# Colorado Revised Statutes 2015

# TITLE 15

PROBATE, TRUSTS,
AND FIDUCIARIES

**FIDUCIARY**

**ARTICLE 1**

Fiduciary

PART 1

GENERAL PROVISIONS

**15-1-101. Short title.** This part 1 shall be known and may be cited as the "Uniform Fiduciaries Law".

**15-1-102. Legislative declaration.** This part 1 shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of those states which enact it.

**15-1-103. Definitions.** As used in this part 1, unless the context otherwise requires:

(1) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(2) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive, executor, administrator, personal representative, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(3) "Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

(4) "Principal" includes any person to whom a fiduciary as such owes an obligation.

**15-1-104. Prior transactions.** The provisions of this part 1 shall not apply to transactions taking place prior to April 16, 1923.

**15-1-105. Application of payments to fiduciary.** A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

**15-1-106. Transfer of negotiable instruments by fiduciary.** If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

**15-1-107. Check drawn by fiduciary payable to third person, effect.** If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligations as fiduciary in drawing or delivering the instrument and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

**15-1-108. Check drawn by and payable to fiduciary, effect.** If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

**15-1-109. Deposit in name of fiduciary.** If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

**15-1-110. Check drawn upon account of principal by fiduciary.** If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

**15-1-111. Deposits in personal account of fiduciary.** If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks on that account, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary by that action; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank

receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

**15-1-112. Deposits in name of two or more trustees.** When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized by the other trustee to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee to draw checks upon the trust account and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

**15-1-112.5. Liability of a fiduciary for acts of predecessor fiduciary.** In the absence of actual knowledge or information which would cause a reasonable fiduciary to inquire further, a fiduciary shall be under no duty to examine the accounts and records of or inquire into the acts or omissions of a predecessor fiduciary and shall not be liable for failure to seek redress for any act or omission of any predecessor fiduciary.

**15-1-113. Cases not provided for in law.** In any case not provided for in this part 1, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, shall continue to apply.

## PART 2

## DISTRIBUTION BY FIDUCIARIES OF EXPRESS TRUSTS

**15-1-201. When part 2 applicable.** This part 2 shall be applicable to all powers of appointment or disposition existing or created on or after April 1, 1953, the donees of which powers shall be living on such date.

**15-1-201.5. Definitions.** As used in this part 2, "donee" has the same meaning as "powerholder" as set forth in section 15-2.5-102 (13).

**15-1-202. Trustee not liable, when.** If a trustee of an express trust which includes property subject to a power of appointment or other power of disposition distributes such property to those persons who would take such property in default of appointment and such distribution is made not sooner than six months after the death of the donee of such power and

without knowledge of the existence of an instrument exercising such power, he shall not be responsible to the appointee under the instrument exercising such power.

**15-1-203. No liability if distribution under instrument.** If a trustee of an express trust which includes property subject to a power of appointment or other power of disposition distributes such property pursuant to an instrument exercising such power and without knowledge of any infirmity in such instrument and thereafter such instrument shall be held wholly or partially invalid, such trustee shall not be responsible to those persons who would take in default of appointment.

**15-1-204. Rights of appointees.** Nothing in this part 2 shall be deemed to affect the right of the appointee of such property to trace such property into the hands of the distributee or to affect the cause of action of such appointee against such distributee.

**15-1-205. Rights of persons entitled.** Nothing in this part 2 shall be deemed to affect the right of the person entitled to such property in default of appointment to trace such property into the hands of the appointee or to affect the cause of action of such person against such distributee.

**15-1-206. Rights of bona fide purchasers.** Nothing in this part 2 shall be construed to impair the title or lien of a purchaser or mortgagee in good faith and for value from the person to whom such property was first conveyed pursuant to, or in default of, appointment, as the case may be.

## PART 3

## FIDUCIARY INVESTMENTS

**15-1-301. Fiduciary defined.** The word "fiduciary" as used in this part 3 means original or successor administrators, special administrators, administrators cum testamento annexo, executors, guardians, conservators, and trustees, whether of express or implied trusts.

**15-1-302. Application.** The provisions of this part 3 shall apply to and govern all fiduciaries appointed or lawfully acting.

**15-1-303. Construction of part 3.** Nothing in this part 3 shall be construed as modifying

or repealing either section 28-5-214 or section 28-5-301, C.R.S., with respect to investment of surplus funds by appointed guardians and conservators of minor and incompetent beneficiaries of the veterans administration.

**15-1-304. Standard for investments.** In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of others, fiduciaries shall be required to have in mind the responsibilities which are attached to such offices and the size, nature, and needs of the estates entrusted to their care and shall exercise the judgment and care, under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital. Within the limitations of the foregoing standard, fiduciaries are authorized to acquire and retain every kind of property, real, personal, and mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, stocks, preferred or common, securities of any open-end or closed-end management type investment company or investment trust, and participations in common trust funds, which men of prudence, discretion, and intelligence would acquire or retain for the account of another.

**15-1-304.1. Standard for investments on and after July 1, 1995 - "Colorado Uniform Prudent Investor Act".** (1) On and after July 1, 1995, when investing and managing assets, fiduciaries shall be governed by the standard for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of this title.

(2) This section shall not apply to those persons, corporations, entities, or state agencies which were made subject to the provisions of section 15-1-304 by specific reference in another statute in existence prior to July 1, 1995.

**15-1-305. Terms of instrument govern.** Nothing in this part 3 shall be construed as authorizing any departure from or variation of the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment", or words of similar import as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of section 15-1-304.

**15-1-306. Court not restricted.** Nothing in this part 3 shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of estate or trust property.

**15-1-307. Powers of investment in persons other than fiduciary. (Repealed)**

**15-1-308. Investments in United States government obligations.** In the absence of an express provision to the contrary, any fiduciary is authorized, whenever a governing instrument or order requires or permits investment in United States government obligations which are backed by the full faith and credit of the United States government, to invest in such obligations, either directly or in the form of the securities of or other interests in any open-end or closed-end management type investment company or investment trust registered under the federal "Investment Company Act of 1940", 15 U.S.C. section 80(a)-1 et seq., if the portfolio of such investment company or investment trust is limited to United States government obligations which are backed by the full faith and credit of the United States government and to repurchase agreements fully collateralized by such obligations and if any such investment company or investment trust actually takes delivery of such collateral, either directly or through an authorized custodian.

PART 4

UNIFORM PRINCIPAL AND INCOME ACT

SUBPART 1

DEFINITIONS AND FIDUCIARY DUTIES

**15-1-401. Short title.** Subparts 1 through 6 of this part 4 shall be known and may be cited as the "Uniform Principal and Income Act".

**15-1-402. Definitions.** As used in this part 4, unless the context otherwise requires:

(1) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subpart 4 of this part 4.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this part 4 to or from income during the period.

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

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(10.5) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) Is a distributee or a permissible distributee of trust income or principal;

(b) Would be a distributee or permissible distributee of trust income or principal if the interest of the distributees described in paragraph (a) of this subsection (10.5) terminated on that date; or

(c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on said date.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(12.5) "Total return trust" means a trust that is converted to a total return trust pursuant to section 15-1-404.5 or a trust the terms of which manifest the settlor's intent that the trustee will administer the trust in accordance with section 15-1-404.5 (4) and (4.5).

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

**15-1-403. Fiduciary duties - general principles.** (1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of subparts 2 and 3 of this part 4, a fiduciary:

(a) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in subparts 1 through 6 of this part 4;

(b) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by subparts 1 through 6 of this part 4;

(c) Shall administer a trust or estate in accordance with subparts 1 through 6 of this part 4

if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(d) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and subparts 1 through 6 of this part 4 do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising the power to adjust under section 15-1-404 (1) or a discretionary power of administration regarding a matter within the scope of subparts 1 through 6 of this part 4, whether granted by the terms of a trust, a will, or subparts 1 through 6 of this part 4, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with subparts 1 through 6 of this part 4 is presumed to be fair and reasonable to all of the beneficiaries.

(3) The terms and conditions of a trust or a will shall govern all actions taken by a fiduciary with respect to any matter within the scope of subparts 1 through 6 of this part 4. The provisions of subparts 1 through 6 of this part 4 are default provisions and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust or a will. The provisions of subparts 1 through 6 of this part 4 shall govern the administration of a trust or will by a fiduciary only if such trust or will contains no conflicting provision.

(4) Nothing in subparts 1 through 6 of this part 4 shall be construed to limit or restrict a maker of a trust or will from making provisions in such trust or will that are different from the provisions in subparts 1 through 6 of this part 4.

**15-1-404. Trustee's power to adjust.** (1) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in section 15-1-403 (1), that the trustee is unable to comply with section 15-1-403 (2).

(2) In deciding whether and to what extent to exercise the power conferred by subsection (1) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(a) The nature, purpose, and expected duration of the trust;

(b) The intent of the settlor;

(c) The identity and circumstances of the beneficiaries;

(d) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(f) The net amount allocated to income under the other sections of subparts 1 through 6 of this part 4 and the increase or decrease in the value of the principal assets, which the trustee

may estimate as to assets for which market values are not readily available;

(g) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(i) The anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(b) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(e) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(g) If the trustee is a beneficiary of the trust;

(h) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly; or

(i) If the trust is a unitrust.

(4) If the provisions of paragraph (e), (f), (g), or (h) of subsection (3) of this section apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(5) A trustee may release the entire power conferred by subsection (1) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraph (a), (b), (c), (d), (e), (f), or (h) of subsection (3) of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (3) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(6) Terms of a trust that limit the power of a trustee to make an adjustment between

principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (1) of this section.

(7) Nothing in this section or in subparts 1 through 6 of this part 4 is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment. In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under this section, the sole remedy is to direct, deny, or revise an adjustment between principal and income.

**15-1-404.5. Conversion - unitrusts - administration.** (1) **Conversion by trustee.** Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust described in section 15-1-404 and convert a trust to a unitrust as described in this section if all of the following apply:

(a) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a unitrust will enable the trustee to better carry out the purposes of the trust;

(b) The trustee sends a written notice of the trustee's decision to convert the trust to a unitrust specifying a prospective effective date for the conversion, which may not be sooner than sixty days after the notice is sent, and including a copy of this section to the qualified beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries described in section 15-1-402 (10.5) (a), and one or more legally competent remainder beneficiaries described in either section 15-1-402 (10.5) (b) or 15-1-402 (10.5) (c), determined as of the date the notice is sent; and

(d) No beneficiary has objected in writing to the conversion to a unitrust and delivered such objection to the trustee within sixty days after the notice was sent.

(2) **Conversion, reconversion, and adjustment of the distribution percentage by agreement.** Conversion to a unitrust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage; except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3) **Conversion or reconversion by court.** (a) The trustee may, for any reason, elect to petition the court to order conversion to a unitrust, including without limitation the reason that conversion under subsection (1) of this section is unavailable because:

(I) A beneficiary timely objects to the conversion to a unitrust;

(II) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (a); or

(III) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (b) or (10.5) (c).

(b) A beneficiary may request the trustee to convert to a unitrust or adjust the distribution percentage pursuant to this subsection (3). If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to convert from a unitrust to an income trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a unitrust to an income trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d) (I) In a judicial proceeding instituted under this subsection (3), the trustee may present opinions and reasons concerning:

(A) The trustee's support for, or opposition to, a conversion to a unitrust, a reconversion from a unitrust to an income trust, or an adjustment of the distribution percentage of a unitrust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(II) A trustee's actions undertaken in accordance with this subsection (3) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a unitrust, reconversion prospectively from a unitrust to an income trust, or adjustment of the distribution percentage of a unitrust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a unitrust is made pursuant to a court order, the trustee may reconvert the unitrust to an income trust only:

(I) Pursuant to a subsequent court order; or

(II) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion, the power to adjust, as described in section 15-1-404 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection (3) no more frequently than every two years, unless the court for good cause orders otherwise.

(4) **Administration of a unitrust.** During the time that a trust is a unitrust, the trustee shall administer the trust in accordance with the provisions of this subsection (4) as follows, unless otherwise expressly provided by the terms of the trust:

(a) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(b) The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section;

(c) The distribution percentage for any trust converted to a unitrust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section;

(d) (I) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(A) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(B) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(II) For purposes of this paragraph (d), accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(e) A change in the method of determining a reasonable current return by converting to a unitrust in accordance with this section and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income and shall be given effect notwithstanding any contrary provision of subparts 1 through 6 of this part 4. The distribution amount shall in all cases be deemed a reasonable current return that fairly apportions the total return of a unitrust.

(4.5) For purposes of subsection (4) of this section:

(a) "Income", as that term appears in the governing instrument, shall be deemed to mean the distribution amount.

(b) (I) The "distribution amount" shall be an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets.

(II) For purposes of this paragraph (b), the average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence.

(5) **Determination of matters in administration of unitrust.** The trustee may determine any of the following matters in administering a unitrust as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a unitrust pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or if the trust is a unitrust for only part of the year, or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs and the second of which ends at the close of the trust year;

(c) Whether distributions are made in cash or in kind;

(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

(e) Whether to value the trust's assets annually or more frequently;

(f) Which valuation dates to use and how many valuation dates to use;

(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

(I) How frequently to value such an asset;

(II) Whether and how often to engage a professional appraiser to value such an asset; and

(III) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an "excluded asset", and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles.

(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the unitrust.

(6) **Allocations.** (a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a unitrust may not be deducted from the distribution amount.

(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(I) Net income determined as if the trust was not a unitrust;

(II) Other ordinary income as determined for federal income tax purposes;

(III) Net realized short-term capital gains as determined for federal income tax purposes;

(IV) Net realized long-term capital gains as determined for federal income tax purposes;

(V) Trust principal comprising assets for which there is a readily available market value; and

(VI) Other trust principal.

(7) **Court orders.** (a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to paragraph (a), (b), or (c) of subsection (3) of this section:

(I) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage less than three percent or greater than five percent;

(II) Average the valuation of the trust's net assets over a period other than three years;

(III) Reconvert prospectively from a unitrust, or adjust the distribution percentage of a unitrust;

(IV) Direct the distribution of net income, determined as if the trust were not a unitrust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(V) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the unitrust.

(b) Nothing in this subsection (7) shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

(8) **Restrictions.** Conversion to a unitrust shall not affect any provision in the governing instrument that:

(a) Directs or authorizes the trustee to distribute the principal;

(b) Directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(c) Authorizes a beneficiary to withdraw a portion or all of the principal; or

(d) Diminishes in any manner an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

(9) **Tax limitations.** If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power; except that:

(a) The trustee may petition the court under paragraph (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A co-trustee or co-trustees to whom this subsection (9) does not apply may convert the trust to a unitrust in accordance with subsection (1) or (2) of this section.

(10) **Releases.** A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

(11) **Remedies.** (a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. An act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by the court to have been an abuse of discretion.

(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive

remedy shall be to seek an order of the court directing the trustee to:

(I) Convert the trust to a unitrust;

(II) Reconvert from a unitrust;

(III) Change the distribution percentage; or

(IV) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(c) A claim for relief under this subsection (11) that is not barred by adjudication, consent, or limitation, is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 15-10-403 or 15-1-405.

(12) **No duty.** A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

(13) **Application.** (a) This section shall apply to trusts in existence on May 22, 2003, and to trusts created on or after that date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Colorado under Colorado law or that is governed by Colorado law with respect to the meaning and effect of its terms unless:

(I) The trust is a trust described in the federal "Internal Revenue Code of 1986", section 642 (c) (5), 664 (d), or 2702 (a) (3);

(II) The governing instrument expressly prohibits the use of this section by specific reference to one or more provisions of subparts 1 through 6 of this part 4;

(III) The terms of a trust in existence on May 22, 2003, incorporate provisions that operate as a unitrust. The trustee or a beneficiary of such a trust may proceed under section 15-1-405 to adopt provisions in this section that do not contradict provisions in the governing instrument.

(14) **Application to express trusts.** (a) This subsection (14) does not apply to a charitable remainder unitrust as defined by section 664 (d), federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 664, as amended.

(b) As used in this section:

(I) "Unitrust" means a trust, the terms of which require or permit distribution of a unitrust amount, without regard to whether the trust has been converted to a unitrust in accordance with this section or whether the trust is established by express terms of the governing instrument.

(II) "Unitrust amount" means an amount equal to a percentage of a unitrust's assets that may or are required to be distributed to one or more beneficiaries annually in accordance with the terms of the unitrust. The unitrust amount may be determined by reference to the net fair market value of the unitrust's assets as of a particular date each year or as an average determined on a multiple-year basis.

**15-1-405. Notice of action.** (1) A trustee may give a notice of proposed action regarding a matter governed by subparts 1 through 6 of this part 4 as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. If there are no adult beneficiaries who may receive such notice, then notice shall be given to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time notice is given, in accordance with the provisions of section 15-10-403. Notice may be given to any other beneficiary. A person shall be bound under this section with respect to such proposed action if the person receives actual notice, if another person having a substantially identical interest receives notice, or if the person would be bound under the provisions of section 15-10-403.

(3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(a) The name and mailing address of the trustee;

(b) The name and telephone number of a person who may be contacted for additional information;

(c) A description of the action proposed to be taken and an explanation of the reasons for the action;

(d) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action;

(e) The date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the

decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed, and has the burden of proving that it should be performed.

SUBPART 2

DECEDENT'S ESTATE OR
TERMINATING INCOME INTEREST

**15-1-406. Determination and distribution of net income.** (1) After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules shall apply:

(a) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subparts 3 to 5 of this part 4 that apply to trustees and the rules in paragraph (e) of this subsection (1). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(b) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subparts 3 to 5 of this part 4 that apply to trustees and by:

(I) Including in net income all income from property used to discharge liabilities;

(II) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax, marital, or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(III) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(c) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under paragraph (b) of this subsection (1) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(d) A fiduciary shall distribute the net income remaining after distributions required by paragraph (c) of this subsection (1) in the manner described in section 15-1-407 to all other

beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(e) A fiduciary may not reduce principal or income receipts from property described in paragraph (a) of this subsection (1) because of a payment described in section 15-1-426 or 15-1-427 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

**15-1-407. Distribution to residuary and remainder beneficiaries.** (1) Each beneficiary described in section 15-1-406 (1) (d) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules shall apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SUBPART 3

APPORTIONMENT AT BEGINNING
AND END OF INCOME INTEREST

**15-1-408. When right to income begins and ends.** (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust:

(a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(c) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

**15-1-409. Apportionment of receipts and disbursements when decedent dies or income interest begins.** (1) A trustee shall allocate an income receipt or disbursement, other than one to which section 15-1-406 (1) (a) applies, to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of subparts 1 through 6 of this part 4. Distributions to shareholders or other owners from an entity to which section 15-1-411 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the

distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

**15-1-410. Apportionment when income interest ends.** (1) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

SUBPART 4

ALLOCATION OF RECEIPTS DURING
ADMINISTRATION OF TRUST

**15-1-411. Character of receipts.** (1) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate governed by section 15-1-412, a business or activity governed by section 15-1-413, or an asset-backed security governed by section 15-1-425.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money;

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) Money received in total or partial liquidation of the entity; and

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(b) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(5) Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection (4) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

**15-1-412. Distribution from trust or estate.** A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 15-1-411 or section 15-1-425 shall apply to a receipt from the trust.

**15-1-413. Business and other activities conducted by trustee.** (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a trustee may maintain separate accounting records include:

(a) Retail, manufacturing, service, and other traditional business activities;

(b) Farming;

(c) Raising and selling livestock and other animals;

(d) Management of rental properties;

(e) Extraction of minerals and other natural resources;

(f) Timber operations; and

(g) Activities governed by section 15-1-424.

**15-1-414. Principal receipts.** (1) A trustee shall allocate to principal:

(a) To the extent not allocated to income under subparts 1 through 6 of this part 4, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(b) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subpart 4;

(c) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 15-1-427 (1) (g) or for other reasons to the extent not based on the loss of income;

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(f) Other receipts as provided in sections 15-1-418 to 15-1-425.

**15-1-415. Rental property.** To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

**15-1-416. Obligation to pay money.** (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(3) This section shall not apply to an obligation to which the provisions of section 15-1-419, 15-1-420, 15-1-421, 15-1-422, 15-1-424, or 15-1-425 applies.

**15-1-417. Insurance policies and similar contracts.** (1) Except as otherwise provided in subsection (2) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 15-1-413, loss of profits from a business.

(3) This section shall not apply to a contract governed by the provisions of section 15-1-419.

**15-1-418. Insubstantial allocations not required.** (1) If a trustee determines that an allocation between principal and income required by the provisions of sections 15-1-419 to 15-1-422 or section 15-1-425 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 15-1-404 (3) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 15-1-404 (4) and may be released for the reasons and in the manner described in section 15-1-404 (5). An allocation is presumed to be insubstantial if:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(b) The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

**15-1-419. Deferred compensation, annuities, and similar payments.** (1) For purposes of this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4) to (7) of this section, "payment" also includes any payment from any separate fund, regardless of the reason for the payment.

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same

accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection (3), a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(4) Except as otherwise provided in subsection (5) of this section, subsections (6) and (7) of this section apply, and subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to:

(a) A trust to which an election to qualify for a marital deduction under 26 U.S.C. sec. 2056 (b) (7), as amended, has been made; or

(b) A trust that qualifies for the marital deduction under 26 U.S.C. sec. 2056 (b) (5), as amended.

(5) Subsections (4), (6), and (7) of this section do not apply if and to the extent that the series of payments would, without application of said subsection (4), qualify for the marital deduction under 26 U.S.C. sec. 2056 (b) (7) (C), as amended.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this part 4. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. sec. 7520, as amended, for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to a payment governed by the provisions of section 15-1-420.

**15-1-420. Liquidating asset.** (1) For purposes of this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that

does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 15-1-419, resources subject to section 15-1-421, timber subject to section 15-1-422, an activity subject to section 15-1-424, an asset subject to section 15-1-425, or any asset for which the trustee establishes a reserve for depreciation under section 15-1-428.

(2) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

**15-1-421. Minerals, water, and other natural resources.** (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a), (b), or (c) of this subsection (1), ninety percent of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(3) Subparts 1 through 6 of this part 4 apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2001, the trustee may allocate receipts from the interest as provided in subparts 1 through 6 of this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in minerals, water, or other natural resources after July 1, 2001, the trustee shall allocate receipts from the interest as provided in subparts 1 through 6 of this part 4.

**15-1-421.5. Disposition of natural resources.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

(b) If received from a production payment, the receipts are income to the extent of any

factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts that the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) of this subsection (1) shall be apportioned on a yearly basis in accordance with this paragraph (c) regardless of whether any natural resource was being taken from the land at the time the trust was established. Fifteen percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on April 22, 2009, held an item of depletable property of a type specified in this section, he or she shall allocate receipts from the property in the manner used before April 22, 2009, but as to all depletable property acquired after April 22, 2009, by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

**15-1-422. Timber.** (1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (a) and (b) of this subsection (1); or

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a), (b), or (c) of this subsection (1).

(2) In determining net receipts to be allocated pursuant to subsection (1) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) Subparts 1 through 6 of this part 4 apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on July 1, 2001, the trustee may allocate net receipts from the sale of timber and related products as provided in subparts 1 through 6 of this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in timberland after July 1, 2001, the trustee shall allocate net receipts from the sale of timber and related products as provided in subparts 1 through 6 of this part 4.

**15-1-423. Property not productive of income.** (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 15-1-404 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 15-1-404 (1). The trustee may decide which action or combination of actions to take.

(2) In cases not governed by the provisions of subsection (1) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

**15-1-424. Derivatives and options.** (1) For purposes of this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under section 15-1-413 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

**15-1-425. Asset-backed securities.** (1) For purposes of this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset governed by the provisions of section 15-1-411 or 15-1-419.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate

the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

SUBPART 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

**15-1-426. Disbursements from income.** (1) A trustee shall make the following disbursements from income to the extent that they are not disbursements governed by the provisions of section 15-1-406 (1) (b) (II) or (1) (b) (III):

(a) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(b) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**15-1-427. Disbursements from principal.** (1) A trustee shall make the following disbursements from principal:

(a) The remaining one-half of the disbursements described in section 15-1-426 (1) (a) and section 15-1-426 (1) (b);

(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(c) Payments on the principal of a trust debt;

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) Premiums paid on a policy of insurance not described in section 15-1-426 (1) (d) of which the trust is the owner and beneficiary;

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(g) Disbursements related to environmental matters, including reclamation, assessing

environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

**15-1-428. Transfers from income to principal for depreciation.** (1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) During the administration of a decedent's estate; or

(c) Under this section if the trustee is accounting under section 15-1-413 for the business or activity in which the asset is used.

(3) An amount transferred to principal need not be held as a separate fund.

**15-1-429. Transfers from income to reimburse principal.** (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements governed by the provisions of subsection (1) of this section include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) Disbursements described in section 15-1-427 (1) (g).

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1) of this section.

**15-1-430. Income taxes.** (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(a) From income to the extent that receipts from the entity are allocated only to income;

(b) From principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) From principal to the extent that the tax exceeds the total receipts from the entity.

(4) After applying subsections (1) to (3) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

**15-1-431. Adjustments between principal and income because of taxes.** (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(a) Elections and decisions, other than those described in subsection (2) of this section, that the fiduciary makes from time to time regarding tax matters;

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust

shall reimburse principal from income.

SUBPART 6

MISCELLANEOUS PROVISIONS

**15-1-432. Uniformity of application - construction.** In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**15-1-433. Severability.** If any provision of subparts 1 through 6 of this part 4 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of subparts 1 through 6 of this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of subparts 1 through 6 of this part 4 are severable.

**15-1-434. Effective date - application to existing trusts and estates - election.** (1) Subparts 1 through 6 of this part 4 shall take effect July 1, 2001.

(2) Subparts 1 through 6 of this part 4 shall apply to every trust or decedent's estate existing on and after July 1, 2001, except as otherwise expressly provided in the will or terms of the trust or in subparts 1 through 6 of this part 4. For each trust established under a will or trust agreement existing and irrevocable on July 1, 2001, the trustee may elect to apply the "Uniform Principal and Income Act" of this state in effect on June 30, 2001. The trustee shall make such election by July 1, 2002.

(3) Notwithstanding the provisions of subsection (2) of this section, subparts 1 through 6 of this part 4 shall not apply to any trust or decedent's estate existing on July 1, 2001, in which no trustee has the authority to act under section 15-1-404 unless the trustees elect to apply subparts 1 through 6 of this part 4. The trustees may make this election at any time.

(4) Once an election is made pursuant to this section, the election shall be irrevocable. The trustee shall give notice of such an election to the beneficiaries of the trust in accordance with section 15-1-405. If such notice complies with section 15-1-405, the provisions of said section shall apply to such election.

**15-1-435. Application of certain provisions - notice of election.** (1) Section 15-1-421.5 shall apply to all trusts and estates executed on or after July 1, 2009, unless the qualified beneficiaries elect not to apply said section.

(2) The provisions of section 15-1-421.5 shall not apply to the determination of income from the disposition of natural resources in a trust or estate created before July 1, 2009, unless the qualified beneficiaries elect to apply section 15-1-421.5 as provided in this section.

(3) If the qualified beneficiaries elect under subsection (1) or (2) of this section, notice of the election to apply or not to apply section 15-1-421.5 shall be given by the trustee in accordance with section 15-1-405, and the provisions of such section shall apply to the election.

(4) An election to apply section 15-1-421.5 is irrevocable.

**15-1-436. Transitional matters.** (1) Section 15-1-419, as amended by Senate Bill 09-139, enacted in 2009, applies to a trust described in section 15-1-419 (4) on and after the following dates:

(a) If the trust is not funded as of April 16, 2009, the date of the decedent's death;

(b) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death; or

(c) If the trust is not described in either paragraph (a) or (b) of this subsection (1), January 1, 2009.

## SUBPART 7

## UNIFORM PRINCIPAL AND INCOME ACT OF 1955

**15-1-451. Short title.** This subpart 7 shall be known and may be cited as the "Uniform Principal and Income Act of 1955".

**15-1-452. Source and prior enactment - uniform application.** (1) This subpart 7 is derived from the "Uniform Principal and Income Act" promulgated in 1931 by the national conference of commissioners on uniform state laws and enacted in this state effective September 1, 1955. The reenactment of such act in this subpart 7 includes the amendments to such act enacted in this state through June 30, 2001, and additional amendments to accommodate its reenactment.

(2) This subpart 7 shall be construed and interpreted as to effectuate the general purpose of the act as promulgated by such commissioners to make uniform the law of those jurisdictions which enacted such act taking into account the case law of such jurisdictions with respect to such act.

**15-1-453. Definitions - construction of terms.** (1) As used in this subpart 7, unless the context otherwise requires:

(a) "Executor" means the executor named in a will and any successor executor and includes an administrator with the will annexed.

(b) "Income" means the return derived from principal.

(c) "Net probate income" means the income derived from property passing to the

executor by will or by the execution of a power of appointment or from any substitute for such property acquired by purchase, exchange, or otherwise, including income derived from property which is used to discharge liabilities of the testator or of the executor in his or her representative capacity, and legacies payable in money, less any income taxes paid by the executor which are attributable to such income and less that share of administration expenses properly chargeable to income.

(d) "Principal" means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person.

(e) "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

(f) "Tenant" means the person to whom income is presently or currently payable or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

(g) "Trustee" includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

(2) This section shall be effective with respect to wills the testators of which die on or after April 18, 1961, to revocable inter vivos trusts the settlors of which die after said date, and to irrevocable inter vivos trusts which are created after said date.

**15-1-454. Applicability.** (1) Except as specifically provided by the person establishing the principal, this subpart 7 shall apply:

(a) To life estates, estates for a term, remainders, reversions, and other legal estates created before July 1, 2001, or after July 1, 2010;

(b) Except as provided in paragraph (b) of subsection (2) of this section, to trusts in existence before July 1, 2001, that have elected:

(I) Not to have subparts 1 through 6 of this part 4 apply to such trust, in accordance with section 15-1-434 (2); or

(II) To have the prior laws apply in accordance with section 15-1-434 (3); and

(c) To trusts in existence before July 1, 2001, that are subject to section 15-1-434 (3) and that have not elected to have subparts 1 through 6 of this part 4 apply to the trust, in accordance with section 15-1-434 (3).

(2) (a) This subpart 7 shall apply retroactively to a life estate or estate for term in principal, which estate was created during the period beginning on July 1, 2001, and before July 1, 2010, and also to the remainder or reversion that commences in possession upon the termination of such life estate or estate for a term unless a tenant or a remainderman of such principal, or any part of such principal, elects to apply and complies with the provisions of subsection (3) of this section.

(b) This subpart 7 shall apply retroactively to trusts described in paragraphs (b) and (c) of

subsection (1) of this section beginning on July 1, 2001, unless the qualified beneficiaries of the trust elect to apply and comply with the provisions of section 15-1-405.

(3) (a) A tenant or a remainderman of principal, or any part of such principal, may make and deliver and, if required, record a notice of election as provided in this subsection (3) on or before July 1, 2009.

(b) The notice of election shall be a written statement of the election by such tenant or remainderman, against the retroactive application of this subpart 7 to such estates in such principal. The notice of election shall include a reference to this subsection (3); the dates of the instruments creating the present and future legal estates in such principal; the names of the persons creating such estates; a description of the principal, including the location of such principal; a description of such estates and the names or descriptions of the persons who are tenants and remaindermen of such principal; identification of which such persons are tenants and which are remaindermen; and the name and address of the person making the election. The notice of election shall be signed and acknowledged by the person making the election.

(c) (I) In the case of an election made by a tenant, notice shall be delivered to the other tenants and to the remaindermen of the principal. In the case of an election made by a remainderman, notice shall be delivered to the other remaindermen and to the tenants of the principal.

(II) If the estate of the remainderman is unvested, notice may be made by or delivered to the persons then living or in existence who would, if then living or in existence, succeed to the principal upon the termination of the life estate or estate for a term in the principal.

(III) In the case of a child under the age of eighteen years, such notice may be made by or delivered to a conservator, guardian, or parent of such child. In the case of a person who is not competent to manage his or her affairs, such notice may be made by or delivered to the conservator, guardian, or person acting under a general power of attorney with respect to the business or financial affairs of such individual.

(IV) The notice of election shall be considered delivered to the person to whom delivery is required to be made when the notice of election or a copy thereof is delivered in person or when mailed by registered or certified mail, return receipt requested, to such person.

(V) The recording of notice as provided in paragraph (d) of this subsection (3) shall fulfill the requirement of delivery of such notice in the case of any unborn, unascertained, or unknown person and in the case of a child who is under the age of eighteen years or an individual who is not competent to manage his or her affairs and for whom there is no person authorized by subparagraph (III) of this paragraph (c) to receive such notice.

(d) (I) In the case that the principal is realty, a copy of the notice of election with an additional statement made as required by this subparagraph (I) shall be recorded with the recorder of the county where such realty is located. The additional statement shall state to whom, when, and by what means the notice was mailed or otherwise delivered and be signed by the person making the election.

(II) In the case that the principal is not realty, a copy of the notice with such additional statement may be recorded with the recorder of the county where the principal is located or, if the principal is intangible personalty, where the address of the tenant in possession of such principal is located. If such location is not within this state, then such copy and statement shall be recorded

with the recorder of the city and county of Denver.

(III) Such copy of the notice and additional statement when recorded as provided in this paragraph (d) are prima facie evidence of the facts therein stated.

(e) No fiduciary for any trust, estate, individual, or other person with an interest, right, or power affected by the retroactive application of such amendments shall be required to make such election, nor shall such fiduciary be held responsible for not making such election.

**15-1-455. Application of this subpart 7 - powers of settlor.** (1) This subpart 7 shall govern the ascertainment of income and principal and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established with or, unless otherwise stated in this subpart 7, without the interposition of a trust; except that, in the establishment of the principal, provision may be made touching all matters covered by this subpart 7, and the person establishing the principal may himself or herself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this subpart 7.

(2) If neither this subpart 7 nor the direction of the person establishing the principal states an applicable rule, income and principal shall be determined in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as those entitled to principal and in view of the manner in which persons of ordinary prudence, discretion, and judgment would determine such matters. If the person establishing the principal grants the trustee or other person discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee or other person has made an allocation contrary to the provisions of this subpart 7.

**15-1-456. Income and principal - disposition.** (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this subpart 7.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this subpart 7. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and

delivered to the tenant or retained by him or her if already in his or her possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; except that the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

**15-1-457. Apportionment of income.** (1) Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, the tenant or his or her personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his or her right is of the total period during which such income would normally accrue.

(2) The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto.

(3) The provisions of this section shall apply regardless of whether an ultimate remainderman is specifically named. Likewise, when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he or she shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he or she has been so entitled is of the total period during which such income would normally accrue. The balance shall be a part of the principal.

**15-1-458. Corporate dividends and share rights.** (1) All dividends on shares of a corporation forming a part of the principal, which shares are payable in the identical class of the shares of the corporation as the stock on which the dividend is paid, shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in such identical class of the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in other shares or in other securities or in obligations of corporations other than the declaring corporation, shall be deemed income. Except with respect to investment trusts, regulated investment companies, and trusts qualifying and electing to be taxed under federal law as real estate investment trusts, where the trustees have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee. Distributions made from ordinary income by an investment trust, by a regulated investment company, or by a trust qualifying and electing to be taxed under federal laws as a real estate investment trust shall be deemed income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, shall be deemed principal.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation and the proceeds of any sale of such rights shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) Where the assets of a corporation are wholly or partially liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal.

(4) If a corporation succeeds another by merger, consolidation, or reorganization or otherwise acquires its assets and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section, but two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section, the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or, in default thereof, the date of declaration of the dividend.

(6) All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(7) Any distribution of shares or other securities or obligations of a corporation, other than the distributing corporation, or the proceeds of sale or other disposition thereof, made as a result of a court decree or final administrative order by a governmental agency ordering the distributing corporation to divest itself of the shares, securities, or other obligations, shall be deemed principal unless the distributing corporation designates that the distribution is wholly or partly in lieu of an ordinary cash dividend, in which case the distribution, to the extent that it is in lieu of the ordinary cash dividend, shall be deemed income. The provisions of this subsection (7) shall take effect on or after March 13, 1963, and shall apply to all estates of tenants or remaindermen then legally effective, whenever created, as well as to all estates of tenants or remaindermen which become legally effective thereafter.

**15-1-459. Premium and discount bonds.** Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value, which in the case of a testamentary trust, unless a contrary intention appears from the will, shall be the value at the date of death, or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value, and, upon their respective maturities or upon their sale, any loss or gain

realized thereon shall fall upon or inure to the principal. If, however, any of such bonds or obligations bears no stated interest but is redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued, such accretion, as and when realized or realizable, shall be income.

**15-1-460. Principal used in business.** (1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business that the original owner of the property comprising the principal had carried on, the net profits of such business attributable to such principal shall be deemed income.

(2) If such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting, from the gross returns during and the inventory value of the property at the end of such period, the expenses during the inventory value of the property at the beginning of such period.

(3) If such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such a way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon the principal.

**15-1-461. Principal comprising animals.** If any part of the principal consists of animals employed in business, the provisions of section 15-1-460 shall apply; and, in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals, and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

**15-1-462. Principal subject to depletion.** If any part of the principal consists of property other than natural resources, subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the tenant; except that, where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of four percent per annum of its fair inventory value, which in the case of a testamentary trust, unless a contrary intention appears from the will, shall be the value at date of death, or, in default of same, its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

**15-1-463. Unproductive estate.** (1) If any part of a principal in the possession of a trustee consists of realty or personalty that for more than a year and until disposed of as stated in this section has not produced an average net income of at least one percent per annum of its fair inventory value, which in the case of a testamentary trust, unless a contrary intention appears from the will, shall be the value at date of death, or, in default thereof, its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or, in case of his or her death, his or her personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent stated in this section.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of four percent per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property, which in the case of a testamentary trust, unless a contrary intention appears from the will, shall be the value at the date of death, or, in default thereof, its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The time the change is delayed starts when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be:

(a) One year after the trustee first received the property if the property was unproductive at that time; or

(b) One year after the property became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his or her share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants, the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

**15-1-464. Disposition of natural resources.** (1) If any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas, or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease, or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such net proceeds, if received as rent on a lease, shall be deemed income but, if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed, to the extent provided in this section, principal to be invested to produce income, and the remainder of such net proceeds shall be deemed income. Of the net proceeds received during any period as

consideration for permanent severance of a natural resource, the amount to be considered as principal for that period shall be the greater of the following:

(a) The amount that bears the same ratio to the fair inventory value of such natural resource, which in the case of a testamentary trust, unless a contrary intention appears in the will, shall be the value at date of death, or, in default thereof, its market value at the time the principal was established, or its cost if purchased later, as the number of units of the natural resource severed during the period bears to the total number of severable units of the natural resource estimated as having existed at the time the principal was established;

(b) The amount that bears the same ratio to the estimated value of the natural resource at the time of commencement of severance as the number of units of the natural resources severed during the period bears to the total number of severable units of the natural resource estimated as having existed at the time of commencement of such severance;

(c) An amount equal to that percentage of the net proceeds received as consideration for such permanent severance that is allowable as a deduction from gross income for depletion purpose under the federal income tax law then in effect at the time of severance or, if the federal income tax law then in effect makes no provision for the deduction of any stated percentage for depletion, or for any reason is not applicable to such natural resource, then fifteen percent of such net proceeds. Such disposition of net proceeds shall apply whether permanent severance commenced before or after the time the principal was established and without regard to the time when the instrument under which severance is being made was executed.

(2) Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his or her own benefit.

**15-1-464.5. Disposition of natural resources - special applicability.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts that the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) of this subsection (1) shall be apportioned on a yearly basis in accordance with this paragraph (c) regardless of whether any natural resource was being taken from the land at the time the trust was established. Fifteen percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed

without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on April 22, 2009, held an item of depletable property of a type specified in this section, he or she shall allocate receipts from the property in the manner used before April 22, 2009, but as to all depletable property acquired after April 22, 2009, by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

(4) (a) Except as provided in paragraph (b) of this subsection (4), this section applies to a trust or estate that is subject to this subpart 7 and shall control over the other provisions of this subpart 7 to the extent that any inconsistency exists between such provisions and this section.

(b) (I) In the case of a trust or a probate estate, the trustee or the personal representative may elect to have this section not apply to the trust or the probate estate by giving notice of such election to the beneficiaries of the trust or the probate estate as provided in subsection (5) of this section.

(II) In the case of an estate other than a trust, a life tenant or the remainderman may elect to have this section not apply to the estate by giving notice of such election in the same time and manner as provided in section 15-1-454 (3) for an election out of the application of this subpart 7 to the estate.

(5) (a) If a trustee or a personal representative makes an election under this section, he or she shall satisfy the requirements set forth in section 15-1-405 for providing notice of the election.

(b) If a life tenant or a remainderman makes an election under this section, he or she shall satisfy the requirements set forth in section 15-1-454 (3) for providing notice of the election and recording the election.

**15-1-465. Expenses - trust estates.** (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, a reasonable portion, but not less than one-half, of the trustees' compensation for current management of principal and application of income to the use of tenant, compensation of assistants, and court costs and attorneys' and other fees on regular accountings shall be paid out of income, but such expenses where incurred in disposing of, or as carrying charges on, an unproductive estate, as defined in section 15-1-463, shall be paid out of principal, subject to the provisions of section 15-1-463 (2).

(2) All other expenses, including trustees' commissions at trust inception and termination and not more than one-half of trustees' compensation for current management of principal and application of income to the use of the tenant, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be

paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of section 15-1-466 (2) shall be paid out of principal, notwithstanding that said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) of this section that represent regularly recurring charges shall be considered to have accrued from day to day and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. If the expenses to be paid out of income are of an unusual amount, the trustee may distribute them throughout an entire year or part thereof or throughout a series of years. After such distribution, if the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) If the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2) of this section, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

**15-1-466. Expenses - nontrust estates.** (1) The provisions of section 15-1-465, so far as applicable and excepting those provisions concerning costs of, or special taxes or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created; except that such apportionment shall be subject to any legal agreement of the parties or any specific direction of the taxing or other statutes. If either tenant or remainderman has incurred an expense for the benefit of his or her own estate and without the consent or agreement of the other, he or she shall pay such expense in full.

(2) Subject to the exceptions described in subsection (1) of this section, the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, if such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases, a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant; except that, it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American experience tables of mortality, and no other evidence of duration or expectancy shall be considered.

**15-1-467. Disposition of net probate income.** (1) Subject to the provisions of section 15-1-455, an executor shall, at the time of distribution, pay over to the trustee of any trust, or to any other legatee to whom specific property other than money is bequeathed or devised, the net probate income of such property and shall pay over all other net probate income to:

(a) The trustee of any trust created out of residue or to which any portion of residue is

added;

(b) Any legatee for life or years of any portion of the residue;

(c) Any legatee of a present, legal, possessory interest in any portion of the residue; and

(d) Any trustee of a sum of money under a trust created or added to by the will but not payable out of the residue, in pro rata shares, in accordance with the respective values of the property bequeathed or devised outright or in trust. The values shall be those finally determined for federal estate tax purposes, or, if no such determination is made, the values shall be those at date of death as determined by the executor. Nothing in this subsection (1) shall prevent a court from ordering distribution of any net probate income directly to the beneficiary of a trust.

(2) If an executor makes a partial distribution of property to any legatee or trustee, the recipient of such partial distribution shall share in the net probate income collected to the date of distribution, but his or her share in the net probate income later collected by the executor shall be reduced accordingly.

(3) The amount of any net probate income distributed by the executor to each trustee or other distributee shall be stated in any order of distribution.

(4) A trustee who receives net probate income from an executor shall treat it as income of the trust for which he or she is acting.

