 1972, ch. 201, sec. 4, p. 510; am. 1978, ch. 350, sec. 3, p. 915.]

15-2-208. WAIVER. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance and exempt property, or either of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance and exempt property by each spouse in the

property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

[15-2-208, added 1972, ch. 201, sec. 4, p. 510; am. 2016, ch. 262, sec. 3, p. 682.]

15-2-209. ELECTION OF NONDOMICILIARY. Upon the death of any married person not domiciled in this state who dies leaving a valid will disposing of real property in this state which is not the community property of the decedent and the surviving spouse, the surviving spouse has the same right to elect to take a portion of or interest in such property against the will of the decedent as though the property was situated in the decedent's domicile at death.

[I.C., sec. 15-2-209, as added by 1972, ch. 201, sec. 4, p. 510.]

PART 3.
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

15-2-301. OMITTED SPOUSE. (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in section 15-3-902 of this code.

[I.C., sec. 15-2-301, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-302. PRETERMITTED CHILDREN. (a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one (1) or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 15-3-902 of this code.

[I.C., sec. 15-2-302, as added by 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 5, p. 510.]

PART 4.
EXEMPT PROPERTY AND ALLOWANCES

15-2-401. APPLICABLE LAW. This part applies to the estate of a decedent who dies domiciled in this state. Rights to the homestead allowance and to exempt property for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

[15-2-401, added 2001, ch. 294, sec. 2, p. 1040; am. 2008, ch. 182, sec. 1, p. 549.]

15-2-402. HOMESTEAD ALLOWANCE. The homestead allowance is exempt from and has priority over all claims against the estate except as hereinafter set forth. The homestead allowance is in addition to any share passing to the surviving spouse or minor or disabled child by the will of the decedent unless otherwise provided in the will, or by intestate succession, or by way of elective share. The amount of the homestead allowance shall be fifty thousand dollars ($50,000). The homestead allowance is not a right to claim ownership of, or succession to, any homestead owned by the decedent at the time of the decedent's death but is only the right to claim the sum set forth above. The right to a homestead allowance is determined as follows:

(a) If there is a surviving spouse of the decedent, the surviving spouse shall be entitled to a homestead allowance.

(b) If there is no surviving spouse, and there are one (1) or more children under the age of twenty-one (21) years whom the decedent was obligated to support or children who were in fact being supported by the decedent and who are disabled, as provided in 42 U.S.C. section 1382c, then each such minor or disabled child is entitled to a portion of the homestead allowance in the amount of the homestead allowance divided by the number of such minor or disabled children entitled to receive the homestead allowance.

[(15-2-402) 15-2-401, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487; am. and redesig. 2001, ch. 294, sec. 3, p. 1040; am. 2004, ch. 123, sec. 1, p. 413; am. 2008, ch. 182, sec. 2, p. 549.]

15-2-403. EXEMPT PROPERTY. In addition to any homestead allowance, the decedent's surviving spouse is entitled from the estate to value, not exceeding ten thousand dollars ($10,000) in excess of any security interests therein, in tangible personal property including, but not limited to, household furniture, automobiles, furnishings, appliances, family heirlooms and personal effects, subject to the terms of section 15-2-406, Idaho Code. If there is no surviving spouse, the decedent's children are entitled jointly to the same tangible personal property, subject to the terms of section 15-2-406, Idaho Code. Rights to exempt property have priority over all claims against the estate. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided in the will, or by intestate succession, or by way of elective share.

[(15-2-403) 15-2-402, as added by 1971, ch. 111, sec. 1, p. 233; am. and redesig. 2001, ch. 294, sec. 4, p. 1041; am. 2003, ch. 63, sec. 1, p. 209; am. 2004, ch. 123, sec. 2, p. 413; am. 2008, ch. 182, sec. 3, p. 550.]

