

## **Elder Law Column**

### **Important Legislation from the 2007 Legislative Session**

There were 423 bills passed during the 2007 Utah Legislative Session. Some of bills may not be enacted if the Governor vetoes any of them. Only time will tell.

There are far too many bills to discuss in this column, but there are three significant bills I would like to bring to your attention. I will fully discuss two of them in this column, but the third will be discussed in a subsequent column.

Senate Bill 24 deals with the Probate Code. It increases the amount of an estate than can avoid probate.

There is a section of the Probate Code that allows for the collection of a decedent's personal property by affidavit rather than through a probate court. Title 75, Chapter 3, Sections 1201-1204 of the Utah Code are the subject sections. These are commonly referred to as the "small estate" provisions.

For small estates that hold no real property (meaning land and real estate), a rightful heir can collect the decedent's estate by a simple affidavit. The contents of the affidavit are set forth in Section 1201.

This section has been in effect since 1975. To take advantage of the small estate affidavit, the maximum amount of the estate can't exceed \$25,000.

Under the newly passed law, that amount will now be \$100,000. This means that if the decedent's estate does not exceed \$100,000 and there is no real property involved, no probate is required. All that has to be done is complete a small estate affidavit and tender it to any bank or institution that holds the decedent's assets.

A small estate affidavit can also be used to transfer title to not more than 4 boats, vehicles or trailers, provided that the decedent's estate does not exceed \$100,000, not counting the vehicles being transferred.

This bill should become effective after

May 1, 2007. It should really help those folks who don't own any real property and who have relatively small estates.

The second bill of interest is Senate Bill 7, which amends Utah's statute that governs the exploitation of vulnerable adults.

In 2002, Part 3 of Chapter 3, Title 62A of the Utah Code was enacted. It provides protection for abuse, neglect or exploitation of vulnerable adults. A "vulnerable adult" is defined as a person 65 years of age or older. It also includes other adults who suffer from mental or physical impairment.

With respect to exploitation, I have been involved in efforts to strengthen the statute, particularly to provide inducements for legal actions against those who exploit.

In many cases involving exploitation, all of the vulnerable adult's assets are gone by the time the exploitation is discovered. To prosecute a civil action against the exploiter, there are usually no funds to pay for legal fees.

SB 7 now provides for the possibility that attorney fees can be awarded in favor of the vulnerable adult and against the exploiter. Legal fees are not automatic, but there is now a provision for a court to award them if the vulnerable adult prevails. On the other hand, if the lawsuit is deemed to be frivolous or taken in bad faith, the court could award attorney fees against the vulnerable adult.

Both of these bills should be beneficial to seniors and their children.

The third bill of significance is Senate Bill 75. I'll briefly introduce this bill now but will defer any detailed discussion of it for another column. Since it does not become effective until January 2008, there is no urgency in learning about its many facets. But, its scope is extensive and profound.

SB 75 replaces in its entirety what we now have as the “Personal Choice and Living Will Act.” Under this Act, we have our “Living Will” statute and the statute providing for a Special Power of Attorney for Medical.

SB 75 repeals all of those statutes and replaces them with the “Advance Health Care Directive Act.” This new Act comes about after several years of study and examination of current documents in general use for specifying end-of-life decisions and medical care. Importantly, the new Act is intended to improve on those kinds of documents and provide more and better choices.

Be sure to look for a more detailed discussion of this new Act in a future column. In the meanwhile, to locate an Elder Law Attorney, call the National Academy of Elder Law Attorneys at (520) 881-4005, or, consult your local Yellow Pages.

**YOUR QUESTIONS:** Do you have a particular question that you would like answered? To better serve the regular readers of this Elder Law Column, please direct your questions in writing to Michael A. Jensen, Elder Law Attorney, PO Box 571708, Salt Lake City, Utah 84157. From time to time, I will attempt to answer some of those questions.

**NEW Caption:**

Michael A. Jensen is an Elder Law Attorney, member of the Utah State Bar, and member of the National Academy of Elder Law Attorneys. He earned his Law Degree, *Cum Laude*, at Boston College Law School; M.B.A. at Harvard; and B.S. in Physics and Math at the University of Utah, graduating *Cum Laude*. Mr. Jensen’s law practice includes Elder Law as well as other civil litigation and helping small to medium business owners plan for their succession. He has also successfully argued on Elder Law and other issues before the Utah Supreme Court and the Court of Appeals. He can be reached at 266-2009, and has offices in downtown Salt Lake City and in Murray.