(5) If net probate income, with respect to which income taxes have been paid by the executor, is distributed, and any of the distributees is a charitable or other tax-exempt organization, and a charitable deduction was allowable on the income tax return of the executor for the taxable year of the executor in which the income was received or accrued, such income taxes paid by the executor shall be allocated among the distributees so that the diminution in such taxes resulting from the charitable deduction allowable to the executor will inure to the benefit of such charitable or exempt organization.

(6) If net probate income with respect to which income taxes have been paid by the executor is distributed and includes tax-exempt or partially tax-exempt income or income with respect to which a credit or special deduction is allowable and the will requires such tax-exempt or partially tax-exempt income or income with respect to which a credit or special deduction is allowable to be distributed other than proportionately to the distributees of net probate income, such income taxes shall be allocated among the distributees so that the benefit of such tax exemption, partial tax exemption, credit, or special deduction will inure to the benefit of the distributee of such tax-exempt or partially tax-exempt income or of the income with respect to which a credit or special deduction is allowable.

(7) If a trust, whether inter vivos or testamentary, contains provisions whereby, on the happening or the failure to happen of an event, a gift is made of money in trust, or of specific property other than money, in trust or outright, or of any portion of the residue of such trust in further trust, or for life or years, the income of such trust for the period following the happening or failure to happen of such event shall be disposed of by the trustee thereof in the manner, so far as applicable, that would prevail if the trustee of such trust were an executor acting under the provisions of this section.

(8) This section shall be effective with respect to wills the testators of which die on or after April 18, 1961, to revocable inter vivos trusts the settlors of which die after said date, and to irrevocable inter vivos trusts which are created after said date.

PART 5

FIDUCIARY PROPERTY - DEPOSITORY NOMINEES

**15-1-501. Fiduciary property kept separate.** Every fiduciary shall keep fiduciary property separate and distinct from such fiduciary's own property and shall not invest or deposit the same with any person, association, or corporation in such fiduciary's own name. Except as provided in this part 5, every fiduciary shall keep the property of each fiduciary account separate and distinct from the property of every other fiduciary account, and all transactions shall be conducted in such fiduciary's name as fiduciary.

**15-1-502. Nominees.** Any fiduciary may register or hold the title to fiduciary property in the name of a nominee.

**15-1-503. Fiduciary property deposits.** Any fiduciary may deposit fiduciary property with a bank or trust company, including a federal reserve bank, or with a clearing corporation, as defined in section 4-8-102 (a) (5), C.R.S., as depository, and such fiduciary property so deposited may be registered in such depository's name as nominee for the fiduciary or may be registered in the name of a nominee of such depository.

**15-1-504. Holding of securities by fiduciary or depository of fiduciary property.** Any bank or trust company or clearing corporation acting as a fiduciary or depository of fiduciary property may merge and hold securities held as fiduciary property, without certification as to ownership attached, with other securities held as fiduciary property, in one or more certificates representing securities of the same class of the same issuer. Ownership of such securities may be transferred by bookkeeping entry on the books of the fiduciary or of the depository without physical delivery of certificates representing such securities.

**15-1-505. Records.** The records of every fiduciary shall at all times show the ownership of any fiduciary property held by such fiduciary or in the name of its nominee or held in a depository.

**15-1-506. Liability of issuer.** No issuer of securities or agent thereof shall be liable for registering or causing to be registered on the books of such issuer any securities in the name of any nominee or, when the transfer is made on the authorization of the nominee, for transferring or causing to be transferred on the books of the issuer any securities theretofore registered by the

issuer in the name of any nominee.

**15-1-507. Custodian as fiduciary.** For purposes of this part 5, a bank or trust company acting as custodian shall be deemed to be a fiduciary, and property held in custody by a bank or trust company shall be deemed to be fiduciary property.

**15-1-508. Individual and corporate fiduciaries.** (1) For purposes of this part 5, a bank or trust company acting as a fiduciary, alone or jointly with any cofiduciary, may take any action authorized by this part 5 without regard to the language or provisions, or any limitations, in the will or trust instrument or other instrument establishing the fiduciary relationship.

(2) For purposes of this part 5, any fiduciary other than a bank or trust company may take any action authorized by this part 5, unless limited by the language or provisions in the will or trust instrument or other instrument establishing the fiduciary relationship expressing a clear intention that an action otherwise authorized by this part 5 shall be denied to such fiduciary.

(3) Nothing in subsection (2) of this section shall be construed to limit the authority of a bank or trust company serving as a cofiduciary with one or more other fiduciaries or serving as a depository to take any action authorized by this part 5 which it could take if serving as sole fiduciary.

**15-1-509. Fiduciary duty.** In the exercise of any of the powers granted in this part 5, a fiduciary has a duty to act reasonably and equitably with due regard for his obligations and responsibilities toward the interests of beneficiaries and creditors and the estate or trust involved and the purposes thereof and with due regard for the manner in which men of prudence, discretion, and intelligence would act in the management of the property of another.

**15-1-510. Application.** This part 5 shall apply to every fiduciary, regardless of the date of the agreement, instrument, or court order by which the fiduciary is appointed.

## PART 6

## UNIFORM FIDUCIARY SECURITY TRANSFERS ACT

**15-1-601 to 15-1-611. (Repealed)**

## PART 7

## FIDUCIARY INTERESTS IN ENTITIES

**15-1-701. Power to become partner.** Subject to the terms of the partnership agreement, if permitted by the trust instrument or will under which the fiduciary serves or by order of a court having jurisdiction of the estate or trust, a fiduciary may enter into a partnership agreement and accept the assignment of or otherwise acquire, hold, and dispose of an interest in a partnership and in so doing may become either a general or a limited partner.

**15-1-702. Family business interests - maintenance of entity - formation of successor entity.** (1) As used in this section, unless the context otherwise requires:

(a) "Family" means an individual, such individual's spouse, parents, the descendants of either of such parents or of such spouse, or the spouses of such descendants or any combination of such persons.

(b) "Family business" means a business enterprise with respect to which the aggregate interests of the family are substantial in relation to the total outstanding interests in the business enterprise.

(c) "Interest" and "interests" include beneficial interests as beneficiaries of any estate or trust and indirect interests through any other form of entity.

(d) "Successor entity" includes the entity holding the family business where such entity survives a consolidation, merger, acquisition, or other combination.

(2) Any fiduciary acting under a will or trust instrument that evidences an intent to retain an interest in a family business may maintain the interest in any form of entity or successor entity. Such a successor entity may be formed by consolidation, merger, acquisition, or other combination and shall be considered the same enterprise for purposes of maintaining the interest in the family business where the interests of the beneficiaries in the successor entity are substantial.

(3) Except as otherwise provided in the instrument under which the fiduciary is acting:

(a) A fiduciary may proceed as provided in this subsection (3) with the formation of such a successor entity where the fiduciary believes in good faith that the formation is on a favorable basis considering only the overall interests of the beneficiaries including the maintenance of a substantial interest on the part of the beneficiaries in the enterprise and the value of such interest in the long term.

(b) A fiduciary may vote and otherwise deal with respect to interests in the family business as the fiduciary believes in the good faith exercise of the fiduciary's business judgment, under the business judgment rule, to be necessary or appropriate to complete such formation on such a favorable basis.

(c) A fiduciary may, in the good faith exercise of such judgment, accept a reduced participation in equity, voting, and other rights and preferences including a reduction in voting rights that results in less than voting control of the successor entity.

(d) A fiduciary may proceed without notice to the beneficiaries where disclosure is forbidden by law or where the fiduciary believes in the good faith exercise of such judgment, that nondisclosure is necessary to complete such formation on such a favorable basis.

(4) This section shall apply to any interests held by an estate or trust in a family business on or after May 26, 2000, and to the formation of any entity or successor entity completed after May 26, 2000.

## PART 8

## POWERS

**15-1-801. Short title.** This part 8 shall be known and may be cited as the "Colorado Fiduciaries' Powers Act".

**15-1-802. Definitions.** As used in this part 8, unless the context otherwise requires:

(1) "Court" means the district or probate court having jurisdiction over the administration of the estate or trust.

(2) "Estate" means the estate of a decedent or a person under disability.

(3) (a) "Fiduciary" means the one or more persons designated in a will, trust instrument, or otherwise, whether corporate or natural persons and including successors and substitutes, who are acting in any of the following capacities:

(I) Personal representatives, including executors, administrators, administrators with the will annexed (cum testamento annexo), administrators in succession acting under a will (de bonis non), ancillary administrators acting under a will, and ancillary executors;

(II) Special administrators;

(III) Conservators; and

(IV) Trustees.

(b) "Fiduciary" does not include a guardian, special fiduciary, or public administrator, except when the public administrator has been appointed a fiduciary as defined in this subsection (3).

(4) "Trust" means any express trust created by a will, trust instrument, or other instrument, whereby there is imposed upon a trustee the duty to administer a trust asset, for the benefit of a named or otherwise described income or principal beneficiary, or both. A trust shall not include trusts for the benefit of creditors, resulting or constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, security instruments such as deeds of trust and mortgages, trusts created by the judgment or decree of a court, liquidation or reorganization trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, instruments wherein one or more persons are mere nominees for another, or trusts created in deposits in any banking institution or savings and loan institution.

(5) "Will" means a will of a decedent and includes a testament or codicil.

**15-1-803. Powers conferred on fiduciaries.** Fiduciaries have all powers conferred upon

them by the provisions of this part 8, unless limited by the language or provisions in the will or trust instrument expressing a clear intention that powers conferred under this part 8 shall be denied to the fiduciary. They have, in addition to the powers conferred in this part 8, such other or further powers as are set forth in the will or trust instrument or as are provided by other statutes or by court rule or order. If any power specifically conferred on a fiduciary by the will or trust instrument conflicts with any power conferred by this part 8, the fiduciary shall be deemed to have only the power specifically conferred by the will or trust instrument and not the conflicting power conferred by this part 8. Provisions in articles 10 to 20 of this title concerning the exercise of powers in the administration of an estate by an executor having powers under a will shall apply to executors having powers conferred under this part 8.

**15-1-804. Powers available.** (1) During the period of administration of the estate or trust and until final distribution, a fiduciary has the power to perform, without court authorization, every act reasonably necessary to administer the estate or trust, including but not limited to the powers specified in subsection (2) of this section. In the exercise of any of his powers, whether derived from this part 8 or from any other source, a fiduciary has a duty to act reasonably and equitably with due regard for his obligations and responsibilities toward the interests of beneficiaries and creditors, the estate or trust involved, and the purposes thereof and with due regard for the manner in which men of prudence, discretion, and intelligence would act in the management of the property of another.

(2) Subject to subsection (1) of this section, a fiduciary has the power:

(a) To receive, take possession of, recover, and preserve the assets of the estate or trust, both real and personal, coming to his attention or knowledge and the rents, issues, and profits arising therefrom;

(b) To retain the initial assets of the estate or trust without liability for loss, depreciation, or diminution in value resulting from such retention until, in the judgment of the fiduciary, disposition of such assets should be made;

(c) To accept additions to the estate or trust, not only from the estate of the decedent or the settlor of the trust, but also from other sources;

(d) To acquire an undivided interest in an estate or trust asset in which the fiduciary, in a fiduciary or individual capacity, also holds an undivided interest;

(e) To invest and reinvest assets of the estate or trust, as provided by law;

(f) To effect and keep in force fire, rent, title, liability, casualty, or other insurance to protect the assets of the estate or trust and the fiduciary against hazards usually insured against;

(g) With respect to real property or any interest in real property owned by the estate or trust, except where such real property, or interest in real property, is specifically devised:

(I) To grant options to sell and to sell and convey the same at public or private sale, for cash or on credit, upon fair, reasonable, and equitable terms;

(II) To lease the same, even for a term extending beyond the duration of the administration of the estate or trust, and, in any such case, to include or exclude the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements;

(III) To encumber the same;

(IV) To make repairs or alterations in buildings, or other structures; to improve or demolish any improvements; to raze existing party walls or buildings and erect new party walls or buildings together with owners of adjoining or adjacent property or to enter into agreements with respect thereto; to subdivide, develop, and dedicate to public use; to make or obtain the vacation of public plats; to adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving money or money's worth; and to dedicate and grant easements to public use without consideration;

(h) With respect to personal property or any interest in personal property, owned by the estate or trust, except where such personal property is specifically bequeathed:

(I) To grant options to sell and to sell the same at public or private sale, for cash or on credit, upon fair, reasonable, and equitable terms;

(II) To lease personal property, even for a term extending beyond the duration of the administration of the estate or trust;

(III) To encumber the same;

(IV) To make repairs to the personal property of the estate or trust;

(i) With respect to any indebtedness owed to the estate or trust, secured or unsecured:

(I) To continue the same upon and after maturity, with or without renewal or extension, upon such terms as the fiduciary deems advisable;

(II) To foreclose any security for such indebtedness, to purchase any property securing such indebtedness, and to acquire any property by conveyance from the debtor in lieu of foreclosure;

(j) To perform, in the case of an estate, any and all valid and legally enforceable executory contracts to which at the time of his death the decedent was a party and which at the time of such death had not been fully performed by such decedent and to discharge all obligations of the estate arising under or by reason of such contracts if such obligations are legally enforceable against the estate;

(k) To enter into contracts which are reasonably incident to the administration of the estate or trust;

(l) To continue or to participate in the operation of any business activity or enterprise, including a sole proprietorship or partnership, existing at the inception of the estate or trust (in the case of an estate having due regard for those having claims against the estate) and to incorporate or otherwise change its form;

(m) To deposit funds of the estate or trust in one or more banks, including the banking department of a corporate fiduciary;

(n) To deposit fiduciary property with others, to the extent permitted by part 5 of this article, so long as the cost thereof does not constitute an additional charge against the estate or trust but is payable out of compensation otherwise properly payable to the fiduciary;

(o) To hold title to fiduciary property in the name of a nominee, without disclosure of the estate or trust, to the extent permitted by part 5 of this article;

(p) To borrow money from any source, including the commercial department of a corporate fiduciary, with any such indebtedness being repayable solely from assets of the estate or trust and to pledge or encumber estate or trust assets as security for such loans;

(q) To advance money for the protection of the estate, or the trust, or the assets thereof and for all expenses, losses, and liabilities incurred in or by the collection, care, administration, or protection of the estate, or trust, or the assets thereof. For all such advances, the fiduciary shall have a lien on the estate or trust assets and may reimburse himself with interest at a reasonable rate out of the estate or trust.

(r) To pay, contest, or otherwise settle claims by or against the estate or trust, including taxes, assessments, and expenses, by compromise, arbitration, or otherwise;

(s) To determine all matters of estate and trust accounting as the fiduciary deems to be proper and equitable;

(t) In the case of a trust, to advance trust income to or for the use of a beneficiary, for which advance the fiduciary shall have a lien on the future benefits of such beneficiary from the trust;

(u) To make distributions in kind, in money, or partially in each, at fair market values on the effective date of distribution, as determined by the fiduciary, and without requiring pro rata distribution of specific assets;

(v) In the case of a trust, to abandon, charge off, or otherwise dispose of any property held by or on behalf of the trust which is of no value or of insufficient value to justify collection, care, administration, or protection;

(w) To execute and deliver all legal instruments which are necessary or appropriate for the administration of the estate or trust;

(x) (I) To employ attorneys or other advisors to advise or assist the fiduciary in the performance of his or her duties or, instead of acting personally, to employ one or more agents to do any ministerial act required to be done by the fiduciary in the performance of his or her duties;

(II) In accordance with section 15-1.1-109 of the "Colorado Uniform Prudent Investor Act", to delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances;

(y) In the case of the survivors of the holders of a power given to or imposed upon two or more fiduciaries, to exercise or perform such power, unless the exercise of such power would be contrary to any express provision of the will, trust instrument, or other instrument;

(z) As successor or substitute fiduciary, to succeed to all of the powers and duties of an original, successor, or prior substitute fiduciary, unless contrary to any express provision of the will, trust instrument, or other instrument;

(aa) To vote in person or by proxy shares of stock or other securities which are assets of the estate or trust;

(bb) To pay calls, assessments, and any other sums chargeable to or accruing against or on account of shares of stock or other securities which are assets of the estate or trust whenever such payments may be legally enforceable against the fiduciary or any property of the estate or trust or whenever the fiduciary deems payment expedient and for the best interests of the estate or trust;

(cc) To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, or liquidations; to enter into voting trust agreements or other similar arrangements; and to consent to corporate sales, leases, and encumbrances. In the exercise of such powers, the fiduciary shall be authorized, whenever he

deems such course expedient, to deposit stocks or other securities which are assets of the estate or trust with any protective or other similar committee or with voting trustees under such terms and conditions respecting the deposit thereof as the fiduciary may approve.

(dd) In the case of a trustee, to hold the assets of two or more trusts or parts of such trusts created by the same instrument or by two or more instruments if the trust provisions are substantially similar, as an undivided whole, without separation as between the assets of such trusts or parts of such trusts; but such separate trusts or parts of such trusts shall have undivided interests in such assets; and no such holding shall defer the vesting of any estate in possession or otherwise;

(ee) In the case of an estate, to join with the surviving spouse, his conservator, his guardian, the executor of his will, or the administrator of his estate, in the execution and filing of a joint income tax return for any period prior to the death of a decedent for which he has not filed a return, a federal gift tax return on gifts made by the decedent's surviving spouse, or a Colorado gift tax return on gifts made before January 1, 1980, by the decedent's surviving spouse, and to consent to said gifts being made one-half by the decedent, for any period prior to a decedent's death, and to pay such taxes thereon as are chargeable to the decedent;

(ff) With respect to stock of a corporation held in an estate or trust where the powers of investment conferred upon the fiduciary by the governing instrument or by this part 8 include the power to retain assets initially contributed, or subsequently added from the estate of the decedent or by the settlor of the trust or from any other source, to retain such stock, to exchange or convert such stock for the stock or other securities of an affiliate of the corporation issuing such stock, and to retain such new stock and other securities. For the purposes of this paragraph (ff), "corporation" includes the corporate fiduciary as well as any other corporation, and "affiliate" of a corporation means any corporation controlling, controlled by, or under common control with such corporation, or any corporation formed as a result of or for the purpose of effectuating any merger, consolidation, or reorganization of such corporation. The powers conferred by this paragraph (ff) are hereby conferred upon the fiduciaries of all estates and trusts, unless otherwise limited by language or provisions in the will or trust agreement expressing a clear intention to the contrary.

(gg) In the case of a bank acting as a corporate fiduciary, to invest fiduciary funds awaiting investment or distribution in short-term investments, including, but not limited to, a collective investment fund. A bank acting as a corporate fiduciary may also deposit fiduciary funds awaiting investment or distribution in the commercial department of such bank or in an affiliate bank. For the purposes of this paragraph (gg), the term "bank" includes a state bank or bank and trust company which is chartered by this state or as a national bank.

(hh) To grant a conservation easement in gross, as defined in section 38-30.5-102, C.R.S., whether for consideration or gratuitously; except that, if such grant is for less than fair market value, the consent of interested persons, as defined in section 15-10-201 (27), shall be obtained in writing or an order of the court shall be obtained after notice to interested persons, unless a will or trust instrument directs, permits, or requires a donation of a conservation easement in gross, in which case no such consent or order shall be required;

(ii) Subject to the terms of the documents controlling the entity concerned, to retain or acquire interests in any entity in which the fiduciary does not have general liability, regardless of

form, including but not limited to any partnership, corporation, limited liability company, and joint venture, and to become a shareholder, partner, member, or joint venturer.

**15-1-805. Powers of fiduciary conferred by court.** The court having jurisdiction of the estate or trust may authorize the fiduciary to exercise any power not otherwise held by the fiduciary which, in the judgment of the court, is necessary for the proper collection, care, administration, and protection of the estate or the trust.

**15-1-806. Third persons protected in dealing with fiduciary.** With respect to a third person dealing with a fiduciary or assisting a fiduciary in the conduct of a transaction, proper exercise of his powers by the fiduciary is to be presumed, and such third person shall not be bound to inquire whether the fiduciary has power to act or is properly exercising such powers, nor shall such third person be bound to see to the proper application of estate or trust assets paid or delivered to the fiduciary.

**15-1-807. Applicability.** This part 8 shall apply to all trusts existing on January 1, 1968, which are later amended to make applicable this part 8, and to all estates and trusts which may come into existence after January 1, 1968.

## PART 9

## DISCLAIMER OF SUCCESSION - NONTESTAMENTARY INSTRUMENTS

**15-1-901 to 15-1-907. (Repealed)**

## PART 10

## CHARITABLE, EDUCATIONAL, RELIGIOUS, AND BENEVOLENT TRUSTS

**15-1-1001. Legislative declaration.** It is the purpose of this part 10 to preserve the intent of testators and grantors of testamentary and inter vivos trusts created prior to and after June 2, 1971, for charitable, educational, religious, and benevolent purposes, by minimizing the imposition of federal income and excise taxes, and federal estate and gift taxes, imposed upon the assets of such trusts, and thereby preserving the maximum amount of the trust assets for the charitable, educational, religious, and benevolent purposes for which they were intended. The attorney general of this state shall perform such acts as, in his opinion, will result in the effectuation of this declaration of purpose.

**15-1-1002. Prohibition of certain acts - amendment of governing instrument.** (1) In the administration of any trust which is a private foundation as defined in section 509 of the federal "Internal Revenue Code of 1986", a charitable trust as defined in section 4947 (a) (1) of the federal "Internal Revenue Code of 1986", or a split-interest trust as defined in section 4947 (a) (2) of the federal "Internal Revenue Code of 1986", notwithstanding any provisions to the contrary in the governing instrument or in any other law of this state, and except as otherwise provided by court decree entered on or after June 2, 1971, the following acts shall be prohibited:

(a) Engaging in any act of "self-dealing", as defined in section 4941 (d) of the federal "Internal Revenue Code of 1986", which would give rise to any liability for the tax imposed by section 4941 (a) of the federal "Internal Revenue Code of 1986";

(b) Retaining any "excess business holdings", as defined in section 4943 (c) of the federal "Internal Revenue Code of 1986", which would give rise to any liability for the tax imposed by section 4943 (a) of the federal "Internal Revenue Code of 1986";

(c) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the federal "Internal Revenue Code of 1986", so as to give rise to any liability for the tax imposed by section 4944 (a) of the federal "Internal Revenue Code of 1986"; and

(d) Making any "taxable expenditure", as defined in section 4945 (d) of the federal "Internal Revenue Code of 1986", which would give rise to any liability for the tax imposed by section 4945 (a) of the federal "Internal Revenue Code of 1986".

(2) The provisions of subsection (1) of this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the federal "Internal Revenue Code of 1986".

(3) Notwithstanding any provisions to the contrary in the governing instrument or in any other law of this state, the trustee of any charitable trust as defined in section 4947 (a) (1) or 4947 (a) (2) of the federal "Internal Revenue Code of 1986", with the consent of all the beneficiaries under the governing instrument, may, without application to any court and either before or after the funding of such trust, amend the governing instrument to conform to the provisions of sections 508 (e), 664, 2055 (e), and 2522 (c) of the federal "Internal Revenue Code of 1986", to the extent applicable, by executing a written amendment to the trust for that purpose. Consent shall not be required as to individual beneficiaries not living at the time of amendment or as to charitable beneficiaries not named or not in existence at the time of amendment. The possibility of beneficial interests arising after the amendment of the governing instruments shall not defeat the ability to amend. In the case of an individual beneficiary not competent to give consent, the consent of such beneficiary's guardian or conservator, if any, or the consent of a guardian ad litem appointed by a court of competent jurisdiction shall be treated as the consent of the beneficiary. A copy of the proposed amendment, executed by the trustee and consented to by all beneficiaries whose consent is required under this subsection (3), shall be delivered in person or by registered mail to the attorney general. The attorney general may, within sixty days after such receipt, indicate by registered mail to the trustee his specific objections to such proposed amendment, in which event the provisions of subsection (4) of this section shall apply if he does

not withdraw his objections. In the case of any eamendment to a trust created by will or to a trust created by inter vivos instrument, unless otherwise provided, the amendment shall be deemed to apply as of the date of death of the decedent or as of the date of gift.

(4) In the event that all such trustees and beneficiaries under the governing instrument do not consent to such amendment or in the event that there are no named beneficiaries, any court of competent jurisdiction shall have the power to amend the governing instrument in accordance with subsection (3) of this section upon petition of the trustee or any beneficiary and upon a subsequent finding by the court that the testator's or the grantor's intention would not be defeated by such amendment. A copy of such petition shall be delivered in person or by registered mail to the attorney general.

(5) Unless otherwise expressly provided in the governing instrument, any devise, bequest, or transfer in a testamentary or revocable inter vivos trust for religious, educational, charitable, or benevolent uses to be determined by the trustee or any other person shall be made only to organizations and for purposes within the meaning of section 2055 (a) of the federal "Internal Revenue Code of 1986".

**15-1-1003. Requirement for distribution of certain amounts.** In the administration of any trust which is a private foundation, as defined in section 509 of the federal "Internal Revenue Code of 1986", or which is a charitable trust, as defined in section 4947 (a) (1) of the federal "Internal Revenue Code of 1986", there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942 (a) of the federal "Internal Revenue Code of 1986". No trustee of such a trust shall be required to reimburse the trust from his own property for the amount of any liability for such tax which is incurred by the trust if the trustee acted in a prudent manner and in good faith. No trustee of such a trust shall be required to reimburse the trust from his own property for any amount which he, acting prudently and in good faith, distributes from the trust, believing it to be required to be distributed in order to avoid the liability for such tax, but which later is determined not to have been required to be distributed for that purpose.

**15-1-1004. Applicability of sections 15-1-1002 and 15-1-1003.** The provisions of sections 15-1-1002 and 15-1-1003 shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the terms of such instrument may not properly be changed to conform to such sections.

**15-1-1005. Rights and powers of courts and attorney general not impaired.** Nothing in this part 10 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

**15-1-1006. References to "Internal Revenue Code of 1954".** All references to sections of the "Internal Revenue Code of 1954" refer to the "Internal Revenue Code of 1954" as it exists on June 2, 1971; except that all references to the "Internal Revenue Code of 1954" in section 15-1-1002 (3) and (5) refer to the "Internal Revenue Code of 1954" as it exists on April 19, 1973.

**15-1-1007. Application of part 10.** This part 10 shall apply to all trusts established after December 31, 1969, with the exceptions contained in section 4947 (a) (2) of the federal "Internal Revenue Code of 1986". This part 10 shall also apply to all trusts established before January 1, 1970, with the exceptions contained in section 508 (e) (2) and section 4947 (a) (2) of the federal "Internal Revenue Code of 1986". Section 15-1-1002 (3) to (5) shall apply in the case of all decedents dying after December 31, 1969, and in the case of all irrevocable inter vivos trusts created after July 31, 1969.

## PART 11

## UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

**15-1-1101. Short title.** This part 11 shall be known and may be cited as the "Uniform Prudent Management of Institutional Funds Act".

**15-1-1102. Definitions.** As used in this part 11, unless the context otherwise requires:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, or any other charitable or eleemosynary purpose.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include funds held by the public employees' retirement association created by article 51 of title 24, C.R.S., or:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution; or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

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

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "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.

**15-1-1103. Standard of conduct in managing and investing institutional fund.** (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this part 11, each person responsible for managing and investing an institutional fund shall manage and invest the institutional fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the institutional fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the institutional fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the institutional fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.

(3) Except as otherwise provided by law other than this part 11, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the institutional fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this part 11.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**15-1-1104. Appropriation for expenditure of accumulation of endowment fund - rules of construction.** (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the endowment fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate

under subsection (a) of this section.

**15-1-1105. Delegation of management and investment functions.** (a) Subject to any specific limitation set forth in a gift instrument or in law other than this part 11, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this part 11.

**15-1-1106. Release or modification of restrictions on management, investment, or purpose.** (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow an institutional fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the institutional fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the institutional fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the institutional fund or the restriction on the use of the institutional fund in a manner consistent with the charitable

purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(1) The institutional fund, subject to the restriction, has a total value of less than one hundred thousand dollars; except that the dollar limit established in this paragraph (1) shall be adjusted for inflation in accordance with the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index. On or before January 1, 2010, and each even-numbered year thereafter, the attorney general shall calculate the adjusted dollar amount for the next two-year cycle using inflation for the prior two calendar years as of the date of the calculation. The adjusted exemption shall be rounded upward to the nearest one hundred dollar increment. The attorney general shall certify the amount of the adjustment for the next two-year cycle and shall publish the amount on the attorney general's web site.

(2) More than twenty years have elapsed since the institutional fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**15-1-1107. Reviewing compliance.** Compliance with this part 11 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**15-1-1108. Application to existing institutional funds.** This part 11 applies to institutional funds existing on or established after September 1, 2008. As applied to institutional funds existing on September 1, 2008, this part 11 governs only decisions made or actions taken on or after said date.

**15-1-1109. Relation to "Electronic Signatures in Global and National Commerce Act".** This part 11 modifies, limits, and supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (a) of that act, 15 U.S.C. sec. 7001 (a), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

**15-1-1110. Uniformity of application and construction.** In applying and construing this part 11, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## PART 12

## LIFE ESTATE IN PROPERTY OF SURVIVING SPOUSE

**15-1-1201. Life estate in property - rights of surviving spouse.** (1) Unless the instrument provides otherwise, any devise of a life estate in property to a surviving spouse by a decedent spouse shall entitle the surviving spouse to:

(a) All income for life from the entire interest in or specific portion of the property, payable annually or at more frequent intervals;

(b) Exclusive beneficial enjoyment of the property during his life, including such income or use of the property as is consistent with the value of the property and its preservation; except that, during the surviving spouse's lifetime, no person other than the surviving spouse may receive any distribution of the property or its income; and

(c) Make the property productive or convert it into productive property within a reasonable time after the devise; except that, the exercise of such power shall be subject to the degree of judgment and care which a prudent person would use if he were the owner of the property. The proceeds of any such conversion shall be reinvested by the surviving spouse in a form subject to the life estate and remainder rights created by the decedent.

(2) The provisions of this part 12 shall be interpreted consistently with the requirements of section 2056 (b) (7) of the federal "Internal Revenue Code of 1986", as amended, if the personal representative of the estate of the decedent spouse elects to treat such life estate as qualified terminable interest property under said Internal Revenue Code section.

**15-1-1202. Applicability of part.** This part 12 shall apply to the estate of any person whose death occurred after December 31, 1981.

## PART 13

## UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

**15-1-1301 to 15-1-1321. (Repealed)**

## PART 14

## RESTRICTIONS ON EXERCISE OF CERTAIN FIDUCIARY POWERS

**15-1-1401. Restrictions on exercise of certain fiduciary powers.** (1) (a) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary of a trust and other beneficiaries of the trust, any of the following powers conferred upon a trustee shall not be

exercised by such trustee:

(I) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for that trustee's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended;

(II) To make discretionary distributions of either principal or income to satisfy any legal obligations of such trustee; or

(III) To make or cause to be made discretionary distributions of either principal or income to or for the direct or indirect benefit of any person who has the right to remove or replace such trustee; except that such a power may be exercised by such trustee to the extent that it may be exercised to provide for such person's health, education, maintenance, or support as described under sections 2041 and 2514 of the federal "Internal Revenue Code of 1986", as amended.

(b) Any of the powers prescribed in paragraph (a) of this subsection (1) that are conferred upon two or more trustees may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise such powers, any party in interest, as described in subsection (3) of this section, may apply to a court of competent jurisdiction to appoint an independent trustee, and such powers may be exercised by the independent trustee appointed by the court. Subparagraph (I) of paragraph (a) of this subsection (1) shall not prohibit a trustee from making payments, including reimbursement of and compensation of such trustee, for the protection of the trust, or the assets thereof, and for all expenses, losses, and liabilities incurred in or by the collection, care, administration, or protection of the trust or the assets thereof.

(2) This section applies to every trust unless the terms of the trust as it may be amended in accordance with its terms provide expressly to the contrary and either specifically refer to this section or otherwise clearly demonstrate the intent that this rule not apply or unless, if the trust is irrevocable, all parties in interest, as described in subsection (3) of this section, elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this section. Such election shall be made on or before July 1, 1999, or three years after the date on which the trust becomes irrevocable, whichever occurs later.

(3) For the purpose of subsection (1) or subsection (2) of this section:

(a) If the trust is revocable or amendable and the settlor is not incapacitated, the party in interest is the settlor.

(b) If the trust is revocable or amendable and the settlor is incapacitated, the party in interest is the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney that is sufficient to grant such authority.

(c) If the trust is not revocable or amendable, the parties in interest are:

(I) Each trustee then serving;

(II) Each income beneficiary then in existence or, if any such beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority; and

(III) Each remainder beneficiary then in existence or, if any such remainder beneficiary

has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority.

(4) The affirmative election required under subsection (2) of this section shall be made:

(a) If the settlor is not incapacitated and the trust is revocable or amendable, through a revocation of or an amendment to the trust;

(b) If the settlor is incapacitated and the trust is revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee; or

(c) If the trust is not revocable or amendable, through a written declaration executed in the manner prescribed for the acknowledgment of deeds in this state and delivered to the trustee.

(5) A person who has the right to remove or to replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers proscribed in subparagraphs (I), (II), and (III) of paragraph (a) of subsection (1) of this section of the trustee that is subject to removal or to replacement.

(6) (a) Subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section shall not apply to a trustee with respect to trust property and the income from such property where such property would, upon the death of such trustee, be included in the gross estate of such trustee for federal estate tax purposes for any reason other than the powers proscribed by subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section.

(b) Subparagraph (I) of paragraph (a) of subsection (1) of this section shall not apply to a trustee that may be appointed or removed by a person for whose benefit the proscribed powers may be exercised to distribute trust property or the income from such property where such property would, upon the death of such person, be included in the gross estate of such person for federal estate tax purposes for any reason other than such powers to appoint or remove such trustee.

(7) The provisions of this section neither create a new cause of action nor impair any existing cause of action that, in either case, relates to any power proscribed by subsection (1) of this section that was exercised before July 1, 1996.

## ARTICLE 1.1

Uniform Prudent Investor Act

**15-1.1-101. Prudent investor rule.** (a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent

that the trustee acted in reasonable reliance on the provisions of the trust.

**15-1.1-102. Standard of care - portfolio strategy - risk and return objectives.** (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

**15-1.1-103. Diversification.** A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

**15-1.1-104. Duties at inception of trusteeship.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this article.

**15-1.1-105. Loyalty.** A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

**15-1.1-106. Impartiality.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

**15-1.1-107. Investment costs.** In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

**15-1.1-108. Reviewing compliance.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**15-1.1-109. Delegation of investment and management functions.** (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

**15-1.1-110. Language invoking standard of article.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment

and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

**15-1.1-111. Application to existing trusts.** This article applies to trusts existing on and created after July 1, 1995; except that, as applied to trusts existing on July 1, 1995, this article governs only decisions or actions occurring after said date.

**15-1.1-112. Uniformity of application and construction.** This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

**15-1.1-113. Short title.** This article shall be known and may be cited as the "Colorado Uniform Prudent Investor Act".

**15-1.1-114. Severability.** If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**15-1.1-115. Colorado changes to uniform act - specific statutes control - use of term "trustee".** (1) (a) The general assembly recognizes that persons, corporations, entities, or state agencies who have responsibility for investing funds may be subject to a standard that is specifically set forth in other statutes. Under such circumstances, such persons, corporations, entities, or state agencies shall comply with the standard of investment set forth in the other statute, and this article shall not modify or repeal that standard.

(b) In addition, as provided for in section 15-1-304.1, this article shall not apply to those persons, corporations, entities, or state agencies which were made subject to the provisions of section 15-1-304 by specific reference in another statute in existence prior to July 1, 1995.

(2) As used in this article, "trustee" includes original or successor administrators, special administrators, administrators cum testamento annexo, executors, guardians, conservators, and trustees, whether of express or implied trusts.

## ARTICLE 1.5

**15-1.5-101. Definitions.** As used in this article:

(1) "Adult" means an individual who is at least eighteen years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this article.

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the district courts of this state, except in the city and county of Denver, where it means the probate court.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this article and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this article or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether related by whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

**15-1.5-102. Custodial trust - general.** (1) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the "Colorado Uniform Custodial Trust Act".

(2) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the "Colorado Uniform Custodial Trust Act". A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under the "Colorado Uniform Custodial Trust Act".

(3) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(4) Except as provided in subsection (5) of this section, a transferor may not terminate a custodial trust.

(5) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(6) Any person may augment existing custodial trust property by the addition of other property pursuant to this article.

(7) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(8) This article does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this article may be enforceable according to its terms under other law.

**15-1.5-103. Custodial trustee for future payment or transfer.** (1) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"".

(2) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(3) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

**15-1.5-104. Form and effect of receipt and acceptance by custodial trustee -**

**jurisdiction.** (1) Obligations of a custodial trustee, including the obligation to follow upon directions of the beneficiary, arise under this article upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(2) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for _____ (name of beneficiary) under the "Colorado Uniform Custodial Trust Act". I undertake to administer and distribute the custodial trust property pursuant to the "Colorado Uniform Custodial Trust Act". My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of _____.

Dated: _____

_____

(Signature of Custodial Trustee)

(3) Upon accepting custodial trust property, a person designated as custodial trustee under this article is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

**15-1.5-105. Transfer to custodial trustee by fiduciary or obligor - facility of payment.** (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to section 15-1.5-103, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds thirty thousand dollars, the transfer is not effective unless authorized by the court.

(2) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

**15-1.5-106. Multiple beneficiaries - separate custodial trusts - survivorship.** (1) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(2) Custodial trust property held under this article by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(3) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to sections 15-1.5-107 and 15-1.5-115 for the

administration of the custodial trust.

**15-1.5-107. General duties of custodial trustee.** (1) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(2) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, or if the beneficiary is incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and shall comply with the provisions of the "Colorado Uniform Prudent Investor Act". However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

(3) Subject to subsection (2) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(4) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"".

(5) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(6) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

**15-1.5-108. General powers of custodial trustee.** (1) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(2) This section does not relieve a custodial trustee from liability for a violation of section 15-1.5-107.

**15-1.5-109. Use of custodial trust property.** (1) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of

the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(3) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

**15-1.5-110. Determination of incapacity - effect.** (1) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if:

(a) The custodial trust was created under section 15-1.5-105;

(b) The transferor has so directed in the instrument creating the custodial trust; or

(c) The custodial trustee has determined that the beneficiary is incapacitated.

(2) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

(a) Previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney;

(b) The certificate of the beneficiary's physician; or

(c) Other persuasive evidence.

(3) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(4) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(5) Absent determination of incapacity of the beneficiary under subsection (2) or (4) of this section, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this article applicable to an incapacitated beneficiary.

(6) Incapacity of a beneficiary does not terminate:

(a) The custodial trust;

(b) Any designation of a successor custodial trustee;

(c) Rights or powers of the custodial trustee; or

(d) Any immunities of third persons acting on instructions of the custodial trustee.

**15-1.5-111. Exemption of third persons from liability.** (1) A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

(a) The validity of the purported custodial trustee's designation;

(b) The propriety of, or the authority under this article for, any action of the purported custodial trustee;

(c) The validity or propriety of an instrument executed or instruction given pursuant to this article either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or

(d) The propriety of the application of property vested in the purported custodial trustee.

**15-1.5-112. Liability to third persons.** (1) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(2) A custodial trustee is not personally liable to a third person:

(a) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(b) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(3) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(4) Subsections (2) and (3) of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

**15-1.5-113. Declination, resignation, incapacity, death, or removal of custodial trustee - designation of successor custodial trustee.** (1) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section 15-1.5-103 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 15-1.5-103. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(2) A custodial trustee who has accepted the custodial trust property may resign by:

(a) Delivering written notice to a successor custodial trustee, if any, the beneficiary, and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any; and

(b) Transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (3) of this section.

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 15-1.5-102 (7) or section 15-1.5-103 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(4) If a successor custodial trustee is not designated pursuant to subsection (3) of this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

(5) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(6) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

**15-1.5-114. Expenses, compensation, and bond of custodial trustee.** (1) Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(a) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(b) Has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(c) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

**15-1.5-115. Reporting and accounting by custodial trustee - determination of liability of custodial trustee.** (1) (a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property:

(I) Once each year;

(II) Upon request at reasonable times by the beneficiary or the beneficiary's legal representative;

(III) Upon resignation or removal of the custodial trustee; and

(IV) Upon termination of the custodial trust.

(b) The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(2) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(3) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(4) In an action or proceeding under this article or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(5) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(6) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

**15-1.5-116. Limitations of action against custodial trustee.** (1) Except as provided in subsection (3) of this section, unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

(a) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or

(b) Who has not received a final account or statement fully disclosing the matter unless

an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(2) Except as provided in subsection (3) of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(3) A claim for relief is not barred by this section if the claimant:

(a) Is a minor, until the earlier of two years after the claimant becomes an adult or dies;

(b) Is an incapacitated adult, until the earliest of two years after the appointment of a conservator, the removal of the incapacity, or the death of the claimant; or

(c) Was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

**15-1.5-117. Distribution on termination.** (1) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(a) To the beneficiary, if not incapacitated or deceased;

(b) To the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(c) Upon the beneficiary's death, in the following order:

(I) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(II) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 15-1.5-106;

(III) As designated in the instrument creating the custodial trust; or

(IV) To the estate of the deceased beneficiary.

(2) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(3) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

**15-1.5-118. Methods and forms for creating custodial trusts.** (1) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 15-1.5-102 are satisfied by:

(a) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE
"COLORADO UNIFORM CUSTODIAL TRUST ACT"

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for _____ (name of beneficiary) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the "Colorado Uniform Custodial Trust Act", the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).
Dated: _____
_____

(Signature); or

(b) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE
"COLORADO UNIFORM CUSTODIAL TRUST ACT"

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the "Colorado Uniform Custodial Trust Act", the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).
Dated: _____
_____

(Signature).

(2) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(a) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(b) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in paragraph (a) of subsection (1) of this section;

(c) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(d) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(e) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(f) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(g) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(h) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"";

(i) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(I) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act""; or

(II) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act""; or

(j) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the "Colorado Uniform Custodial Trust Act"".

**15-1.5-119. Applicable law.** (1) This article applies to a transfer or declaration creating a custodial trust that refers to this article if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this article despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this state.

(2) A transfer made pursuant to an act of another state substantially similar to this article is governed by the law of that state and may be enforced in this state.

**15-1.5-120. Uniformity of application and construction.** This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

**15-1.5-121. Short title.** This article may be cited as the "Colorado Uniform Custodial Trust Act".

**15-1.5-122. Severability.** If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

## POWERS OF APPOINTMENT

## ARTICLE 2

Powers of Appointment

**15-2-101 to 15-2-304. (Repealed)**

## ARTICLE 2.5

Uniform Powers of Appointment Act

PART 1

GENERAL PROVISIONS

**15-2.5-101. Short title.** This article may be cited as the "Colorado Uniform Powers of Appointment Act".

**15-2.5-102. Definitions.** In this article:

(1) "Appointee" means a person to whom a powerholder makes an appointment of appointive property.

(2) "Appointive property" means property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument, which clause exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) Expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) Expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) Disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person who is not a permissible appointee.

(9) "Instrument" means a record.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual; estate; trust; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.

(13) "Powerholder" means a person in whom a donor creates a power of appointment.

(14) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(I) The occurrence of the specified event;

(II) The satisfaction of the ascertainable standard; or

(III) The passage of the specified time; and

(b) Does not include a power exercisable only at the powerholder's death.

(16) "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.

(17) "Specific-exercise clause" means a clause in an instrument, which clause specifically refers to and exercises a particular power of appointment.

(18) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

**15-2.5-103. Governing law.** (1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(a) The creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.