15-2-405. SOURCE -- DETERMINATION -- DOCUMENTATION -- MISCELLANEOUS PROVISIONS. If the estate is otherwise sufficient, property specifically devised, including the provisions pursuant to section 15-2-513, Idaho Code, may not be used to satisfy rights to the homestead allowance or exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance or exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument to establish the homestead allowance or exempt property. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief. Despite any language to the contrary in this chapter, the homestead allowance and exempt property are not mandatory or automatic, but rather must be applied for by the surviving spouse and/or children, as appropriate, as set forth in this title. Even though the allowance and the right to apply for exempt property are not claims against estates, the manner of and time period for applying for the allowance or the exempt property shall be the same as set forth in sections 15-3-801, 15-3-803 and 15-3-804, Idaho Code; provided however, that the personal representative shall not be required to give actual notice to a surviving spouse or a minor or disabled child of the right to apply for the homestead allowance or the exempt property, and provided further that any notice actually given by the personal representative does not need to make any additional or special reference to an application by the surviving spouse or minor or disabled or adult children also being barred if not submitted within the time period set forth in the notice. Also, the personal representative shall not be liable to the surviving spouse, minor or disabled or adult child, any creditor, or any other successor to the estate in the same manner as provided in section 15-3-801(c), Idaho Code, as a result of giving or failing to give notice. The homestead allowance and exempt property may not be enforced or applied for on behalf of a surviving spouse or a minor or adult child of the decedent by a creditor of the surviving spouse or a minor or disabled or adult child of the decedent, or by any person or entity claiming by, through, or because of the surviving spouse or minor or disabled or adult child of the decedent. Despite any language to the contrary in other sections of this chapter, the homestead allowance and exempt property do not take precedence over reasonable administrative costs and expenses of the estate of the decedent.

[(15-2-405) 15-2-404, as added by 1971, ch. 111, sec. 1, p. 233; am. and redesig. 2001, ch. 294, sec. 6, p. 1042; am. 2004, ch. 123, sec. 4, p. 414; am. 2008, ch. 182, sec. 5, p. 550.]

15-2-406. LIMITATIONS ON EXEMPT PROPERTY AND HOMESTEAD ALLOWANCE BY WILL. The decedent may provide by will that a surviving spouse, and/or adult children, but not minor or disabled children:

(1) Are not entitled to any exempt property or homestead allowance; or

(2) Are entitled to limited exempt property or a limited homestead allowance, as provided in the will; but

(3) May not condition such elimination or limitation upon whether the estate of the decedent is subject to a claim for estate recovery for medicaid benefits paid to the decedent or to a spouse of the decedent.

[15-2-406, added 2008, ch. 182, sec. 6, p. 552.]

PART 5.
WILLS

15-2-501. WHO MAY MAKE A WILL. Any emancipated minor or any person eighteen (18) or more years of age who is of sound mind may make a will. A married woman may dispose of her property, whether separate or community, in the same manner as any other person subject to the restrictions imposed by this code.

[I.C., sec. 15-2-501, as added by 1971, ch. 211, sec. 1, p. 233.]

15-2-502. EXECUTION. Except as provided for holographic wills, writings within section 15-2-513 of this part, and wills within section 15-2-506 of this part, or except as provided in section 51-109, Idaho Code, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

[15-2-502, added 1971, ch. 111, sec. 1, p. 233; am. 2008, ch. 76, sec. 1, p. 202; am. 2017, ch. 192, sec. 8, p. 454.]

15-2-503. HOLOGRAPHIC WILL. A will which does not comply with section 15-2-502 of this Part is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

[I.C., sec. 15-2-503, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-504. SELF-PROVED WILL. (1) Any will may be simultaneously executed, attested, and made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I,....., the testator, sign my name to this instrument this..... day of.....,...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

.....
Testator

We,.....,....., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last

will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

.....
Witness

.....
Witness

The State of.....
County of.....

Subscribed, sworn to and acknowledged before me by....., the testator and subscribed and sworn to before me by....., and....., witnesses, this..... day of.....

(Seal)

(Signed).....
.....
(Official capacity of officer)

(2) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in form and content substantially as follows:

The State of.....
County of.....

We,.....,....., and....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen (18) years of age or older, of sound mind and under no constraint or undue influence.

.....
Testator

.....
Witness

.....
Witness

Subscribed, sworn to and acknowledged before me by....., the testator, and subscribed and sworn to before me by....., and....., witnesses, this..... day of.....

(Seal)

(Signed).....
.....
(Official capacity of officer)

(3) A will may be executed, and made self-proved, in compliance with section 51-109, Idaho Code, and attested as set forth in subsections (1) and (2) of this section.

[15-2-504, added 1978, ch. 350, sec. 7, p. 917; am. 2007, ch. 90, sec. 2, p. 247; am. 2008, ch. 76, sec. 2, p. 203; am. 2017, ch. 192, sec. 9, p. 454.]