**15-2.5-104. Supplementation by common law and principles of equity.** Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

PART 2

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

**15-2.5-201. Creation of power of appointment.** (1) A power of appointment is created only if:

(a) The instrument creating the power:

(I) Is valid under applicable law; and

(II) Except as otherwise provided in subsection (2) of this section, transfers the appointive property; and

(b) The terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subparagraph (II) of paragraph (a) of subsection (1) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

**15-2.5-202. Nontransferability.** A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

**15-2.5-203. Presumption of unlimited authority.** (1) Subject to section 15-2.5-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(a) Presently exercisable;

(b) Exclusionary; and

(c) Except as otherwise provided in section 15-2.5-204, general.

**15-2.5-204. Exception to presumption of unlimited authority.** (1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(a) The power is exercisable only at the powerholder's death; and

(b) The permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

**15-2.5-205. Rules of classification - definitions.** (1) In this section, "adverse party" means a person with a substantial beneficial interest in property, which interest would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

**15-2.5-206. Power of the donor to revoke or amend.** (1) A donor may revoke or amend a power of appointment only to the extent that:

(a) The instrument creating the power is revocable by the donor; or

(b) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

PART 3

EXERCISE OF POWER OF APPOINTMENT

**15-2.5-301. Requisites for exercise of power of appointment.** (1) A power of appointment may be exercised only:

(a) If the instrument exercising the power is valid under applicable law;

(b) If the terms of the instrument exercising the power:

(I) Manifest the powerholder's intent to exercise the power; and

(II) Subject to section 15-2.5-304, satisfy the requirements of exercise, if any, imposed by the donor; and

(c) To the extent the appointment is a permissible exercise of the power.

**15-2.5-302. Intent to exercise - determining intent from residuary clause.** (1) In this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

(a) The terms of the instrument containing the residuary clause do not manifest a contrary intent;

(b) The power is a general power exercisable in favor of the powerholder's estate;

(c) There is no gift-in-default clause or the clause is ineffective; and

(d) The powerholder did not release the power.

**15-2.5-303. Intent to exercise - after-acquired power.** (1) Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(a) Except as otherwise provided in paragraph (b) of this subsection (1), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(b) If the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

**15-2.5-304. Substantial compliance with donor-imposed formal requirement.** (1) A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make

reference or specific reference to the power, is sufficient if:

(a) The powerholder knows of and intends to exercise the power; and

(b) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

**15-2.5-305. Permissible appointment.** (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) Create a general or nongeneral power in a permissible appointee; or

(c) Create a nongeneral power in an impermissible appointee to appoint to one or more of the permissible appointees of the original nongeneral power.

**15-2.5-306. Appointment to deceased appointee or permissible appointee's descendant.** (1) An appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee, which deceased appointee is a descendant of one or more of the grandparents of the donor, regardless of whether the descendant is described by the donor as a permissible appointee.

**15-2.5-307. Impermissible appointment.** (1) Except as otherwise provided in section 15-2.5-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

**15-2.5-308. Selective allocation doctrine.** If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

**15-2.5-309. Capture doctrine - disposition of ineffectively appointed property under general power.** (1) To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(a) The gift-in-default clause controls the disposition of the ineffectively appointed property; or

(b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the ineffectively appointed property:

(I) Passes to:

(A) The powerholder if the powerholder is a permissible appointee and living; or

(B) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a reversionary interest to the donor or to the donor's transferee or successor in interest.

**15-2.5-310. Disposition of unappointed property under released or unexercised general power.** (1) To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(a) The gift-in-default clause controls the disposition of the unappointed property; or

(b) If there is no gift-in-default clause or to the extent the clause is ineffective:

(I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the unappointed property passes to:

(A) The powerholder if the powerholder is a permissible appointee and living; or

(B) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(II) To the extent the powerholder released the power, or if there is no taker under subparagraph (I) of this paragraph (b), the unappointed property passes under a reversionary interest to the donor or to the donor's transferee or successor in interest.

**15-2.5-311. Disposition of unappointed property under released or unexercised nongeneral power.** (1) To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(a) The gift-in-default clause controls the disposition of the unappointed property; or

(b) If there is no gift-in-default clause, or to the extent the clause is ineffective, the unappointed property:

(I) Passes to the permissible appointees if:

(A) The permissible appointees are defined and limited; and

(B) The terms of the instrument creating the power do not manifest a contrary intent; or

(II) If there is no taker under subparagraph (I) of this paragraph (b), passes under a

reversionary interest to the donor or the donor's transferee or successor in interest.

**15-2.5-312. Disposition of unappointed property if partial appointment to taker in default.** Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

**15-2.5-313. Appointment to taker in default.** If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes the property under the clause.

**15-2.5-314. Powerholder's authority to revoke or amend exercise.** (1) A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(a) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(b) The terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

PART 4

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

**15-2.5-401. Disclaimer.** (1) Subject to the "Uniform Disclaimer of Property Interests Act", part 12 of article 11 of this title:

(a) A powerholder may disclaim all or part of a power of appointment; and

(b) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

**15-2.5-402. Authority to release.** A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

**15-2.5-403. Method of release.** (1) A powerholder of a releasable power of appointment may release the power in whole or in part:

(a) By substantial compliance with a method provided in the terms of the instrument creating the power; or

(b) If the terms of the instrument creating the power do not provide a method, or the method provided in the terms of the instrument is not expressly made exclusive, by:

(I) Delivering a writing declaring the extent to which the power is released to a person who could be adversely affected by an exercise of the power;

(II) Joining with some or all of the takers in default in making an otherwise-effective transfer of an interest in the property that is subject to the power, in which case the power is released to the extent that a subsequent exercise of the power would defeat the interest transferred;

(III) Contracting with a person who could be adversely affected by an exercise of the power not to exercise the power, in which case the power is released to the extent that a subsequent exercise of the power would violate the terms of the contract; or

(IV) Communicating in any other appropriate manner an intent to release the power, in which case the power is released to the extent that a subsequent exercise of the power would be contrary to manifested intent.

**15-2.5-404. Revocation or amendment of release.** (1) A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(a) The instrument of release is revocable by the powerholder; or

(b) The powerholder reserves a power of revocation or amendment in the instrument of release.

**15-2.5-405. Power to contract - presently exercisable power of appointment.** (1) A powerholder of a presently exercisable power of appointment may contract:

(a) Not to exercise the power if the contract, when made, does not confer a benefit on a person other than a taker in default or a permissible appointee; or

(b) To exercise the power if the contract, when made, does not confer a benefit on an impermissible appointee.

**15-2.5-406. Power to contract - power of appointment not presently exercisable.** (1) A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(a) Is also the donor of the power; and

(b) Has reserved the power in the instrument creating the power.

PART 5

(Reserved)

PART 6

MISCELLANEOUS PROVISIONS

**15-2.5-601. Uniformity of application and construction.** In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**15-2.5-602. Relation to electronic signatures in global and national commerce act.** This article modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. section 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. section 7003 (b).

**15-2.5-603. Application to existing relationships.** (1) Except as otherwise provided in this article, on the effective date of this article or of any amendment to this article:

(a) This article or any amendment to this article applies to a power of appointment created before, on, or after July 1, 2015, or any amendment to this article;

(b) This article or any amendment to this article applies to any proceedings in court then pending or thereafter commenced concerning a power of appointment, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this article or any amendment to this article, in which case the particular provision of this article does not apply and the superseded law applies;

(c) A rule of construction or presumption provided in this article or any amendment to this article applies to an instrument executed before July 1, 2015, unless there is a clear indication of a contrary intent in the terms of the instrument;

(d) Except as otherwise provided in paragraphs (a) to (c) of this subsection (1), an action done before July 1, 2015, is not affected by this article or any amendment to this article; and

(e) No provision of this article or of any amendment to this article shall apply retroactively if the court determines that such application would cause the provisions to be retrospective in its operation in violation of section 11 of article II of the state constitution.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this article or any amendment to this article before July 1, 2015, the law continues to apply to the right.

**COLORADO PROBATE CODE**

**ARTICLE 10**

## PART 1

## SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

**15-10-101. Short title.** Articles 10 to 17 of this title shall be known and may be cited as the "Colorado Probate Code" and is referred to in said articles as "this code" or "code".

**15-10-102. Purposes - rule of construction.** (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

(c) To promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors;

(d) To facilitate use and enforcement of certain trusts;

(d.1) To promote a speedy and efficient system for managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents;

(d.2) To provide a system of general and limited guardianships for minors and incapacitated persons and to coordinate guardianships and protective proceedings concerned with management and protection of the estates of incapacitated persons;

(e) To make uniform the law among the various jurisdictions.

(3) Under this code, the rights of partners in a civil union created pursuant to the "Colorado Civil Union Act", article 15 of title 14, C.R.S., are the same rights as those extended to spouses who are married pursuant to the provisions of the "Uniform Marriage Act", part 1 of article 2 of title 14, C.R.S.

**15-10-103. Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

**15-10-104. Severability.** If any provision of this code or the application thereof to any

person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the 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.

**15-10-105. 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.

**15-10-106. 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 five years after the discovery 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.

**15-10-106.5. Petition to determine cause and date of death resulting from disaster - body unidentifiable or missing.** (1) If the occurrence of a disaster has been declared by proclamation of the governor under section 24-33.5-704, C.R.S., and it appears that a person has died as a direct result, but the remains have not been located or are unidentifiable, the coroner, sheriff, or district attorney for the county in which any part of such disaster occurred, the spouse, next of kin, or public administrator for such county, or, thirty days after the disaster was declared, any other person, may apply to the coroner of such county asking that the coroner determine the cause, manner, and date of death of the alleged decedent.

(2) (a) Such application shall contain the facts and circumstances concerning the disaster, the reasons for the belief that the alleged decedent perished, a statement that the alleged decedent's remains have not been located or are unidentifiable, and the names and addresses of all persons known or believed to be heirs at law of the alleged decedent.

(b) The application shall contain an affidavit in which the applicant states the following information to the extent of the applicant's personal knowledge, information, and belief:

(I) The full name of the alleged decedent;

(II) The alleged decedent's residential address, including city, county, and zip code;

(III) The alleged decedent's date and place of birth;

(IV) The alleged decedent's sex, race, ethnicity, and social security number;

(V) The full names of the alleged decedent's parents and the mother's maiden name;

(VI) The applicant's name, address, telephone number, and relationship to the alleged decedent;

(VII) The identification number of any missing person report filed concerning the alleged decedent;

(VIII) The date and time of the applicant's last contact with the alleged decedent and a description of that contact;

(IX) The basis for the belief that the alleged decedent was physically present at the time and place of an occurrence declared under section 24-33.5-704, C.R.S.;

(X) A description of the efforts undertaken by the applicant, and efforts the applicant knows others to have undertaken, to locate or identify the alleged decedent;

(XI) Whether the alleged decedent served in the armed forces of the United States and, if so, the branch and dates of service;

(XII) If the alleged decedent was employed, the name of the alleged decedent's employer and the employer's address and telephone number; and

(XIII) The alleged decedent's marital status, the name of spouse, and wife's maiden name, if applicable.

(c) The applicant shall pay an application fee of twenty-five dollars when filing the application.

(d) The coroner shall assign an application number to the application.

(3) If the coroner finds sufficient evidence that a disaster occurred and that the alleged decedent named in the application may be presumed to have died, then the coroner shall issue a certificate of death under this section.

(4) A certified copy of an order issued pursuant to subsection (7) of this section shall be sufficient when presented to the coroner or other person acting in place of the coroner for the issuance of a certificate of death under this section.

(5) An application for the finding of death under this section shall not be filed later than five years following the initial proclamation of the disaster.

(6) This section shall apply only under the circumstances specified in subsection (1) of this section. In all other cases and if the coroner finds the evidence insufficient to support the issuance of a death certification, the provisions of section 15-10-107 with respect to determination of death and status apply.

(7) If the coroner denies or fails to act within thirty days on an application that complies with subsection (2) of this section, the applicant may file a petition, in the district court for the county in which any part of the disaster occurred or in the Denver probate court if any part of the disaster occurred in the city and county of Denver, for an expedited determination of death in accordance with this section. If the court determines the alleged decedent died, a certified copy of the court's order shall constitute sufficient evidence for the coroner under subsection (4) of this section.

**15-10-107. Evidence of death or status.** (1) In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a court determination of death and status apply:

(a) Death occurs when an individual is determined dead under section 12-36-136, C.R.S.

(b) An 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 evidence of the fact, place, date, and time of death and the identity of the decedent.

(c) An authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual 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.

(d) In the absence of prima facie evidence of death under paragraph (b) or (c) of this subsection (1), the fact of death shall be established by clear and convincing evidence, including circumstantial evidence.

(e) An individual whose death is not established under paragraphs (a) to (d) of this subsection (1) or under section 15-10-106.5 who is absent for a continuous period of five years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence, including, without limitation, a determination under section 15-10-106.5 that death occurred earlier.

(f) In the absence of evidence disputing the time of death stated on a document described in paragraph (b) or (c) of this subsection (1), a document described in paragraph (b) or (c) of this subsection (1) that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

(2) In the event that the fact of death of an absentee is entered in any action brought before a finding of death is entered in a formal testacy proceeding under this code, the finding relating to death of the absentee in such action shall not be determinative of any finding to be made in any proceeding under this code.

**15-10-108. 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 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent that their interests (as objects, takers in default, or otherwise) are subject to the power.

**15-10-109. Remarriage of absentee's spouse.** (1) At any time after a finding of death of an absentee in a formal testacy proceeding under this code, the spouse of an absentee may remarry, and:

(a) Such subsequent marriage shall not constitute the offense of bigamy or any other criminal offense under the laws of this state, even though the absentee shall later be determined to be alive; and

(b) Upon such subsequent marriage, the marriage between the absentee and his said spouse shall be deemed to have been dissolved as of the date of the absentee's death as determined in accordance with section 15-10-107.

**15-10-110. Insurance and other contracts - surrender value - effect of contract provisions - suit on claim of death.** (1) A finding of death in a formal testacy proceeding under this code shall be fully effective as to rights under insurance, annuity, and endowment contracts dependent upon the life of an absentee, and the receipts of beneficiaries for payments made under any such contracts shall be a release to the contract issuer of all claims under such contracts.

(2) If, in any proceeding under this code, the absentee is not found to be deceased and any policy of insurance or any annuity or endowment contract owned by the absentee provides for a surrender value, the conservator, acting for the insured, with court approval and a finding of necessity, may demand the payment of surrender value to the estate of the absentee. The receipt of the conservator for such payment shall be a release to the contract issuer of all claims under the contract.

(3) Notwithstanding the provisions in any annuity or endowment contract or policy of life or accident insurance or in the charter or bylaws of any mutual or fraternal insurance association hereafter executed or adopted, the provisions of this section shall govern the effect to be given to evidence of absence or of death.

(4) When any annuity or endowment contract, any policy of life or accident insurance, or the charter or bylaws of any mutual or fraternal insurance association hereafter executed or adopted contains a provision requiring a beneficiary to bring suit upon a claim of death within a stated period after the death of the insured and the fact of the absence of the insured is relied upon by the beneficiary as evidence of the death, the action may be begun, notwithstanding such provision in the contract, policy, charter, or bylaws, at any time within the statutory period of limitation for actions on contracts in writing dating from the date of death of the absentee, as determined in a formal testacy proceeding under this code.

**15-10-111. Entry into safe deposit box of decedent - definitions.** (1) (a) Whenever a decedent at the time of his or her death was a sole or joint lessee of a safe deposit box, the custodian shall, prior to notice that a personal representative or special administrator has been appointed, allow access to the box by:

(I) If the decedent was the sole lessee of the box, a person claiming to be a successor of the decedent, or acting on behalf of a successor of the decedent, upon presentation of an affidavit made pursuant to section 15-12-1201 for the purpose of delivering the contents of the box in accordance with said section; or

(II) If the decedent was the sole lessee or a joint lessee of the box, a person who is reasonably believed to be an heir at law or devisee of the decedent, a person nominated as a personal representative pursuant to the provisions of section 15-12-203 (1) (a), or the agent or attorney of any such person for the purpose of determining whether the box contains an instrument that appears to be a will of the decedent, deed to a burial plot, or burial instructions.

(b) (I) If a person described in subparagraph (I) or (II) of paragraph (a) of this subsection (1) desires access to a safe deposit box but does not possess a key to the box, the custodian shall drill the safe deposit box at the person's expense.

(II) In the case of a person described in subparagraph (I) of paragraph (a) of this subsection (1), the custodian shall deliver the contents of the box, other than a purported will, deed to a burial plot, and burial instructions, to the person in accordance with section 15-12-1201. In order to protect a custodian in carrying out his or her duty under the foregoing sentence to examine such contents solely for the purpose of identifying and withholding specified documents and making delivery of such contents other than the specified documents to such person, a custodian is not deemed to have acquired knowledge, either actual or constructive, pertaining to the value of any of the contents of the box delivered to the person as a consequence of the examination and delivery.

(III) In the case of a person described in subparagraph (II) of paragraph (a) of this subsection (1), the custodian shall retain, in a secure location at the person's expense, the contents of the box other than a purported will, deed to a burial plot, and burial instructions.

(IV) A custodian shall deliver a purported will as described in subsection (2) of this section.

(V) If the safe deposit box contains a deed to a burial plot or burial instructions that are not a part of a purported will, the person or persons authorized to have access to the safe deposit box under the provisions of subsection (1) of this section may remove these instruments, and the custodian shall not prevent the removal.

(VI) Expenses incurred by a custodian pursuant to this section shall be considered an estate administration expense.

(c) A representative of the custodian shall be present during the entry of a safe deposit box pursuant to this section.

(1.3) Nothing in this section affects the rights and responsibilities of a public administrator, as described in sections 15-12-620 and 15-12-621.

(1.5) As used in this section, unless the context otherwise requires:

(a) "Custodian" means a bank, savings and loan association, credit union, or other institution acting as a lessor of a safe deposit box, as defined in section 11-46-101, C.R.S., or section 11-101-401, C.R.S.

(b) "Representative of a custodian" means an authorized officer or employee of a custodian.

(2) (a) If an instrument purporting to be a will is found in a safe deposit box as the result of an entry pursuant to subsection (1) of this section, the purported will shall be removed by the representative of the custodian.

(b) At the request of the person or persons authorized to have access to the safe deposit box under the provisions of subsection (1) of this section, the representative of the custodian shall copy each purported will of the decedent, at the expense of the requesting person, and shall deliver the copy of each purported will to the person, or if directed by the person, to the person's agent or attorney. In copying any purported will, the representative of the custodian shall not remove any staples or other fastening devices or disassemble the purported will in any way.

(c) The custodian shall mail the purported will by registered or certified mail or deliver the purported will in person to the clerk of the district or probate court of the county in which the decedent was a resident. If the custodian is unable to determine the county of residence of the decedent, the custodian shall mail the purported will by registered or certified mail or deliver the

purported will in person to the office of the clerk of the proper court of the county in which the safe deposit box is located.

(d) Repealed.

(3) After the appointment of a personal representative or special administrator for the decedent, the personal representative or special administrator shall be permitted to enter the safe deposit box upon the same terms and conditions as the decedent was permitted to enter during his or her lifetime.

(4) Nothing in this section affects the right of surviving joint lessees to enter a safe deposit box after the death of a decedent.

(5) A custodian shall not be liable to a person for an action taken pursuant to this section or for a failure to act in accordance with the requirements of this section unless the action or failure to act is shown to have resulted from the custodian's bad faith, gross negligence, or intentional misconduct.

**15-10-112. Cost of living adjustment of certain dollar amounts.** (1) As used in this section, unless the context otherwise requires:

(a) "CPI" means the consumer price index (annual average) for all urban consumers (CPI-U): United States city average -- all items, reported by the bureau of labor statistics, United States department of labor or its successor agency or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chosen by the department of revenue; and

(b) "Reference base index" means the CPI for the calendar year 2010.

(2) The dollar amounts stated in sections 15-11-102, 15-11-202 (2), 15-11-403, and 15-11-405 apply to the estate of a decedent who died during or after 2010, but for the estate of a decedent who died after 2011, these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If the amount of the increase or decrease produced by the computation is not a multiple of one thousand dollars, then the amount of the increase or decrease is rounded down if it is an increase, or rounded up if it is a decrease, to the next multiple of one thousand dollars, but for the purpose of section 15-11-405, the periodic installment amount is the lump-sum amount divided by twelve. If the CPI for 2010 is changed by the bureau of labor statistics, the reference base index must be revised using the rebasing factor reported by the bureau of labor statistics, or other comparable data if a rebasing factor is not reported.

(3) Before February 1, 2012, and before February 1 of each succeeding year, the department of revenue shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in 2012 of each dollar amount as increased or decreased under this section.

PART 2

DEFINITIONS

**15-10-201. General definitions.** Subject to additional definitions contained in this article and the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" means an attorney in fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under the "Colorado Patient Autonomy Act".

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of article 12 of this title.

(3) "Augmented estate" means the estate described in sections 15-11-203, 15-11-204, 15-11-205, 15-11-206, 15-11-207, and 15-11-208.

(4) "Authenticated" means certified, when used in reference to copies of official documents, and only certification by the official having custody is required.

(5) "Beneficiary", as it relates to a trust beneficiary, 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; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", includes a beneficiary of an insurance or annuity policy, of an account with payment on death (POD) designation, of a security registered in beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(6) "Beneficiary designation" means a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in the beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(6.5) "Business trust" includes, but is not limited to, Massachusetts business trusts created for business or investment purposes; Delaware statutory trusts; Illinois land trusts; mutual fund trusts; common trust funds; voting trusts; liquidation trusts; real estate investment trusts; environmental remediation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, compensation, annuities, profits, pensions, or employee benefits of any kind; and other trusts with purposes that are the same or similar to any of the trusts enumerated in this subsection (6.5), regardless of whether such other trusts are created under statutory or common law, and regardless of whether the beneficial interests in such other trusts are evidenced by certificates.

(7) "Child" includes an individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes a person who is only a

stepchild, a foster child, a grandchild, or any more remote descendant.

(8) "Claims", in respect to the 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, or taxes due the state of Colorado, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(9) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(10) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.

(11) "Descendant" means all of the individual's 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.

(12) "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.

(13) "Devisee" means a person designated in a will to receive a devise. For the purposes of article 12 of this title, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(14) "Disability" means cause for a protective order as described in section 15-14-401.

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

(16) "Divorce" includes a dissolution of marriage, and "annulment" includes a declaration of invalidity, as such terms are used in the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S.

(16.5) "Domiciliary foreign personal representative" means a personal representative appointed by another jurisdiction in which the decedent was domiciled at the time of the decedent's death.

(16.7) "Donee", as used in the context of powers of appointment, has the same meaning as "powerholder" as set forth in section 15-2.5-102 (13).

(17) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(18) "Exempt property" means that property of a decedent's estate which is described in section 15-11-403.

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

(20) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

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

(22) "Governing instrument" means a deed, will, trust, insurance or annuity policy, multiple-party account, security registered in beneficiary form (TOD), pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or power of attorney, or a donative, appointive, or nominative instrument of any other type.

(23) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(24) "Heirs", except as controlled by section 15-11-711, means persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(25) "Incapacitated person" means an individual described in section 15-14-102 (5).

(26) "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, appointment of a personal representative, or determination of a guardian under sections 15-14-202 and 15-14-301.

(27) "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 person, which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(28) "Issue" of a person means descendant as defined in subsection (11) of this section.

(29) "Joint tenants with right of survivorship" and "community property with the right of survivorship" for the purposes of this code only includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

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

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

(32) "Minor" means a person who is under eighteen years of age.

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

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

(35) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, limited liability company, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(36) "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.

(37) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(38) "Person" means an individual or an organization.

(39) "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.

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

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

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

(43) "Protected person" has the same meaning as set forth in section 15-14-102 (11).

(44) "Protective proceeding" has the same meaning as used in section 15-14-401.

(44.5) "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.

(45) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in section 15-10-307.

(46) "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 security; 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 items enumerated in this subsection (46).

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

(47.5) "Sign" means, with present intent to authenticate or adopt a record other than a will:

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

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

(48) "Special administrator" means a personal representative as described by sections 15-12-614 to 15-12-618.

(49) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or insular possession subject to the jurisdiction of the United States.

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

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

(52) "Supervised administration" means the proceedings described in part 5 of article 12 of this title.

(53) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 15-11-104, 15-11-702, or 15-11-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

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

(55) "Testator" includes an individual of either sex.

(56) (a) Except as provided in paragraph (b) of this subsection (56):

(I) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created and any amendments to such trusts.

(II) "Trust" 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.

(b) (I) "Trust" excludes constructive trusts unless a court, in determining such a trust, provides that the trust is to be administered as an express trust.

(II) "Trust" also excludes resulting trusts; conservatorships; personal representatives; accounts as defined in section 15-15-201 (1); custodial arrangements pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; security arrangements; business trusts, as defined in subsection (6.5) of this section; and any arrangement under which a person is nominee or escrowee for another.

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

(58) "Ward" means an individual described in section 15-14-102 (15).

(59) "Will" includes any 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. "Will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.

## PART 3

## SCOPE, JURISDICTION, AND COURTS

**15-10-301. Territorial application.** (1) Except as otherwise provided in this code, this code applies to:

(a) The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;

(b) 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;

(c) Incapacitated persons and minors in this state;

(d) Survivorship and related accounts in this state;

(e) Trusts subject to administration in this state; and

(f) Declaration instruments created pursuant to article 19 of this title.

**15-10-302. Subject matter jurisdiction.** (1) The court has jurisdiction over all subject matter vested by article VI of the state constitution and by articles 1 to 10 of title 13, C.R.S.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

**15-10-303. Venue - multiple proceedings - transfer.** (1) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was 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.

(3) If a court finds that in the interest of justice a proceeding or a 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.

**15-10-304. Practice in court.** Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the Colorado rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this code.

**15-10-305. Records and certified copies.** (1) The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of 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.

(2) All instruments purporting to be the original wills, upon presentation for probate thereof, shall be recorded by the clerk of the court, in a well-bound book, to be provided by him for that purpose, or photographed, microphotographed, or reproduced on film as a permanent record, and shall remain and be preserved in the office of the clerk of the court. Upon admission of such will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.

**15-10-306. Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(2) If there is no right to trial by jury under subsection (1) of this section or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

**15-10-307. Registrar - powers.** The acts and orders which this code specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the clerk of the court.

**15-10-308. Appeals.** Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the Colorado appellate rules.

**15-10-309. Reserved.**

**15-10-310. Oath or affirmation on filed document.** (1) 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.

(2) The court shall have jurisdiction over any person, resident or nonresident, who files any document with the court under this code and over any person, resident or nonresident, who executes any such document and who knows or has reason to know that the document will be filed with the court under this code in any proceeding for relief from fraud relating to such a document that may be initiated against such person. Service of process shall be as provided in the Colorado rules of civil procedure.

PART 4

NOTICE, PARTIES, AND REPRESENTATION
IN ESTATE LITIGATION AND OTHER MATTERS

**15-10-401. Notice - method and time of giving.** (1) 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 on any petition to be given to any interested person or to the interested person's attorney of record or the interested person's designee. Notice shall be given:

(a) By mailing a copy thereof at least fourteen 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 any demand for notice, or at the person's office or place of residence, if known; or

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

(c) If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation published in the county where the hearing is to be held, the last publication of which is to be at least fourteen days before the time set for the hearing. In case there is no newspaper of general circulation published in the county of appointment, said publication shall be made in such a newspaper in an adjoining county. A motion for court permission to publish the notice of any hearing shall not be required unless otherwise directed by the court.

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

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding. If notice is given by publication, at the time the party who issued the notice by publication files proof of publication, that party shall also file an affidavit verified by the oath of such party or by someone on his or her behalf stating the facts that warranted the use of publication for service of the notice of the hearing and stating the efforts, if any, that have been made to obtain personal service or service by mail. The affidavit shall also state the address, or last known address, of each person served by publication or shall state that the person's address or identity is unknown and cannot be ascertained with reasonable diligence.

(4) "Publication once a week for three consecutive weeks" means publication once during each week of three consecutive calendar weeks with at least twelve days elapsing between the first and last publications.

**15-10-402. 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.

**15-10-403. Pleadings - when parties bound by others - notice.** (1) In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the provisions of this section are applicable.

(2) 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.

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

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one 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.

(b) 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.

(c) If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child, and where there is such representation orders binding the parent bind the minor child.

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

(4) Notice is required as follows:

(a) Notice as prescribed by section 15-10-401 shall be given to each interested person or to one who can bind an interested person as described in subsection (3) of this section. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn, unascertained, minor, or incapacitated persons who are not represented under subsection (3) of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn, unascertained, minor, or incapacitated persons.

(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, protected, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that a need for such representation appears. 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.

PART 5

FIDUCIARY OVERSIGHT, REMOVAL, SANCTIONS, AND CONTEMPT

**15-10-501. Court powers - definitions - application.** (1) **Court powers.** A court, incident to a court proceeding, possesses and may employ all of the powers and authority expressed in the provisions of this part 5 to maintain the degree of supervision necessary to ensure the timely and proper administration of estates by fiduciaries over whom the court has obtained jurisdiction. Nothing in this part 5 shall be interpreted to limit a court's powers under Colorado law. The powers of a court as described in this part 5 do not confer jurisdiction over the fiduciaries of nonsupervised trusts, private trusts, agencies created by powers of attorney, and custodial accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., except as provided in paragraph (c) of subsection (2) of this section.

(2) **Definitions.** As used in this part 5, unless the context otherwise requires:

(a) "Court" means a district court of Colorado and the probate court of the city and county of Denver.

(b) "Estate" means the estate of a decedent; a guardianship; a protective proceeding; a trust, including an implied trust; an agency created by a power of attorney; or a custodial account created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

(c) "Jurisdiction" means, and is restricted to, the personal jurisdiction obtained by a court over a fiduciary as a result of the filing of a proceeding concerning the estate. The filing of a trust registration statement, by itself, shall not constitute a proceeding for the purposes of this part 5.

(3) **Application.** The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

**15-10-502. Initial investigation.** (1) If, during the administration of an estate, a court desires to be informed about the current status of the administration, then the court, on its own motion or the request of an interested person, and without the need to state any reason for its actions, may:

(a) Send a letter to the fiduciary of the estate directing the fiduciary to file with the court one or more of the following documents on or before a date to be determined by the court:

(I) A status report;

(II) An inventory of the current assets of the estate;

(III) An up-to-date interim accounting; or

(IV) A financial report concerning the estate;

(b) Order the fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1) on or before a date to be determined

by the court.

(2) When a court has directed a fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1), the fiduciary may request that the documents be placed under security pursuant to rule 20 of the Colorado rules of probate procedure.

**15-10-503. Power of a court to address the conduct of a fiduciary - emergencies - nonemergencies.** (1) **Emergency situations - court action without the requirement of prior notice or hearing.** If it appears to a court that an emergency exists because a fiduciary's actions or omissions pose an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may, on its own motion or upon the request of an interested person, without a hearing and without following any of the procedures authorized by section 15-10-502, order the immediate restraint, restriction, or suspension of the powers of the fiduciary; direct the fiduciary to appear before the court; or take such further action as the court deems appropriate to protect the ward or protected person or the assets of the estate. If a court restrains, restricts, or suspends the powers of a fiduciary, the court shall set a hearing and direct that notice be given pursuant to section 15-10-505. The clerk of the court shall immediately note the restraint, restriction, or suspension on the fiduciary's letters, if any. Any action for the removal, surcharge, or sanction of a fiduciary shall be governed by subsection (2) of this section.

(2) **Nonemergency situations - court action after notice and hearing.** Upon petition by a person who appears to have an interest in an estate, or upon the court's own motion, and after a hearing for which notice to the fiduciary has been provided pursuant to section 15-10-505, a court may order any one or more of the following:

(a) Supervised administration of a decedent's estate, as described in part 5 of article 12 of this title. The degree and extent of the supervision shall be endorsed upon the fiduciary's letters, if any.

(b) A temporary restraint on the fiduciary's performance of specified acts of administration, disbursement, or distribution; a temporary restraint on the fiduciary's exercise of any powers or discharge of any duties of the office of the fiduciary; or any other order to secure proper performance of the fiduciary's duty if it appears to the court that, in the absence of such an order, the fiduciary may take some action that would unreasonably jeopardize the interest of the petitioner or of some other interested person. The court may make persons with whom the fiduciary may transact business parties to any order issued pursuant to this paragraph (b). The restraint shall be endorsed upon the fiduciary's letters, if any.

(c) Additional restrictions on the powers of the fiduciary. The restrictions shall be endorsed upon the fiduciary's letters, if any.

(d) The suspension of the fiduciary if the court determines that the fiduciary has violated his, her, or its fiduciary duties. If a court orders the suspension of a fiduciary pursuant to this paragraph (d), the court shall direct that the suspension be endorsed upon the fiduciary's letters, if any.

(e) The removal of the fiduciary. A court may remove a fiduciary for cause at any time, and the following provisions shall apply:

(I) After a fiduciary receives notice of proceedings for his, her, or its removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.

(II) If a court orders the removal of a fiduciary, the court shall direct by order the disposition of the assets remaining in the name of, or under the control of, the fiduciary being removed.

(III) Cause for removal of a fiduciary exists when removal would be in the best interests of the estate or if it is shown that the fiduciary or the person seeking the fiduciary's appointment intentionally misrepresented material facts in the proceedings leading to the fiduciary's appointment, or that the fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(IV) If a court orders the removal of a fiduciary, the court shall direct that the fiduciary's letters, if any, be revoked and such revocation be endorsed upon the fiduciary's letters, if any.

(f) The appointment of a temporary or permanent successor fiduciary;

(g) A review of the fiduciary's conduct. If a court orders a review of the fiduciary's conduct, the court shall specify the scope and duration of the review in the court's order.

(h) A surcharge or sanction of the fiduciary pursuant to section 15-10-504; or

(i) Such further relief as the court deems appropriate to protect the ward or protected person or the assets of the estate.

**15-10-504. Surcharge - contempt - sanctions against fiduciaries.** (1) **Notice.** Except as provided in subsection (3) of this section, notice to a fiduciary concerning any matters governed by the provisions of this section shall be provided pursuant to section 15-10-505.

(2) **Surcharge.** (a) If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs.

(b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of part 6 of this article.

(3) **Contempt proceedings against fiduciary.** Nothing in this part 5 shall be interpreted to limit or restrict a court's authority to proceed against a fiduciary for direct contempt as provided in rule 107 of the Colorado rules of civil procedure. In addition, if a fiduciary fails to comply with an order of a court issued pursuant to this part 5, the court may proceed against the fiduciary for indirect contempt as provided in rule 107 of the Colorado rules of civil procedure. A court may initiate indirect contempt proceedings on its own motion or upon the filing of a motion supported by affidavit as described in rule 107 of the Colorado rules of civil procedure.

(4) **Sanctions.** If a court determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court, after a hearing, may order such other sanctions as the court deems appropriate.

**15-10-505. Notice to fiduciary - current address on file.** (1) In all actions undertaken pursuant to this part 5, the following provisions shall govern notice to fiduciaries:

(a) **In emergency situations.** If it appears to a court that an emergency exists because there is an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may take appropriate action and issue an order with or without prior notice to a fiduciary as the court determines appropriate based upon the nature of the emergency. If a fiduciary of an estate is not present when an emergency order is entered concerning the administration of the estate, the court shall attempt to notify the fiduciary of the court's action and mail a copy of the court's order to the fiduciary at the fiduciary's last address of record on file with the court. Notice of the court's order shall also be served, pursuant to section 15-10-401, upon all interested persons or as the court directs. Notice of all hearings set under section 15-10-503 (1) shall be given pursuant to section 15-10-401.

(b) **In nonemergency situations.** In nonemergency situations, notice to a fiduciary shall be governed by section 15-10-401.

(c) **Contempt.** For a hearing to determine possible contempt of a fiduciary, the court shall provide notice to the fiduciary as required by rule 107 of the Colorado rules of civil procedure.

(2) **Fiduciary's responsibility to keep current address in court file.** Every fiduciary appointed by a court is required to keep his, her, or its current address and telephone number on file with the court. The fiduciary shall promptly notify the court of any change in the fiduciary's address or telephone number.

## PART 6

## COMPENSATION AND COST RECOVERY

**15-10-601. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as the estate is originally constituted and as the estate exists from time to time during administration. "Estate" includes custodial property as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; custodial trust property as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and the property of a principal that is subject to a power of attorney.

(2) "Fiduciary" means:

(a) A personal representative, guardian, conservator, or trustee;

(b) A custodian as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;

(c) A custodial trustee as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;

(d) An agent as defined in sections 15-10-201 (1), 15-14-602 (3), and 15-14-702 (1); and

(e) A public administrator as described in section 15-12-619.

(3) (a) "Governing instrument" means a will or a trust or a donative, appointive, or nominative instrument of any other type, including but not limited to:

(I) An instrument that creates a custodial transfer as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;

(II) A custodial trust as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;

(III) A medical durable power of attorney as described in section 15-14-506;

(IV) An agency instrument as defined in section 15-14-602 (2);

(V) A power of attorney as defined in section 15-14-702 (7);

(VI) A court order appointing a guardian as described in parts 2 and 3 of article 14 of this title; and

(VII) A court order appointing a conservator as described in part 4 of article 14 of this title.

(b) "Governing instrument" does not include a deed; an insurance or annuity policy; a multiple-party account; a security registered in beneficiary form; a pension; a profit-sharing, retirement, or similar benefit plan; or an individual retirement account.

**15-10-602. Recovery of reasonable compensation and costs.** (1) A fiduciary and his or her lawyer are entitled to reasonable compensation for services rendered on behalf of an estate.

(2) A lawyer hired by a respondent, ward, or protected person is entitled to reasonable compensation and costs incurred for the legal representation the lawyer provides for the respondent, ward, or protected person.

(3) A third party who performs services at the request of a court is entitled to reasonable compensation.

(4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.

(5) Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered pursuant to this section may be paid directly or reimbursed without a court order. A court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.

(6) Except as provided in sections 15-10-605 (4), 15-14-318 (4), and 15-14-431 (5), if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian, or trustee defends or prosecutes a proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate reimbursement for necessary costs and disbursements, including but not limited to reasonable attorney fees.

(7) (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.

(b) If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, respondent, ward, or protected person, the lawyer or other person not appointed by the court may receive costs and reasonable compensation from the estate as provided below:

(I) The lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within fourteen days after the entry of the order or within a greater or lesser time as the court may direct. Any objection thereto shall be filed within fourteen days after the filing of the request for compensation or costs.

(II) After a request for compensation or costs or an objection to such a request, if any has been filed, the court shall determine, without a hearing, the benefit, if any, that the estate received from the services provided.

(III) If the court determines that a compensable benefit resulted from the services, then the person requesting compensation or costs shall submit to the court only those fees or costs purportedly incurred in providing the beneficial services. If no objection to those fees and costs is filed, the court shall determine the amount of compensation or costs to be awarded for the benefit, without a hearing.

(IV) An interested person disputing the reasonableness of the amount of compensation or costs requested for the beneficial services may file an objection. If an objection is filed, the proceedings to resolve the dispute shall be governed by section 15-10-604.

(c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in section 15-10-603 (3):

(I) The value of a benefit to the estate, respondent, ward, or protected person;

(II) The number of parties involved in addressing the issue;

(III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and

(IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

(d) For the purposes of this subsection (7), services rendered by a lawyer or a person not appointed by a court that confer a benefit to an estate, respondent, ward, or protected person are those significant, demonstrable, and generally noncumulative services that assist the court in resolving material issues in the administration of an estate. By way of example and not limitation, such benefits may result in significantly increasing or preventing a significant decrease in the size of the estate, preventing or exposing maladministration or a material breach of fiduciary duty, or clarifying and upholding a decedent's, settlor's, principal's, respondent's, ward's, or protected person's intent with respect to a material issue in dispute.

(8) A fiduciary who is a member of a law firm may use the services of the law firm and charge for the reasonable value of the services of the members and staff of the firm that assist the fiduciary in performing his or her duties.

(9) Every application or petition for appointment of a fiduciary filed under this code, including without limitation those required under sections 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, and 15-14-403, shall include a statement by the applicant or petitioner disclosing the basis upon which any compensation is to be charged to the estate by the fiduciary and his or her or its counsel or shall state that the basis has not yet been determined. The disclosure statement shall specifically describe, as is applicable, the hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated. This disclosure obligation shall be

continuing in nature so as to require supplemental disclosures if material changes to the basis for charging fees take place.

**15-10-603. Factors in determining the reasonableness of compensation and costs.** (1) A court may review and determine:

(a) The reasonableness of the compensation of any fiduciary, lawyer, or other person who:

(I) Is employed on behalf of an estate, fiduciary, respondent, ward, or protected person;

(II) Is appointed by the court; or

(III) Provides beneficial services to an estate, respondent, ward, or protected person; and

(b) The appropriateness of any cost sought to be paid by or recovered from an estate.

(2) In considering the reasonableness of the compensation, there shall be no presumption that any method of charging a fee for services rendered to an estate, fiduciary, principal, respondent, ward, or protected person is per se unreasonable. Regardless of the method used for charging a fee, in determining appropriate compensation, the court shall apply the standard of reasonableness in light of all relevant facts and circumstances.

(3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court considers relevant in reaching its decision:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the service properly;

(b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;

(c) (I) The compensation customarily charged in the community for similar services with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;

(II) As used in this subsection (3), unless the context otherwise requires, "community" means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.

(d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;

(e) Whether and to what extent any litigation has taken place and the results of such litigation;

(f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;

(g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;

(h) The adequacy of any detailed billing statements upon which the compensation is based;

(i) Whether the fiduciary has charged variable rates that reflect comparable payment standards in the community for like services;

(j) The expertise, special skills, reputation, and ability of the person performing the services and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;

(k) The terms of a governing instrument;

(l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

(m) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the cost-effectiveness of the action taken under the circumstances existing at the time the service was performed.

(4) If a governing instrument provides that a fiduciary is entitled to receive compensation in accordance with a published fee schedule in effect at the time the services are performed, fees charged in accordance with the published fee schedule shall be presumed to be reasonable. The absence of such a provision in a governing instrument shall not preclude the fiduciary from receiving compensation in accordance with a published fee schedule in effect at the time the services are performed.

(5) Nothing in this section shall be interpreted to prohibit members or employees of a professional fiduciary's organization or law firm, including partners, associates, paralegals, law clerks, trust officers, caregivers, and social workers, from collaborating on the same service so long as the collaboration is reasonable and the total compensation charged for the service in the aggregate is reasonable under the circumstances.

**15-10-604. Fee disputes - process and procedure.** (1) A dispute over the reasonableness of a request for compensation or costs authorized by this part 6 shall be resolved in accordance with the factors set forth in section 15-10-603 (3) and the process and procedure set forth in this section.

(2) For purposes of this section, a fee dispute shall be deemed to have arisen when an objection to compensation or costs has been filed in a proceeding.

(3) After the objection to compensation or costs has been filed, the person requesting compensation or costs shall have thirty-five days, or a greater or lesser time as the court may direct, to make available to the objector for inspection and copying all documentation that the person deems necessary to establish the reasonableness of the compensation and costs in consideration of the factors set forth in section 15-10-603 (3) and to certify to the court that such documentation was made available to the objector on a certain date. The objector shall then have fourteen days, or a greater or lesser time as the court may direct, to file specific written objections to such compensation and costs based on the factors set forth in section 15-10-603 (3). The fourteen days shall commence on the date that the person makes the documentation available to the objector or upon the filing of the person's certification, whichever is later. The court may permit further discovery on the compensation and cost issues raised by the pleadings only upon

good cause shown.

(4) Subject to the court's inherent authority to order alternative dispute resolution methods, the court shall determine, after notice and hearing, the amount of compensation and costs it considers to be reasonable and shall issue its findings of fact and conclusions of law referencing the factors set forth in section 15-10-603 (3) and any other factors it deems relevant to its decision.

**15-10-605. Compensation and costs - assessment - limitations.** (1) If the court determines that any proceedings pursuant to this code or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and the costs, including reasonable attorney fees, incurred by the fiduciary and other affected parties in responding to the proceedings or pleadings, against an estate, party, person, or entity that brought or defended the proceedings or filed the pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction, or surcharge provided by law.

(2) If any person entitled to compensation under this part 6 is required to defend the reasonableness of compensation or costs in a proceeding, the court may review the fees and costs incurred by the person in defending the compensation or costs, and the fees incurred in challenging the compensation and costs, and may assess the reasonable fees and costs incurred in the proceeding as the court deems equitable. The court may allocate fees or costs assessed pursuant to this subsection (2) in favor of or against the estate or any party, person, or entity involved in the proceeding as justice and equity may require.

(3) A person who is unsuccessful in defending the reasonableness of compensation or costs at a hearing shall not be entitled to recover the fees or costs of that defense as the court deems equitable.

(4) A fiduciary who is unsuccessful in defending the fiduciary's conduct in a proceeding pursuant to this code alleging breach of fiduciary duty shall not recover the fees or costs of that defense as the court deems equitable.

**15-10-606. Applicability.** (1) This part 6 applies to:

(a) An estate existing before, on, or after August 10, 2011; and

(b) Proceedings to determine the reasonableness of compensation and costs commenced on or after August 10, 2011.

(2) This part 6 does not apply to proceedings to determine the reasonableness of compensation and costs commenced before August 10, 2011, unless the court determines that the application of this part 6 would not prejudice the rights of any party to the proceeding and the court directs otherwise.

## ARTICLE 11

Intestate Succession and Wills

PART 1

INTESTATE SUCCESSION

SUBPART 1

GENERAL RULES

**15-11-101. Intestate estate.** (1) Any part of a decedent's estate not effectively disposed of by will or otherwise passes by intestate succession to the decedent's heirs as prescribed in this code, except as modified by the decedent's will.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

**15-11-102. Share of spouse.** The various possible circumstances describing the decedent, his or her surviving spouse, and their surviving descendants, if any, are set forth in this section to be utilized in determining the intestate share of the decedent's surviving spouse. If more than one circumstance is applicable, the circumstance that produces the largest share for the surviving spouse shall be applied. The intestate share of a decedent's surviving spouse is:

(1) The entire intestate estate if:

(a) No descendant or parent of the decedent survives the decedent; or

(b) All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) The first three hundred thousand dollars, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(3) The first two hundred twenty-five thousand dollars, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

(5) (Deleted by amendment, L. 2009, (HB 09-1287), ch. 310, p. 1671, § 3, effective July

1, 2010.)

(6) The dollar amounts stated in this section shall be increased or decreased based on the cost of living adjustment as calculated and specified in section 15-10-112.

**15-11-102.5. Share of designated beneficiary.** (1) If the decedent is survived by a person with the right to inherit real or personal property from the decedent in a designated beneficiary agreement executed pursuant to article 22 of this title, the intestate share of the decedent's designated beneficiary is:

(a) The entire estate if no descendent of the decedent survives the decedent; or

(b) One half of the intestate estate if one or more descendants of the decedent survive the decedent.

**15-11-103. Share of heirs other than surviving spouse and designated beneficiary.** Any part of the intestate estate not passing to the decedent's surviving spouse under section 15-11-102, or to the decedent's surviving designated beneficiary under section 15-11-102.5, or the entire intestate estate if there is no surviving spouse and no surviving designated beneficiary with the right to inherit real or personal property from the decedent through intestate succession, passes in the following order to the individuals who survive the decedent:

(1) (Deleted by amendment, L. 2010, (SB 10-199), ch. 374, p. 1748, § 5, effective July 1, 2010.)

(2) To the decedent's descendants per capita at each generation;

(3) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(4) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation;

(5) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(a) Half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation; and

(b) Half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation;

(6) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner as described in subsection (5) of this section;

(7) (Deleted by amendment, L. 2010, (SB 10-199), ch. 374, p. 1748, § 5, effective July 1, 2010.)

(8) (Deleted by amendment, L. 2009, (HB 09-1287), ch. 310, p. 1672, § 4, effective July 1, 2010.)

**15-11-104. Requirement of survival by one hundred twenty hours - individual gestation.** (1) For purposes of intestate succession and exempt property, and except as otherwise provided in paragraph (b) of this subsection (1), the following rules apply:

(a) An individual born before a decedent's death who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period.

(b) An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period.

(2) This section is not to be applied if its application would result in a taking of intestate estate by the state under section 15-11-105.

**15-11-105. No taker.** If there is no taker under the provisions of this article, the intestate estate passes to the state of Colorado, subject to the provisions of section 15-12-914.

**15-11-106. Per capita at each generation.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section 15-11-104.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 15-11-104.

(2) **Decedent's descendants.** If, under section 15-11-103 (2), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who are allocated a share and their surviving descendants had predeceased the decedent.

(3) **Descendants of parents or grandparents.** If, under section 15-11-103 (4) or (6), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the descendants of the decedent's deceased parents or either of them, or to the descendants of the decedent's deceased grandparents or any of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or any of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

**15-11-107. Kindred of half blood.** Relatives of half blood inherit the same share they would inherit if they were of whole blood.

**15-11-108. After-born heirs - repeal. (Repealed)**

**15-11-109. Advancements.** (1) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement, or (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For the purposes of subsection (1) of this section, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

(4) An heir who has received from the intestate estate more than his or her share shall in no case be required to refund, except as otherwise provided by section 15-11-203.

**15-11-110. Debts to decedent.** A debt owed to a decedent is not charged against the intestate share of any individual 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 descendants.

**15-11-111. Alienage.** No individual is disqualified to take as an heir, devisee, grantee,

lessee, mortgagee, assignee, or other transferee because the individual or an individual through whom he or she claims is or has been an alien.

**15-11-112. Dower and courtesy abolished.** The estates of dower and courtesy are abolished.

**15-11-113. Individuals related to decedent through two blood lines.** An individual who is related to the decedent through two blood lines of relationship is entitled to only a single share based upon the relationship which would entitle the individual to the larger share.

**15-11-114. Parent barred from inheriting in certain circumstances.** (1) A parent is barred from inheriting from or through a child of the parent if:

(a) The parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(b) The child died before reaching eighteen years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under the laws of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

SUBPART 2

PARENT-CHILD RELATIONSHIP

**15-11-115. Definitions.** In this subpart 2:

(1) "Adoptee" means an individual who is adopted.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(3) "Divorce" includes an annulment, dissolution of marriage, and declaration of invalidity of a marriage.

(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.

(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under section 19-4-105, C.R.S., the term means only the man for whom that relationship is established.

(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(7) "Genetic parent" means a child's genetic father or genetic mother.

(8) "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

(9) "Relative" means a grandparent or a descendant of a grandparent.

**15-11-116. Effect of parent-child relationship.** Except as otherwise provided in section 15-11-119, if a parent-child relationship exists or is established under this subpart 2, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

**15-11-117. No distinction based on marital status.** Except as otherwise provided in section 15-11-114, 15-11-119, 15-11-120, or 15-11-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.

**15-11-118. Adoptee and adoptee's adoptive parent or parents.** (1) **Parent-child relationship between adoptee and adoptive parent or parents.** A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

(2) **Individual in process of being adopted by married couple - stepchild in process of being adopted by stepparent.** For purposes of subsection (1) of this section:

(a) An individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and

(b) A child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by one hundred twenty hours.

(2.5) **Individual in process of being adopted by second parent.** For purposes of subsection (1) of this section, a child who is in the process of being adopted by a second adult in a second-parent adoption when the second adult dies is treated as adopted by the second adult if the child's parent survives the second adult by one hundred twenty hours.

(3) **Child of assisted reproduction or gestational child in process of being adopted.** If, after a parent-child relationship is established between a child of assisted reproduction and a parent under section 15-11-120 or between a gestational child and a parent under section 15-11-121, the child is in the process of being adopted by the parent's spouse or another individual when that spouse or individual dies, the child is treated as adopted by the deceased spouse or individual for the purpose of paragraph (b) of subsection (2) of this section.

**15-11-119. Adoptee and adoptee's genetic parents.** (1) **Parent-child relationship**

**between adoptee and genetic parents.** Except as otherwise provided in this section, a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

(2) **Stepchild adopted by stepparent.** A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:

(a) The genetic parent whose spouse adopted the individual; and

(b) The other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(2.5) **Child of a second-parent adoption.** A parent-child relationship exists between an individual who is adopted by a second parent and:

(a) A genetic parent who consented to a second-parent adoption; and

(b) Another genetic parent who is not a third-party donor, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(3) **Individual adopted by relative of genetic parent.** A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(4) **Individual adopted after death of both genetic parents.** A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

(5) **Child of assisted reproduction or gestational child who is subsequently adopted.** If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under section 15-11-120 or between a gestational child and a parent or parents under section 15-11-121, the child is adopted by another or others, the child's parent or parents under section 15-11-120 or 15-11-121 are treated as the child's genetic parent or parents for the purpose of this section.

**15-11-120. Child conceived by assisted reproduction other than child born to gestational carrier.** (1) **Definitions.** In this section:

(a) "Birth mother" means a woman, other than a gestational carrier under section 15-11-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.

(b) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under section 15-11-121.

(c) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(I) A husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(II) The birth mother of a child of assisted reproduction; or

(III) An individual who has been determined under subsection (5) or (6) of this section to have a parent-child relationship with a child of assisted reproduction.

(2) **Third-party donor.** A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.

(3) **Parent-child relationship with birth mother.** A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.

(4) **Parent-child relationship with husband whose sperm were used during his lifetime by his wife for assisted reproduction.** Except as otherwise provided in subsections (9) and (10) of this section, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

(5) **Birth certificate - presumptive effect.** A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

(6) **Parent-child relationship with another.** Except as otherwise provided in subsections (7), (9), and (10) of this section, and unless a parent-child relationship is established under subsection (4) or (5) of this section, a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(a) Before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(b) In the absence of a signed record under paragraph (a) of this subsection (6):

(I) Functioned as a parent of the child no later than two years after the child's birth;

(II) Intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(III) Intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

(7) **Record signed more than two years after the birth of the child - effect.** For the purpose of paragraph (a) of subsection (6) of this section, neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached eighteen years of age.

(8) **Presumption - birth mother is married or surviving spouse.** For the purpose of paragraph (b) of subsection (6) of this section, the following rules apply:

(a) If the birth mother is married at the time of conception and no divorce proceeding is then pending, her spouse is presumed to satisfy the requirements of subparagraph (I) or (II) of paragraph (b) of subsection (6) of this section.

(b) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, her deceased spouse is presumed to satisfy the requirements of

subparagraph (II) or (III) of paragraph (b) of subsection (6) of this section.

(9) **Divorce before placement of eggs, sperm, or embryos.** If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

(10) **Withdrawal of consent before placement of eggs, sperm, or embryos.** If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (6) of this section.

(11) **When posthumously conceived child treated as in gestation.** If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the time of the individual's death for purposes of section 15-11-104 (1) (b) if the child is:

(a) In utero not later than thirty-six months after the individual's death; or

(b) Born not later than forty-five months after the individual's death.

**15-11-121. Child born to gestational carrier.** (1) In this section:

(a) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (5) of this section.

(b) "Gestational carrier" means a woman who is not an intended parent who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.

(c) "Gestational child" means a child born to a gestational carrier under a gestational agreement.

(d) "Intended parent" means an individual who entered into a validated gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

(2) **Court order adjudicating parentage - effect.** A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.

(3) **Gestational carrier.** A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:

(a) Designated as a parent of the child in a court order described in subsection (2) of this section; or

(b) The child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

(4) **Parent-child relationship with intended parent or parents.** In the absence of a court order under subsection (2) of this section, a parent-child relationship exists between a gestational child and an intended parent who:

(a) Functioned as a parent of the child no later than two years after the child's birth; or

(b) Died while the gestational carrier was pregnant if:

(I) There were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth;

(II) There were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

(III) There was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

(5) **Gestational agreement after death or incapacity.** In the absence of a court order under subsection (2) of this section, a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:

(a) A record signed by the individual which considering all the facts and circumstances evidences the individual's intent; or

(b) Other facts and circumstances establishing the individual's intent by clear and convincing evidence.

(6) **Presumption - gestational agreement after spouse's death or incapacity.** Except as otherwise provided in subsection (7) of this section, and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of paragraph (b) of subsection (5) of this section if:

(a) The individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;

(b) When the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and

(c) The individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.

(7) **Subsection (6) presumption inapplicable.** The presumption under subsection (6) of this section does not apply if there is:

(a) A court order under subsection (2) of this section; or

(b) A signed record that satisfies paragraph (a) of subsection (5) of this section.

(8) **When posthumously conceived gestational child treated as in gestation.** If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the time of the individual's death for purposes of section 15-11-104 (1) (b) if the child is:

(a) In utero not later than thirty-six months after the individual's death; or

(b) Born not later than forty-five months after the individual's death.

(9) **No effect on other laws.** This section does not affect laws of this state other than this code regarding the enforceability or validity of a gestational agreement.

**15-11-122. Equitable adoption.** This subpart 2 does not affect the doctrine of equitable adoption.

## PART 2

## ELECTIVE-SHARE OF SURVIVING SPOUSE

**15-11-201. Definitions.** (1) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. The notation of a state documentary fee on a recorded instrument pursuant to section 39-13-103, C.R.S., is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

(2) "Decedent's nonprobate transfers to others" means amounts that are included in the augmented estate under section 15-11-205.

(3) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, and if the interests are equal, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants. If the interests are unequal, "fractional interest in property held in joint tenancy with the right of survivorship" means the decedent's interest immediately preceding the decedent's death.

(4) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(5) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(6) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation, including beneficiary designations under individual retirement accounts and annuities described in section 408 of the federal "Internal Revenue Code of 1986", as amended, as well as other pension plans or arrangements not subject to part 2 (section 201 et seq.) of the federal "Employee Retirement Income Security Act of 1974", as amended (29 U.S.C. sec. 1051 et seq.).

(7) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not he or she then had the capacity to exercise the power, held a power to create a present or future interest in himself or herself, his or her creditors, his or her estate, or the creditors of his or her estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(8) "Property" includes values subject to a beneficiary designation.

(9) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) "Transfer", as it relates to a transfer by or on behalf of the decedent, includes:

(a) An exercise or release of a presently exercisable general power of appointment held by the decedent;

(b) A lapse at death of a presently exercisable general power of appointment held by the decedent; and

(c) An exercise, release, or lapse of a presently exercisable general power of appointment that the decedent created in himself or herself and of a power described in section 15-11-205 (2) (b) that the decedent conferred on a nonadverse party.

(11) "Value", unless otherwise indicated, means fair market value as of the decedent's date of death.

**15-11-202. Elective-share.** (1) **Elective-share amount.** The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part 2, to take an elective-share amount equal to fifty percent of the value of the marital-property portion of the augmented estate.

(2) (a) **Supplemental elective-share amount.** If the sum of the amounts described in sections 15-11-207, 15-11-209 (1) (a), and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under section 15-11-209 (3) (a) and (3) (b) is less than fifty thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to fifty thousand dollars, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section 15-11-209 (3) (a) and (3) (b).

(b) The court shall increase or decrease the dollar amount stated in paragraph (a) of this subsection (2) based on the cost of living adjustment as calculated and specified in section 15-10-112.

(3) **Effect of election on statutory benefits.** If the right of election is exercised by or on behalf of the surviving spouse, the exempt property and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) **Nondomiciliary.** The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective-share in property in this state is governed by the law of the decedent's domicile at death.

**15-11-203. Composition of the marital-property portion of the augmented estate.** (1) Subject to section 15-11-208, the value of the augmented estate, to the extent provided in sections 15-11-204, 15-11-205, 15-11-206, and 15-11-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible,

wherever situated, that constitutes:

(a) The decedent's net probate estate;

(b) The decedent's nonprobate transfers to others;

(c) The decedent's nonprobate transfers to the surviving spouse; and

(d) The surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) of this section multiplied by the following percentage:

| If the decedent and the spouse were married to each other: | The percentage is: |
|---|---|
| Less than 1 year | Supplemental amount only. |
| 1 year but less than 2 years | 10% |
| 2 years but less than 3 years | 20% |
| 3 years but less than 4 years | 30% |
| 4 years but less than 5 years | 40% |
| 5 years but less than 6 years | 50% |
| 6 years but less than 7 years | 60% |
| 7 years but less than 8 years | 70% |
| 8 years but less than 9 years | 80% |
| 9 years but less than 10 years | 90% |
| 10 years or more | 100% |

**15-11-204. Decedent's net probate estate.** The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administrative expenses, family allowance, exempt property, and enforceable claims.

**15-11-205. Decedent's nonprobate transfers to others.** The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included in the decedent's probate estate under section 15-11-204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(a) Property over which the decedent alone, immediately before death, held or retained a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent that the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise to or for the benefit of any person other than the decedent's estate or surviving spouse; except that property over which the decedent had only a testamentary power of appointment is not included. Property over which the decedent had a general inter vivos power of appointment or withdrawal created in the decedent by a third party is

includable unless the governing instrument contains a provision for its termination or lapse, in full or in part, during the life of the decedent.

(b) The decedent's fractional interest in real property held by the decedent in joint tenancy with the right of survivorship created during the marriage to the surviving spouse, except as provided in section 15-11-208, and the decedent's fractional interest in personal property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent that the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(d) Except as provided in section 15-11-208, proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent that they were payable at the decedent's death to or for the benefit of the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or

(b) Any transfer in which the decedent created a power over the income or principal of the transferred property, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent that the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, in default, or otherwise to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(a) Any property that passed as a result of the termination of a right or interest in, or

power over, property that would have been included in the augmented estate under paragraph (a), (b), or (c) of subsection (1) of this section or under subsection (2) of this section if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those provisions if the property were valued at the time that the right, interest, or power terminated and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph (I), "termination", with respect to a right or an interest in property, occurs when the right or interest terminates by the terms of the governing instrument or the decedent transfers or relinquishes the right of interest and, with respect to a power over property, when the power terminates by exercise, release, lapse, in default, or otherwise; except that, with respect to a power described in subparagraph (I) of paragraph (a) of this subsection (1), "termination" occurs when the power is terminated by exercise or release but not otherwise.

(b) Any transfer of, or relating to, an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under subparagraph (IV) of paragraph (a) of this subsection (1) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent that the proceeds were payable at the decedent's death to or for the benefit of the decedent's estate or surviving spouse.

(c) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the two years exceeded the amount excludable from taxable gifts under 26 U.S.C. sec. 2503 (b) or its successor on the date next preceding the date of the decedent's death.

**15-11-206. Decedent's nonprobate transfers to the surviving spouse.** Excluding property passing to the surviving spouse under the federal social security system after the decedent's date of death, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(1) The decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(2) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

(3) All other property that would have been included in the augmented estate under section 15-11-205 (1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

**15-11-207. Surviving spouse's property and nonprobate transfers to others.** (1) Except to the extent included in the augmented estate under section 15-11-204 or 15-11-206, the value of the augmented estate includes the value of:

(a) Property that was owned by the decedent's surviving spouse at the decedent's death, including:

(I) The surviving spouse's fractional interest in real property held in joint tenancy with the right of survivorship created during the marriage to the decedent, except as provided in section 15-11-208, and the surviving spouse's fractional interest in personal property held by the surviving spouse in joint tenancy with the right of survivorship;

(II) The surviving spouse's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; and

(III) Property that passed to the surviving spouse by reason of the decedent's death but not including the spouse's right to family allowance, exempt property, or payments under the federal social security system after the decedent's date of death; and

(b) Property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subparagraphs (I) and (II) of paragraph (a) of this subsection (1) had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but for purposes of subparagraphs (I) and (II) of paragraph (a) of subsection (1) of this section, the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of this subsection (2), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under section 15-11-205 (1) (d) are not valued as if he or she were deceased.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

**15-11-208. Exclusions, valuations, and overlapping application.** (1) **Exclusions.** (a) The value of any property is excluded from the decedent's nonprobate transfers to others:

(I) To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or

(II) If the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; or

(III) If the property was transferred to a bona fide purchaser.

(b) For purposes of this subsection (1), in the absence of a finding of a contrary intent, joinder in the filing of a gift tax return does not constitute consent or joinder.

(c) Any life insurance maintained pursuant to a marriage dissolution settlement agreement or court order or any distribution from a plan qualified under section 401 (a) of the federal "Internal Revenue Code of 1986", as amended, is excluded from the decedent's nonprobate transfers to others to the extent such items are payable to a person other than the surviving spouse.

(d) Life insurance, accident insurance, pension, profit sharing, retirement, and other

benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate are excluded from the augmented estate.

(e) Any completed transfers made by the decedent prior to July 1, 1974, are excluded from the decedent's nonprobate transfers to others.

(f) Any fractional interest in real property held in joint tenancy with the right of survivorship, if such joint tenancy was created by a donative transfer by someone other than the decedent or the surviving spouse, is excluded from the augmented estate.

(2) **Valuations.** The value of property:

(a) Included in the augmented estate under section 15-11-205, 15-11-206, or 15-11-207 is reduced in each category by enforceable claims against the included property; and

(b) Includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(3) **Overlapping application - no double inclusion.** In case of overlapping application to the same property of the provisions of section 15-11-205, 15-11-206, or 15-11-207, the property is included in the augmented estate under the provision yielding the highest value and under only one overlapping provision if they all yield the same value.

**15-11-209. Sources from which elective-share payable.** (1) **Elective-share amount only.** (a) In a proceeding for an elective-share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(I) Amounts included in the augmented estate under section 15-11-204 (the net probate estate) which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 15-11-206; and

(II) The marital-property portion of amounts included in the augmented estate under section 15-11-207 (the spouse's property).

(b) For the purposes of this subsection (1), if the surviving spouse disclaims any property, including interests in trust created by the decedent, such property shall not be applied under this subsection (1) to the extent that such property passes to a person other than the surviving spouse.

(2) **Marital-property portion.** The marital-property portion under subparagraph (II) of paragraph (a) of subsection (1) of this section is computed by multiplying the value of the amounts included in the augmented estate under section 15-11-207 by the percentage of the augmented estate set forth in the schedule in section 15-11-203 (2) appropriate to the length of time the spouse and the decedent were married to each other.

(3) **Unsatisfied balance - order of contribution.** If, after the application of subsection (1) of this section, the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount:

(a) Amounts included in the decedent's net probate estate after application of subsection (1) of this section and in the decedent's nonprobate transfers to others described in section 15-11-

205 (3) (a) (during the marriage and the two-year period next preceding the decedent's death, the decedent's interest terminated and the property was transferred to someone other than the spouse), and in section 15-11-205 (3) (c) (any transfer during the same two-year period but only to the extent the transfer exceeded the applicable gift tax annual exclusion) are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(b) If, after the application of subsection (1) of this section and paragraph (a) of this subsection (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of that remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(4) **Unsatisfied balance treated as general pecuniary devise.** The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) of this section is treated as a general pecuniary devise for purposes of section 15-12-904, but interest shall commence to run one year after determination of the elective share amount by the court. This subsection (4) applies only to estates of decedents who die on or after August 6, 2014.

**15-11-210. Personal liability of recipients.** (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make a contribution may choose to give up the proportional part of the decedent's nonprobate transfers to him or her or to pay the value of the amount for which he or she is liable.

(2) If any section or any part of any section of this part 2 is preempted by any federal law other than the federal "Employee Retirement Income Security Act of 1974", as amended, with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person, who, not for value, receives the payment, item of property, or any other benefit is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 15-11-209, to the person who would have been entitled to it were that section or part of that section not preempted.

(3) A bona fide purchaser who purchases property from a recipient or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this part 2 to return the payment, item of property, or benefit nor liable under this part 2 for the amount of the payment or the value of the item of property or benefit.

**15-11-211. Proceeding for elective-share - time limit.** (1) Except as provided in subsection (2) of this section, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective-share within nine months after the date of the decedent's death or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give written 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 estate whose interests will be adversely affected by the taking of the elective-share.

(2) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court, for cause shown by the surviving spouse, may extend the time for election.

(3) If the spouse makes an election by filing a petition for the elective-share more than nine months after the decedent's death, the decedent's nonprobate transfers to others are not included within the augmented estate unless the spouse had filed a petition for extension prior to the expiration of the nine-month period and the court granted the extension.

(4) The surviving spouse may withdraw his or her demand for an elective-share at any time before entry of a final determination by the court. Written notice of such withdrawal must be given to persons interested in the estate and the distributees and recipients of portions of the augmented estate whose interests may be adversely affected by the taking of the elective-share.

(5) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 15-11-209 and 15-11-210. If it appears that a fund or property included in the augmented 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 or she would have been under sections 15-11-209 and 15-11-210 had relief been secured against all persons subject to contribution.

(6) An 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.

**15-11-212. Right of election personal to surviving spouse - incapacitated surviving spouse.** (1) **Surviving spouse must be living at time of election.** The right of election may be exercised only by a surviving spouse who is living when the petition for the elective-share is filed in the court under section 15-11-211. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.

(2) **Incapacitated surviving spouse.** If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under section 15-11-209 (1) and (3) and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection (2), an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need;

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust, but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination; and

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(I) Under the residuary clause, if any, of the will of the predeceased spouse against whom the elective-share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(II) To that predeceased spouse's heirs under section 15-11-711.

**15-11-213. Waiver of right to elect and of other rights.** (1) Any affirmation, modification, or waiver of a marital right or obligation, as defined in section 14-2-302, C.R.S., made on or after July 1, 2014, is unenforceable unless the affirmation, modification, or waiver is contained in a premarital or marital agreement, as defined in section 14-2-302, C.R.S., that is enforceable under part 3 of article 2 of title 14, C.R.S.

(2) Any affirmation, modification, or waiver of a marital right or obligation made before July 1, 2014, is governed by the law in effect at the time the affirmation, modification, or waiver was made.

**15-11-214. Protection of payors and other third parties.** (1) Although under this part 2, a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in good-faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party

received written notice from the surviving spouse or the spouse's representative of an intention to file a petition for the elective-share or that a petition for the elective-share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective-share or that a petition for the elective-share has been filed. Any form or service of notice other than that described in subsection (2) of this section is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) A written notice of intention to file a petition for the elective-share or that a petition for the elective-share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail with return receipt requested or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party.

(3) Upon receipt of a written notice of intention to file a petition for the elective-share or that a petition for the elective-share has been filed, a payor or other third party may pay any amount owed or transfer to 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 availability of such actions under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. The court is the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transfer to or deposit with the court of any item of property even if no probate proceedings have been commenced before such payment, transfer, or deposit. Payment of amounts to the court or transfer to or deposit with the court of any item of property pursuant to this section by the payor or other third party discharges the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to the court or items of property transferred to or deposited with the court.

(4) The court shall hold the funds or item of property and, upon its determination under section 15-11-211 (5), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 15-11-211 (1), or, if filed, the demand for an elective-share is withdrawn under section 15-11-211 (4), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court in the discretion of the court. Payments or transfers to the court or deposits made into the court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(5) Upon petition to the court by the beneficiary designated in a governing instrument,

the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

## PART 3

## SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

**15-11-301. Entitlement of spouse; premarital will.** (1) If a testator's surviving spouse married the testator after the testator executed his or her will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he or she would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised outright to nor in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is so devised to a descendant of such a child, or passes under section 15-11-603 or 15-11-604 to such a child or to a descendant of such a child, unless:

(a) It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) 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 the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise outright to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 15-11-603 or 15-11-604 to a descendant of such a child, abate as provided in section 15-12-902.

**15-11-302. Omitted children.** (1) Except as provided in subsection (2) of this section, if a testator fails to provide in his or her will for any of his or her children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator has one or more children living when he or she executed the will, and the will devised property or an interest in property to one or more of the then living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(I) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then living children under the will.

(II) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (I) of this paragraph (b), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(III) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then living children under the will.

(IV) In satisfying a share provided by this paragraph (b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Neither paragraph (a) nor (b) of subsection (1) of this section applies if:

(a) It appears from the will that the omission was intentional; or

(b) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by paragraph (a) of subsection (1) of this section, devises made by the will abate under section 15-12-902.

## PART 4

## EXEMPT PROPERTY AND ALLOWANCES

**15-11-401. Applicable law.** This part 4 applies to the estate of a decedent who dies domiciled in this state. Rights to exempt property and a family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

**15-11-402. Homestead.** The provisions of sections 38-41-201 and 38-41-204, C.R.S., provide for a homestead exemption but shall not create an allowance for the surviving spouse or minor children. A personal representative's obligation to distribute property as an exempt property allowance under section 15-11-403, to pay money as a family allowance under section 15-11-404, or to distribute property to devisees, heirs, or beneficiaries shall not be considered a

debt, contract, or civil obligation, as referred to under sections 38-41-201 and 38-41-202, C.R.S.

**15-11-403. Exempt property.** (1) (a) Prior to January 1, 2012, the decedent's surviving spouse is entitled to exempt property from the estate in the form of cash in the amount of or other property of the estate in the value of twenty-six thousand dollars in excess of any security interests therein. If there is no surviving spouse, the decedent's dependent children are entitled jointly to the same exempt property. Rights to exempt property have priority over all claims against the estate, except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805. The right to exempt property shall abate as necessary to permit payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or dependent children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective-share.

(b) On and after January 1, 2012, the decedent's surviving spouse is entitled to exempt property from the estate in the form of cash in the amount of or other property of the estate in the value of thirty thousand dollars in excess of any security interests therein. If there is no surviving spouse, the decedent's dependent children are entitled jointly to the same exempt property. Rights to exempt property have priority over all claims against the estate, except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805. The right to exempt property shall abate as necessary to permit payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or dependent children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective-share.

(2) The dollar amount stated in paragraph (a) or (b) of subsection (1) of this section shall be increased or decreased based on the cost of living adjustment as calculated and specified in section 15-10-112; except that, when the increase in the dollar amount stated in paragraph (b) of subsection (1) of this section, as enacted in Senate Bill 11-016, enacted in 2011, takes effect, the next regularly scheduled cost of living adjustment will be suspended for one year.

**15-11-404. Family allowance.** (1) In addition to the right to exempt property, the decedent's surviving spouse and minor children who the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his or her guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except claims for the costs and expenses of administration,

and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective-share. The death of any person entitled to a family allowance terminates the right to receive an allowance for any period arising after his or her death, but does not affect the right of his or her estate to recover the unpaid allowance for periods prior to his or her death.

**15-11-405. Source, determination, and documentation.** (1) (a) (I) If the estate is otherwise sufficient, property specifically devised or disposed of by memorandum under section 15-11-513 to any person other than a person entitled to exempt property may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property. The personal representative may make these selections if the surviving spouse, the dependent children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. Prior to January 1, 2012, the personal representative may determine the family allowance in a lump sum not exceeding twenty-four thousand dollars or periodic installments not exceeding two thousand dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may provide a family allowance other than that which the personal representative determined or could have determined.

(II) If the estate is otherwise sufficient, property specifically devised or disposed of by memorandum under section 15-11-513 to any person other than a person entitled to exempt property may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property. The personal representative may make these selections if the surviving spouse, the dependent children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. On and after January 1, 2012, the personal representative may determine the family allowance in a lump sum not exceeding thirty thousand dollars or periodic installments not exceeding two thousand five hundred dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may provide a family allowance other than that which the personal representative determined or could have determined.

(b) The dollar amount stated in subparagraph (I) or (II) of paragraph (a) of this subsection (1) shall be increased or decreased based on the cost of living adjustment as calculated and specified in section 15-10-112; except that, when the increase in the dollar amount stated in subparagraph (II) of paragraph (a) of this subsection (1), as enacted in Senate Bill 11-016, enacted in 2011, takes effect, the next regularly scheduled cost of living adjustment will be suspended for one year.

(2) If the right to an elective-share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the exempt property and family allowance to the trust established under section 15-11-206 (2).

(3) No exempt property or family allowance shall be payable unless the person entitled to payment thereof requests such payment within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year after the date of death, whichever time limitation first expires. The court may extend the time for presenting such request as it sees fit for cause shown by the person entitled to payment before the time limitation has expired; except that the time for presenting the request shall not be extended beyond two years after the date of death. The request shall be made to the personal representative, or, if none is appointed, to any other person having possession of the decedent's assets. A request on behalf of a minor or dependent child may be made by the child's guardian or other person having his or her care and custody.

## PART 5

## WILLS AND WILL CONTRACTS AND CUSTODY AND DEPOSIT OF WILLS

**15-11-501. Who may make a will.** An individual eighteen or more years of age who is of sound mind may make a will.

**15-11-502. Execution - witnessed or notarized wills - holographic wills.** (1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a will shall be:

(a) In writing;

(b) Signed by the testator, or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) Either:

(I) Signed by at least two individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will as described in paragraph (b) of this subsection (1) or the testator's acknowledgment of that signature or acknowledgment of the will; or

(II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.

(2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

(4) For purposes of this section, "conscious presence" requires physical proximity to the testator but not necessarily within testator's line of sight.

(5) For purposes of this part 5, "will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.

**15-11-503. Writings intended as wills.** (1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(a) The decedent's will;

(b) A partial or complete revocation of the will;

(c) An addition to or an alteration of the will; or

(d) A partial or complete revival of the decedent's formerly revoked will or a formerly revoked portion of the will.

(2) Subsection (1) of this section shall apply only if the document is signed or acknowledged by the decedent as his or her will or if it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse.

(3) Whether a document or writing is treated under this section as if it had been executed in compliance with section 15-11-502 is a question of law to be decided by the court, in formal proceedings, and is not a question of fact for a jury to decide.

(4) Subsection (1) of this section shall not apply to a designated beneficiary agreement under article 22 of this title.

**15-11-504. Self-proved will.** (1) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

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 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

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] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that [he] [she] executes it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of us, in the conscious presence of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen 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) A will that is executed with attesting witnesses may be made self-proved at any time after its execution 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 in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

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 the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the conscious presence of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator was at that time eighteen 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 signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

**15-11-505. Who may witness.** (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

**15-11-506. Choice of law as to execution.** A written will is valid if executed in compliance with section 15-11-502 or 15-11-503 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.

**15-11-507. Revocation by writing or by act.** (1) A will or any part thereof is revoked:

(a) By executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(b) By performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part of it or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

**15-11-508. Revocation by change of circumstances.** Except as provided in sections 15-11-803 and 15-11-804, a change of circumstances does not revoke a will or any part of it.

**15-11-509. Revival of revoked will.** (1) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 15-11-507 (1) (b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 15-11-507 (1) (b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

**15-11-510. Incorporation by reference.** A 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.

**15-11-511. Testamentary additions to trusts.** (1) 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, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor 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. 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 is 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) A revocation or termination of the trust before the death of the testator causes the devise to lapse, but exhaustion of trust corpus between the time of execution of the testator's will

and the testator's death shall not constitute a lapse; a revocation or termination of the trust before the death of the testator shall not cause the devise to lapse, if the testator provides that, in such event, the devise shall constitute a devise to the trustee of the trust identified in the testator's will, and on the terms thereof, as they existed at the time of the execution of testator's will, or as they existed at the time of the revocation or termination of the trust, as the testator's will provides.

**15-11-512. Events of independent significance.** A will may dispose of property by reference to acts and events that 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 another individual's will is such an event.

**15-11-513. Separate writing or memorandum identifying devise of certain types of tangible personal 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. To be admissible under this section as evidence of the intended disposition, the writing shall be either in the handwriting of the testator or be signed by the testator and shall 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 that has no significance apart from its effect on the dispositions made by the will.

**15-11-514. 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 July 1, 1995, may be established only by (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (iii) 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.

**15-11-515. Deposit of will with court in testator's lifetime.** A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will shall be sealed and kept confidential. During the testator's lifetime, a deposited will shall be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination.

**15-11-516. Duty of custodian of will; lodging of will after death; transfer of lodged**

**will; liability.** (1) Within ten days after a testator's death or as soon thereafter as the death becomes known to the custodian of an instrument purporting to be the testator's will, the custodian shall deliver the will to the court having probate jurisdiction in the Colorado county where the decedent resided or was domiciled at death for lodging in the records of such court. If the decedent was not a Colorado resident or domiciliary, the custodian shall deliver the will to the court having probate jurisdiction where the decedent was a resident or domiciliary at death, if known to the custodian, but if such residence or domicile is not known, to the court having probate jurisdiction in any Colorado county where property of the decedent was located at death. If the domicile, residence, and location of property are unknown to the custodian, or if the court having probate jurisdiction outside of Colorado refuses to accept delivery of the will, the custodian shall deliver the will to the court having probate jurisdiction in the Colorado county where the will was located. Upon being informed of the testator's death, a court holding a deposited will shall lodge the will in its records.

(2) Upon the filing of a petition or application showing appropriate venue to be in another state or in another Colorado county, the court shall order the lodged will transferred to the court having probate jurisdiction in that state or county. Any person who willfully fails to deliver an instrument purporting to be a will is liable to any person aggrieved for the damages that may be sustained by the failure.

(3) Any person who willfully refuses or fails to deliver an instrument purporting to be 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.

**15-11-517. Penalty clause for contest.** A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

## PART 6

## RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

**15-11-601. Scope.** In the absence of a finding of a contrary intention, the rules of construction in this part 6 control the construction of a will. In the absence of a finding of a contrary intention, the provisions of sections 15-11-603 and 15-11-604 shall apply to wills and codicils executed or republished or reaffirmed on or after July 1, 1995, and prior law (sections 15-11-605 and 15-11-606) shall apply to wills and codicils executed prior to July 1, 1995, and not republished or reaffirmed on or after that date. In the process of determining whether a contrary intention exists, the rules of construction of this part 6 shall not apply.

**15-11-602. Will may pass all property and after-acquired property.** A will may provide for the passage of all property the testator owns at death and all property acquired by the

estate after the testator's death.

**15-11-603. Antilapse; deceased devisee; class gifts.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes (i) a class member if the devise is in the form of a class gift, (ii) the beneficiary of a trust but not the trustee, (iii) an individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator, and (iv) an appointee under a power of appointment exercised by the testator's will.

(e) (Reserved)

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 15-11-702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) **Substitute gift.** If a devisee fails to survive the testator and is a grandparent or a descendant of a grandparent of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take per capita at each generation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in paragraph (d) of this subsection (2), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased devisee's or devisees' surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee takes per capita at each generation the share to which the deceased devisee would have

been entitled had the deceased devisee survived the testator. For the purposes of this paragraph (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of this part 6, words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. The use of language such as "and if he does not survive me the gift shall lapse" or "to A and not to A's descendants" shall be sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph (a) or (b) of this subsection (2), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) **Dispositions under separate writing.** The provisions of this section shall not apply to dispositions of tangible personal property made under section 15-11-513.

(4) **More than one substitute gift; which one takes.** If, under subsection (2) of this section, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in paragraph (b) of this subsection (4), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) In this subsection (4):

(I) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(II) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(III) "Younger-generation devise" means a devise that:

(A) Is to a descendant of a devisee of the primary devise;

(B) Is an alternative devise with respect to the primary devise;

(C) Is a devise for which a substitute gift is created; and

(D) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(IV) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

**15-11-604. Failure of testamentary provision.** (1) Except as provided in section 15-11-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in section 15-11-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

**15-11-605. Increase in securities; accessions.** (1) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(a) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(b) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(c) Securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

**15-11-606. Nonademption of specified devises - unpaid proceeds of sale, condemnation, or insurance - sale by conservator or agent.** (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and:

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

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

(c) Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

(e) Real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) If not covered by any of paragraphs (a) to (e) of this subsection (1), a general pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime, but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition, or otherwise, the testator did not intend

ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of a specific devisee under subsection (2) of this section is reduced by any right the devisee has under subsection (1) of this section.

(4) For the purposes of the references in subsection (2) of this section to a conservator, subsection (2) of this section does not apply if after the sale, mortgage, condemnation, casualty, or recovery it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

(5) For the purposes of the references in subsection (2) of this section to an agent acting within the authority of a durable power of attorney for an incapacitated principal, (i) "Incapacitated principal" means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

**15-11-607. Nonexoneration.** A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**15-11-608. Exercise of power of appointment - repeal. (Repealed)**

**15-11-609. Ademption by satisfaction.** (1) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 15-11-603 and 15-11-604, unless the testator's contemporaneous writing provides otherwise.

PART 7

## RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

**15-11-701. Scope.** For the purposes of this part 7, the term "governing instrument" shall be as defined in section 15-10-201 (22); except:

(1) "Governing instrument" shall not include a deed that transfers any interest in real property; however, section 15-11-712 shall apply to such deeds.

(2) As the application of a particular section is limited by its terms to a specific type of provision or governing instrument. In the absence of a finding of a contrary intention, the rules of construction in this part 7 control the construction of a governing instrument executed or republished or reaffirmed on or after July 1, 1995, and the rules of construction under prior law control the construction of a governing instrument executed prior to July 1, 1995, and not a governing instrument republished or reaffirmed after that date. In the process of determining whether a contrary intention exists, the rules of construction of this part 7 shall not apply.

(3) In the absence of a finding of a contrary intention, the rules of construction in section 15-11-705 apply to a governing instrument executed or republished or reaffirmed on or after July 1, 2010, and the rules of construction under section 15-11-705, as it existed prior to July 1, 2010, apply to a governing instrument executed prior to July 1, 2010, and not republished or reaffirmed after that date.

**15-11-702. Requirement of survival by one hundred twenty hours.** (1) **Requirement of survival by one hundred twenty hours under probate code.** For the purposes of this code, except as provided in subsection (4) of this section, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

(2) **Requirement of survival by one hundred twenty hours under other governing instrument.** Except as provided in subsection (4) of this section, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

(3) **Co-owners with right of survivorship; requirement of survival by one hundred twenty hours.** Except as provided in subsection (4) of this section, if (i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours, and (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners. For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances

that entitles one or more to the whole of the property or account on the death of one or more of the others.

(4) **Exceptions.** Survival by one hundred twenty hours is not required if:

(a) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and if that language is operable under the facts of the case;

(b) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival of the event or the specified period shall be established by clear and convincing evidence;

(c) The imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 15-11-1102 (1) (a), (2) (a), or (3) (a) or section 15-11-1102.5 (1) (b) (I), (1) (b) (II), (1) (b) (III), (2) (b) (I) (A), (2) (b) (II) (A), or (2) (b) (III) (A), or to become invalid under section 15-11-1102 (1) (b), (2) (b), or (3) (b) or section 15-11-1102.5 (1) (b) (I), (1) (b) (II), or (1) (b) (III); but survival shall be established by clear and convincing evidence; or

(d) The application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival shall be established by clear and convincing evidence.

(5) **Protection of payors and other third parties.** (a) 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 who, under this section, is not entitled to the payment or item of property, or for having taken any other action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice as described in paragraph (b) of this subsection (5). A payor or other third party shall have no duty or obligation to inquire as to the application of the one-hundred-twenty-hour survival or to seek any evidence with respect to any such survival. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice. Any form or service of notice other than that described in paragraph (b) of this subsection (5) shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(b) The written notice shall indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the beneficiary designated in the governing instrument failed to survive the decedent by one hundred twenty hours. The written notice shall 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. Notice to a sales representative of the payor or other third party shall not constitute notice to the payor or other third party.

(c) Upon receipt of the written notice described in paragraph (b) of this subsection (5), a payor or other third party may pay to the court any amount owed, or transfer to or deposit with the court any item of property held by it. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. The court is the court having jurisdiction of the probate proceedings

relating to the decedent's estate, or if no proceedings have been commenced, the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transfer to or deposit with the court of any item of property, even if no probate proceedings have been commenced before such payment, transfer, or deposit. Payment of amounts to the court or transfer to or deposit with the court of any item of property pursuant to this section by the payor or other third party discharges the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to the court or items of property transferred to or deposited with the court.

(d) The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, shall be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court.