15-2-505. WHO MAY WITNESS. (a) Any person eighteen (18) or more years of age generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

[I.C., sec. 15-2-505, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487.]

15-2-506. CHOICE OF LAW AS TO EXECUTION. A written will is valid if executed in compliance with section 15-2-502 or 15-2-503 of this Part or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

[I.C., sec. 15-2-506, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-507. REVOCATION BY WRITING OR BY ACT. A will or any part thereof is revoked:

(a) By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(b) By being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

(c) The revocation of a will executed in duplicate may be accomplished by revoking one (1) of the duplicates.

[I.C., sec. 15-2-507, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-508. REVOCATION BY DIVORCE -- NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of subsection (b) of section 15-2-802 of this code. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

[I.C., sec. 15-2-508, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-509. REVIVAL OF REVOKED WILL. (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 15-2-507 of this chapter, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

(c) Republication of a revoked will revives such will.

[I.C., sec. 15-2-509, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-510. INCORPORATION BY REFERENCE. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

[I.C., sec. 15-2-510, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-511. TESTAMENTARY ADDITIONS TO TRUSTS.

(1) (a) A will may validly devise property to the trustee of a trust established or to be established:

(i) During the testator's lifetime by the testator or by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or

(ii) At the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(2) Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) of this section is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(3) Unless the testator's will provides otherwise a revocation or termination of the trust before the testator's death causes the devise to lapse.

[15-2-511, as added by 1971, ch. 111, sec. 1, p. 233; am. 1999, ch. 304, sec. 1, p. 761; am. 2006, ch. 161, sec. 1, p. 481.]

15-2-512. EVENTS OF INDEPENDENT SIGNIFICANCE. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

[I.C., sec. 15-2-512, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-513. SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

[I.C., sec. 15-2-513, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 6.
RULES OF CONSTRUCTION

15-2-601. REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY 120 HOURS. A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

[I.C., sec. 15-2-601, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-602. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in 15-2-201 through 15-2-209, the provisions relating to the exempt property and allowances described in 15-2-401 through 15-2-405 or any other public policy of this state otherwise applicable to the disposition.

[I.C., sec. 15-2-602, as added by 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 6, p. 510; am. 2001, ch. 294, sec. 7, p. 1042.]

15-2-603. RULES OF CONSTRUCTION AND INTENTION. The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.

[I.C., sec. 15-2-603, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-604. CONSTRUCTION THAT WILL PASSES ALL PROPERTY -- AFTER-ACQUIRED PROPERTY. A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

[I.C., sec. 15-2-604, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-605. ANTI-LAPSE -- DECEASED DEVISEE -- CLASS GIFTS. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty (120) hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

[I.C., sec. 15-2-605, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-606. FAILURE OF TESTAMENTARY PROVISION. (a) Except as provided in section 15-2-605 of this Part, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 15-2-605 of this Part, if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

[I.C., sec. 15-2-606, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-607. CHANGE IN SECURITIES -- ACCESSIONS -- NONADEMPTION. (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at the time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) of this section are not part of the specific devise.

[I.C., sec. 15-2-607, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-608. NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES -- UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE -- SALE BY CONSERVATOR. (a) A

specified devisee has the right to the remaining specifically devised property and:

(1) Any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) Any amount of a condemnation award for the taking of the property unpaid at death;

(3) Any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(b) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee, under this subsection is reduced by any right he has under subsection (a) of this section.

[15-2-608, added 1978, ch. 350, sec. 9, p. 918.]

15-2-609. NONEXONERATION. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

[I.C., sec. 15-2-609, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-610. EXERCISE OF POWER OF APPOINTMENT. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

[I.C., sec. 15-2-610, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-611. CONSTRUCTION OF GENERIC TERMS TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE SUCCESSION. Half bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

[I.C., sec. 15-2-611, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-612. ADEMPTION BY SATISFACTION. Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For

purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

[I.C., sec. 15-2-612, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-613. SIMULTANEOUS DEATH -- DISPOSITION OF PROPERTY. Subject to extension by the provisions of section 15-2-104 and section 15-2-601 of this code, where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be distributed as if he had survived, except as otherwise provided in this section.

(a) Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's distribution of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(b) Where there is no sufficient evidence that two (2) joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half (1/2) as if one had survived and one-half (1/2) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(c) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(d) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, wherein provision has been made for distribution of property different from the provisions of the section.

(e) This section shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

(f) This section may be cited as the "uniform simultaneous death act."