(e) Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(6) **Protection of bona fide purchasers; personal liability of recipient.** (a) A person who purchases property for value and without notice or who receives 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. However, a person who, not for value, receives a payment, item of property, or any other benefit to which the 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.

(b) If this section or any part of this section is preempted by federal law (other than the federal "Employee Retirement Income Security Act of 1974", as amended) with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the 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 would have been entitled to it were this section or part of this section not preempted.

**15-11-703. Choice of law as to meaning and effect of governing instrument.** The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective-share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or any

other public policy of this state otherwise applicable to the disposition.

**15-11-704. Power of appointment; meaning of specific reference requirement - repeal. (Repealed)**

**15-11-705. Class gifts construed to accord with intestate succession.** (1) **Definitions.** In this section:

(a) "Adoptee" has the meaning set forth in section 15-11-115.

(b) "Child of assisted reproduction" has the meaning set forth in section 15-11-120.

(c) "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment.

(d) "Functioned as a parent of the adoptee" has the meaning set forth in section 15-11-115, substituting "adoptee" for "child" in that definition.

(e) "Functioned as a parent of the child" has the meaning set forth in section 15-11-115.

(f) "Genetic parent" has the meaning set forth in section 15-11-115.

(g) "Gestational child" has the meaning set forth in section 15-11-121.

(h) "Relative" has the meaning set forth in section 15-11-115.

(2) **Terms of relationship.** A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (5) and (6) of this section, an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.

(3) **Relatives by marriage.** Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, standing alone shall be construed to exclude relatives by marriage.

(4) **Half-blood relatives.** Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, standing alone shall be construed to include both types of relationships.

(5) **Transferor not genetic parent.** In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of the genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached eighteen years of age.

(6) **Transferor not adoptive parent.** In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(a) The adoption took place before the adoptee reached eighteen years of age;

(b) The adoptive parent was the adoptee's stepparent or foster parent; or

(c) The adoptive parent functioned as a parent of the adoptee before the adoptee reached

eighteen years of age.

(7) **Class-closing rules.** The following rules apply for purposes of the class-closing rules:

(a) A child in utero at a particular time is treated as living at that time if the child lives one hundred twenty hours after birth.

(b) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives one hundred twenty hours after birth and was in utero not later than thirty-six months after the deceased parent's death or born not later than forty-five months after the deceased parent's death.

(c) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

**15-11-706. Nonprobate transfers; deceased beneficiary.** (1) **Definitions.** This section shall not apply to wills; beneficiary deeds; insurance or annuity policies; or pension, profit sharing, retirement, or similar benefit plans. As used in this section, unless the context otherwise requires:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes (i) a class member if the beneficiary designation is in the form of a class gift and (ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he or she survived the decedent.

(e) (Reserved)

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 15-11-702.

(2) **Substitute gift.** If a beneficiary fails to survive the decedent and is a grandparent, or a descendant of a grandparent of the decedent, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per

capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in paragraph (d) of this subsection (2), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary's or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) Except as otherwise provided in a governing instrument, for the purposes of this part 7, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. The use of language such as "and if he does not survive me the gift shall lapse" or "to A and not to A's descendants" shall be sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (a) or (b) of this subsection (2), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) **More than one substitute gift; which one takes.** If, under subsection (2) of this section, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in paragraph (b) of this subsection (3), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), unless the context otherwise requires:

(I) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(II) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(III) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) Is to a descendant of a beneficiary of the primary beneficiary designation;

(B) Is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) Is a beneficiary designation for which a substitute gift is created; and

(D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(IV) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) **Protection of payors.** (a) 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 who, under this section, is not entitled to the payment or item of property, or for having taken any other action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party has received written notice as described in paragraph (b) of this subsection (4). A payor or other third party shall have no duty or obligation to inquire as to the existence of a substituted gift under this section or to seek any evidence with respect to any such substituted gift. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice. Any form or service of notice other than that described in paragraph (b) of this subsection (4) shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(b) The written notice shall indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim to a substitute gift is being made under this section. The written notice shall 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.

(c) Upon receipt of the written notice described in paragraph (b) of this subsection (4), a payor or other third party may pay to the court any amount owed or transfer to or deposit with the court any item of property held by it. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. The court is the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transfer to or deposit with the court of any item of property, even if no probate proceedings have been commenced before such payment, transfer, or deposit. Payment of amounts to the court or transfer to or deposit with the court of any item of property pursuant to this section by the payor or other third party discharges the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to the court or items of property

transferred to or deposited with the court.

(d) The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, shall be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court.

(e) Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(5) **Protection of bona fide purchasers; personal liability of recipient.** (a) A person who purchases property for value and without notice, or who receives 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. However, a person who, not for value, receives a payment, item of property, or any other benefit to which the 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.

(b) If this section or any part of this section is preempted by federal law (other than the federal "Employee Retirement Income Security Act of 1974", as amended) with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the 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 would have been entitled to it were this section or part of this section not preempted.

**15-11-707. Survivorship with respect to future interests under terms of trust; substitute takers.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had he or she survived the distribution date.

(d) "Distribution date", with respect to a future interest, means the time when the future

interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 15-11-702.

(2) **Survivorship required; substitute gift.** A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in paragraph (d) of this subsection (2), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary's or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph (b), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of this part 7, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (a) or (b) of this subsection (2), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) **More than one substitute gift; which one takes.** If, under subsection (2) of this section, substitute gifts are created and not superseded with respect to more than one future

interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in paragraph (b) of this subsection (3), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), unless the context otherwise requires:

(I) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(II) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(III) "Younger-generation future interest" means a future interest that:

(A) Is to a descendant of a beneficiary of the primary future interest;

(B) Is an alternative future interest with respect to the primary future interest;

(C) Is a future interest for which a substitute gift is created; and

(D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(IV) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) **If no other takers, property passes under residuary clause or to transferor's heirs.** Except as provided in subsection (5) of this section, if, after the application of subsections (2) and (3) of this section, there is no surviving taker, the property passes in the following order:

(a) If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) If no taker is produced by the application of paragraph (a) of this subsection (4), the property passes to the transferor's heirs under section 15-11-711.

(5) **If no other takers and if future interest created by exercise of power of appointment.** If, after the application of subsections (2) and (3) of this section, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) If no taker is produced by the application of paragraph (a) of this subsection (5), the property passes as provided in subsection (4) of this section. For purposes of subsection (4) of this section, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

**15-11-708. Class gifts to "descendants", "issue", or "heirs of the body"; form of**

**distribution if none specified.** If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

**15-11-709. By representation; per capita at each generation; per stirpes.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 15-11-702.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 15-11-702.

(2) **Per capita at each generation.** If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) **Per stirpes.** If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) **Deceased descendant with no surviving descendant disregarded.** For the purposes of subsections (2), (3), and (5) of this section, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

(5) **By representation.** For all governing instruments executed before, on, or after July 1, 1995, unless the governing instrument provides otherwise, the following definition of "by representation" shall apply: If "by representation" is called for, the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased

descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share and the share of each deceased descendant in the same generation is divided among his or her descendants in the same manner.

**15-11-710. Worthier-title doctrine abolished.** The doctrine of worthier-title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family", or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

**15-11-711. Interests in "heirs" and like.** If an applicable statute or a governing instrument calls for a present or future distribution to, or creates a present or future interest in, a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family", or language of similar import, the property passes to those persons in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the donative disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the interest is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

**15-11-712. Simultaneous death; disposition of property.** The rules of construction in this section shall control in those situations not subject to the control of section 15-11-702.

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no clear and convincing evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he or she had survived, except as provided otherwise in this section.

(2) (a) If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his or her surviving another person, and both persons die, and there is no clear and convincing evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived.

(b) If there is no clear and convincing evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their deaths each of such beneficiaries would have been entitled to the property if he or she had survived the others, the property shall be divided into as many equal portions as there were beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

(3) Where there is no clear and convincing evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two 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. For the purposes of this section, the term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

(4) Where a husband and wife have died leaving community property and there is no clear and convincing evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived, and as if said one-half were his separate property, and the other one-half thereof shall pass as if the wife had survived, and as if said other one-half were her separate property.

(5) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no clear and convincing evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary; except that, if the policy is community property of the insured and his or her spouse, and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representative of the insured, the proceeds shall be distributed as community property.

(6) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance or any other situation where provision is made for distribution of property different from the provisions of this section or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

**15-11-713. Construction of wills and trusts containing formula marital clauses.** (1) If a decedent dies leaving a will that was executed or a trust that was created before September 12, 1981, which will or trust contains a formula expressly providing that the decedent's spouse or a qualifying trust is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, such formula provision shall be construed as referring to the amount of property which, after utilization of the credits available to the decedent's estate, produces the least possible federal estate tax and is eligible for the marital deduction as allowed under the federal "Internal Revenue Code", as amended by section 403 (a) of the federal "Economic Recovery Tax Act of 1981", P. L. No. 97-34, in effect at the time of the decedent's death; except that such construction shall not be made if its effect is to reduce the amount of property passing to the surviving spouse or a qualifying trust. Such construction shall only be made if the following requirements are met:

(a) The decedent died after December 31, 1988;

(b) The formula referred to in this subsection (1) was not amended to refer specifically to an unlimited marital deduction under federal law at any time after September 12, 1981, and before the death of the decedent;

(c) The will or trust contains a devise to, or is in trust for the benefit of, the decedent's spouse which qualifies for a marital deduction pursuant to section 2056 of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 2056, as amended;

(d) There is no finding by the court having jurisdiction over the decedent's estate that the decedent intended to refer to the maximum marital deduction of the internal revenue code in effect at the time that the will or trust was drafted; and

(e) All distributions in satisfaction of the surviving spouse's share of the estate or the

qualifying trust for the surviving spouse have not been completed.

(2) For the purposes of this section:

(a) "Amount" includes a fractional, pecuniary, or residual amount.

(b) "Optimum marital deduction formula" means any formula in a will or trust that provides that the decedent's spouse or a qualifying trust is to receive the maximum amount of property that qualifies for the estate tax marital deduction allowable by federal law that produces the least possible or no federal estate tax. A formula subject to construction under subsection (1) of this section is, as construed by subsection (1) of this section, an optimum marital deduction formula.

(c) "Qualifying trust" means any trust for the benefit of the decedent's spouse which qualifies for the marital deduction allowed under section 2056 of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 2056, as amended.

(3) In the case of an optimum marital deduction formula that contains a general reference to federal estate tax credits or otherwise requires the state death tax credit to be taken into account without a specific reference to such tax credit, the decedent is presumed to have intended that such tax credit be taken into account to reduce the amount that the decedent's spouse or a qualifying trust is to receive, only to the extent that the overall estate tax burden on the decedent's estate is not thereby increased. However, if a preponderance of the evidence shows that the decedent intended to increase the overall estate tax burden on the estate, the state death tax credit shall be taken into account fully for the purposes of reducing the amount that the decedent's spouse or a qualifying trust is to receive. Any formula subject to construction under subsection (1) of this section is subject to the presumption set forth in this subsection (3).

(4) In the case of an optimum marital deduction formula that specifically requires the state death tax credit to be taken into account and does not contain any words limiting the extent to which such credit shall be taken into account, the decedent is presumed to have intended that such credit be taken into account fully for the purpose of reducing the amount that the decedent's spouse or a qualifying trust is to receive, notwithstanding any resulting increase in the overall estate tax burden on the estate.

(5) Subsections (3) and (4) of this section apply with respect to any decedent who dies after December 31, 1988, unless all distributions in satisfaction of the surviving spouse's share of the estate or the qualifying trust for the surviving spouse are completed by July 1, 1994.

## PART 8

## GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

### 15-11-801. Disclaimer of property interests. (Repealed)

**15-11-802. Effect of divorce, annulment, and decree of separation.** (1) 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 or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of parts 1, 2, 3, and 4 of this article, and of section 15-12-203, a surviving spouse does not include:

(a) 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 subsequently they participate in a marriage ceremony purporting to marry each to the other or enter into a common-law marriage;

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony or enters into a common-law marriage with a third individual; or

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

**15-11-803. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "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.

(b) "Felonious killing", except as provided in subsection (7) of this section, is the killing of the decedent by an individual who, as a result thereof, is convicted of, pleads guilty to, or enters a plea of nolo contendere to the crime of murder in the first or second degree or manslaughter, as said crimes are defined in sections 18-3-102 to 18-3-104, C.R.S.

(c) "Governing instrument" means a governing instrument executed by the decedent.

(d) "Killer" is any individual who has committed a felonious killing.

(e) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer and or the decedent then had capacity to exercise the power.

(2) **Forfeiture of statutory benefits.** An individual who feloniously kills the decedent forfeits all benefits with respect to the decedent's estate, including an intestate share, an elective-share, an omitted spouse's or child's share, the decedent's homestead exemption under section 38-41-204, C.R.S., exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his or her intestate share.

(3) **Revocation of benefits under governing instruments.** The felonious killing of the decedent:

(a) Revokes any revocable (i) disposition or appointment of property made by the decedent to the killer in a governing instrument, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or

representative capacity, including a personal representative, executor, trustee, or agent; and

(b) Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship or as community property with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

(4) **Effect of severance.** A severance under paragraph (b) of subsection (3) 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 killer 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 are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) **Effect of revocation.** Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) **Wrongful acquisition of property.** A wrongful acquisition of property or interest by a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from his or her wrong.

(7) **Felonious killing; how determined - time limitations on civil proceedings.** (a) **Criminal proceedings.** After all right to appeal has been waived or exhausted following the entry of a judgment of conviction establishing criminal accountability for the felonious killing of the decedent, such judgment conclusively establishes the convicted individual as the decedent's killer for purposes of this section.

(b) **Civil proceedings.** Notwithstanding the status or disposition of a criminal proceeding, a court of competent jurisdiction, upon the petition of an interested person, shall determine whether, by a preponderance of evidence standard, each of the elements of felonious killing of the decedent has been established. If such elements have been so established, such determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(c) **Time limitations on civil proceedings.** (I) A petition brought under paragraph (b) of this subsection (7) may not be filed more than three years after the date of the decedent's death.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (c) to the contrary, if a criminal proceeding is commenced in a court of this state or in another jurisdiction against an individual for the felonious killing of the decedent, a petition brought under paragraph (b) of this subsection (7) may be filed so long as the petition is filed no later than one year after all right to appeal has been waived or exhausted following an entry of a judgment of conviction, or a dismissal, or an acquittal in the criminal proceeding. However, if the death and the possible culpability of the slayer for the felonious slaying of the decedent is not known to the petitioner within the three-year period of limitations established pursuant to subparagraph (I) of this paragraph (c), the accrual of the action under paragraph (b) of this subsection (7) and the possibility of the tolling of the running of the three-year period of limitation under subparagraph (I) of this paragraph (c) shall be determined according to the principles of accrual and tolling established by case law with respect to similar limitations established under section 13-80-108, C.R.S.

(d) **Judgment of conviction.** For the purposes of this subsection (7), a "judgment of

conviction" includes a judgment of conviction on a plea of guilty or nolo contendere, or a judgment of conviction on a verdict of guilty by the court or by a jury.

(8) **Protection of payors and other third parties.** (a) 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 felonious killing, or for having taken any other action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party has received written notice as described in paragraph (b) of this subsection (8). A payor or other third party shall have no duty or obligation to make any determination as to whether or not the decedent was the victim of a felonious killing or to seek any evidence with respect to any such felonious killing even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in any such felonious killing. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice. Any form or service of notice other than that described in paragraph (b) of this subsection (8) shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(b) The written notice shall indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. The written notice shall 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.

(c) Upon receipt of the written notice described in paragraph (b) of this subsection (8), a payor or other third party may pay to the court any amount owed or transfer to or deposit with the court any item of property held by it. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. The court is the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transfer to or deposit with the court of any item of property, even if no probate proceedings have been commenced before such payment, transfer, or deposit. Payment of amounts to the court or transfer to or deposit with the court of any item of property pursuant to this section by the payor or other third party discharges the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to the court or items of property transferred to or deposited with the court.

(d) The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, shall be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court.

(e) Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(9) **Protection of bona fide purchasers; personal liability of recipient.** (a) A person who purchases property for value and without notice, or who receives 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. However, a person who, not for value, receives a payment, item of property, or any other benefit to which the 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.

(b) 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 person who, not for value, receives the payment, item of property, or any other benefit to which the 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 would have been entitled to it were this section or part of this section not preempted.

**15-11-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "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.

(b) "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 15-11-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

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

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

(e) "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.

(f) "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 or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) **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, the divorce or annulment of a marriage:

(a) 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

(b) 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 or as community property with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(3) **Effect of severance.** A severance under paragraph (b) of subsection (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 are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) **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.

(5) **Revival if divorce nullified.** Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) **No revocation for other change of circumstances.** No change of circumstances other than as described in this section and in section 15-11-803 effects a revocation.

(7) **Protection of payors and other third parties.** (a) 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 reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party has received written notice as described in paragraph (b) of this subsection (7). A payor or other third party shall have no duty or obligation to inquire as to the continued marital relationship between the decedent and such beneficiary or to seek any evidence with respect to any such marital relationship. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice. Any form or service of notice other than that

described in paragraph (b) of this subsection (7) shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(b) The written notice shall indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated beneficiary occurred. The written notice shall 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.

(c) Upon receipt of the written notice described in paragraph (b) of this subsection (7), a payor or other third party may pay to the court any amount owed or transfer to or deposit with the court any item of property held by it. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. The court is the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transfer to or deposit with the court of any item of property, even if no probate proceedings have been commenced before such payment, transfer, or deposit. Payment of amounts to the court or transfer to or deposit with the court of any item of property pursuant to this section by the payor or other third party discharges the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to the court or items of property transferred to or deposited with the court.

(d) The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, shall be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court.

(e) Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(8) **Protection of bona fide purchasers; personal liability of recipient.** (a) 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. However, 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.

(b) 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.

**15-11-805. Ownership of personal property between spouses.** (1) For purposes of this article, tangible personal property in the joint possession or control of the decedent and his or her surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not otherwise evidenced by a certificate of title, bill of sale, or other writing. This presumption shall not apply to:

(a) Property acquired by either spouse before the marriage;

(b) Property acquired by either spouse by gift or inheritance during the marriage;

(c) Property used by the decedent spouse in a trade or business in which the surviving spouse has no interest; or

(d) Property held for another.

(e) (Deleted by amendment, L. 2002, p. 653, § 8, effective July 1, 2002.)

(2) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.

**15-11-806. Reformation to correct mistakes.** The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

**15-11-807. Modification to achieve transferor's tax objectives.** To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

## PART 9

## HONORARY TRUSTS; TRUSTS FOR PETS

**15-11-901. Honorary trusts; trusts for pets.** (1) **Honorary trust.** Subject to subsection (3) of this section, and except as provided under sections 38-30-110, 38-30-111, and 38-30-112, C.R.S., if (i) a trust is for a specific, lawful, noncharitable purpose or for lawful, noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one years but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) **Trust for pets.** Subject to this subsection (2) and subsection (3) of this section, a trust for the care of designated domestic or pet animals and the animals' offspring in gestation is valid. For purposes of this subsection (2), the determination of the "animals' offspring in gestation" is made at the time the designated domestic or pet animals become present beneficiaries of the trust. Unless the trust instrument provides for an earlier termination, the trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection (2), to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent. Any trust under this subsection (2) shall be an exception to any statutory or common law rule against perpetuities.

(3) **Additional provisions applicable to honorary trusts and trusts for pets.** In addition to the provisions of subsection (1) or (2) of this section, a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee, other than reasonable trustee fees and expenses of administration, or to any use other than for the trust's purposes or for the benefit of a covered animal or animals.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(I) As directed in the trust instrument;

(II) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(III) If no taker is produced by the application of subparagraph (I) or (II) of this paragraph (b), to the transferor's heirs under part 5 of this article.

(c) (Reserved)

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument, by the person having custody of an animal for which care is provided by the trust instrument, by a remainder beneficiary, or, if none, by an individual appointed by a court upon application to it by an individual.

(e) All trusts created under this section shall be registered and all trustees shall be subject to the laws of this state applying to trusts and trustees.

(f) (Reserved)

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may

also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

## PART 10

## INTERNATIONAL WILLS

**15-11-1001. Short title.** This part 10 shall be known and may be cited as the "Uniform International Wills Act".

**15-11-1002. Definitions.** As used in this part 10, unless the context otherwise requires:

(1) "Authorized person" and "person authorized to act in connection with international wills" means a person who, by section 15-11-1010 or the laws of the United States, including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

(2) "International will" means a will executed in conformity with sections 15-11-1003 to 15-11-1006.

**15-11-1003. International wills - validity.** (1) A will is valid as regards form irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this part 10.

(2) The invalidity of a will as an international will does not affect its formal validity as a will of another kind.

(3) This part 10 does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

**15-11-1004. International wills - requirements.** (1) An international will shall be made in writing. It need not be written by the testator himself. It may be written in any language by hand or by any other means.

(2) A testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. Such testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

(4) If the testator is unable to sign, the absence of his signature shall not affect the validity of the international will if such testator indicates the reason for his inability to sign and

the authorized person makes note thereof on the will. In such case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for him.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

(6) The provisions of section 15-11-501 shall apply.

**15-11-1005. International wills - other points of form.** (1) All the signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will shall be the date of its signature by the authorized person. Such date shall be noted at the end of the will by the authorized person.

(3) The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept shall be mentioned in the certificate provided for in section 15-11-1006.

(4) A will executed in compliance with section 15-11-1004 shall not be invalid as an international will merely because it does not comply with this section.

**15-11-1006. Certificate that requirements for an international will have been met.** (1) The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this part 10 for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator.

(2) The certificate shall be substantially in the following form:

**CERTIFICATE**

1. I, _____ (name, address, and capacity), a person authorized to act in connection with international wills,
2. certify that on _____ (date) at _____ (place)
3. (testator) _____
   (name, address, and date and place of birth) in my presence and that of the witnesses
4. (a) _____ (name, address, and date and place of birth)
   (b) _____ (name, address, and date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.
   *(c) _____ (social security number or any other individual-identifying number established by law)

5. I furthermore certify that:
6. (a) In my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _____, I have mentioned this declaration on the will,

* and the signature has been affixed by _____ (name and address) (to be completed if testator unable to sign)

7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by _____ and numbered (to be completed if testator unable to sign);
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the intended place of deposit of safekeeping of the instrument pending the death of the testator is _____.

11. *(g) the testator has requested me to include the following statement concerning the safekeeping of his will:

---

12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE

* to be completed if appropriate

**15-11-1007. Effect of certificate.** In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this part 10. The absence or irregularity of a certificate does not affect the formal validity of a will under this part 10.

**15-11-1008. Revocation.** An international will is subject to the rules of revocation of wills set forth in part 5 of this article.

**15-11-1009. Source and construction of this part.** Sections 15-11-1001 to 15-11-1008

derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this part 10, regard shall be had to its international origin and to the need for uniformity in its interpretation.

**15-11-1010. Persons authorized to act in relation to international will - eligibility - recognition by authorizing agency.** Individuals who have been admitted to practice law before the courts of this state and are currently licensed so to do are authorized persons in relation to international wills.

**15-11-1011. Filing of international will - certificate and deposit of will.** (1) (a) The authorized person may file, at the time the international will is made, a completed copy of the certificate required by this part 10 with the clerk of the court having probate jurisdiction in the county in which the testator is domiciled.

(b) If the testator is not domiciled in Colorado, the authorized person may file the completed copy of the certificate with the clerk of the court having probate jurisdiction in the county where the international will was executed.

(c) The failure of the authorized person to correctly file a properly completed certificate with the appropriate court shall not in and of itself invalidate the international will.

(2) Nothing in this section shall be construed to limit the ability of the testator or the testator's agent to deposit an international will with any court for safekeeping as authorized in section 15-11-515.

## PART 11

## COLORADO STATUTORY RULE AGAINST PERPETUITIES ACT

**15-11-1101. Short title.** This part 11 shall be known and may be cited as the "Colorado Statutory Rule Against Perpetuities Act".

**15-11-1102. Statutory rule against perpetuities - applicability - repeal. (Repealed)**

**15-11-1102.5. Statutory rule against perpetuities.** (1) **Year 2001 rule.** (a) Paragraph (b) of this subsection (1) shall apply to interests in trust and powers of appointment with respect to all or any part of a trust, which interest or power is created after May 31, 2001.

(b) (I) A nonvested property interest is invalid unless it either vests or terminates within one thousand years after its creation.

(II) A general power of appointment not presently exercisable because of a condition precedent is invalid unless the condition precedent either is satisfied or becomes impossible to

satisfy within one thousand years after its creation.

(III) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless the power is irrevocably exercised or otherwise terminates within one thousand years after its creation.

(2) **Year 1991 rule.** (a) Paragraph (b) of this subsection (2) shall apply to interests and powers created on or after May 31, 1991, other than interests and powers subject to paragraph (b) of subsection (1) of this section.

(b) (I) A nonvested property interest is invalid unless:

(A) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual who is then alive; or

(B) The interest either vests or terminates within ninety years after its creation.

(II) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(A) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one years after the death of an individual who is then alive; or

(B) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(III) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(A) When the power is created, it is certain to be irrevocably exercised or to otherwise terminate no later than twenty-one years after the death of an individual who is then alive; or

(B) The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

(IV) In determining whether a nonvested property interest or a power of appointment is valid under subparagraphs (I) to (III) of paragraph (b) of this subsection (2), the possibility that a child will be born to an individual after the individual's death is disregarded.

(V) If, in measuring a period from the creation of a trust or other property arrangement for purposes of interests, powers, and trusts subject to this paragraph (b), language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon the later of the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor or lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives.

(3) **Nonvested interest or power created by the exercise of a power.** (a) For the purposes of paragraph (a) of subsection (1) of this section, paragraph (a) of subsection (2) of this section, and subparagraph (II) of paragraph (c) of this subsection (3), a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) For the purposes of paragraph (b) of subsection (1) of this section and paragraph (b)

of subsection (2) of this section, a power of appointment created by the exercise of a nongeneral power of appointment shall be considered as created when the first power of appointment is created. This paragraph (b) shall be applied and construed in a manner that is consistent with the treatment of the exercise of a nongeneral power of appointment as nontaxable for purposes of the estate and gift tax under the federal internal revenue laws.

(c) (I) Paragraph (b) of subsection (1) of this section shall not apply with respect to nonvested property interests and powers of appointment created by the exercise of a nongeneral power of appointment over all or any part of a trust that was irrevocable on September 25, 1985.

(II) Nonvested property interests and powers of appointment, which interests or powers are so created on or after May 31, 1991, shall be subject to paragraph (b) of subsection (2) of this section.

(III) This paragraph (c) shall be applied and construed in a manner that is consistent with the treatment of such a trust as exempt from the generation-skipping transfer tax under the federal internal revenue laws.

**15-11-1103. When nonvested property interest or power of appointment created.** (1) Except as provided in subsections (2) and (3) of this section and in sections 15-11-1102.5 (3) (a) and 15-11-1106 (1), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part 11, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of either a nonvested property interest or a property interest subject to a power of appointment described in section 15-11-1102 (2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. For purposes of this part 11, a joint power with respect to community property or to marital property under the "Uniform Marital Property Act" held by individuals married to each other is a power exercisable by one person alone.

(3) For purposes of this part 11, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

**15-11-1104. Reformation - repeal. (Repealed)**

**15-11-1104.5. Reformation.** (1) **Year 2001 rule.** Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the one thousand years allowed by section 15-11-1102.5 (1) (b) (I), (1) (b) (II), or (1) (b) (III) if:

(a) A nonvested property interest or a power of appointment becomes invalid under

section 15-11-1102.5 (1) (b); or

(b) A class gift is not, but might become, invalid under section 15-11-1102.5 (1) (b), and the time has arrived when the share of any class member is to take effect in possession or enjoyment.

(2) **Year 1991 rule.** Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by section 15-11-1102.5 (2) (b) (I) (B), (2) (b) (II) (B), or (2) (b) (III) (B) if:

(a) A nonvested property interest or a power of appointment becomes invalid under section 15-11-1102.5 (2) (b);

(b) A class gift is not, but might become, invalid under section 15-11-1102.5 (2) (b), and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(c) A nonvested property interest that is not validated by section 15-11-1102.5 (2) (b) (I) (A) can vest but not within ninety years after its creation.

**15-11-1105. Exclusions from statutory rule against perpetuities.** (1) The statutory rule against perpetuities, as set forth in sections 15-11-1102 and 15-11-1102.5, does not apply to invalidate:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(I) A premarital or postmarital agreement;

(II) A separation or divorce settlement;

(III) A spouse's election;

(IV) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(V) A contract to make or not to revoke a will or trust;

(VI) A contract to exercise or not to exercise a power of appointment; or

(VII) A transfer in satisfaction of a duty of support.

(VIII) (Deleted by amendment, L. 2006, p. 381, § 12, effective July 1, 2006.)

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(c) A power to appoint a fiduciary;

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more

employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

**15-11-1106. Prospective application.** (1) Except as extended by subsection (2) of this section, this part 11 applies to a nonvested property interest or a power of appointment that is created on or after May 31, 1991. For purposes of this section and section 15-11-1107, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before May 31, 1991, and is determined in a judicial proceeding, commenced on or after May 31, 1991, to violate this state's rule against perpetuities as that rule existed before May 31, 1991, a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that preserves most closely the transferor's manifested plan of distribution and that brings that plan within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

**15-11-1106.5. Retroactive application of certain provisions - notice of election.** (1) Sections 15-11-1102.5 and 15-11-1104.5 shall apply retroactively with respect to an interest in a trust or a power of appointment over all or any part of a trust, which interest or power was created before July 1, 2006, unless a person who owns or holds such interest or power makes and delivers a notice of election as provided in this section.

(2) (a) The notice of election pursuant to subsection (1) of this section shall be a written statement of such person's election against the retroactive application of sections 15-11-1102.5 and 15-11-1104.5. The notice of election shall include a reference to this section, the name and date of the trust, the names of the settlor and the trustee of the trust, a description of the interest or power, and the name and address of the person making the election. The notice of election shall be signed and acknowledged by such person.

(b) The notice of election shall be delivered to a trustee of such trust on or before July 1, 2008. If there is no person serving as trustee at the time delivery is to be made, the notice of election may instead be delivered to a person authorized to appoint a successor trustee of the trust. When the successor trustee is appointed, the person to whom the notice of election was delivered shall deliver it to the successor trustee.

(c) The notice of election shall be considered delivered to the person to whom delivery is required to be made when the notice of election or a copy thereof is delivered in person or when mailed by registered or certified mail, return receipt requested, to such person.

(d) The trustee of the trust shall file the notice of election with the records maintained by the trustee for the trust. There shall be a rebuttable presumption that the notice of election was not delivered as provided in this section unless the notice of election or a copy of such notice is in the records of the trust maintained by the trustee.

(3) No fiduciary for any trust, estate, individual, or other person with an interest, right, or power affected by the retroactive application of such amendments shall be required to make such election, nor shall such fiduciary be held responsible for not making such election.

**15-11-1107. Uniformity of application and construction.** (1) This part 11 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part 11 among states enacting the "Uniform Statutory Rule Against Perpetuities Act". With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid.

(2) This part 11 supersedes and abolishes the rule of the common law known as the rule against perpetuities for nonvested interests created after May 31, 1991.

## PART 12

## UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

**15-11-1201. Short title.** This part 12 shall be known and may be cited as the "Uniform Disclaimer of Property Interests Act".

**15-11-1202. Definitions.** As used in this part 12, unless the context otherwise requires:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed if the disclaimer had not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant if the disclaimer had not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision,

agency, or instrumentality; public corporation; or any other legal or commercial entity.

(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 an Indian tribe or band or an Alaskan native village recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(a) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(b) A trust created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

**15-11-1203. Scope.** This part 12 applies to disclaimers of any interest in or power over property, whenever created.

**15-11-1204. Part supplemented by other law.** (1) Unless displaced by a provision of this part 12, the principles of law and equity supplement this part 12.

(2) This part 12 does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this part 12.

**15-11-1205. Power to disclaim - general requirements - when irrevocable.** (1) A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or if an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer shall be in writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed, and, with regard to an interest in real property, be recorded in the manner provided for in section 15-11-1212. In this subsection (3), "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.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed and, with regard to an interest in real property, recorded pursuant to section 15-11-1212, or when it becomes effective as provided for in sections 15-11-1206 through 15-11-1211, whichever occurs later.

(6) A disclaimer made pursuant to this part 12 is not a transfer, assignment, or release.

(7) No person obligated to distribute an interest disclaimed under this part 12 shall be liable to any person for distributing the interest as if the interest were not disclaimed unless the person obligated to distribute the interest receives a copy of the disclaimer prior to distributing the interest.

**15-11-1206. Disclaimer of interest in property.** (1) As used in this section, unless the context otherwise requires:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Method of representation" includes any method of division described in section 15-11-709.

(c) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by section 15-11-1207 or 15-11-1208, the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest, providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in paragraph (b) of this subsection (2), the following rules apply:

(I) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant had ceased to exist immediately before the time of distribution.

(II) If the disclaimant is an individual, except as otherwise provided for in subparagraphs (III) and (IV) of this paragraph (c), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(III) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died immediately before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(IV) (A) If the disclaimed interest would pass as part of the disclaimant's estate had the disclaimant died immediately before the time of distribution, the disclaimed interest instead passes as if by representation to the descendants of the disclaimant who are living at the time of distribution.

(B) If the disclaimed interest would pass as part of the disclaimant's estate had the disclaimant died immediately before the time of distribution and no descendant of the

disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state to which such interest would escheat, but excluding the disclaimant, and in such shares as such persons would succeed to the transferor's intestate estate under the applicable law had the transferor died at the time of distribution. However, for purposes of this sub-subparagraph (B), if the transferor's surviving spouse is living but remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(C) As used in sub-subparagraph (B) of this subparagraph (IV), "applicable law" refers to the intestate succession law of the transferor's domicile with respect to a disclaimer of an interest in personal property and refers to the intestate succession law of this state with respect to a disclaimed interest that is real property located in this state.

(D) In addition to other applications of this sub-subparagraph (D) that are apparent, the general assembly declares its intent to have the rules of this sub-subparagraph (D) apply with respect to present interests in real property and personal property that are transferred outright or in trust to an individual by a transferor during the lifetime of the transferor where the interest disclaimed would, if not disclaimed, have vested in the individual to whom the property is transferred and would be part of that individual's estate if he or she had died immediately after the transfer. Accordingly, this sub-subparagraph (D) shall be so construed to determine the disposition of the present interest. For purposes of the application of the rules to such present interests, the reference to "immediately before the time of distribution" in sub-subparagraphs (A) and (B) of this subparagraph (IV) shall instead be considered as references to "immediately after the time of distribution".

(E) In sub-subparagraph (D) of this subparagraph (IV), "present interest" means an interest that takes effect in possession or enjoyment, if at all, at the time of its creation.

(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

**15-11-1207. Disclaimer of rights of survivorship in jointly held property.** (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the incremental portion of the jointly held property devolving to the surviving holder by right of survivorship.

(2) A disclaimer pursuant to subsection (1) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) In the event of a disclaimer pursuant to subsection (1) of this section with only one holder surviving the death of the holder to whose death the disclaimer relates, the incremental portion disclaimed shall, as a consequence of the disclaimer, pass as part of the estate of the deceased holder.

(4) In the event of a disclaimer pursuant to subsection (1) of this section with two or more of the holders surviving the death of the holder to whose death the disclaimer relates:

(a) The disclaimer does not sever the joint tenancy with respect to the jointly held property as among the surviving holders;

(b) The incremental portion disclaimed shall, as a consequence of a disclaimer, devolve to the surviving holders in proportion to their respective interests in the jointly held property excluding the disclaimant and any other surviving holder who disclaims to the extent of his or her disclaimer of the incremental portion;

(c) An incremental portion devolving to a surviving holder, as a consequence of one or more disclaimers, may be disclaimed by the surviving holder;

(d) To the extent that all of the surviving holders disclaim an incremental portion devolving to them, the portion shall instead pass as part of the estate of the deceased holder; and

(e) The proportion of each of the surviving holders with respect to the jointly held property shall be adjusted to take into account the devolution of the incremental portion to the extent that the portion is disclaimed.

**15-11-1208. Disclaimer of interest by trustee.** If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

**15-11-1209. Disclaimer of power of appointment or other power not held in fiduciary capacity.** (1) If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the disclaimer applies only to that holder, and the following rules apply:

(a) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

(b) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power; and

(c) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

**15-11-1210. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.** (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

**15-11-1211. Disclaimer of power held in fiduciary capacity.** (1) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer pursuant to this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

**15-11-1212. Delivery or filing.** (1) As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(a) An annuity or insurance policy;

(b) An account with a designation for payment on death;

(c) A security registered in beneficiary form;

(d) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(e) Any other nonprobate transfer at death.

(2) Subject to subsections (3) to (15) of this section, delivery of a disclaimer may be effected by personal delivery, first class mail, or any other method likely to result in its receipt.

(3) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(a) A disclaimer shall be delivered to the personal representative of the decedent's estate; or

(b) If no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to appoint a personal representative.

(4) In the case of an interest in a testamentary trust:

(a) A disclaimer shall be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(b) If no personal representative is then serving, the disclaimer shall be filed with a court having jurisdiction to enforce the trust.

(5) In the case of an interest in an inter vivos trust:

(a) A disclaimer shall be delivered to the trustee then serving;

(b) If no trustee is then serving, the disclaimer shall be filed with a court having jurisdiction to enforce the trust; or

(c) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it shall be delivered to the settlor of a revocable trust or the transferor of the interest.

(6) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer shall be delivered to the person making the beneficiary designation.

(7) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer shall be delivered to the person obligated to distribute the interest.

(8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer shall be delivered to the person to whom the disclaimed interest passes.

(9) In the case of a disclaimer by an object or taker in default of exercise of a power of

appointment at any time after the power was created:

(a) The disclaimer shall be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) If no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint a fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) The disclaimer shall be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power; or

(b) If no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint a fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer shall be delivered as provided for in subsection (3), (4), or (5) of this section, as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer shall be delivered to the principal or the principal's agent, guardian, or conservator.

(13) In the case of a disclaimer of a power not held in a fiduciary capacity, the disclaimer shall be delivered to the fiduciary under the instrument that created the power, or to the person obligated to distribute the property.

(14) Except as provided for in subsections (3) to (8) of this section, in the case of an interest the disposition of which is determined pursuant to section 15-11-1206 (2) (c) (IV), the disclaimer shall be delivered or filed as follows:

(a) Delivered to the transferor of the interest if the transferor is then living;

(b) Delivered to the personal representative of the estate of the transferor, if the transferor is not then living; or

(c) Filed with a court having jurisdiction to appoint a personal representative for the estate of the transferor, if the transferor is not then living and a personal representative of the estate of the transferor is not then serving.

(15) In the case of a disclaimer of an interest in real property in which the disclaimant has a recorded interest, a copy of the disclaimer shall be recorded in the office of the clerk and recorder of the county in which the interest disclaimed is located. For purposes of this subsection (15) and section 15-11-1215, "recorded interest" means an interest in real property that has been recorded in the office of the county clerk and recorder of the county in which the real property is located.

**15-11-1213. When disclaimer barred or limited.** (1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) The disclaimant accepts the interest sought to be disclaimed;

(b) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(c) A judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than this part 12.

(6) A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this part 12 had the disclaimer not been barred.

(7) Notwithstanding any other provision in this part 12, this part 12 shall not modify the construction of law or application of law with respect to:

(a) A disqualification of medical assistance benefits under title 25.5, C.R.S., to a disclaimant who is or was an applicant for or recipient of such benefits; or

(b) A recovery from the estate of a deceased recipient of such medical assistance benefits.

**15-11-1214. Tax-qualified disclaimer.** Notwithstanding any other provision of this part 12, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of title 26 of the United States internal revenue code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer pursuant to this part 12.

**15-11-1215. Filing or registering of disclaimer.** If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed or registered, the disclaimer may be filed or registered. Failure to file or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer, provided, however, that a disclaimer of an interest in real property in which the disclaimant has a recorded interest is not effective and therefore is not valid as between any persons until a copy of the disclaimer is recorded in section 15-11-1212 (15).

**15-11-1216. Application to existing relationships.** Except as otherwise provided for in section 15-11-1213, an interest in or power over property existing on August 10, 2011, for which the time for delivering or filing a disclaimer under law superseded by this part 12 has not expired may be disclaimed after August 10, 2011.

**15-11-1217. Uniformity of application and construction.** In applying and construing this part 12, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**15-11-1218. Severability.** If any provision of this part 12 or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this part 12 that can be given effect without the invalid provision or application.

## ARTICLE 12

Probate of Wills and Administration

### PART 1

GENERAL PROVISIONS

**15-12-101. Devolution of estate at death; restrictions.** The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of the testate estate or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to exempt property and family allowances, rights of creditors, elective share of the surviving spouse, and administration.

**15-12-102. Necessity of order of probate for will.** Except as provided in sections 15-12-901, 15-12-1201, 15-13-204, and 15-13-205 and in part 13 of this article, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

**15-12-103. Necessity of appointment for administration.** Except as otherwise provided in article 13 of this title, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or

registrar, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

**15-12-104. Claims against decedent.** No claim may be presented and no proceeding to enforce a claim against the estate of a decedent or his or her successors may be revived or commenced before the appointment of a personal representative, except as permitted by section 15-12-804. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 15-12-1004 or from a former personal representative individually liable as provided in section 15-12-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his or her right to his or her security except as to any deficiency judgment that might be sought therein.

**15-12-105. Proceedings affecting devolution and administration - jurisdiction of subject matter.** Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article and may petition the court for orders in formal proceedings within the court's jurisdiction. The court has jurisdiction as provided in section 15-10-302.

**15-12-106. Proceedings within the exclusive jurisdiction of court - service - jurisdiction over persons.** In proceedings where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 15-10-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

**15-12-107. Scope of proceedings - proceedings independent - exception.** (1) Unless supervised administration as described in part 5 of this article is involved:

(a) Each proceeding before the court or registrar is independent of any other proceeding involving the same estate;

(b) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(c) Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(d) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

**15-12-108. Probate, testacy, and appointment proceedings - ultimate time limit.** (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(a) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings;

(b) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and

(c) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.

(2) These limitations do not apply to:

(a) Proceedings to construe probated wills; or

(b) Proceedings to determine heirs of an intestate and related appointment proceedings; or

(c) Appointment proceedings and testacy proceedings if no previous testacy proceedings or proceedings determining heirship relating to the decedent's estate have been concluded in this state.

(3) In cases under subsection (1) of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purpose of other limitation provisions of this code which relate to the date of death.

**15-12-109. Statutes of limitations on decedent's cause of action.** No statute of limitations running on a cause of action belonging to a decedent which had not been barred as of the date of his death shall apply to bar a cause of action surviving the decedent's death sooner than one year after death. A cause of action which, but for this section, would have been barred less than one year after death is barred after one year unless tolled.

## PART 2

## VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

**15-12-201. Venue for first and subsequent estate proceedings - location of property.** (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) In the county where the decedent had his domicile or his residence at the time of his death; or

(b) If the decedent was not domiciled in nor a resident of this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 15-10-303 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**15-12-202. Reserved.**

**15-12-203. Priority among persons seeking appointment as personal representative.** (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(b) The surviving spouse of the decedent who is a devisee of the decedent;

(b.3) The surviving party to a civil union entered into in accordance with article 15 of title 14, C.R.S., who is a devisee of the decedent;

(b.5) A person given priority to be a personal representative in a designated beneficiary agreement made pursuant to article 22 of this title;

(c) Other devisees of the decedent;

(d) The surviving spouse of the decedent;

(d.5) The surviving party to a civil union entered into in accordance with article 15 of title 14, C.R.S.;

(e) Other heirs of the decedent;

(f) Forty-five days after the death of the decedent, any creditor.

(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (1) of this section apply, except that:

(a) If the estate appears to be more than adequate to meet exemptions and costs of

administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) In case of objection to appointment of a person, other than one whose priority is determined by will, by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

(3) A person entitled to letters under paragraphs (b) to (e) of subsection (1) of this section and a person between the ages of eighteen and twenty-one who would be entitled to letters but for his age may nominate a qualified person to act as personal representative. Any person eighteen years of age or older may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.

(4) Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of a person with priority, a person who is nominated pursuant to subsection (3) of this section, or a person whose entitlement to appointment results from renunciation by another person with priority may be made in an informal proceeding. Before formal appointment of one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:

(a) Under the age of twenty-one;

(b) A person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

(9) If there be more than one fiduciary of an estate, and one of such fiduciaries shall die, resign, or be removed, the court may in its discretion appoint a successor fiduciary to act in place and instead of the former fiduciary, together with the remaining fiduciary or fiduciaries, or the court may permit the remaining fiduciary or fiduciaries to serve without any new or additional fiduciary; except that, if there be a will providing for the fiduciaries, the provisions of the will shall control when applicable.

**15-12-204. Demand for notice of order or filing concerning decedent's estate.** Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 15-10-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

## PART 3

## INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

**15-12-301. Informal probate or appointment proceedings - application - contents.** (1) Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information required by this section.

(2) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(a) A statement of the interest of the applicant;

(b) The name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(c) If the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(d) A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(e) A statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere;

(f) A statement indicating that the time limit for informal probate or appointment provided in this article has not expired either because three years or less have passed since the decedent's death or, if more than three years have passed since the decedent's death, because the circumstances described in section 15-12-108 authorizing tardy probate or appointment have

occurred.

(3) An application for informal probate of a will shall state the following in addition to the statements required by subsection (2) of this section:

(a) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(b) That the applicant, to the best of his knowledge, believes the will to have been validly executed;

(c) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(d) Repealed.

(4) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

(5) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subsection (2) of this section:

(a) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked will relating to property having a situs in this state under section 15-10-301 or a statement why any such will of which he may be aware is not being probated;

(b) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 15-12-203.

(6) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(7) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 15-12-610 (3) or whose appointment has been terminated by death or removal shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

**15-12-302. Informal probate - duty of registrar - effect of informal probate.** Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 15-12-303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

**15-12-303. Informal probate - proof and findings required.** (1) In an informal proceeding for original probate of a will, the registrar shall determine that:

(a) The application is complete;

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) The applicant appears from the application to be an interested person as defined in section 15-10-201 (27);

(d) On the basis of the statements in the application, venue is proper;

(e) An original, duly executed, and apparently unrevoked will is in the registrar's possession;

(f) Any notice required by section 15-12-204 has been given and that the application is not within section 15-12-304;

(g) It appears from the application that the time limit for original probate has not expired; and

(h) One hundred twenty hours have elapsed since decedent's death.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (4) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 15-11-502, 15-11-503, or 15-11-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) of this section may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

**15-12-304. Informal probate - unavailable in certain cases.** Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and one or more codicils thereto), the latest of which does not expressly revoke the earlier, shall be declined.

**15-12-305. Informal probate - registrar not satisfied.** If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 15-12-303 and 15-12-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

**15-12-306. Informal probate - notice and information requirements.** The moving party must give notice as described by section 15-10-401 of his application for informal probate to any person demanding it pursuant to section 15-12-204 and to any personal representative of the decedent whose appointment has not been terminated. If a personal representative has not been appointed, then not later than thirty days after a will has been informally probated the moving party shall give information of the probate to the persons and in the manner prescribed by section 15-12-705 and shall promptly file with the court a statement that such information has been given, to whom, and at what addresses, if mailed. No other notice of informal probate is required.

**15-12-307. Informal appointment proceedings - delay in order - duty of registrar - effect of appointment.** (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 15-12-614, the registrar, after making the findings required by section 15-12-308, shall appoint the applicant subject to qualification and acceptance; except that, if the decedent was a nonresident, the registrar shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 15-12-608 to 15-12-612, but is not subject to retroactive vacation.

**15-12-308. Informal appointment proceedings - proof and findings required.** (1) In informal appointment proceedings, the registrar must determine that:

(a) The application for informal appointment of a personal representative is complete;

(b) The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) The applicant appears from the application to be an interested person as defined in section 15-10-201 (27);

(d) On the basis of the statements in the application, venue is proper;

(e) Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(f) Any notice required by section 15-12-204 has been given;

(g) From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment;

(h) One hundred twenty hours have elapsed since the decedent's death.

(2) Unless section 15-12-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 15-12-610 (3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

**15-12-309. Informal appointment proceedings - registrar not satisfied.** If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 15-12-307 and 15-12-308 or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

**15-12-310. Informal appointment proceedings - notice requirements.** (1) The moving party must give notice as described by section 15-10-401 of his intention to seek an appointment informally:

(a) To any person demanding it pursuant to section 15-12-204; and

(b) To any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

**15-12-311. Informal appointment unavailable in certain cases.** If an application for informal appointment indicates the existence of a possible unrevoked will which may relate to property subject to the laws of this state and which is not filed for probate in this court, the registrar shall decline the application.

## PART 4

## FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

**15-12-401. Formal testacy proceedings - nature - when commenced.** (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 15-12-402 (1) in which he requests that the court, after notice and hearing, enter an order

probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 15-12-402 (4) for an order that the decedent died intestate.

(2) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**15-12-402. Formal testacy or appointment proceedings - petition - contents.** (1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will shall:

(a) Request an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) Contain the statements required for informal applications as stated in section 15-12-301 (2) and the statements required by section 15-12-301 (3); and

(c) State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

(2) If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(3) If a will has been lost or destroyed, or for any other reason is unavailable, and the fact of the execution thereof is established, as herein provided, and the contents thereof are likewise established to the satisfaction of the court, and the court is satisfied that the will has not been revoked by the testator, the court may admit the same to probate and record, as in other cases. In every such case the order admitting such will to probate shall set forth the contents of the will at length, and the names of the witnesses by whom the same was proved, and such order shall be recorded in the record of wills.

(4) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 15-12-301 (2) and (5), and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by section 15-12-301 (5) (b) may be omitted.

**15-12-403. Formal testacy proceedings - notice of hearing on petition.** (1) (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 15-10-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 15-12-204.

(b) Notice shall be given to the following persons: The surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons, if the petitioner has reasonable cause to believe that unknown persons may claim an interest, and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered or certified mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

**15-12-404. Formal testacy proceedings - written objections to probate.** Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

**15-12-405. Formal testacy proceedings - uncontested cases - hearings and proof.** If a

petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 15-12-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of the attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

**15-12-406. Formal testacy proceedings - contested cases.** (1) In a contested case in which the proper execution of a will is at issue, the following rules apply:

(a) If the will is self-proved pursuant to section 15-11-504, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(b) If the will is notarized pursuant to section 15-11-502 (1) (c) (II), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.

(c) If the will is witnessed pursuant to section 15-11-502 (1) (c) (I), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

**15-12-407. Formal testacy proceedings - burdens in contested cases.** In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and, if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

**15-12-408. Formal testacy proceedings - will construction - effect of final order in another jurisdiction.** A final order of a court of another state determining testacy or the validity or construction of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state

where the order was made.

**15-12-409. Formal testacy proceedings - order - foreign will.** After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by section 15-12-108, it shall determine the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 15-12-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

**15-12-410. Formal testacy proceedings - probate of more than one instrument.** If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 15-12-412.

**15-12-411. Formal testacy proceedings - partial intestacy.** If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

**15-12-412. Formal testacy proceedings - effect of order - vacation.** (1) Subject to appeal and subject to vacation as provided in this section and in section 15-12-413, a formal testacy order under sections 15-12-409 to 15-12-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs; except that:

(a) The court shall entertain a petition for modification or vacation of its order and

probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication;

(b) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication;

(c) A petition for vacation under either paragraph (a) or (b) of this subsection (1) must be filed prior to the earlier of the following time limits:

(I) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;

(II) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 15-12-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(III) Twelve months after the entry of the order sought to be vacated.

(d) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(e) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 15-12-403 (2) was made.

(2) If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. An action for recovery from distributees not based on fraud or intentional wrongdoing shall not be brought by the alleged decedent or any person claiming through him more than three years from the date of such distribution. In no event shall any recovery be made by the alleged decedent against any person who, in accordance with law and in good faith and for adequate value, purchased or acquired a lien upon property of the alleged decedent.

**15-12-413. Formal testacy proceedings - vacation of order for other cause.** For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

**15-12-414. Formal proceedings concerning appointment of personal**

**representative.** (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 15-12-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 15-12-301 (2) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 15-12-203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 15-12-611.

## PART 5

## SUPERVISED ADMINISTRATION

**15-12-501. Supervised administration - nature of proceedings.** Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in sections 15-12-502 to 15-12-505, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

**15-12-502. Supervised administration - petition - order.** (1) A petition for supervised administration may be filed by any interested person or by a personal representative at any time, or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding, and

the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(1.5) A supervised administration proceeding may also be initiated by the court upon its own motion after notice and findings as required under subsection (2) of this section.

(2) After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(a) If the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(b) If the decedent's will directs unsupervised administration such provision shall control unless the personal representative petitions for supervised administration, in which case such petition shall be granted unless the court finds that supervised administration is unnecessary for protection of persons interested in the estate; or

(c) In other cases if the court finds that supervised administration is necessary under the circumstances.

**15-12-503. Supervised administration - effect on other proceedings.** (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 15-12-401.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

**15-12-504. Supervised administration - powers of personal representative.** Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to transfer, surrender, or release estate assets to a distributee without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

**15-12-505. Supervised administration - interim orders - distribution and closing orders.** Unless otherwise ordered by the court, supervised administration is terminated by order

in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under section 15-12-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

## PART 6

## PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

**15-12-601. Qualification.** Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

**15-12-602. Acceptance of appointment - consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be provided to the personal representative pursuant to section 15-10-401.

**15-12-603. Bond not required without court order - exceptions.** (1) No bond is required of a personal representative appointed in informal proceedings, except:

(a) Upon the appointment of a special administrator;

(b) When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) When bond is required under section 15-12-605.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding; except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

**15-12-604. Bond amount - security - procedure - reduction.** If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the

registrar, or give other suitable security, in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. If the personal representative be a company or association with capital and surplus at least equal to that required by law of a corporate surety, the registrar may excuse a requirement of bond. The registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 15-15-201) whose deposits are insured to the satisfaction of the court in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

**15-12-605. Demand for bond by interested person.** Subject to the provisions of sections 15-12-603 and 15-12-604, and to a determination by the court that bond is desirable, any person apparently having an interest worth in excess of five thousand dollars, or any creditor having a claim in excess of five thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, the court may require bond in such amount as it may determine and notify the personal representative to file the same, but the requirement ceases if the person demanding bond ceases to be interested in the estate. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

**15-12-606. Terms and conditions of bonds.** (1) The following requirements and provisions apply to any bond required by sections 15-12-604 and 15-12-605:

(a) Bonds shall name the people of the state of Colorado as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law;

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligator in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any such proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative

of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative;

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted;

(f) Unless expressly stated in the bond to the contrary, no surety shall be liable for any actions of the personal representative taken prior to the date of such bond.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**15-12-607. Order restraining personal representative.** (1) On petition of any person who appears to have an interest in the estate, or on its own motion, a court by temporary order may restrain a personal representative pursuant to section 15-10-503.

(2) (Deleted by amendment, L. 2008, p. 482, § 3, effective July 1, 2008.)

**15-12-608. Termination of appointment - general.** Termination of appointment of a personal representative occurs as indicated in sections 15-12-609 to 15-12-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will; except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

**15-12-609. Termination of appointment - death or disability.** The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates his appointment. Until a duly appointed and qualified successor personal representative or corepresentative has taken possession of the estate possessed and being administered by a deceased or protected personal representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification, or to any remaining corepresentative.

**15-12-610. Termination of appointment - voluntary.** (1) An appointment of a personal representative terminates as provided in section 15-12-1003 one year after the filing of a closing statement.

(2) An order closing an estate as provided in section 15-12-1001 or 15-12-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his or her position by filing a written statement of resignation with the registrar after he or she has given at least fourteen days' written notice to the persons known to be interested in the estate. If the person resigning is a sole representative and if no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him or her. If the person resigning is a corepresentative, such resignation is effective only upon delivery of the assets in his or her possession to any remaining corepresentatives.

**15-12-611. Termination of appointment by removal - cause - procedure.** (1) The court shall have the power to remove a personal representative for cause at any time. Removal proceedings shall be governed by the provisions of section 15-10-503.

(2) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or herself or his or her nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

**15-12-612. Termination of appointment - change of testacy status.** Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 15-12-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

**15-12-613. Successor personal representative.** Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with

reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

**15-12-614. Special administrator - appointment.** (1) A special administrator may be appointed:

(a) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative, or if a prior appointment has been terminated as provided in section 15-12-609;

(b) In a formal proceeding by order of the court on the petition of any interested person, or by the court on the court's own motion, and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

**15-12-615. Special administrator - who may be appointed.** (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(2) In other cases, any proper person may be appointed special administrator.

**15-12-616. Special administrator - appointed informally - powers and duties.** A special administrator appointed by the registrar in informal proceedings pursuant to section 15-12-614 (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

**15-12-617. Special administrator - formal proceedings - power and duties.** A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

**15-12-618. Termination of appointment - special administrator.** The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a

special administrator is subject to termination as provided in sections 15-12-608 to 15-12-611.

**15-12-619. Public administrator - appointment - oath - bond - deputy.** (1) The district or probate court in each judicial district may appoint a person who shall be known as the public administrator. The appointee shall be a qualified elector over twenty-one years of age and shall be a resident of or maintain a principal place of business in the judicial district in which the appointee is to act as public administrator. Unless authorized by the appointing court, the appointee shall remain a resident of or maintain a principal place of business in the judicial district in which the appointee has been appointed during the period in which the appointee holds the office of public administrator. The person appointed as the public administrator shall serve at the pleasure of the appointing court until discharged by the court or until such person's resignation is accepted by the appointing court. Any person appointed as a public administrator shall not be considered an employee of either the state of Colorado or of the judicial district or the city or the county in which such person has been appointed public administrator because of his or her appointment as public administrator.

(2) Before taking office, a public administrator shall take and subscribe an oath, before a district or probate judge of the appointing judicial district, in the following form:

> I, _____, in accepting the position of the public administrator in and for the _____ judicial district of the state of Colorado, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and that I will faithfully perform the duties of the office of public administrator as required by law.

(3) If a public administrator is discharged or resigns from office, the public administrator may, at the court's discretion, be permitted to complete the administration of any estate or trust in which the public administrator has been previously appointed, or is acting as the public administrator, at the time of discharge or resignation.

(4) Every public administrator shall procure and maintain a general bond in the sum of twenty-five thousand dollars covering the public administrator's performance and the performance of the public administrator's employees to the people of the state of Colorado. Such bond shall be conditioned on the faithful discharge of the duties of the office of the public administrator and shall be filed in the office of the secretary of state. If the Colorado attorney general finds reasonable grounds to believe that a public administrator has improperly administered a public administrator's estate, the attorney general may sue upon such bond in the name of the people of the state of Colorado to compensate any party harmed by any neglect or wrongful act by a public administrator or the public administrator's employees. In addition to the above general bond, a public administrator may also be required to give such bonds as are required of other fiduciaries.

(5) The public administrator is authorized to act as provided in this section and sections 15-12-620, 15-12-621, 15-12-622, and 15-12-623 and as directed by the appointing court. A

public administrator may also be appointed as a fiduciary in other cases in any judicial district in the state of Colorado or elsewhere as needed.

(6) Subject to the approval and confirmation by the district or probate court in each judicial district, the public administrator may also appoint one or more deputy public administrators. Deputy public administrators shall be qualified electors over the age of twenty-one. Any deputy public administrator shall serve at the pleasure of the appointing court and the public administrator in that judicial district until such time as the deputy public administrator is discharged by the court or the public administrator or until the deputy public administrator resigns. No resignation of a deputy public administrator shall be effective until it is filed with and approved by the appointing court. The deputy public administrator shall act as directed by the public administrator in the deputy public administrator's judicial district.

(7) Any acting public administrator or deputy public administrator who was appointed prior to July 1, 1991, shall be exempt from the appointment criteria required by this section.

**15-12-620. Public administrator - responsibility for protecting decedent's estate - duty of persons holding property.** (1) Upon notification of the death of any person who was either a resident of Colorado, or a nonresident who died owning real or personal property located in Colorado, it shall be the responsibility of the public administrator of the judicial district of the decedent's residence, or, in the case of a nonresident, of the public administrator of the judicial district wherein the decedent's property is located, to take possession of the decedent's property or to take such measures as are reasonably necessary to protect and secure the decedent's property. The public administrator need not act in cases where such property can be protected by a person who is in the vicinity of the property and who is willing and able to provide such protection, if such person is either an heir of the decedent or has apparent authority to act as the personal representative of the decedent's estate as set forth in an original document that reasonably appears to be the last will of the decedent.

(2) In appropriate cases, the public administrator shall act as soon as the public administrator receives notice of the decedent's death. The public administrator shall continue to protect the decedent's property until the administration of the decedent's estate is granted to a person or entity by a court of proper jurisdiction or until the public administrator is presented with a properly executed affidavit pursuant to section 15-12-1201. The ten-day waiting period required in section 15-12-1201 (1) (b) shall not apply to affidavits presented to a public administrator to obtain property being protected by a public administrator pursuant to this section.

(3) Reasonable administration fees and costs including reasonable attorney fees incurred in efforts to protect the decedent's property shall be paid to the public administrator at the time such property is released by the public administrator. Upon the presentation or mailing of an itemized statement of fees and costs to the person assuming responsibility for the case, the public administrator shall be entitled to deduct such fees and costs from any cash assets of the decedent's estate that are in the public administrator's possession. Any fee dispute regarding a public administrator's fees and costs shall be resolved by petition to the district or probate court that has jurisdiction over the estate.

(4) When a person dies leaving property located in any house, residence, or apartment, on the premises of another, or in a nursing home, coroner's office, mortuary, state agency, or public or private hospital, without leaving either a known heir residing in this state or a resident of this state who has been nominated as a personal representative in an original document that reasonably appears to be the last will of the decedent, the person in possession of such house, residence, apartment or premises, or the administrator of such nursing home, coroner's office, mortuary, state agency, or public or private hospital, shall give prompt notice of death, and notice of the existence of the property, to the public administrator of that judicial district. Any person who fails to act in compliance with this section shall be liable for all damages and any loss that may be sustained as a result of the neglect or refusal of such person to report the death or the existence of property to the public administrator. Such damages may be recovered by the decedent's heirs or successors, or by the public administrator. It shall be the responsibility of any law enforcement agency, coroner, or other public agency to give notice to the public administrator of the appropriate jurisdiction at any time they believe that property of a decedent located within their jurisdiction is not properly secured or protected.

**15-12-621. Public administrator - decedents' estates - areas of responsibility.** (1) The public administrator of each judicial district shall be responsible for handling the administration of decedents' estates within such judicial district under the following circumstances:

(a) (I) Where the decedent died a resident of that judicial district; or

(II) Where the decedent was a nonresident of the state of Colorado and the decedent has property located within that judicial district; and

(b) Where no individual can be found who is willing and able to administer the estate of the decedent by virtue of being either nominated to act as a personal representative under the last will of the decedent, or is an heir or devisee of the decedent entitled to receive a portion of the decedent's estate.

(2) A public administrator may also administer a decedent's estate within the public administrator's judicial district in cases where the decedent's heirs, devisees, creditors, or nominated personal representative, do not act to evidence their willingness or intention to administer the decedent's estate within sixty days from the date of death, by either:

(a) Assuming responsibility for the administration of the estate by use of an affidavit pursuant to sections 15-12-1201 and 15-12-1202; or

(b) By filing a petition or application to open the estate in a district or probate court in this state.

(3) The grant of authority to a public administrator in this section shall not supersede the normal priority for the appointment of a personal representative as set forth in section 15-12-203; except that a public administrator shall have priority for appointment over creditors of the estate.

(4) In estates where the location or identity of some or all of the decedent's heirs or devisees is unknown, the requirement for the publication of notice to such persons concerning the petition for the appointment of a public administrator as personal representative or special

administrator of the estate shall be waived unless the court otherwise directs.

(5) All decedent estates in which the public administrator has been appointed as the personal representative of the estate shall be closed in a formal hearing in accordance with section 15-12-1001.

(6) Small estates, as defined in section 15-12-1201, may be administered by the public administrator using an affidavit as provided in section 15-12-1201, with the same effect as provided in section 15-12-1202. The claims period shall end one year from the date of the decedent's death. At the end of the claims period, the public administrator shall summarily make distribution of estate assets by distribution to allowed claimants pursuant to the priorities set forth in section 15-12-805. The remainder of the estate's funds, if any, shall be distributed to the decedent's heirs or devisees as determined under the Colorado Probate Code. In determining who is entitled to an estate's funds, a public administrator may rely on affidavits by persons who set forth facts to establish their claims, heirship, or the validity of a testamentary document. The public administrator shall not be liable for any improper distributions made in reasonable reliance on information contained in such affidavits. All estates administered by a public administrator pursuant to the small estate procedure shall be closed by the filing of a public administrator's statement of account with the appointing district or probate court. The statement of account shall set forth all receipts and disbursements made during the administration of the estate including the public administrator's fees and costs, and the fees and costs of the public administrator's staff and investigators. Upon filing of the public administrator's statement of account, the public administrator shall be discharged and released from all further responsibility and all liability with regards to the estate.

(7) In the absence of any interested person willing to make funeral and burial arrangements, a public administrator may make funeral and burial arrangements for the decedent. The public administrator shall make reasonable efforts to see that such arrangements are consistent with the decedent's apparent religious or other preferences regarding such matters. A public administrator may authorize the cremation of the decedent's remains if the decedent left signed written instructions, or other funeral arrangements authorized by the decedent, which indicated the decedent's wish to be cremated. A public administrator shall have the authority to authorize cremation if he believes that public funds will be needed to complete the administration of an estate because the estate lacks the apparent assets to pay fully all necessary administration, funeral, and burial costs and expenses. In cases of doubt the public administrator may decline to authorize cremation.

(8) Whenever a public administrator is administering or investigating a decedent's estate, the public administrator or the public administrator's authorized employee or agent may make an immediate search for the decedent's assets and burial instructions; and in furtherance thereof, a public administrator may prepare a certificate stating that he or she is a public administrator administering or investigating the estate of the decedent, that the decedent died on a stated date, and that such person may have assets or a will or burial instructions which are needed for the proper administration of the decedent's estate. Any entity, person, bank, corporation, or financial institution that receives such a certificate shall promptly release to the public administrator, or to the public administrator's authorized employees or agents, all information that such entity has at its disposal concerning any assets in which the decedent had any interest, whether such assets be

jointly or individually owned; and any such entity, person, bank, corporation, or financial institution shall promptly grant access to the public administrator, or to the public administrator's authorized employees or agents, to any safe deposit box which the decedent had the right of entry to search and remove any will or burial instructions concerning the decedent's estate. For this preliminary investigation, the public administrator shall not be required to furnish a death certificate, an affidavit pursuant to section 15-12-1201, or letters. If a will, codicil, or burial instructions concerning the decedent is discovered as a result of this investigation, upon giving a receipt for same, the public administrator, or the public administrator's authorized employee or agent, shall be entitled to receive the original of such document. The public administrator shall lodge the original of any will or codicil so discovered in the district or probate court having proper jurisdiction. A copy of such instrument shall be provided to any heir or devisee of the decedent who requests it. Any costs incurred in the drilling of a safe deposit box or the copying of any estate documents shall be paid by the estate of the decedent. If any burial instructions are found, the public administrator shall promptly deliver such instructions to the person or persons who have the right to dispose of the decedent's remains. Receipt of a certificate of the public administrator as provided by this section shall fully discharge any entity, person, bank, corporation, or other financial institution from all liability for the release of any information concerning the decedent's assets or the granting of access to a safe deposit box, or for any acts or omissions by the public administrator with reference to these items, without the necessity of inquiring into the truth of any facts stated in the certificate. Any entity, person, bank, corporation, or other financial institution who refuses to honor a properly presented certificate as provided in this section shall be liable for all damages and costs, including reasonable attorney fees and costs, suffered by the estate as a result of the failure of such entity to comply with the public administrator's request for information.

(9) A public administrator may act as a special administrator in a decedent's estate when a creditor or claimant requests such an appointment for the purpose of having the public administrator represent the estate in an action to be brought by the creditor or claimant against the estate. A public administrator requested to act as a special administrator in such cases need act only if the creditor or claimant makes advance arrangements, satisfactory to the public administrator, to pay all reasonable fees and costs likely to be incurred by the public administrator in the public administrator's performance as special administrator regardless of the outcome of the creditor's or claimant's claim or litigation against the estate.

**15-12-622. Public administrator - acting as conservator or trustee.** (1) When appointed by a court of appropriate jurisdiction, the public administrator may act as a conservator, temporary conservator, special conservator, trustee, or other fiduciary of any estate that has assets requiring protection. Each county department of social services may refer any resident of that county, or any nonresident located in that county, to that county's public administrator for appropriate protective proceedings if such department determines that such person meets the standards required for court protective action.

(2) Any case referred to the public administrator pursuant to this section by a county

department of social services shall be presented to the court of appropriate jurisdiction by a petition which shall state to the court that the public administrator has been requested by the county department of social services to act as a conservator or other fiduciary for the person in need of protection, that the public administrator is the nominee of that department, and that the public administrator is not acting as an attorney for that department. The public administrator may prepare and file such a petition if requested to do so by the county department of social services. The fact that a public administrator has been requested by a county department of social services to act as a conservator or other fiduciary shall not be construed by the court as granting any priority for his appointment, and the court shall make that determination solely upon the best interests of the person in need of protection. If the public administrator is not appointed as conservator or other fiduciary and the court determines that another individual should act as the conservator or fiduciary, the court may award reasonable fees and costs to the public administrator if the court determines that the efforts of the public administrator were beneficial to the estate or contributed to the protection of the protected person's assets. In cases where the court awards fees and costs to the public administrator, to the extent that such funds are available, such fees shall be paid from the protected person's estate. In cases in which the public administrator is not compensated from the protected person's estate, the court may approve the payment of such fees from state funds designated for the tlinepayment of court-appointed counsel or fiduciaries. The court may determine the amount of fees to be paid from such state funds as it deems to be just.

(3) In any case in which the public administrator has been nominated to act as conservator or other fiduciary at the request of the county department of social services and such case develops into a contested court proceeding, the department's own attorney shall assume all aspects of the contested court case, and the public administrator shall not be required to be involved in such hearings unless specifically directed to do so by the court.

(4) **Missing persons.** A public administrator has standing to petition a court of appropriate jurisdiction for his or her appointment to act as a conservator, temporary conservator, or special conservator to protect a person's assets and manage the person's estate if:

(a) The person is missing, detained, or unable to return to the United States; and

(b) No interested person has initiated protective proceedings to accomplish this purpose.

**15-12-623. Public administrator - administration - reports - fees.** (1) The following court docket fees shall be charged:

(a) Public administrator statements of account in small estates, as "small estates" is defined in section 15-12-1201, having gross assets:

| | Fee | Tax | Total |
|---|---|---|---|
| (I) Less than $500.00 | fee waived | | |
| (II) $500.00 or more, but less than $2,000.00 | $ 9.00 | 1.00 | 10.00 |

| | | | |
|---|---|---|---|
| (III) $2,000.00 or more | $ 89.00 | 1.00 | 90.00 |

(b) The docket fee charged in all other decedent, trust, or conservatorship estates filed by a public administrator shall be the same fee as those charged to the general public filing a similar type of action.

(2) On or before March 1 of each year, each public administrator shall file with the appointing court such reports concerning the administration of public administrator cases during the previous calendar year as the appointing court shall direct.

(3) The office of the public administrator shall only charge fees and costs that are reasonable and proper for similar services in the community. The public administrator shall maintain detailed time records for all charged services. The public administrator shall attempt to minimize fees while providing quality fiduciary, administrative, and legal services to all assigned estates. The public administrator may charge the estates under his or her administration for the services of attorneys, paralegals, bookkeepers, certified public accountants, investigators, tax counsel, or any other professional or nonprofessional who provides necessary services which further the cost-effective administration of the estates. A public administrator who is a member of a law firm may use the legal services of that firm to assist the public administrator in his or her duties as the public administrator or as a fiduciary. All fees of the public administrator or of the public administrator's agents and employees are subject to review by the court having jurisdiction over the estate in which the fees were incurred. The payment of public administrators' administrative fees and costs shall have priority over all other claims and exempt property or family allowances. In cases in which the public administrator is appointed to administer an estate and a more suitable person is subsequently located and such person is then appointed to continue the administration of the estate, the public administrator shall be entitled to receive the prompt payment of his fees and costs for the period of his administration of the estate.

(4) Cash assets collected by the public administrator in small decedent estates may be combined into a single public administrator's trust account which shall be held in a federally insured bank or savings and loan association located in this state. The total amount of the funds in a single public administrator's trust account shall not exceed the federal deposit insurance limits for such accounts. When an additional account is required, such account shall be opened in a different Colorado bank or savings and loan association which has the required federal deposit insurance protection. Regardless of whether the public administrator is an attorney, all estate funds under the control of a public administrator shall be governed by the rules set forth by the Colorado supreme court in the code of professional responsibility, DR 9-102, dealing with trust accounts, unless otherwise modified by this section. Any public administrator's trust account may be utilized as the temporary depository for any public administrator funds. When letters are issued in an estate, the funds belonging to such an estate shall be promptly transferred to an account or accounts in the individual estate's name.

## PART 7

## DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

**15-12-701. Time of accrual of duties and powers.** The duties and powers of a personal representative commence upon his or her appointment. The powers of a personal representative relate back in time to give acts by the person appointed that are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person nominated to serve as personal representative in a will may carry out written instructions of the decedent or of the persons designated to control disposition of the decedent's last remains under section 15-19-106, relating to his or her body, anatomical gifts, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

**15-12-702. Priority among different letters.** A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

**15-12-703. General duties - relation and liability to persons interested in estate - duty to search for a designated beneficiary agreement - standing to sue.** (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-16-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent.

(3) Repealed.

(3.5) A personal representative shall not be surcharged for distributions made that do not take into consideration the possible birth of a posthumously conceived child unless prior to such

distribution:

(a) The personal representative has received notice or has actual knowledge that there is an intention to use an individual's genetic material to create a child or has received written notice that there may be an intention to use an individual's genetic material to create a child; and

(b) The birth of the child could affect the distribution of the decedent's estate.

(4) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

(5) A personal representative shall not be surcharged for distributions made that do not take into consideration a designated beneficiary agreement if:

(a) The personal representative has reviewed the records of the county clerk and recorder's office in every county in Colorado in which the personal representative has actual knowledge that the decedent was domiciled at any time during the three years prior to the decedent's death for a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession; and

(b) The personal representative has not received actual notice nor has actual knowledge of the existence of a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession.

(6) Subject to the good faith standard of section 15-10-602 (6), the provisions of section 15-10-605, and subsections (7) and (8) of this section, personal representatives, persons with priority for appointment as personal representative, and court-appointed fiduciaries may ascertain the testator's probable intent or estate planning purpose on issues involving the decedent's estate and, where not contrary to public policy or law, shall have standing and may prosecute or defend that intent or purpose, at the expense of the estate, in proceedings brought under this code.

(7) Without limiting the general applicability of subsection (6) of this section:

(a) (I) A person serving as personal representative or a person nominated as personal representative in a will or appointed as public or special administrator has standing, but no duty, to offer a will for probate. If such person declines or is unable to offer the will for probate, any person who is a successor of the decedent under the will may offer the will for probate and defend the validity of the will in proceedings under this code. In either case, the person may act notwithstanding the fact that he or she may be a devisee under the will. The will proponent's reasonable fees and costs are payable as an expense of administration.

(II) For purposes of this subsection (7), a proponent other than the nominated personal representative should be treated as a nominated personal representative in cases where the nominated personal representative has declined or is unable to offer the will for probate. Such treatment shall not confer upon the proponent a higher priority for appointment than was conferred upon such proponent pursuant to section 15-12-203 before the will was offered for probate.

(b) The personal representative has standing to oppose, at estate expense, a person's claim to be an heir; an omitted spouse or child; a spouse, including a common law spouse; or a devisee.

(c) The personal representative has standing to oppose, at estate expense, a surviving

spouse's attempt to invalidate a marital agreement that limits his or her share in the estate.

(d) Where a surviving spouse petitions for an elective share, the court proceeding is an action between the spouse and the interested person or persons whose interests may be affected, and the personal representative is a neutral party to the proceeding. In such a proceeding, the fees and costs reasonably incurred by the personal representative and his or her agents in providing basic information to the parties regarding the augmented estate are payable as an estate expense. The personal representative may prepare a calculation of the augmented estate at estate expense.

(8) (a) In any proceeding brought under this code where any personal representative, person with priority for appointment as a personal representative, nominated personal representative, or court-appointed fiduciary purports to participate in the proceeding at estate expense and has a material conflict of interest, any interested person may petition the court pursuant to section 15-12-614 (1) (b) or 15-12-713 for the appointment of an independent special administrator to represent, to the extent the court directs, the estate's interests in the litigation at estate expense.

(b) For purposes of this subsection (8), the fact that a personal representative, a person with priority for appointment as a personal representative, a nominated personal representative, or a court-appointed fiduciary is also a successor or a potential successor of the estate is not, in and of itself, a material conflict of interest.

**15-12-704. Personal representative to proceed without court order - exception.** A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

**15-12-705. Duty of personal representative - information to heirs and devisees.** (1) Not later than thirty days after appointment, every personal representative, except any special administrator, shall give information of his or her appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall:

(a) Include the name, address, and date of appointment of the personal representative;

(b) Include the date of death of the decedent;

(c) Indicate whether the decedent died intestate or testate and, if the decedent died testate, the dates of the will and any codicils thereto, the date of admission to probate, and whether the probate was formal or informal;

(d) Indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(e) Indicate whether bond has been filed;

(f) Indicate whether administration is supervised and, if administration is unsupervised, that the court will consider ordering supervised administration if requested by an interested person;

(g) Indicate that papers relating to the estate, including an inventory of estate assets, as described in section 15-12-706, are either on file with the court or available to be obtained by interested persons from the personal representative;

(h) Indicate that interested persons are entitled to receive an accounting;

(i) Indicate that the surviving spouse, minor children, and dependent children may be entitled to exempt property and a family allowance if a request for payment is made in the manner and within the time limits prescribed by statutes;

(j) Indicate that the surviving spouse may have a right of election to take a portion of the augmented estate if a petition is filed within the time limits prescribed by statute;

(k) Indicate that, because a court will not routinely review or adjudicate matters unless it is specifically requested to do so by a beneficiary, creditor, or other interested person, all interested persons, including beneficiaries and creditors, have the responsibility to protect their own rights and interests in the estate in the manner provided by the provisions of this code by filing an appropriate pleading with the court by which the estate is being administered and serving it on all interested persons pursuant to section 15-10-401;

(l) Indicate that all interested parties have the right to obtain information about the estate by filing a demand for notice pursuant to section 15-12-204;

(m) Indicate that any individual who has knowledge that there is or may be an intention to use an individual's genetic material to create a child and that the birth of the child could affect the distribution of the decedent's estate should give written notice of such knowledge to the personal representative of the decedent's estate; and

(n) Indicate that any individual who has knowledge that there is a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession should give written notice of such knowledge to the personal representative of the decedent's estate.

(2) The personal representative's failure to give the information required by this section is a breach of his or her duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative may inform other persons of his or her appointment by delivery or ordinary first-class mail.

(3) The personal representative shall file with the court a copy of the information provided and a statement of when, to whom, and at which address or addresses it was provided.

**15-12-706. Duty of personal representative - inventory and appraisement.** (1) Within three months after his appointment, a personal representative who is not a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent and subject to disposition by will or intestate

succession at the time of his death, listing it with reasonable detail and indicating, as to each listed item, its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to any item. The inventory shall include the oath or affirmation of the personal representative that it is complete and accurate so far as he is informed.

(2) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court.

(3) If it appears that the heirs of an intestate or the devisees of a testator are unknown, or if known and there is no person qualified to receive the distributive share of such heirs or devisees, the personal representative shall also, within said three months, deliver or mail to the attorney general a copy of the inventory.

**15-12-707. Employment of appraisers.** The personal representative may employ qualified and disinterested appraisers to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

**15-12-708. Duty of personal representative - supplementary inventory.** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to interested persons who request the inventory.

**15-12-709. Duty of personal representative - possession of estate.** Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property; except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for the purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for the purposes of administration. The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in such representative's possession. The personal representative may maintain an action to recover possession of the property or to

determine the title thereto. If the personal representative incurs expenses necessary for the protection or disposition of property not subject to such representative's administration, such as those incurred to fix the amount of death taxes thereon, or to compel the contribution contemplated in section 15-11-204 or 15-12-916 (4), the court may fix such liability for the same as it determines to be equitable against any person entitled to or wrongfully withholding the property.

**15-12-710. Power to avoid transfers.** The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and, subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

**15-12-711. Powers of personal representatives - in general.** Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

**15-12-712. Improper exercise of power - breach of fiduciary duty.** If the exercise of power concerning the estate is improper, the personal representative is subject to the provisions of section 15-10-504 and is liable to interested persons for damage or loss resulting from breach of his or her fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 15-12-713 and 15-12-714.

**15-12-713. Sale, encumbrance, or transaction involving conflict of interest - voidable - exceptions.** (1) Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a beneficial interest, or any transaction which is affected by a conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented, unless:

(a) The will or a contract entered into by the decedent expressly authorized the transaction; or

(b) The transaction is approved by the court after notice to interested persons.

(c) Repealed.

(2) Any transaction previously declared by subsection (1) of this section to be void shall be deemed voidable unless a petition has been filed with the court to set aside any such transaction and a lis pendens has been recorded in the county where any affected real property is located, within sixty days after July 16, 1975.

**15-12-714. Persons dealing with personal representative - protection.** (1) A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 15-12-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective, except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(2) For purposes of this section, any recorded instrument evidencing a transaction with a personal representative on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S., shall be prima facie evidence that such transaction was made for value.

**15-12-715. Transactions authorized for personal representatives - exceptions.** (1) Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-12-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(a) Exercise any of the powers enumerated in the "Colorado Fiduciaries' Powers Act" at the time of such exercise; and

(b) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

**15-12-716. Powers and duties of successor personal representative.** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

**15-12-717. Corepresentatives - when joint action required.** If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for

emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**15-12-718. Powers of surviving personal representative.** Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as personal corepresentatives is not appointed, those appointed may exercise all the powers incident to the office.

**15-12-719. Compensation of personal representative. (Repealed)**

**15-12-720. Expenses in estate litigation. (Repealed)**

**15-12-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate. (Repealed)**

**15-12-722. Failure to comply with court orders - penalty. (Repealed)**

**15-12-723. Assets concealed or embezzled.** If any personal representative, heir, legatee, creditor, guardian, or conservator or other person interested in the estate of any deceased person or protected person complains to the court, in writing, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased or protected person, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidence of or tend to disclose the right, title, interest, or claim of the decedent or protected person to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said district or probate court may cite such suspected person to appear before it and may examine him on oath upon the matter of such complaint. If the person cited refuses to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail until he complies with the order of the court. All such interrogatories and answers may be in writing and signed by the party examined and filed in the district or probate court.

PART 8

CREDITORS' CLAIMS

**15-12-801. Notice to creditors.** (1) Unless one year or more has elapsed since the death of the decedent, a personal representative shall cause a notice to creditors to be published in some daily or weekly newspaper published in the county in which the estate is being administered, or if there is no such newspaper, then in some newspaper of general circulation in an adjoining county. Such notice shall be published not less than three times, at least once during each of three successive calendar weeks. The notice shall be substantially as follows:

NOTICE TO CREDITORS

Estate of .....(Deceased)

No. .....

All persons having claims against the above-named estate are required to present them to the undersigned or to the District Court of .....County, Colorado (or Probate Court of the City and County of Denver, Colorado), on or before

(a date not earlier than four months from date of first publication
or the date one year from date of death, whichever occurs first),

..... 20 ....., or said claims may be forever barred.

.....
Personal Representative

(2) A personal representative may give written notice by mail or other delivery to any creditor. Written notice shall be the notice described in subsection (1) of this section or a similar notice. Such written notice shall notify the creditor to present his claim within the later of the following time periods or be forever barred:

(a) Within the time set in the notice to creditors by publication in compliance with subsection (1) of this section; or

(b) Within sixty days from the mailing or other delivery of such notice, but not later than the date one year from date of death.

(3) A personal representative shall not be liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

**15-12-802. Statutes of limitations.** (1) Unless an estate is insolvent, or would thereby be rendered insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some event other than death or the giving of notice to creditors for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to the provisions of this part 8.

(3) For purposes of any statute of limitations other than those time periods specified in sections 15-12-801, 15-12-803, 15-12-804, and 15-12-806, the proper presentation of a claim under section 15-12-804 is equivalent to commencement of a proceeding on the claim.

**15-12-803. Limitations on presentation of claims.** (1) (a) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state of Colorado and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statutes of limitations, are barred against the estate, the personal representative, any transferee or other person incurring liability under section 15-15-103, and the heirs and devisees of the decedent, unless presented as follows:

(I) As to creditors barred by publication, within the time set in the published notice to creditors;

(II) As to creditors barred by written notice, within the time set in the written notice;

(III) As to all creditors, within one year after the decedent's death.

(b) In addition to the limitations on presentation of claims in paragraph (a) of this subsection (1), claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.

(2) All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, any transferee or other person incurring liability under section 15-15-103, and the heirs and devisees of the decedent, unless presented as follows:

(a) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(b) Any other claim, within four months after it arises.

(3) Nothing in this section affects or prevents:

(a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) To the limits of the insurance protection only, any proceeding to establish liability of

the decedent or the personal representative for which he is protected by liability insurance; or

(c) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

(4) This section is a nonclaim statute that cannot be waived or tolled, and it shall not be considered a statute of limitations.

(5) Unless section 15-10-106 is determined to apply, and subject to the provisions of subsection (3) of this section, claims that are not presented in accordance with subsections (1) and (2) of this section are barred even if addressing the merits of the claim would not delay the settlement and distribution of the estate.

**15-12-804. Manner of presentation of claims.** (1) Before a claim may be presented, the decedent's estate must first have been commenced in a court of appropriate jurisdiction by the filing of an application or petition pursuant to part 3 or 4 of this article. A claimant may thereafter present a claim only by:

(a) Filing a written statement of the claim with the clerk of the court, in the form approved by the supreme court, whether or not a personal representative has been appointed;

(b) Delivering or mailing a written statement of the claim to the court-appointed personal representative; or

(c) In the case of a claimant who has a claim described in section 15-12-803 (1), presenting a claim by commencing a proceeding against the personal representative in the court where the personal representative was appointed to obtain payment of the claim. A claimant having a claim described in section 15-12-803 (2) may present a claim by commencing a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction under the rules of civil procedure or statutes of this state to obtain payment of his or her claim against the estate. In order to constitute a timely presentation of a claim, the commencement of any proceeding under this paragraph (c) must occur within the time limited for presenting the claim. Time limits on proceedings to enforce timely presented claims are determined by section 15-12-806 (1) and not by this paragraph (c).

(2) Unless presentation is made pursuant to paragraph (a) of subsection (1) of this section, a claim against a decedent's estate is not validly presented by delivering or mailing a claim to any person unless that person has been appointed by the court or registrar of the court as the personal representative of the decedent's estate prior to the time the presentation is attempted.

(3) A personal representative's knowledge that a creditor could bring a claim against an estate shall not be treated as a valid substitute for the proper presentation of a written claim authorized by subsection (1) of this section.