[I.C., sec. 15-2-613, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-614. EFFECT OF DEVISE. Every devise in any will conveys all of the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that he intended to convey a lesser estate.

[I.C., sec. 15-2-614, as added by 1971, ch. 111, sec. 1, p. 233.]

15-2-616. RESTRICTION ON DEVISES TO NURSING HOME OR RESIDENTIAL OR ASSISTED LIVING FACILITY OPERATORS. A devise or bequest involving either real or personal property, directly or indirectly, to any person who owns, operates or is employed at a nursing home, residential or assisted living facility or any home, including the testator's home, whether or not licensed, in which the testator was a resident within one (1) year of his death shall be presumed to have been the result of undue influence, rebuttable by clear and convincing evidence. This section shall apply to all property passing by testate succession after July 1, 1983, regardless of when the will was writ-

ten; provided, this section shall in no way limit or affect the rights of a beneficiary who is related to the testator, or who is a charitable or benevolent society or corporation; provided further that the foregoing limitations shall not apply to wills of persons whose death is caused by accidental means and whose wills are executed prior to the accident which results in death.

[15-2-616, added 1983, ch. 236, sec. 1, p. 642; am. 1989, ch. 193, sec. 1, p. 475; am. 1994, ch. 350, sec. 1, p. 1110; am. 2000, ch. 274, sec. 1, p. 801.]

PART 7.
CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

15-2-701. CONTRACTS CONCERNING SUCCESSION. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

[I.C., sec. 15-2-701, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 8.
GENERAL PROVISIONS

15-2-801. RENUNCIATION.

(1)(a) A person or the representative of an incapacitated or unascertained person who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary of an insurance contract, person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, or otherwise the recipient of any benefit under a testamentary or nontestamentary instrument may renounce, in whole or in part, powers, future interests, specific parts, fractional shares or assets thereof by filing a written instrument within the time and at the place hereinafter provided.

(b) The instrument shall:

(i) Describe the property or interest renounced;

(ii) Be signed by the person renouncing; and

(iii) Declare the renunciation and the extent thereof.

(c) The appropriate court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce or to deviate from any power of administration, management or allocation of benefit upon finding that exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust or estate, in the manner pursuant to part 4, chapter 1, title 15, Idaho Code.

(2) Except as provided in subsection (9) of this section, the writing specified in subsection (1) of this section must be filed within nine (9) months after the transfer or the death of the decedent, or donee of the power, whichever is the later, or, if the taker of the property is not then finally ascertained, not later than nine (9) months after the event that determines that the taker of the property or interest is finally ascertained or his interest indefeasibly vested. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the writing may also be recorded in the office of the recorder in the county in which said real estate lies. A copy of the writing also shall be delivered in person or mailed by registered or certified mail to the personal representative of the decedent, the trustee of any trust in which the interest renounced exists, and no such personal representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the renunciation.

(3) Unless the decedent or donee of the power has otherwise indicated, the property or interest renounced passes as if the person renouncing had predeceased the decedent, or if the person renouncing is designated to take under a power of appointment as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. In every case, the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) The right to renounce property or an interest therein is barred by:

(a) Assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor;

(b) Written waiver of the right to renounce; or

(c) Sale or other disposition of property pursuant to judicial process made before the renunciation is effective.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(7) This section does not abridge the right of any person to assign, convey, release or renounce any property or an interest therein arising under any other statute.

(8) In clarification and amplification of subsection (1)(a) of this section, and to make clear the existing terms thereof, a renunciation may be made by an agent appointed under a power of attorney, by a conservator or guardian on behalf of an incapacitated person, or by the personal representative or administrator of a deceased person. The ability to renounce on behalf of the person does not need to be specifically set forth in a power of attorney if the power is general in nature.

(9) The due date for filing a timely disclaimer under subsection (2) of this section, where the decedent died after December 31, 2009, but before December 17, 2010, shall be not earlier than September 19, 2011.

[15-2-801, added 1978, ch. 173, sec. 2, p. 395; am. 2000, ch. 182, sec. 1, p. 451; am. 2011, ch. 106, sec. 1, p. 271; am. 2023, ch. 218, sec. 3, p. 607.]

15-2-802. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION. (a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3 and 4 of this chapter and of section 15-3-203 of this code, a surviving spouse does not include:

(1) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or live together as man and wife;

(2) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

[15-2-802, added 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 7, p. 319; am. 2016, ch. 362, sec. 1, p. 1068.]