(4) Each written statement of a claim shall include:

(a) A request or demand for payment from the decedent or the estate; and

(b) Sufficient information to allow the personal representative to investigate and respond to the claim, including the basis of the claim, the name and address of the claimant, and the

amount claimed.

(5) Except in the situation where a special administrator has been formally appointed with specific powers to deal with the specific claim being presented or has been formally appointed to deal with claims generally under this part 8, a special administrator appointed in informal proceedings, or a special administrator who lacks the powers and authority of a general personal representative, is not a personal representative to whom presentation of a claim may properly be made.

(6) A claim shall be deemed presented on the date that the court-appointed personal representative receives the written statement of claim or the date the claim is filed with the court, whichever is earlier. If a claim is not yet due, the claim shall state the date when it will become due. If the claim is contingent or unliquidated, the claim shall state the nature of the uncertainty. If the claim is secured, the claim shall describe the security. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the presentation made.

(7) The personal representative shall inform any interested person, upon request, as to the existence, amounts, and nature of all claims against the estate that are known to him or her, but the personal representative shall not be required to express any opinion as to the probable outcome of any claim.

(8) If a claim is presented under subsection (1) of this section, a proceeding thereon may not be commenced more than sixty-three days after the personal representative has mailed a notice of disallowance; except that, in the case of a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the sixty-three-day period, or, to avoid injustice, the court, on petition, may order an extension of the sixty-three-day period, but in no event shall the extension run beyond the applicable statute of limitations.

**15-12-805. Classification of claims.** (1) The personal representative shall pay allowed claims against the estate of a decedent in the following order:

(a) Property held by or in the possession of the deceased person as fiduciary or trustee of a trust, which shall include a resulting trust, as long as the reasonable expenses of administering such property and of investigating and determining such claim, as provided by section 15-10-602, but subject to section 15-10-605, shall be paid from such property as determined by the court;

(b) Other costs and expenses of administration;

(c) Reasonable funeral and burial, interment, or cremation expenses;

(d) Debts and taxes with preference under federal law;

(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(f) Debts and taxes with preference under other laws of this state;

(f.5) The claim of the department of health care policy and financing for the net amount of medical assistance, as defined in section 25.5-4-302 (5), C.R.S., paid to or for the decedent;

(f.7) The claim of a county department of social services or the state department of human services for the excess public assistance paid for which the recipient was ineligible;

(g) Any child support obligations of the decedent that were due and unpaid at death in accordance with a valid court order or agreement of record in which the decedent was a party, and any future child support obligations of the decedent as determined by the court;

(h) All other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**15-12-806. Allowance of claims.** (1) The personal representative may mail a notice to any claimant stating that the claim has been disallowed. If the personal representative fails to mail notice to a claimant of action on his or her claim within sixty-three days after the time for original presentation of the claim has expired, the claim shall be deemed to be allowed. After any claim has been deemed to be allowed or disallowed, the personal representative may change the status of the allowance or disallowance of the claim by notice to the claimant; except that the personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty-three days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty-three days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

**15-12-807. Payment of claims.** (1) One year after the decedent's death, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for family and exempt property allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided

in this subsection (1) may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) The payment was made before the expiration of the time limit stated in subsection (1) of this section and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) The payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

**15-12-808. Individual liability of personal representative.** (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In other appropriate proceedings.

(5) A personal representative is not individually liable for making distributions that do not take into consideration the possible birth of a posthumously conceived child if the personal representative made the distribution prior to:

(a) Receiving notice or acquiring actual knowledge of the existence of an intention to use an individual's genetic material to create a child; and

(b) The birth of the child could affect the distribution of the decedent's estate.

(6) If a personal representative has reviewed the records of the county clerk and recorder in every county in Colorado in which the personal representative has actual knowledge that the decedent was domiciled at any time during the three years prior to the decedent's death and the personal representative does not have actual notice or actual knowledge of the existence of a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession, the personal representative shall not be individually liable for distributions made to devisees or heirs at law that do not take into consideration the designated beneficiary agreement.

**15-12-809. Secured claims.** (1) Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(a) If the creditor exhausts his security before receiving payment, (unless precluded by other law) upon the amount of the claim allowed less the fair value of the security; or

(b) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

(2) A claim for a decedent's proportionate share of liability for a secured debt, made by a third party who is jointly liable with the decedent to the secured creditor, based on the third party's right to contribution from the decedent, shall be reduced by the fair market value, as of the date of death, of the decedent's interest in the property securing the debt, if the property securing the debt is owned by the decedent and not subject to disposition by will or intestate succession at the time of death, and if the decedent's interest passed to the third party on decedent's death.

**15-12-810. Claims not due and contingent or unliquidated claims.** (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(b) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**15-12-811. Counterclaims.** In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

**15-12-812. Execution and levies prohibited.** No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

**15-12-813. Compromise of claims.** When a claim against the estate has been presented in any manner, the personal representative may, if it appears to be in the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

**15-12-814. Encumbered assets.** If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be in the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

**15-12-815. Administration in more than one state - duty of personal representative.** (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges, and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the exempt property and family allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

**15-12-816. Final distribution to domiciliary representative.** (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(a) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(b) The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(c) The court orders otherwise in a proceeding for a closing order under section 15-12-1001 or incident to the closing of a supervised administration.

(2) In other cases distribution of the estate of a decedent shall be made in accordance with the applicable provisions of this article.

## PART 9

## SPECIAL PROVISIONS RELATING TO DISTRIBUTION

**15-12-901. Successors' rights if no administration.** (1) (a) As used in this subsection (1), "will probated in this state" means a will that is declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

(b) Except as otherwise provided in paragraph (c) of this subsection (1) and in part 13 of this article:

(I) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a will probated in this state or the laws of intestate succession.

(II) Devisees may establish title by the will probated in this state to devised property.

(c) A duly executed and unrevoked will that is not a will probated in this state may be admitted as evidence of a devise if:

(I) A court proceeding concerning the succession or administration of the estate has not occurred; and

(II) Either the devisee or his or her successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

(2) Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent's ownership, his or her death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

**15-12-902. Distribution - order in which assets appropriated -**

**abatement.** (1) (a) Except as provided in subsection (2) of this section and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(I) Property not disposed of by the will;

(II) Residuary devises;

(III) General devises;

(IV) Specific devises.

(b) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or the express purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

**15-12-903. Right of retainer.** Unless a contrary intent is indicated by the will, the amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

**15-12-904. Interest on general pecuniary devise.** General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

**15-12-905. Penalty clause for contest.** A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

**15-12-906. Distribution in kind - valuation - method.** (1) A specific devisee is entitled to distribution of the thing devised to him.

(2) (a) Any exempt property or family allowance or devise payable in money may be satisfied by value in kind, if:

(I) The person entitled to the payment has requested distribution in kind;

(II) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(III) No residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(b) For the purpose of valuation under paragraph (a) of this subsection (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(c) The residuary estate may be distributed in cash or in kind, without requiring a pro rata distribution of specific assets, if there is no objection to the proposed distribution. In other cases, residuary property may be converted into cash for distribution, subject to all applicable fiduciary duties, or may be distributed in cash or in kind, without requiring a pro rata distribution of specific assets, pursuant to a court order.

(3) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

(4) If, in any instrument which provides for a devise or transfer intended to qualify for a federal estate tax marital deduction, the personal representative or trustee is required, or expressly authorized, by the terms of the instrument, to satisfy such devise or transfer by a distribution of property in kind at values as finally determined for federal estate tax purposes or at values which are the same as the federal income tax bases of such property to the estate or trust, then, unless the instrument expressly requires that such devise or transfer be satisfied with property having an aggregate fair market value at the date, or dates, of distribution amounting to no less than the amount of such devise or transfer as finally determined for federal estate tax purposes, the distributee of such devise or transfer shall be entitled to a distribution of property which will have an aggregate fair market value fairly representative of the distributee's proportionate share of the appreciation or depreciation in the value to the date, or dates, of distribution of all property then available for distribution, and the personal representative or trustee shall satisfy such devise or transfer accordingly.

**15-12-907. Distribution in kind - evidence.** If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or

releasing the assets to the distributee as evidence of the distributee's title to the property.

**15-12-908. Distribution - right or title of distributee.** Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate; except that the personal representative may recover the assets or their value if the distribution was improper.

**15-12-909. Improper distribution - liability of distributee.** Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable for return of the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable for return of the value as of the date of disposition of the property improperly received and its income and gain received by him.

**15-12-910. Purchasers from distributees protected.** If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated prior to execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated prior to the distribution. For purposes of this section, any recorded instrument evidencing a transfer to a purchaser from or lender to a distributee on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S., shall be prima facie evidence that such transfer was made for value.

**15-12-911. Partition for purpose of distribution.** When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which

cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

**15-12-912. Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written agreement, whether or not supported by a consideration, executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his or her obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his or her office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

**15-12-913. Distributions to trustee.** (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 15-16-303.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2) of this section.

**15-12-914. Disposition of unclaimed assets.** (1) If any heirs or devisees of any intestate or testator are unknown, or if known and there is no person qualified to receive devises or distributive shares of such heirs or devisees at the time of making final settlement of the estate, or if such heirs or devisees refuse to receive and receipt for such devises or distributive shares, or in the event there is no taker under the provisions of article 11 of this title, the personal representative shall reduce all such devises or distributive shares to cash and shall be ordered by the court to pay any balances remaining in his hands to the state treasurer; and the state shall be answerable for the same, without interest, anytime within twenty-one years after the same shall have been paid into the treasury, to such person or persons as shall appear to be legally entitled to the same, upon order of the court having administration of the estate.

(2) Except as provided in subsection (1) of this section, any person, corporation, association, or other entity in possession of moneys paid to him or it or in his or its possession in

any fiduciary capacity, and the said moneys are unclaimed, or the person to whom the person in possession may lawfully pay the same, or the person who may be entitled thereto is unknown or absent or fails to receive and properly receipt therefor, may pay said moneys to the state treasurer; and the state shall be answerable for the same, without interest, anytime within twenty-one years after the same shall have been paid to the state treasurer; such payment to the state treasurer shall discharge the person making the same from any further liability or responsibility for such moneys.

(3) After the lapse of twenty-one years from the time any such moneys shall be paid into the state treasury, and no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state and shall be transferred to the public school fund thereof, and the state shall not be liable therefor. Prior to said lapse of twenty-one years, such moneys may be invested by the state treasurer, and all interest or increment therefrom shall be credited to the general fund.

(4) At the time any personal representative or other fiduciary pays into the state treasury any moneys, he shall make a written report thereof to the attorney general of the state, giving him such information as he may have, under oath or affirmation, touching the identity and antecedents of the deceased, as well as of any person supposed to be entitled to said moneys, to the end that fictitious claims thereto may be forestalled. The attorney general shall file such reports in his office and keep the index thereof, and no order shall be made by a court for the repayment of any moneys so paid into the state treasury without the attorney general having first been served with written notice thirty days before the time of making application therefor. Upon the serving of such notice, the attorney general shall be classified as an interested person under this code and may appear and take all steps for and on behalf of the state that any person who might be a defendant to such action might take. The reasonable expense of any such action taken by the attorney general shall be initially paid out of the attorney general's contingent fund; but, with the approval, order, and direction of the court having jurisdiction of the estate, any such reasonable expense incurred by the attorney general in conserving the estate and in investigating and litigating the claim of any alleged heir, devisee, distributee, or creditor shall be repaid to said contingent fund out of the moneys in the estate or fund in controversy before final settlement thereof.

(5) No estate or trust shall be permitted to remain open for the reason that an heir or devisee or beneficiary is unknown or cannot be located or refuses to receive and receipt for his share. All property subject to the provisions of subsection (1) of this section shall be paid to the state treasurer no later than three months after the entry of the order of final settlement or no later than six months after such property becomes eligible for distribution, whichever date is the earlier.

**15-12-915. Distribution to person under disability.** (1) A personal representative or trustee may discharge his obligation to distribute to any person under legal disability:

(a) By distributing to his conservator; or

(b) By distributing to any person authorized by law to give a valid receipt and discharge for the distribution; or

(c) The court may authorize distribution to a parent or relative of or a person having the custody and being responsible for the care of the person under disability for such person's use or benefit, subject to such terms and conditions as the court shall direct and approve; or

(d) By distributing in any way authorized by the terms of the will or trust instrument or by the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; but, in making any such distribution, the personal representative or trustee has a duty to act as a prudent man with due regard to the obligations of a fiduciary.

**15-12-916. Apportionment of estate taxes.** (1) For purposes of this section:

(a) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(b) "Fiduciary" means personal representative or trustee.

(c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(d) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(e) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(f) "Tax" means the federal estate tax, the additional inheritance tax imposed by section 26-2-113, C.R.S., the Colorado estate tax imposed by article 23.5 of title 39, C.R.S., and interest and penalties imposed in addition to the tax.

(2) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate, subject to the exceptions specified in this section. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for tax apportionment purposes. In all instances not involving a spouse unprovided for in a will as provided in section 15-11-301 or an election by a surviving spouse as provided in section 15-11-202, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the method described in the will or other dispositive instrument controls. In instances involving such a spouse unprovided for in a will or election, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the apportionment of tax to the spouse unprovided for in the will or to the surviving spouse shall be in accordance with the method described in this code, and the apportionment of tax to the remaining persons interested in the estate shall be in accordance with the method described in the will or other dispositive instrument.

(3) (a) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

(b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (2) of this section, because of special circumstances, it may direct

apportionment thereof in the manner it finds equitable.

(c) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(d) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code, the determination of the court in respect thereto shall be prima facie correct.

(4) (a) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

(b) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(5) (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but, if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (2) of this section, and to that extent no apportionment is made against the property. The provisions of this paragraph (e) do not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the federal "Internal Revenue Code of 1986", as

amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

(9) If the liabilities of persons interested in the estate as prescribed by this code differ from those which result under the federal estate tax law, the liabilities imposed by the federal law shall control, and all other provisions of this code shall apply as if the amounts and liabilities prescribed by the federal law had been prescribed by subsection (2) of this section.

## PART 10

## CLOSING ESTATES

**15-12-1001. Formal proceedings terminating administration - testate or intestate - order of general protection.** (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative; except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate. After notice

to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**15-12-1002. Formal proceedings terminating testate administration - order construing will without adjudicating testacy.** A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative; except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 15-12-1001.

**15-12-1003. Closing estates - by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than six months after the date of original appointment of a general personal representative for the estate or one year after the date of death, whichever occurs first, a verified statement stating that he or she, or a prior personal representative whom he or she has succeeded, has or have:

(a) Fully administered the estate of the decedent by making payment, settlement, or other

disposition of all lawful claims, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(b) Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(2) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

**15-12-1004. Liability of distributees to claimants.** After assets of an estate have been distributed and subject to section 15-12-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property or family allowances or for amounts in excess of the value of his other distributions as of the time of such distributions. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**15-12-1005. Limitations on proceedings against personal representative.** Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

**15-12-1006. Limitations on actions and proceedings against distributees.** (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred as follows:

(a) A claim by a creditor of the decedent is forever barred at one year after the decedent's death.

(b) Any other claimant or any heir or devisee is forever barred at the later of the following:

(I) Three years after the decedent's death; or

(II) One year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

**15-12-1007. Certificate discharging liens securing fiduciary performance.** After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**15-12-1008. Subsequent administration.** If, after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, it is determined that the estate has not been fully administered or fully distributed by reason of subsequently discovered property or for any other reason, the court, upon petition of any interested person, and upon notice as it directs, may appoint the same or a successor personal representative to complete the administration or distribution of the estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

**15-12-1009. Estates not closed after three years or more.** (1) When records of the court indicate no action has been taken in an estate for a period of three years or more, the court may, on its own motion, and after notice to the attorney of record, if available, or if there is no attorney of record, then to the personal representative, enter an order closing the estate without further accounting. Such closure may likewise be ordered upon the motion of any interested person, as defined in section 15-10-201 (27), or upon motion of the attorney of record. Any order in such case shall provide for the closing of the estate without further accounting, and such order shall not discharge the personal representative or any other person from any liability to the estate, the court, or any other person; except that sureties upon any bond posted in such proceedings shall be released as to any claim arising after closure of the estate under such circumstances.

(2) Unless the court has reason to believe the personal representative's conduct in the administration of the estate has been improper, closure of the estate as provided in this section shall be without further accounting, report, or hearing.

(3) Upon motion of any interested person, an estate closed pursuant to this section shall be reopened by the court.

(4) This section shall be applicable to all decedents' estates, whether instituted before or after the effective date of this code.

## PART 11

## COMPROMISE OF CONTROVERSIES

**15-12-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.** A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

**15-12-1102. Procedure for securing court approval of compromise.** (1) The procedure for securing court approval of a compromise is as follows:

(a) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(b) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(c) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. A minor child represented only by his parents may be bound only if his parents join with other competent persons in execution of the compromise, and if there is no conflict of interest between parent and child. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

## PART 12

## COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY

**15-12-1201. Collection of personal property by affidavit.** (1) At any time ten or more days after the date of death of a decedent, any person indebted to the decedent or having possession of any personal property, including but not limited to funds on deposit at, or any contents of a safe deposit box at, any financial institution; tangible personal property; or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall pay or deliver such property to a person claiming to be a successor of the decedent or acting on behalf of a successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(a) The fair market value of property owned by the decedent and subject to disposition by will or intestate succession at the time of his or her death, wherever that property is located, less liens and encumbrances, does not exceed twice the amount set forth in section 15-11-403, as adjusted by section 15-10-112;

(b) At least ten days have elapsed since the death of the decedent;

(c) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) Each person is entitled to payment or delivery of the property as set forth in such affidavit.

(1.5) An instrument or other property that is payable or deliverable to a decedent or to the estate of a decedent is considered property of the decedent subject to subsection (1) of this section. A successor or person acting on behalf of a successor under subsection (1) of this section may endorse an instrument that is so payable and collect such amount.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1) of this section.

(3) The public official having cognizance over the registered title of any personal property of the decedent shall change the registered ownership from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1) of this section.

(3.5) In the event that an instrument or other evidence of an indebtedness is secured by real property, in order to act on behalf of the holder of the indebtedness secured by a mortgage, deed of trust, or other security document, the person making the affidavit must record, with the clerk and recorder of the county where the real property is located, a copy of the affidavit and a copy of the decedent's death certificate or a verification of death document.

(3.7) Pursuant to section 15-10-111 (1) (a) (I) and (1) (b), a safe deposit box may be entered and its contents shall be delivered upon presentation of an affidavit made pursuant to subsection (1) of this section.

(4) The duties owed to a successor by a person acting on behalf of the successor in the making, presentation, or other use of an affidavit under this section are the same as the duties of an agent to the agent's principal, and the breach of such duty is subject to the same remedies as are available under the law of this state with respect to an agent subject to part 7 of article 14 of this title, including but not limited to the remedies available under part 5 of article 10 of this title.

A successor who makes, presents, or uses such an affidavit where there are two or more successors is a person acting on behalf of each other successor.

**15-12-1202. Effect of affidavit.** (1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he or she dealt with a personal representative of the decedent. He or she is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of the right of persons entitled thereto in a proceeding brought for the purpose by or on behalf of such persons.

(3) If a proof of right has been established in a proceeding under subsection (2) of this section, any person to whom an affidavit was delivered and who refused, without reasonable cause, to pay, deliver, transfer, or issue any personal property or evidence thereof belonging to the decedent, as provided in section 15-12-1201, shall be liable for all costs, including reasonable attorney fees and costs, incurred by or on behalf of the persons entitled thereto. The person to whom an affidavit was delivered bears the burden of proving reasonable cause by a preponderance of the evidence.

(4) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

**15-12-1203. Small estates - summary administrative procedure.** If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed the value of personal property held by or in the possession of the decedent as fiduciary or trustee, exempt property allowance, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 15-12-1204.

**15-12-1204. Small estates - closing by sworn statement of personal representative.** (1) Unless prohibited by order of the court, and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 15-12-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed the value of personal property held by or in the possession of the decedent as fiduciary or trustee, exempt property, family allowance, costs and

expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent;

(b) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(c) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under section 15-12-1003.

**15-12-1205. Time of taking effect - provisions for transition.** The provisions of sections 15-12-1201 and 15-12-1202 became effective on July 1, 1974, regardless of the date of the death of the decedent.

## PART 13

## DETERMINATION OF HEIRS, DEVISEES, AND PROPERTY INTERESTS BY SPECIAL PROCEEDING

**15-12-1301. Definitions.** As used in this part 13, unless the context otherwise requires:

(1) "Interested person" means an alleged heir or devisee of a decedent or any person claiming an interest derived from an alleged heir or devisee in any property the descent or succession of which is to be determined pursuant to this part 13.

(2) "Owner by inheritance" means a person in whom all or any part of the decedent's interest in the property vests as a result of intestate or testate succession.

(3) "Property" means the property interest owned by the decedent at the time of death without regard to other property interests which may be owned by other persons in the same parcel of real property or item of personal property.

**15-12-1302. Petition to determine heirship - devisees - interests in property.** (1) When any person dies leaving an interest in real property in this state, or dies domiciled in this state leaving an interest in personal property wherever located, any interested person may petition the court having jurisdiction over probate matters in and for the county in which the decedent was domiciled or resided at the time of death, or the county in which the property or some portion thereof is situated, to determine the heirs of the decedent and the

descent of all or any portion of intestate property, or to determine the devisees of the decedent under a will previously admitted to probate in this or any other state and the succession of testate property.

(2) The petition shall be in writing, signed, and verified and shall include the following:

(a) A statement that one year has passed since the date of death of the decedent;

(b) A statement that administration of the decedent's estate has not been granted in this state, or if administration has been granted in this state the estate has been settled without determination of the descent or succession of all or a portion of the decedent's property;

(c) A statement containing the name, age, and disability of any interested person who is known to the petitioner to be a minor or under legal disability;

(d) A statement of the time and place of death of the decedent;

(e) A statement of the last place of domicile or residence of the decedent;

(f) A statement of whether the decedent died intestate or testate and, if testate, the name of the court which admitted the decedent's will to probate and a certified copy of the will and the order admitting the will to probate;

(g) The names, addresses, and relationship of all interested persons, owners by inheritance, and all the heirs and devisees entitled to any part of the property;

(h) A description of the decedent's interest in the property the descent or succession of which is to be determined through the petition; and

(i) The name and address of the petitioner and a statement of the petitioner's interest in the property.

(3) The petition may include more than one decedent if related by successive interests in the property.

(4) Upon filing of the petition, the court shall set a time and date for hearing the petition.

**15-12-1303. Hearing - notice - service.** (1) The petitioner shall prepare a notice of the filing of the petition which notice shall include the name of the decedent, a description of the property set forth in the petition, the name of each interested person, and the name of each owner by inheritance. The notice may be served by personal service or by mailing a copy thereof, postage prepaid, addressed to the person at the address given and shall be directed to the interested persons and owners by inheritance set forth in the petition. The notice shall direct all interested persons and owners by inheritance to appear and answer the petition within twenty-one days after service of the notice if personal service occurs within the state of Colorado or thirty-five days after service if personal service occurs outside the state of Colorado or service is had by mail or by publication. The notice shall further provide that all objections to the petition must be filed in writing with the court and the filing fee paid within the time required for answering the petition and that the hearing shall be limited to the objections timely filed and the parties answering the petition in a timely manner. The notice shall set forth the time and place of the hearing on the petition.

(2) The notice shall be published once a week for three consecutive weeks, as defined in section 15-10-401 (4), in a newspaper of general circulation in the county where the proceeding is filed, or if there is no such newspaper in such county, then in some newspaper of general

circulation in an adjoining Colorado county. Service by publication shall be complete on the last day of publication. Prior to the hearing the petitioner shall file with the court the publisher's affidavit of publication stating the dates of publication. The petition itself need not be published.

(3) The notice, in addition to publication, shall be served on each person named in the petition whose address is shown on the petition and who does not join in the petition, or does not consent to the granting of the petition or enter a personal appearance, or does not admit, accept, or waive service. If service is by personal service within the state, service must be completed at least twenty-one days prior to the hearing. If service is by personal service outside the state or by mail within or outside the state or by publication, service must be completed at least thirty-five days prior to the hearing. The petitioner shall file a return of service or shall make and file a certificate of mailing, stating the name of the person to whom the copy was mailed and the address to which mailed, that it was mailed, postage prepaid, and the date of mailing. A copy of the petition shall be served with the notice.

**15-12-1304. Appearance.** Any interested person or owner by inheritance may appear and answer such petition and establish any proper defense to the petition or any part thereof, or assert or protect any interest the person may claim, at any time within the time for filing an answer as set forth in the notice. After the expiration of the time periods allowed for appearance and answer, the court shall proceed with the hearing on the petition. Any person who objects to the relief prayed for in the petition must present all such objections in writing within the time period for filing an answer; except that the court, for good cause, may allow an entry of appearance by any interested person at any time prior to the entry of the court's judgment and decree.

**15-12-1305. Judgment.** The court shall determine the standing of the petitioner to bring the action, the heirs and devisees of the decedent, the owners by inheritance of the property, a description of the property, and any other pertinent facts, and shall enter judgment on the petition. If after proper service pursuant to section 15-12-1303 there are no objections or answers filed to the petition, then the court may enter a decree pursuant to this part 13 without a hearing.

**15-12-1306. Decree - conclusive and when - reopening.** A decree entered pursuant to this part 13 shall be conclusive as to the rights of heirs or devisees in the property described in the order from the date of its entry. Any person claiming to be an heir or devisee, or the grantee or successor in interest of an heir or devisee, not served with notice by personal service or by mail, and who did not admit, accept, or waive service, or consent to the granting of the petition or enter a personal appearance, may petition to reopen the proceeding and modify the decree within one year after the entry thereof, but not thereafter; except that no such modification of the decree shall serve to impair the rights of any person who, in reliance upon such decree, in good faith, for value, and without notice, purchased property or acquired a lien upon property.

**15-12-1307. Title of proceedings.** All such proceedings shall be titled substantially in the following form:

"IN THE MATTER OF THE DETERMINATION OF HEIRS OR DEVISEES OR BOTH, AND OF INTERESTS IN PROPERTY, OF (Names of decedents), Deceased.".

**15-12-1308. Proceedings under the rules of civil procedure.** Nothing herein shall be construed to prevent determination of the descent or the succession of property pursuant to the Colorado Rules of Civil Procedure or any other provision of the "Colorado Probate Code".

**15-12-1309. Effective date - applicability.** This part 13 shall take effect July 1, 1993, and shall apply to all proceedings commenced on or after said date.

PART 14

COLORADO UNIFORM ESTATE TAX APPORTIONMENT ACT

**15-12-1401. Short title.** This part 14 shall be known and may be cited as the "Colorado Uniform Estate Tax Apportionment Act".

**15-12-1402. Definitions.** As used in this part 14, unless the context otherwise requires:

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned, reduced by:

(a) Any claim or expense allowable as a deduction for purposes of the estate tax;

(b) The value of any interest in property that, for purposes of the estate tax, qualifies for a marital or charitable deduction or is otherwise deductible or exempt; and

(c) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Apportionment provision" means any provision of a dispositive instrument having the effect of allocating estate tax to certain property or recipients, or exonerating certain property or recipients from liability for estate tax. An apportionment provision may include, but is not equivalent to, a provision affecting rights of recovery or reimbursement under federal estate tax law.

(3) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping

transfer tax incurred on a direct skip taking effect on death.

(4) "Gross estate" means, with respect to an estate tax, all interests in property subject to the estate tax.

(5) "Person" has the same meaning as set forth in section 15-10-201 (38).

(6) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(7) "Time-limited interest" means an interest in property that terminates on a lapse of time or on the occurrence or nonoccurrence of an event or that is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

(8) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

**15-12-1403. Apportionment by will or other dispositive instrument.** (1) Except as otherwise provided in subsection (3) of this section, the following rules apply:

(a) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax shall be apportioned accordingly.

(b) Any portion of an estate tax not apportioned pursuant to paragraph (a) of this subsection (1) shall be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph (b):

(I) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(II) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(c) If any portion of an estate tax is not apportioned pursuant to paragraph (a) or (b) of this subsection (1), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(2) Subject to subsections (3) and (4) of this section, and unless the decedent expressly and unambiguously directs to the contrary, the following rules apply:

(a) If an apportionment provision specifically directs that a person receiving an interest in a property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned the interest:

(I) The tax attributable to the exonerated interest shall be apportioned among other persons receiving interests in the apportionable estate passing under the same instrument; or

(II) The deficiency shall be apportioned ratably among other persons receiving interests

in the apportionable estate that are not exonerated from apportionment of the tax if the values of the other interests are less than the tax attributable to the exonerated interest.

(b) If an apportionment provision directs that an estate tax is to be apportioned to a specific interest in property, recipients of other interests in the apportionable estate are indirectly exonerated from the responsibility to pay such tax; however, such indirect exoneration does not preclude the application of section 15-12-1404 if the value of the interest to which the tax is apportioned is insufficient to pay the tax in full.

(c) If an apportionment provision directs that an estate tax is to be apportioned to a specific interest in property, a portion of which qualifies for a marital or charitable deduction, the estate tax shall first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(d) Except as otherwise provided for in paragraph (e) of this subsection (2), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under section 15-12-1407, the tax shall be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(e) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax shall first be apportioned, to the extent feasible, to interests in property that have not been distributed to persons entitled to receive the interests.

(3) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent has no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection (3), a testamentary power of appointment is a power to transfer the property that is subject to the power.

(4) An apportionment provision expressly directing estate taxes to be paid from the "residue" of the subject probate or trust estate, or using language of similar effect, shall be subject to the following construction:

(a) If the gross estate includes assets not passing under the dispositive instrument and the beneficiaries of those assets and the beneficiaries of the residue are different persons, this part 14 shall apply unless there is an express and unambiguous statement that the estate tax attributable to the assets shall also be paid from the residue.

(b) If the dispositive instrument contains pre-residuary gifts and the residuary estate is insufficient to pay all estate taxes due, the apportionment provision directing payment from the residue shall be effective with respect to the residue as provided for pursuant to paragraph (b) of subsection (2) of this section, and this part 14 shall apply only to specify the source of payment for estate tax that cannot be paid from the residue. In this event, neither section 15-12-902 nor any other statutory or common law rule of abatement shall affect the apportionment of estate tax among the pre-residuary gifts.

(c) When a gift qualifying for an estate tax marital or charitable deduction is made from a portion of the residue, the provisions of paragraph (c) of subsection (2) of this section shall

apply, unless there is an express and unambiguous statement in the dispositive instrument of an intent to not fully utilize the available marital or charitable deduction. For this purpose, a direction to pay estate tax from the residue without "apportionment" or "right of contribution", or language of similar effect, does not constitute an express and unambiguous statement sufficient to avoid the application of paragraph (c) of subsection (2) of this section.

(5) An express and unambiguous apportionment of estate tax pursuant to this section does not, by itself, affect rights of recovery that may be available to a fiduciary under federal tax law. An intent to waive a right of recovery provided in sections 2206, 2207, 2207A, and 2207B of the internal revenue code of 1986, as amended, shall be expressly stated in the dispositive instrument in the manner described in such sections.

**15-12-1404. Statutory apportionment of estate taxes.** (1) To the extent that apportionment of an estate tax is not controlled by an instrument described in section 15-12-1403, and except as otherwise provided for in sections 15-12-1406 and 15-12-1407, the following rules apply:

(a) Subject to paragraphs (b) to (d) of this subsection (1), the estate tax shall be apportioned ratably to each person that has an interest in the apportionable estate.

(b) A generation-skipping transfer tax incurred on a direct skip taking effect at death shall be charged to the person to which the interest in property is transferred.

(c) If property is included in the decedent's gross estate because of section 2044 of the internal revenue code of 1986, as amended, or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate shall be apportioned ratably among the holders of interests in the property. The balance of the tax, if any, shall be apportioned ratably to each other person having an interest in the apportionable estate.

(d) Except as otherwise provided for in section 15-12-1403 (2) (d), and except as to property to which section 15-12-1407 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest shall be apportioned, without further apportionment, to the principal of that property.

**15-12-1405. Credits and deferrals.** (1) Except as otherwise provided for in sections 15-12-1406 and 15-12-1407, the following rules apply to credits and deferrals of estate taxes:

(a) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(b) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(c) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the

persons to whom the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

**15-12-1406. Insulated property, advancement of tax - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(b) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under subsection (3) of this section.

(c) "Insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(d) "Uninsulated holder" means a person who has an interest in uninsulated property.

(e) "Uninsulated property" means property included in the apportionable estate, other than insulated property.

(2) If estate tax is to be advanced pursuant to subsection (3) of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which section 15-12-1407 applies, the estate tax shall be advanced, without further apportionment, from the principal of the uninsulated property.

(3) Subject to sections 15-12-1409 (2) and 15-12-1409 (4), an estate tax attributable to interests in insulated property shall be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency shall be advanced ratably by the person holding interests in any property that is excluded from the apportionable estate as defined in section 15-12-1402 (1) (b) as if those interests were in uninsulated property.

(4) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(5) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total uninsulated property.

(6) Upon a distribution of insulated property for which the distributee becomes obligated to make a payment to uninsulated holders pursuant to subsection (4) of this section, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the

distributee's obligation to that uninsulated holder.

**15-12-1407. Apportionment and recapture of special elective benefits.** (1) As used in this section, unless the context otherwise requires:

(a) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(I) A reduced valuation of specified property that is included in the gross estate;

(II) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(III) An exclusion from the gross estate of specified property.

(b) "Specified property" means property for which an election has been made for a special elective benefit.

(2) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax shall be computed as if no election for any of such benefits had been made. The aggregate reduction in estate tax resulting from all elections made shall be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(3) An additional estate tax imposed to recapture all or part of a special elective benefit shall be charged to any person who is liable for the additional tax pursuant to the law providing for the recapture.

**15-12-1408. Securing payment of estate tax from property in possession of fiduciary.** (1) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(2) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

(3) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

**15-12-1409. Collection of estate tax by fiduciary.** (1) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by that person.

(2) Except as otherwise provided for in section 15-12-1406, any estate tax due from a person that cannot be collected from that person may be collected by the fiduciary from other persons in the following order of priority:

(a) A person having an interest in the apportionable estate that is not exonerated from the

tax;

(b) Any other person having an interest in the apportionable estate; and

(c) A person having an interest in the gross estate.

(3) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(4) The total tax collected from a person pursuant to this part 14 may not exceed the value of that person's interest.

**15-12-1410. Right of reimbursement.** (1) A person required pursuant to section 15-12-1409 to pay an estate tax greater than the amount due from the person pursuant to sections 15-12-1403 and 15-12-1404 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by sections 15-12-1403 and 15-12-1404 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected pursuant to section 15-12-1409 (2).

(2) A fiduciary may enforce the right of reimbursement under subsection (1) of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if so requested by the person.

**15-12-1411. Action to determine or enforce part.** A fiduciary, transferee, or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this part 14.

**15-12-1412. Uniformity of application and construction.** In applying and construing this part 14, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**15-12-1413. Severability.** If any provision of this part 14 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 14 that can be given effect without the invalid provision or application, and to this end the provisions of this part 14 are severable.

**15-12-1414. Delayed application.** (1) Sections 15-12-1403 to 15-12-1407 shall not apply to the estate of a decedent who dies on or within three years after August 10, 2011, nor to the estate of a decedent who dies more than three years after August 10, 2011, if the decedent continuously lacked testamentary capacity from the expiration of the three-year period after August 10, 2011, until the date of death.

(2) For the estate of a decedent who dies on or after August 10, 2011, to which sections 15-12-1403 to 15-12-1407 do not apply, estate taxes shall be apportioned pursuant to the law in

effect immediately before August 10, 2011.

(3) The provisions of this part 14 may be adopted as applicable law in a governing instrument at any time on or after August 10, 2011. The provisions of this part 14 may be incorporated by reference, in whole or in part, into a governing instrument at any time.

## ARTICLE 13

Ancillary Administration

### PART 1

DEFINITIONS

**15-13-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article 12 of this title.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in article 12 of this title and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 15-13-205.

(3) "Resident creditor" means a person domiciled in, or doing business in, this state, who is, or could be, a claimant against an estate of a nonresident decedent.

### PART 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

**15-13-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.** (1) At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the representative's appointment, and an affidavit made by or on behalf of the representative stating:

(a) The date of the death of the nonresident decedent;

(b) That no local administration, or application or petition therefor, is pending in this

state;

(c) That the domiciliary foreign personal representative is entitled to payment or delivery.

**15-13-202. Payment or delivery discharges.** Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

**15-13-203. Resident creditor notice.** Payment or delivery under section 15-13-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

**15-13-204. Proof of authority.** If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state, in a county in which property belonging to the decedent is located, authenticated copies of the appointment documents.

**15-13-205. Powers.** A domiciliary foreign personal representative who has complied with section 15-13-204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

**15-13-206. Power of representatives in transition.** The power of a domiciliary foreign personal representative under section 15-13-201 or 15-13-205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 15-13-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

**15-13-207. Ancillary and other local administrations - provisions governing.** (1) In

respect to a nonresident decedent, the provisions of article 12 of this title govern:

(a) Proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(b) The status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

## PART 3

## JURISDICTION OVER FOREIGN REPRESENTATIVES

**15-13-301. Jurisdiction by act of foreign personal representative.** (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) Filing authenticated copies of his appointment as provided in section 15-13-204;

(b) Receiving payment of money or taking delivery of personal property under section 15-13-201; or

(c) Doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual.

(2) Jurisdiction conferred by this section shall not include jurisdiction over the personal representative for matters unrelated to the estate for which he was acting when he submitted himself to the jurisdiction of the courts of this state by performing any of the acts enumerated in this section and, under paragraph (b) of subsection (1) of this section, is limited to the money or value of personal property collected.

**15-13-302. Jurisdiction by act of decedent.** In addition to jurisdiction conferred by section 15-13-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

**15-13-303. Service on foreign personal representative.** (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting and receiving a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1) of this section, he or she shall be allowed at least thirty-five days within which to appear or

respond.

PART 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

**15-13-401. Effect of adjudication for or against personal representative.** An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

## ARTICLE 14

Persons Under Disability - Protection

PART 1

GENERAL PROVISIONS

**15-14-101. Short title.** Parts 1 to 4 of this article may be cited as the "Colorado Uniform Guardianship and Protective Proceedings Act".

**15-14-102. Definitions.** In parts 1 to 4 of this article:

(1) "Claim", with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator" means a person at least twenty-one years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

(3) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.

(4) "Guardian" means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

(5) "Incapacitated person" means an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an

extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

(6) "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

(7) "Letters" includes letters of guardianship or letters of conservatorship.

(8) "Minor" means an unemancipated individual who has not attained eighteen years of age.

(9) "Parent" means a parent whose parental rights have not been terminated.

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

(11) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

(12) "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

(13) "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.

(14) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Ward" means an individual for whom a guardian has been appointed.

**15-14-103. Reserved.**

**15-14-104. Facility of transfer.** (1) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding ten thousand dollars a year or the then current annual gift tax exclusion as stated in the internal revenue code, whichever is greater, by transferring it to:

(a) A person who has the care and custody of the minor and with whom the minor resides;

(b) A guardian of the minor;

(c) A custodian under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., or a custodial trustee under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; or

(d) A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.

(2) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(3) A guardian or other person who receives money or property for a minor under paragraph (a) of subsection (1) of this section or subsection (2) of this section may only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess must be preserved for the future support, care, education, health, and welfare of the minor, and any balance must be transferred to the minor upon emancipation or attaining majority with an accounting of all income and disbursements.

**15-14-105. Delegation of power by parent or guardian.** A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding twelve months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

**15-14-106. Subject-matter jurisdiction.** (1) Except as provided in subsection (2) of this section, parts 1 to 4 of this article apply to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this state, protective proceedings for individuals domiciled in or having property located in this state, and property coming into the control of a guardian or conservator who is subject to the laws of this state. Such jurisdiction is subject to the provisions of section 19-1-104 (4) and (5), C.R.S., with respect to guardianships for children under the "Colorado Children's Code".

(2) In matters concerning adults, article 14.5 of this title shall apply and shall supersede the terms of subsection (1) of this section.

**15-14-107. Transfer of jurisdiction.** (1) After the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another county in this state or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(2) (a) Except as provided in paragraph (b) of this subsection (2), if a guardianship or protective proceeding is pending in another state or a foreign country and a petition for guardianship or protective proceeding is filed in a court in this state, the court in this state shall notify the original court and, after consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or protected person.

(b) In matters concerning adults, the provisions of article 14.5 of this title shall apply.

(3) (a) Except as provided in paragraph (b) of this subsection (3), a guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this state if venue in this state is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this

state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ward or protected person, if the ward or protected person has attained twelve years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under parts 1 to 4 of this article were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ward or protected person. Upon the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Within ten days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained twelve years of age, and to all persons given notice of the hearing on the petition.

(b) In matters concerning adults, the provisions of article 14.5 of this title shall apply.

**15-14-108. Venue.** (1) Venue for a guardianship proceeding for a minor is in the county of this state in which the minor resides or is present at the time the proceeding is commenced.

(2) Venue for a guardianship proceeding for an incapacitated person is in the county of this state in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the county in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the county in which the respondent is present.

(3) Venue for a protective proceeding is in the county of this state in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this state, in any county of this state in which property of the respondent is located.

(4) If a proceeding under parts 1 to 4 of this article is brought in more than one county in this state, the court of the county in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

**15-14-109. Practice in court - consolidation of proceedings.** (1) Except as otherwise provided in parts 1 to 4 of this article, the rules of civil procedure and the Colorado rules of probate procedure, including the rules concerning appellate review, govern proceedings under parts 1 to 4 of this article.

(2) If guardianship and protective proceedings as to the same individual are commenced or pending in the same court, the proceedings may be consolidated.

**15-14-110. Letters of office.** (1) A nominee for guardian, emergency guardian, conservator, or special conservator shall file an acceptance of office with the court. The acceptance of office shall be signed by the nominee and, except as otherwise provided in this section, shall include a statement by the nominee informing the court of the following:

(a) Whether the nominee has been convicted of, pled nolo contendere to, or received a

deferred sentence for a felony or misdemeanor, and, if so, the name of the state and court issuing the order;

(b) Whether a temporary civil protection or restraining order or a permanent civil protection or restraining order has been issued against the nominee in the state of Colorado or another state at any time;

(c) Whether a civil judgment has been entered against the nominee, and, if so, the name of the state and court granting the judgment;

(d) Whether the nominee has been relieved of any court-appointed responsibilities, and, if so, the name of the court relieving the nominee; and

(e) That the nominee acknowledges and understands that if the nominee fails to file required reports with the court or fails to respond to an order of the court to show cause why the nominee should not be held in contempt of court, Colorado law authorizes the court to access data and records of state agencies in order to obtain contact information, as defined in sections 15-14-317 (4) (c) and 15-14-420 (6) (c).

(2) (a) In support of the statement set forth in the acceptance of office pursuant to subsection (1) of this section, the nominee for guardian, conservator, emergency guardian, or special conservator shall:

(I) Obtain and attach to the acceptance of office a name-based criminal history record check through the Colorado bureau of investigation. The nominee shall be responsible for the cost of the name-based criminal history record checks.

(II) Obtain and attach to the acceptance of office a current credit report of the nominee paid for by the nominee; and

(III) Verify the acceptance of office under penalty of perjury, stating that, to the best of his or her knowledge or belief, the statements in the acceptance of office and attached documentation are accurate and complete.

(b) The court may, in its discretion, waive any or all of the requirements of paragraph (a) of this subsection (2) for good cause shown when making an emergency appointment of a guardian pursuant to section 15-14-204 or 15-14-312, or when making an appointment of a special conservator pursuant to sections 15-14-405, 15-14-406, and 15-14-412.