15-2-803. EFFECT OF HOMICIDE ON DISTRIBUTION AT DEATH. (a) (1) "Slayer" shall mean any person who participates, either as principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein.

(b) No slayer shall in any way acquire any property or receive any benefit as a result of the death of the decedent, but such property shall pass as provided in the sections following.

(c) The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent.

(d) Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

(e) Any community property which would have passed to or for the benefit of the slayer by devise, legacy or intestate succession from the decedent shall be distributed as if he had predeceased the decedent.

(f) Property in which the slayer holds a reversion of vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

(g) Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

(h) As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

(2) In any case the interest shall not be vested or increased during period of the life expectancy of the decedent.

(i) (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.

(j) (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

(k) Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this Part if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer.

(l) The provisions of this Part shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice, property which the slayer would have acquired except for the terms of this Part, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this Part, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

(m) The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this Part.

(n) This section shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed.

[I.C., sec. 15-2-803, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487.]

15-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE -- NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES. (a) Definitions. In this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 15-2-802, Idaho Code. A decree of separation that does not terminate the status of husband and wife is not a divorce for the purposes of this section.

(3) "Divorced individual" includes an individual whose marriage has been annulled.

(4) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his marriage to his former spouse.

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity.

(6) "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself in place of his former spouse or in place of his former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, a divorce or annulment of a marriage:

(1) Revokes any revocable:

(i) Disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) Nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian; and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship transforming the interests of the former spouses into equal tenancies in common.

(c) Effect of Severance. A severance under subsection (b)(2) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of Revocation. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) Revival. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by the divorce or annulment being set aside.

(f) No Revocation for Other Change of Circumstances. No change of circumstances other than as described in this section and in section 15-2-803 effects a revocation.

(g) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment or remarriage under paragraph (1) of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(h) Protection of Bona Fide Purchasers -- Personal Liability of Recipient.

(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under

this section to return the payment, item of property or benefit, nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

[15-2-804, added 2016, ch. 362, sec. 2, p. 1069.]

PART 9.
CUSTODY AND DEPOSIT OF WILLS

15-2-902. DUTY OF CUSTODIAN OF WILL -- LIABILITY. After the death of the testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

[I.C., sec. 15-2-902, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 10
WILL REGISTRY

15-2-1001. WILL REGISTRY. The secretary of state shall create and maintain a will registry. The information contained in such registry shall include: the full name of the person making the will; the date the will was made; and sufficient identification of the location of the will at the time of registration. The method of registration shall be on a form required by the secretary of state. The fee for registration shall be ten dollars ($10.00) which shall be deposited by the secretary of state in the general fund. The secretary of state shall not be liable in any way for the accuracy of the information contained in the registry. The existence, or nonexistence, of a registration for a particular will shall not be considered as an evidentiary fact in any proceeding relating to such will. The failure to file information about a will in the registry shall not be a factor in the validity of the will, nor shall the failure to file be considered as malpractice on the part of any attorney as to the will. Only interested persons as defined in section 15-1-201, Idaho Code, or their attorneys may search the records contained herein. The secretary of state shall not be

liable for the accuracy of the representation of the interested person or the interested person's attorney.

[15-2-1001, added 2000, ch. 181, sec. 1, p. 450.]

PART 11
UNIFORM ELECTRONIC WILLS ACT

15-2-1101. SHORT TITLE. This chapter shall be known and may be cited as the "Uniform Electronic Wills Act."

[15-2-1101, added 2023, ch. 104, sec. 1, p. 308.]

15-2-1102. DEFINITIONS. As used in this chapter:

(1) "Communication technology" means an electronic device or process that:

(a) Allows two (2) or more individuals to communicate with each other simultaneously by sight and sound; or

(b) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic presence" means the relationship of two (2) or more individuals in different locations communicating in real time by means of communication technology.

(4) "Electronic will" means a will executed electronically in compliance with section 15-2-1105(1), Idaho Code.

(5) "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.

(6) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To affix to or logically associate with the record an electronic symbol or process.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(8) "Tamper-evident" means a feature of an electronic record whereby evidence of any change to the electronic record is preserved. The term includes a digital certificate or similar technology that satisfies the requirements of section 51-120, Idaho Code.

(9) "Will" includes a 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.

[15-2-1102, added 2023, ch. 104, sec. 1, p. 308.]

15-2-1103. LAW APPLICABLE TO ELECTRONIC WILL -- PRINCIPLES OF EQUITY. An electronic will is a will for all purposes of the law of this state.

The law of this state applicable to wills and principles of equity applies to an electronic will, except as modified by this chapter.

[15-2-1103, added 2023, ch. 104, sec. 1, p. 309.]

15-2-1104. CHOICE OF LAW REGARDING EXECUTION. A will executed electronically but not in compliance with section 15-2-1105(1), Idaho Code, is an electronic will under this chapter if executed in compliance with the law of the jurisdiction where the testator is:

(1) Physically located when the will is signed; or

(2) Domiciled or resides when the will is signed or when the testator dies.

[15-2-1104, added 2023, ch. 104, sec. 1, p. 309.]

15-2-1105. EXECUTION OF ELECTRONIC WILL. (1) An electronic will must be:

(a) A tamper-evident electronic record that is readable as text at the time of signing under paragraph (b) of this subsection;

(b) Signed by:

(i) The testator; or

(ii) Another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and

(c) Signed in the physical or electronic presence of the testator by at least two (2) individuals, each of whom is a resident of a state at the time of signing, within a reasonable time after witnessing:

(i) The signing of the will under paragraph (b) of this subsection; or

(ii) The testator's acknowledgment of the signing of the will under paragraph (b) of this subsection or acknowledgment of the will.

(2) Intent of a testator that a record under subsection (1)(a) of this section be the testator's electronic will, or that a record affixed to or logically associated with an electronic will forms a part thereof, may be established by extrinsic evidence.

(3) A signature affixed to an acknowledgment or affidavit under section 15-2-1108(1), Idaho Code, that is affixed to or logically associated with an electronic will, or a record that would constitute an electronic will but for lack of a signature or signatures described in this sentence, is deemed a signature of the electronic will under subsection (1) of this section.

[15-2-1105, added 2023, ch. 104, sec. 1, p. 309.]

15-2-1107. REVOCATION. (1) An electronic will may revoke all or part of a previous will.

(2) All or part of an electronic will is revoked by:

(a) A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or

(b) A physical act, if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

[15-2-1107, added 2023, ch. 104, sec. 1, p. 309.]

15-2-1108. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVED AT TIME OF EXECUTION. (1) An electronic will may be simultaneously executed, attested, and made self-proved by acknowledgment of the testator and affidavits of the witnesses, in the same manner as other wills, in accordance with section 15-2-504(1), Idaho Code.

(2) The provisions of section 15-2-504(2), Idaho Code, shall not apply with respect to an electronic will.

(3) The form of the affidavits of the witnesses under subsection (1) of this section, as set forth in section 15-2-504(1), Idaho Code, may be modified by replacing the phrase "presence and hearing" with "physical or electronic presence."

(4) An acknowledgment or affidavit under subsection (1) of this section must be a tamper-evident electronic record and must be affixed to or logically associated with the electronic will to which it refers at the time of or within a reasonable time after execution of the acknowledgment or affidavit.

[15-2-1108, added 2023, ch. 104, sec. 1, p. 310.]

15-2-1109. CERTIFICATION OF PAPER COPY -- ELECTRONICALLY FILED WILL DEEMED ORIGINAL. (1) An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. The certified paper copy of the will must include all records affixed to or logically associated with the electronic will.

(2) For purposes of sections 15-3-303(a)(5) and 15-3-402, Idaho Code, and any related provisions under Idaho rules for electronic filing and service or other applicable rules, an electronic will transmitted to the registrar or court via electronic filing or other electronic means constitutes the original of the electronic will.

(3) An application or petition for probate of an electronic will filed with the court must state:

(a) That the electronic will filed with the court is a tamper-evident electronic record;

(b) That the petition or application includes all records affixed to or logically associated with the electronic will or an explanation of any omitted items; and

(c) If known, facts regarding the provenance of the electronic will and all records affixed to or logically associated with the electronic will.

[15-2-1109, added 2023, ch. 104, sec. 1, p. 310.]

15-2-1110. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[15-2-1110, added 2023, ch. 104, sec. 1, p. 310.]

15-2-1111. TRANSITIONAL PROVISION. The provisions of this chapter apply to the will of a decedent who dies on or after January 1, 2020.

[15-2-1111, added 2023, ch. 104, sec. 1, p. 310.]