(3) After a hearing, the court shall issue appropriate letters of guardianship or emergency guardianship if it finds, upon review of the acceptance of office, that the nominee is appropriate for the office. Letters of guardianship shall indicate whether the guardian was appointed by the court or a parent. After a hearing and the filing of any required bond, the court shall issue appropriate letters of conservatorship or special conservatorship if it finds, upon review of the acceptance of office, that the nominee is appropriate for the office. Any limitation on the powers of a guardian, emergency guardian, conservator, or special conservator or of the assets subject to a conservatorship shall be endorsed on the guardian's or conservator's letters.

(4) The specifications required pursuant to paragraphs (a) to (d) of subsection (1) of this section and the requirements of subsection (2) of this section shall not apply to the following nominees:

(a) A public administrator nominated as a guardian or conservator;

(b) A trust company nominated as a guardian or conservator;

(c) A bank nominated as a guardian or conservator;

(d) A credit union, savings and loan, or other financial institution nominated as a guardian or conservator pursuant to state law;

(e) A state or county agency nominated as a guardian or conservator pursuant to state law;

(f) A parent residing with his or her child who is nominated as a guardian or conservator of his or her child; and

(g) Any other person or entity for whom the court, for good cause shown, determines that the requirements shall not apply.

(5) Nothing in this section shall be construed to prohibit the court from requiring a nominee to obtain additional background information as the court deems necessary to assist the court in determining the fitness of the nominee for the appointment sought by the nominee, including requiring a nominee to obtain fingerprint-based criminal history record checks through the Colorado bureau of investigation and the federal bureau of investigation. If the court requires a nominee to submit fingerprint-based criminal history record checks, the nominee shall be responsible for providing a complete set of fingerprints to the Colorado bureau of investigation and for obtaining the fingerprint-based criminal history record checks and presenting them with the acceptance of office. The nominee shall also be responsible for the cost of the fingerprint-based criminal history record checks.

**15-14-111. Effect of acceptance of appointment.** By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

**15-14-112. Termination of or change in guardian's or conservator's appointment.** (1) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. A parental appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator without a decree of discharge does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.

(2) A guardian or conservator may petition for permission to resign. A petition for removal of a guardian or conservator shall be governed by the provisions of section 15-10-503. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(3) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than thirty days after the occurrence of the vacancy or other designated event. The additional or successor guardian or

conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever occurs last. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

**15-14-113. Notice.** (1) Except as otherwise ordered by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with Colorado rules of probate procedure, at least fourteen days before the hearing.

(2) Proof of notice must be made before or at the hearing and filed in the proceeding.

(3) A notice under parts 1 to 4 of this article must be given in plain language.

**15-14-114. Waiver of notice.** A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding in accordance with Colorado rules of probate procedure. However, a respondent, ward, or protected person may not waive notice.

**15-14-115. Guardian ad litem.** At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

**15-14-116. Request for notice - interested persons.** An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending in accordance with Colorado rules of probate procedure. The clerk shall send or deliver a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in a protective proceeding.

**15-14-117. Multiple appointments or nominations.** If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

**15-14-118. Small estate - person under disability - no personal representative.** (1) Any interested person may file a verified petition for the distribution without administration of the estate of a person under disability under the provisions of this section.

(2) Such petition shall state so far as known to petitioner:

(a) The name, date of birth, county, and state of residence of the person under disability;

(b) If the person under disability is a nonresident of the state, that he or she has a chose in action or other personal property within the county which must be conserved and has no guardian or conservator determined to be appointed by any court;

(c) The date upon which and the court by which the person under disability was adjudged as having a mental illness, being mentally deficient, or being disabled;

(d) The description and value of each chose in action or other personal property owned by the person under disability and subject to administration as a part of his or her estate;

(e) The name, address, relationship, and date of birth, if a minor, of each person who would inherit the estate of the person under disability if the person under disability were then deceased;

(f) The name and address of each person who would have a claim against the estate if the estate were to be administered and the amount of any such claim;

(g) The name and address of any person or institution having the care and custody of the person under disability and the post-office address of the person under disability.

(3) The court may hear such petition without notice or upon such notice as the court may direct.

(4) If the court finds that the total personal estate of the person under disability subject to administration is ten thousand dollars, or less, that no conservator for the estate has been appointed, and that no useful purpose would be served by the appointment of a conservator, the court may order the personal estate be distributed without the appointment of a conservator as provided in this section.

(5) The court shall direct the distribution of said personal estate as the court finds the estate would be distributed in case of administration, the claimants being first paid in the order of the class of their claims. The court may order the distribution of any surplus to the person under disability, to the guardian or conservator of person under disability, if the court has appointed a guardian or conservator or to the next friend appointed by the court, or as otherwise provided by law for the distribution of property to persons under legal disability. If distribution to a next friend is ordered, the court, in its order, may attach such conditions regarding bond, reports to the court, and otherwise as it may deem proper.

(6) The order of court shall constitute sufficient legal authority to any person owing any money, having custody of any property, or acting as a registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration.

(7) Anytime within thirty-five days after the making of an order pursuant to this section, any person interested in the estate may file a petition to revoke the same, alleging that other personal property was not included in the petition or that the property described in the petition

was improperly valued, and that if said property were added, included, or properly valued as the case may be, the total value of the personal property would exceed ten thousand dollars, or that the order ordered money paid or property distributed to a person not entitled thereto. Upon proof of any such grounds, the court shall revoke the order and enter a more appropriate order, but the revocation or modification of such order shall not impose any liability upon any person who, in reliance upon such order, in good faith, for value, and without notice, paid money or delivered property, or impair the rights of any person who, in reliance on such order, in good faith, for value, and without notice, purchased property or acquired a lien on property.

(8) If a next friend shall be named to enter into the settlement of a claim of a person under disability against another person for personal injury to the person under disability or for injury to his or her property and the entire net value of the personal estate of the person under disability, including the proposed settlement, after providing for expenses of settlement, is ten thousand dollars or less, such proceeding for approval of the settlement by the court may be had in connection with the petition for the disposition of the estate of the person under disability, including the proceeds of the settlement, under this section, and the court may proceed with the settlement as though a legal guardian or conservator had been appointed and may distribute the net proceeds of the settlement under the provisions of this section. The next friend named may execute releases with the same effect as though they had been executed by a duly appointed legal guardian or conservator.

(9) For purposes of this section, "person under disability" means a person for whom a protective proceeding could be instituted.

**15-14-119. Notice to public institutions on appointment of guardian or conservator.** When any court shall appoint a conservator of the estate of a protected person or a guardian of an incapacitated person committed to or residing in any public institution of this state, the court shall notify the superintendent or chief administrative officer of said public institution or, if unknown, the executive director of the department of human services in writing of the fact of such appointment, giving the name and address of the conservator or guardian.

**15-14-120. Uniform veterans' guardianship act not affected.** If any of the provisions of parts 1 to 4 of this article are inconsistent with the provisions of part 2 of article 5 of title 28, C.R.S., known as the "Uniform Veterans' Guardianship Act", the provisions of that act shall prevail with respect to funds or proceedings subject thereto.

**15-14-121. 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.

**15-14-122. Severability clause.** If any provision of parts 1 to 4 of this article or its

application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of parts 1 to 4 of this article which can be given effect without the invalid provision or application, and to this end the provisions of parts 1 to 4 of this article are severable.

## PART 2

## GUARDIANSHIP OF MINOR

**15-14-201. Appointment and status of guardian.** A person becomes a guardian of a minor by appointment by a parent or guardian by will or written instrument or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

**15-14-202. Testamentary appointment of guardian - appointment by written instrument.** (1) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. A guardian may also be appointed by will or other signed writing by a guardian of a minor child. The appointment may specify the desired limitations on the powers to be given to the guardian. A guardian may not appoint a surviving parent who has no parental rights to be a successor guardian. The appointing parent or guardian may revoke or amend the appointment before confirmation by the court.

(2) Upon petition of an appointing parent or guardian and a finding that the appointing parent or guardian will likely become unable to care for the child within two years, and after notice as provided in section 15-14-205 (1), the court, before the appointment becomes effective, may confirm the selection of a guardian by a parent or guardian and terminate the rights of others to object. If the minor has attained twelve years of age, the minor must consent to the appointment of a guardian pursuant to section 15-14-203 (2).

(3) Subject to section 15-14-203, the appointment of a guardian becomes effective upon the death of the appointing parent or guardian, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the child, whichever occurs first.

(4) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

(a) File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

(b) Give written notice of the acceptance of appointment to the appointing parent or guardian, if living, the minor, if the minor has attained twelve years of age, and a person other than the parent or guardian having care and custody of the minor.

(5) Unless the appointment was previously confirmed by the court, the notice given under paragraph (b) of subsection (4) of this section must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 15-14-203 (1) and of the right of a minor who has attained twelve years of age to refuse to consent to the appointment of the guardian as provided in section 15-14-203 (2).

(6) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 15-14-205 (1).

(7) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. If a guardian survives the death or adjudication of incapacity of both parents, an appointment by the last parent or guardian who died or was adjudged incapacitated has priority. An appointment by a parent or guardian which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(8) The powers of a guardian who complies timely with the requirements of subsections (4) and (6) of this section relate back to give acts by the guardian which are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

(9) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 15-14-203 (1) or of the refusal of a minor child who has attained the age of twelve years to consent pursuant to section 15-14-203 (2).

**15-14-203. Objection of others to parental appointment - consent by minor of twelve years of age or older to appointment of guardian.** (1) Until the court has confirmed an appointee under section 15-14-202, the other parent, or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent or guardian. The court may treat the filing of an objection or the refusal of the minor to consent as a petition for the appointment of an emergency or a temporary guardian under section 15-14-204, and proceed accordingly.

(2) Until the court has confirmed an appointee under section 15-14-202, a minor who is the subject of an appointment by a parent or guardian and who has attained twelve years of age has the right to consent or refuse to consent to an appointment of a guardian. If the minor consents to the appointment of the guardian, the minor shall file with the court in which the will is probated or the written instrument is filed a written consent to the appointment before it is accepted or within thirty-five days after notice of its acceptance. If the minor does not consent to

the appointment of a guardian, then the court shall appoint a guardian pursuant to section 15-14-204.

**15-14-204. Judicial appointment of guardian - conditions for appointment.** (1) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

(2) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

(a) The parents consent;

(b) All parental rights have been terminated;

(c) The parents are unwilling or unable to exercise their parental rights; or

(d) Guardianship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and the guardian has not made an appointment of a guardian either by will or written instrument; however, the court shall not presume it is in the best interests of a child to be in the care of a parent in circumstances where a court has previously granted custody of a child to a third party.

(3) If a guardian is appointed by a parent or guardian pursuant to section 15-14-202 and the appointment has not been prevented or terminated under section 15-14-203 (1) or the minor has consented to the appointment pursuant to section 15-14-203 (2), that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 15-14-202 has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

(4) If necessary and on petition or motion and whether or not the conditions of subsection (2) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 15-14-113 must be given to the parents and to a minor who has attained twelve years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 15-14-205.

(5) If the court finds that following the procedures of this part 2 will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the emergency guardian's authority may not exceed sixty days and the emergency guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained twelve years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the emergency guardian is appointed without notice, notice of the appointment must be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within

five days after the appointment.

**15-14-205. Judicial appointment of guardian - procedure.** (1) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

(a) The minor, if the minor has attained twelve years of age and is not the petitioner;

(b) Any person alleged to have had the primary care and custody of the minor during the sixty days before the filing of the petition;

(c) Each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;

(d) Any person nominated as guardian by the minor if the minor has attained twelve years of age;

(e) Any appointee of a parent or guardian whose appointment has not been prevented or terminated under section 15-14-203 (1) or whose appointment was consented to under section 15-14-203 (2); and

(f) Any guardian or conservator currently acting for the minor in this state or elsewhere.

(2) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 15-14-204 (2) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

(3) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained twelve years of age.

**15-14-206. Judicial appointment of guardian - priority of minor's nominee - limited guardianship.** (1) The court shall appoint a guardian whose appointment will be in the best interest of the minor. The court shall appoint a guardian nominated by the minor, if the minor has attained twelve years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

(2) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this part 2 and thereby create a limited guardianship. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

**15-14-207. Duties of guardian.** (1) Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and

exercise reasonable care, diligence, and prudence.

(2) A guardian shall:

(a) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the ward's personal effects and bring a protective proceeding if necessary to protect other property of the ward;

(c) Expend money of the ward which has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(d) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's future needs;

(e) Report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule; and

(f) Inform the court of any change in the ward's custodial dwelling or address.

**15-14-208. Powers of guardian.** (1) Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.

(2) A guardian may:

(a) Apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(b) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's custodial dwelling outside the state upon express authorization of the court;

(c) If a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(d) Consent to medical or other care, treatment, or service for the ward;

(e) Consent to the marriage of the ward; and

(f) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(3) The court may specifically authorize the guardian to consent to the adoption of the ward.

**15-14-209. Rights and immunities of a guardian.** (1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room and board

provided by the guardian or one who is affiliated with the guardian, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(2) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

**15-14-210. Termination of guardianship - other proceedings after appointment.** (1) A guardianship of a minor terminates upon the minor's death, adoption, emancipation, or attainment of majority or as ordered by the court.

(2) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained twelve years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

(3) Issues of liability as between an estate and the estate's guardian individually may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In other appropriate proceedings.

## PART 3

## GUARDIANSHIP OF INCAPACITATED PERSON

**15-14-301. Appointment and status of guardian.** A person becomes a guardian of an incapacitated person upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

**15-14-302. Reserved.**

**15-14-303. Reserved.**

**15-14-304. Judicial appointment of guardian - petition.** (1) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(2) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;

(b) (I) The name and address of the respondent's:

(A) Spouse or partner in a civil union or, if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and

(B) Adult children and parents; or

(II) If the respondent has neither spouse, partner in a civil union, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

(c) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;

(d) The name and address of each legal representative of the respondent;

(e) The name and address of each person nominated as guardian by the respondent;

(f) The name and address of each proposed guardian and the reason why the proposed guardian should be selected;

(g) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;

(h) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and

(i) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

**15-14-305. Preliminaries to hearing.** (1) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;

(b) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(c) Inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed guardian;

(b) Visit the respondent's present dwelling and any dwelling in which the respondent will live, if known, if the appointment is made;

(c) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Make any other investigation the court directs.

(5) The visitor shall promptly file a report in writing with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

(c) Recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(d) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed guardian;

(II) The powers and duties proposed; and

(III) The scope of the guardianship;

(e) A statement as to whether the proposed dwelling meets the respondent's individual needs;

(f) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(g) Any other matters the court directs.

**15-14-306. Professional evaluation.** (1) At or before a hearing under this part 3, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

(a) A description of the nature, type, and extent of the respondent's specific cognitive and

functional limitations, if any;

(b) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(c) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(d) The date of any assessment or examination upon which the report is based.

**15-14-307. Reserved.**

**15-14-308. Presence and rights at hearing.** (1) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent and may be closed upon the request of the respondent or upon a showing of good cause, except that the hearing may not be closed over the objection of the respondent.

(2) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

(3) The petitioner shall make every reasonable effort to secure the respondent's attendance at the hearing.

**15-14-309. Notice.** (1) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

(2) In a proceeding to establish a guardianship, a copy of the petition for guardianship and notice of the hearing meeting the requirements of subsection (1) of this section must be given to the persons listed in the petition. Failure to give notice under this subsection (2) is not jurisdictional and thus does not preclude the appointment of a guardian or the making of a protective order.

(3) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.

(4) A guardian shall give notice of the filing of the guardian's report, together with a copy

of the report, to the ward and any other person the court directs. The notice must be delivered or sent within ten days after the filing of the report.

**15-14-310. Who may be guardian - priorities - prohibition of dual roles.** (1) Subject to subsection (4) of this section, the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

(a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(b) A person nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney or given priority to be a guardian in a designated beneficiary agreement made pursuant to article 22 of this title;

(c) An agent appointed by the respondent under a medical durable power of attorney pursuant to section 15-14-506;

(d) An agent appointed by the respondent under a general durable power of attorney;

(e) The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

(e.5) The partner in a civil union of the respondent or a person nominated by will or other signed writing of a deceased partner in a civil union;

(f) An adult child of the respondent;

(g) A parent of the respondent or an individual nominated by will or other signed writing of a deceased parent; and

(h) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

(2) A respondent's nomination or appointment of a guardian shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.

(3) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause shown, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(4) An owner, operator, or employee of a long-term-care provider from which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

(5) (a) Unless the court makes specific findings for good cause shown or the person is a family caregiver as defined in section 25.5-10-202, C.R.S., or the person is a caregiver to an eligible person pursuant to section 25.5-6-1101 (4), C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person unless the person is a family caregiver as defined in section 25.5-10-202, C.R.S.

**15-14-311. Findings - order of appointment.** (1) The court may:

(a) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(I) The respondent is an incapacitated person; and

(II) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or

(b) With appropriate findings, treat the petition as one for a protective order under section 15-14-401, enter any other appropriate order, or dismiss the proceeding.

(2) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(3) Within thirty days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

**15-14-312. Emergency guardian.** (1) If the court finds that compliance with the procedures of this part 3 will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order. Immediately upon appointment of an emergency guardian, the court shall appoint a lawyer to represent the respondent throughout the emergency guardianship. Except as otherwise provided in subsection (2) of this section, reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(2) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from testimony that the respondent will be substantially harmed if the appointment is delayed. If not present at the hearing, the respondent must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within fourteen days after the court's receipt of such a request.

(3) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(4) The court may remove an emergency guardian or modify the powers granted at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article concerning guardians apply to an emergency guardian.

**15-14-313. Temporary substitute guardian.** (1) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate

action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward, the affected guardian, and other interested persons, the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(2) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article concerning guardians apply to a temporary substitute guardian.

**15-14-314. Duties of guardian.** (1) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian shall:

(a) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

(c) Expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(d) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;

(e) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed;

(f) Inform the court of any change in the ward's custodial dwelling or address; and

(g) Immediately notify the court in writing of the ward's death.

**15-14-315. Powers of guardian.** (1) Subject to the limitations set forth in section 15-14-316 and except as otherwise limited by the court, a guardian may:

(a) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any

private contract, devise, trust, conservatorship, or custodianship;

(b) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside this state upon express authorization of the court;

(c) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(d) Consent to medical or other care, treatment, or service for the ward; and

(e) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(2) The court may specifically authorize or direct the guardian to consent to the adoption or marriage of the ward.

**15-14-315.5. Dissolution of marriage and legal separation.** (1) The guardian may petition the court for authority to commence and maintain an action for dissolution of marriage or legal separation on behalf of the ward. The court may grant such authority only if satisfied, after notice and hearing, that:

(a) It is in the best interest of the ward based on evidence of abandonment, abuse, exploitation, or other compelling circumstances, and the ward either is incapable of consenting; or

(b) The ward has consented to the proposed dissolution of marriage or legal separation.

(2) Nothing in this section shall be construed as modifying the statutory grounds for dissolution of marriage and legal separation as set forth in section 14-10-106, C.R.S.

**15-14-316. Rights and immunities of guardian - limitations.** (1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room and board provided by the guardian or one who is affiliated with the guardian, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(2) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the third party.

(3) A guardian, without authorization of the court, may not revoke a medical durable power of attorney made pursuant to section 15-14-506 of which the ward is the principal. If a medical durable power of attorney made pursuant to section 15-14-506 is in effect, absent an

order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(4) A guardian may not initiate the commitment of a ward to a mental health care institution or facility except in accordance with the state's procedure for involuntary civil commitment. To obtain hospital or institutional care and treatment for mental illness of a ward, a guardian shall proceed as provided under article 65 of title 27, C.R.S. To obtain services and supports from an approved service agency as defined in section 25.5-10-202, C.R.S., for a ward with intellectual and developmental disabilities, a guardian shall proceed under article 10 of title 25.5, C.R.S. To obtain care and treatment for alcoholism or substance abuse, a guardian shall proceed as provided under article 80 of title 27, C.R.S. No guardian shall have the authority to consent to any such care or treatment against the will of the ward.

**15-14-317. Reports - monitoring of guardianship - court access to records.** (1) Within sixty days after appointment or as otherwise directed by the court, a guardian shall report to the court in writing on the condition of the ward, the guardian's personal care plan for the ward, and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The annual report must state or contain:

(a) The current mental, physical, and social condition of the ward;

(b) The living arrangements for all addresses of the ward during the reporting period;

(c) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

(d) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

(e) Whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;

(f) Plans for future care; and

(g) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(2) The court may appoint a visitor or other suitable person to review a report, interview the ward or guardian, and make any other investigation the court directs.

(3) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

(4) (a) Whenever a guardian fails to file a report or fails to respond to an order of the court to show cause why the guardian should not be held in contempt of court, the clerk of the court or his or her designee may research the whereabouts and contact information of the guardian and the ward. To facilitate this research, the clerk of the court or his or her designee shall have access to data maintained by other state agencies, including but not limited to vital statistics information maintained by the department of public health and environment, wage and employment data maintained by the department of labor and employment, lists of licensed drivers and income tax data maintained by the department of revenue and provided pursuant to section 13-71-107, C.R.S., and voter registration information obtained annually by the state court

administrator pursuant to section 13-71-107, C.R.S. The court may access the data only to obtain contact information for the guardian or the ward. Notwithstanding any provision of law to the contrary, the judicial department and the other state agencies listed in this paragraph (a) may enter into agreements for the sharing of this data. The judicial department and the courts shall not access data maintained pursuant to the "Address Confidentiality Program Act", part 21 of article 30 of title 24, C.R.S.

(b) The court shall preserve the confidentiality of the data obtained from other state agencies and use the data only for the purposes set forth in this subsection (4). Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the court pursuant to this subsection (4) are not public records and shall be open to public inspection only upon an order of the court based on a finding of good cause, except to the extent they would otherwise be open to inspection from the providing state agency.

(c) For purposes of this subsection (4), "contact information" means name, residential address, business address, date of birth, date of death, phone number, e-mail address, or other identifying information as directed by the court.

**15-14-318. Termination or modification of guardianship - resignation or removal of guardian.** (1) A guardianship terminates upon the death of the ward or upon order of the court.

(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court shall terminate a guardianship if the ward no longer meets the standard for establishing the guardianship. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(3) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship.

(3.5) The following provisions apply in a termination proceeding that is initiated by the ward:

(a) The guardian may file a written report to the court regarding any matter relevant to the termination proceeding, and the guardian may file a motion for instructions regarding any relevant matter including, but not limited to, the following:

(I) Whether an attorney, guardian ad litem, or visitor should be appointed for the ward;

(II) Whether any further investigation or professional evaluation of the ward should be conducted, the scope of the investigation or professional evaluation, and when the investigation or professional evaluation should be completed; and

(III) Whether the guardian is to be involved in the termination proceedings and, if so, to what extent.

(b) If the guardian elects to file a written report or a motion for instructions, the guardian shall file such initial pleadings within twenty-one days after the petition to terminate has been filed. Any interested person shall then have fourteen days to file a response. If a response is filed, the guardian shall have seven days to file a reply. If a motion for instructions is filed by the

guardian as his or her initial pleading, the court shall rule on the motion before the petition for termination of the guardianship is set for hearing. Unless a hearing on the motion for instructions is requested by the court, the court may rule on the pleadings without a hearing after the time period for the filing of the last responsive pleading has expired. After the filing of the guardian's initial motion for instructions, the guardian may file subsequent motions for instruction as appropriate.

(c) Except for the actions authorized in paragraphs (a), (b), and (e) of this subsection (3.5), or as otherwise ordered by the court, the guardian may not take any action to oppose or interfere in the termination proceeding. The filing of the initial or subsequent motion for instructions by the guardian shall not, in and of itself, be deemed opposition or interference.

(d) Unless ordered by the court, the guardian shall have no duty to participate in the termination proceeding, and the guardian shall incur no liability for filing the report or motion for instruction or for failing to participate in the proceeding.

(e) Nothing in this subsection (3.5) shall prevent:

(I) The court, on its own motion and regardless of whether the guardian has filed a report or request for instructions, from ordering the guardian to take any action that the court deems appropriate or from appointing an attorney, guardian ad litem, visitor, or professional evaluator;

(II) The court from ordering the guardian to appear at the termination proceeding and give testimony; or

(III) Any interested person from calling the guardian as a witness in the termination proceeding.

(f) Any individual who has been appointed as a guardian, and is an interested person in his or her individual capacity, and wants to participate in the termination proceeding in his or her individual capacity and not in his or her fiduciary capacity may do so without restriction or limitation. The payment of any fees and costs to that individual, related to his or her decision to participate in the termination proceeding, shall be governed by section 15-10-602 (7) and not by section 15-10-602 (1).

(4) The court may remove a guardian pursuant to section 15-10-503 or permit the guardian to resign as set forth in section 15-14-112.

(5) Issues of liability as between an estate and the estate's guardian individually may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In other appropriate proceedings.

(6) When a ward dies, all fees, costs, and expenses of the administration of the guardianship, including any unpaid guardian fees and costs and those of his or her counsel, may be submitted to the court for court approval in conjunction with the termination of the guardianship. Thereafter, all court-approved fees, costs, and expenses of administration arising from the guardianship shall be paid as court-approved claims for costs and expenses of administration in the decedent's estate. In the event that there are insufficient moneys to pay all claims in the decedent's estate in full, the fees, costs, and expenses of administration arising from

the guardianship shall retain their classification as "costs and expenses of administration" in the decedent's estate and shall be paid pursuant to section 15-12-805.

## PART 4

## PROTECTION OF PROPERTY OF PROTECTED PERSON

**15-14-401. Protective proceeding.** (1) Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part 4 in relation to the estate and affairs of:

(a) A minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

(b) Any individual, including a minor, if the court determines that, for reasons other than age:

(I) By clear and convincing evidence, the individual is unable to manage property and business affairs because the individual is unable to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(II) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

**15-14-402. Jurisdiction over business affairs of protected person.** (1) After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for a conservatorship or other protective order;

(b) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

(c) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

**15-14-403. Original petition for appointment or protective order.** (1) The following may petition for the appointment of a conservator or for any other appropriate protective order:

(a) The person to be protected;

(b) An individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or

(c) A person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

(2) A petition under subsection (1) of this section must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;

(b) If the petition alleges impairment in the respondent's ability to effectively receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;

(c) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;

(d) (I) The name and address of the respondent's:

(A) Spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and

(B) Adult children and parents; or

(II) If the respondent has neither spouse, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

(e) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;

(f) The name and address of each legal representative of the respondent;

(g) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(h) The reason why a conservatorship or other protective order is in the best interest of the respondent.

(3) If a conservatorship is requested, the petition must also set forth to the extent known:

(a) The name and address of each proposed conservator and the reason why the proposed conservator should be selected;

(b) The name and address of each person nominated as conservator by the respondent if the respondent has attained twelve years of age; and

(c) The type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

**15-14-404. Notice.** (1) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, if the respondent has attained twelve years of age, but if the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

(2) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection (2) does not preclude the appointment of a conservator or the making of another protective order.

(3) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, must be given to the protected person, if the protected person has attained twelve years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(4) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person and any other person the court directs. The notice must be delivered or sent within ten days after the filing of the inventory, report, or plan of conservatorship.

**15-14-405. Original petition - minors - preliminaries to hearing.** (1) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained twelve years of age.

(2) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the minor as may be required for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a special conservator to assist in that task.

**15-14-406. Original petition - persons under disability - preliminaries to hearing.** (1) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court shall appoint a visitor unless the petition does not request the appointment of a conservator and

the respondent is represented by a lawyer. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training or experience as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

(a) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(b) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(c) Inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed conservator, if any; and

(b) Make any other investigation the court directs.

(5) The visitor shall promptly file a report with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) Recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(c) A statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed conservator;

(II) The powers and duties proposed; and

(III) The scope of the conservatorship;

(d) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(e) Any other matters the court directs.

(6) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the

respondent or individuals who are in fact dependent upon the respondent. The court may appoint a special conservator to assist in that task.

(7) Repealed.

**15-14-406.5. Professional evaluation.** (1) At or before a hearing under this part 4, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless the court directs otherwise, the report must contain:

(a) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any;

(b) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(c) A prognosis for improvement and a recommendation as to the appropriate treatment of habilitation plan; and

(d) The date of any assessment or examination upon which the report is based.

**15-14-407. Reserved.**

**15-14-408. Original petition - procedure at hearing.** (1) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor, and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent and may be closed upon request of the respondent, or upon a showing of good cause; except that the hearing may not be closed over the objection of the respondent.

(2) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

(3) The petitioner shall make every reasonable effort to secure the respondent's attendance at the hearing.

**15-14-409. Original petition - orders.** (1) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(2) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

(3) Within thirty days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained twelve years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

(4) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.

**15-14-410. Powers of court.** (1) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:

(a) With respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor that may be necessary for the best interest of the minor and members of the minor's immediate family; and

(b) With respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person that the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(2) Subject to section 15-14-110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

**15-14-411. Required court approval.** (1) After notice to interested persons and upon express authorization of the court, a conservator may:

(a) Make gifts, except as otherwise provided in section 15-14-427 (2);

(b) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(c) Exercise or release a power of appointment;

(d) Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

(e) Exercise rights to elect options and change beneficiaries under retirement plans, insurance policies, and annuities or surrender the plans, policies, and annuities for their cash

value;

(f) Exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(g) Make, amend, or revoke the protected person's will.

(2) A conservator, in making, amending, or revoking the protected person's will, shall comply with section 15-11-502 or 15-11-507.

(3) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (1) of this section, shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. To the extent the decision cannot be ascertained, the court shall consider the best interest of the protected person. The court shall also consider:

(a) The financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;

(b) Possible reduction of income, estate, inheritance, or other tax liabilities;

(c) Eligibility for governmental assistance;

(d) The protected person's previous pattern of giving or level of support;

(e) The existing estate plan;

(f) The protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and

(g) Any other factors the court considers relevant, including the best interest of the protected person.

**15-14-412. Protective arrangements and single transactions.** (1) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

(a) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(I) Payment, delivery, deposit, or retention of funds or property;

(II) Sale, mortgage, lease, or other transfer of property;

(III) Purchase of an annuity;

(IV) Making a contract for life care, deposit contract, or contract for training and education; or

(V) Addition to or establishment of a suitable trust, including a trust created under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and

(b) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of, and distribution of settlement of, a claim, upon determining that it is in the best interest of the protected person.

(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 15-14-411 (3).

(3) The court may appoint a special conservator to assist in the accomplishment of any

protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and shall serve until discharged by order after report to the court.

**15-14-412.5. Limited court-approved arrangements authorized for persons seeking medical assistance for nursing home care - applicable to trusts established before a certain date.** (1) The general assembly hereby finds, determines, and declares that:

(a) The state makes significant expenditures for nursing home care under the "Colorado Medical Assistance Act";

(b) A large number of persons do not have enough income to afford nursing home care, but have too much income to qualify for state medical assistance, a situation popularly referred to as the "Utah gap";

(c) Some persons in the Utah gap, through innovative court-approved trust arrangements, have become qualified for state medical assistance, thereby increasing state medical assistance expenditures;

(d) It is therefore appropriate to enact state laws that limit such court-approved trusts in a manner that is consistent with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396 et seq., as amended, and that provide that persons who qualify for assistance as a result of the creation of such trusts shall be treated the same as any other recipient of medical assistance for nursing home care;

(e) In enacting this section, the general assembly intends only to limit certain court-approved trusts and court-approved transfers of property. It is not the general assembly's intent to approve or disapprove of privately created trusts or private transfers of property made under the same or similar circumstances.

(2) The court shall not authorize, direct, or ratify any trust that either has the effect of qualifying or purports to qualify the trust beneficiary for medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., unless the circumstances surrounding the creation of the trust and the trust provisions meet the criteria set forth in section 25.5-6-102 (3), C.R.S. This section shall apply to any court-approved trust that is funded with property owned by the beneficiary at the time the trust is created but shall not apply to any trust that is established and directly funded by a defendant or insurance company in settlement of an action or claim for personal injury brought by or on behalf of the trust beneficiary.

(3) Except as otherwise permitted by Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, the court shall not authorize, direct, or ratify the transfer of any property owned by a protected person if the transfer either has the effect of qualifying or purports to qualify the protected person for medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., unless the property is transferred into a trust established in accordance with subsection (2) of this section.

(4) This section shall take effect January 1, 1992, and shall apply to any court-approved trust established for or court-approved transfer of property made by or for a protected person applying for or receiving medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., on or after said date; except that such a trust created before said date that does

not comply with this section shall be modified to comply with this section no later than July 1, 1992, before which time a court-approved trust or a court-approved transfer of property to a court-approved trust shall not render the protected person ineligible for medical assistance.

(5) The provisions of this section shall not apply if federal funds are not available for persons who would qualify for medical assistance as a result of a court-approved trust that meets the criteria set forth in section 25.5-6-102, C.R.S.

(6) This section applies to trusts established or transfers of property made prior to July 1, 1994. The provisions set forth in sections 15-14-412.6 to 15-14-412.9 and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S., apply to trusts established or property transferred on or after July 1, 1994.

**15-14-412.6. Trust established by an individual - eligibility for certain public assistance programs - general provisions.** (1) For purposes of this section and sections 15-14-412.7 to 15-14-412.9, unless the context otherwise requires the following definitions apply:

(a) "Asset" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (e), as amended.

(b) "Income" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (e), as amended.

(c) "Public assistance" means public assistance as provided by article 2 of title 26, C.R.S., and medical assistance as provided by articles 4, 5, and 6 of title 25.5, C.R.S.

(d) "Resources" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (e), as amended.

(e) "Trust established by an individual" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (d) (2), as amended.

(2) Notwithstanding any statutory provision to the contrary, a court shall not authorize, direct, or ratify any trust established by an individual that has the effect of qualifying or purports to qualify the trust beneficiary for public assistance unless the trust meets the criteria set forth in this section, sections 15-14-412.7 to 15-14-412.9, and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

(3) The court shall not authorize, direct, or ratify the transfer of any assets owned by a protected person if the transfer has the effect of qualifying or purports to qualify the protected person for public assistance unless the assets are transferred to a trust that meets the criteria set forth in this section, sections 15-14-412.7 to 15-14-412.9, and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

**15-14-412.7. Income trusts - limitations.** (1) An income trust within the meaning of this section is a trust established for the benefit of an individual that consists only of pension income, social security, and other monthly income to the individual and accumulated income in the trust and that is established for the purpose or with the effect of establishing or maintaining income eligibility for certain medical assistance.

(2) An income trust shall not be effective for establishing or maintaining income

eligibility for any category of public assistance other than nursing home care or home- and community-based services.

(3) In order to establish or maintain income eligibility, an income trust shall meet all of the following criteria:

(a) The assets used to fund the trust are limited to any monthly unearned income received by the applicant, including any pension payment;

(b) The sole lifetime beneficiaries of the trust are the person for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom the trust was created.

(c) The entire corpus of the trust, or as much of the corpus as may be distributed each month without violating federal requirements for federal financial participation, is distributed each month for expenses related to nursing home care or home- and community-based services for the beneficiary that are approved under the state medical assistance program; except that an amount reasonably necessary to maintain the existence of the trust and to comply with federal requirements may be retained in the trust;

(d) The trust provides that deductions may be made from the monthly trust distribution to the same extent that deductions from the income of a nursing home resident or home- and community-based services client are allowed under the state medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., for nursing home residents and home- and community-based services clients who are not trust beneficiaries. Allowable deductions include the following:

(I) A monthly personal needs allowance;

(II) With respect to nursing home residents only, payments to the beneficiary's community spouse or dependent family members as provided and in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396r-5, as amended, and section 25.5-6-101, C.R.S.;

(III) Specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396a (r), as amended;

(IV) Any other deduction provided by rules of the medical services board, including rules concerning posteligibility treatment of income for home- and community-based services clients;

(e) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, the state agency administering the state medical assistance program receives all amounts remaining in the trust up to the total medical assistance paid on behalf of the individual;

(f) The applicant's monthly gross income from all sources, without reference to the trust, exceeds the income eligibility standard for medical assistance then in effect but is less than the average private pay rate for nursing home care for the geographic region in which the applicant lives.

**15-14-412.8. Disability trusts - limitations.** (1) A disability trust within the meaning of

this section is a trust that is established for an individual under sixty-five years of age who is disabled, as such term is defined in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1382c (a) (3), as amended, consists of assets of the individual, and is established for the purpose or with the effect of establishing or maintaining the individual's resource eligibility for medical assistance.

(2) A disability trust is not valid for the purpose of establishing or maintaining a person's resource eligibility for medical assistance unless the trust meets all of the following criteria:

(a) The trust is funded by assets of an individual under age sixty-five who is disabled as defined in 42 U.S.C. sec. 1382c (a) (3), as amended, and which is established for the benefit of such individual by the individual's parent, grandparent, guardian, or by the court.

(b) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, the department of health care policy and financing receives any amount remaining in the trust up to the total medical assistance paid on behalf of the individual.

(c) The sole lifetime beneficiaries of the trust are the individual for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom the trust was created.

(3) A disability trust is not valid for the purpose of establishing or maintaining eligibility for any category of public assistance other than medical assistance.

(4) No disability trust shall be valid unless the department of health care policy and financing, or its designee, has reviewed the trust and determined that the trust conforms to the requirements of this section and any rules adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

**15-14-412.9. Pooled trusts - limitations.** (1) A pooled trust within the meaning of this section is a trust consisting of individual accounts established for individuals who are disabled and is established for the purpose or with the effect of establishing or maintaining a person's resource eligibility for medical assistance.

(2) A pooled trust is not valid for the purposes of establishing or maintaining eligibility for medical assistance unless the trust meets the following criteria:

(a) The trust is established and managed by a nonprofit association that is approved by the United States internal revenue service.

(b) A separate account is maintained for each beneficiary of the trust; except that the accounts are pooled for purposes of investment and management of funds.

(c) The sole lifetime beneficiaries of the trust are the individual for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom

the trust was created.

(d) Accounts in the trust are established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. sec. 1382c (a) (3), as amended, and are established by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court.

(e) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, to the extent that amounts remaining in the beneficiary's trust account are not retained by the trust, the state medical assistance program receives any amount remaining in that individual's trust account up to the total medical assistance paid on behalf of the individual.

(3) A pooled trust is not valid for the purpose of establishing or maintaining a person's eligibility for any category of public assistance other than medical assistance.

(4) No pooled trust shall be valid unless the department of health care policy and financing, or its designee, has reviewed the trust and determined that the trust conforms to the requirements of this section and any rules adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

**15-14-413. Who may be conservator - priorities - prohibition of dual roles.** (1) Except as otherwise provided in subsection (4) of this section, the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

(a) A conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;

(b) A person nominated as conservator by the respondent, including the respondent's specific nomination of a conservator made in a durable power of attorney or given priority to be a conservator in a designated beneficiary agreement made pursuant to article 22 of this title, if the respondent has attained twelve years of age;

(c) An agent appointed by the respondent to manage the respondent's property under a durable power of attorney;

(d) The spouse of the respondent;

(d.5) The partner in a civil union of the respondent;

(e) An adult child of the respondent;

(f) A parent of the respondent; and

(g) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

(2) A respondent's nomination or appointment of a conservator shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.

(3) A person having priority under paragraph (a), (d), (d.5), (e), or (f) of subsection (1) of this section may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(4) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(5) An owner, operator, or employee of a long-term care provider from which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

(6) (a) Unless the court makes specific findings for good cause shown or the person is a family caregiver as defined in section 25.5-10-202, C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person unless the person is a family caregiver as defined in section 25.5-10-202, C.R.S.

**15-14-414. Petition for order subsequent to appointment.** (1) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:

(a) Requiring bond or collateral or additional bond or collateral, or reducing bond or collateral;

(b) Requiring an accounting for the administration of the protected person's estate;

(c) Directing distribution;

(d) Removing the conservator pursuant to section 15-10-503 and appointing a special or successor conservator;

(e) Modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or

(f) Granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.

(3) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.

(4) At the conclusion of the hearings authorized by this section, the court may review the motions and petitions filed by a party under this section to determine if they were substantially warranted and brought in good faith. If, after the hearing, the court determines that the motions and petitions filed under this section were not substantially warranted or were brought in bad faith, the court may award fees and costs against the movant or petitioner including, but not limited to, the attorney fees and costs incurred by the conservatorship, or the affected parties, in responding to the motions and petitions.

**15-14-415. Bond.** Unless the court makes specific findings as to the reasons a bond is

not required in the present case, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. In the alternative, the court may impose restrictions upon the conservator's access to, or transfer of, the assets of the conservatorship estate. Unless otherwise directed by the court, the cost of the bond shall be charged to the protected person's estate and the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

**15-14-416. Terms and requirements of bond.** (1) The following rules apply to any bond required:

(a) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.

(b) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator may be proceeded against until liability under the bond is exhausted.

(e) Unless otherwise directed by the court, the cost of the bond shall be paid from the protected person's estate.

(2) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

(3) If there is a request for the waiver or reduction of a surety upon a bond, the court may require the conservator to supply the court with a credit report, a statement of the conservator's assets, liabilities, income, and expenses, and a statement about any interests the conservator may have in or liability to the conservatorship estate, or any other information the court may wish to consider.

**15-14-417. Compensation, fees, costs, and expenses of administration - expenses. (Repealed)**

**15-14-418. General duties of conservator - financial plan.** (1) A conservator, in relation to powers conferred by this part 4 or implicit in the title acquired by virtue of the

proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.

(2) A conservator shall take into account the limitations of the protected person, and to the extent possible, as directed by the order of appointment or the financial plan, encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.

(3) Within a time set by the court, but no later than ninety days after appointment, a conservator shall file for approval with the appointing court a financial plan for protecting, managing, expending, and distributing the income and assets of the protected person's estate. The financial plan shall be based upon a comparison of the projected income and expenses of the protected person and shall set forth a plan to address the needs of the person and how the assets and income of the protected person shall be managed to meet those needs. The financial plan must be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the financial plan steps to the extent possible to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections of expenses and resources.

(4) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator. The conservator may examine the will and any other donative, nominative, or other appointive instrument of the person.

(5) A conservator shall file an amended financial plan whenever there is a change in circumstances that requires a substantial deviation from the existing financial plan.

**15-14-419. Inventory.** (1) Within a time set by the court, but no later than ninety days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(2) If any property not included in the original inventory comes to the knowledge of a conservator or if the conservator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he or she shall prepare an amended inventory and file it with the court and provide copies to interested parties as directed by prior court orders.

**15-14-420. Reports - appointment of monitor - monitoring - records - court access to records.** (1) A conservator shall report to the court about the administration of the estate annually unless the court otherwise directs. Upon filing a petition or motion and after notice, a conservator shall be entitled to a hearing to settle all matters covered in an intermediate or final report. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates all of the conservator's, his or her other counsel's, and his or her other agent's liabilities concerning all matters adequately disclosed in the report. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities of the conservator, his or her counsel, and that of his or her agents relating to the conservatorship, the protected

person, or the protected person's successors.

(2) Unless the court orders otherwise, a report must:

(a) Contain a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;

(b) Reflect the services provided to the protected person; and

(c) State any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(3) The court may appoint a visitor or other suitable person to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.

(4) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans.

(5) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person within thirty days unless the court otherwise directs.

(6) (a) Whenever a conservator fails to file a report or fails to respond to an order of the court to show cause why the conservator should not be held in contempt of court, the clerk of the court or his or her designee may research the whereabouts and contact information of the conservator and the protected person. To facilitate this research, the clerk of the court or his or her designee shall have access to data maintained by other state agencies, including but not limited to vital statistics information maintained by the department of public health and environment, wage and employment data maintained by the department of labor and employment, lists of licensed drivers and income tax data maintained by the department of revenue and provided pursuant to section 13-71-107, C.R.S., and voter registration information obtained annually by the state court administrator pursuant to section 13-71-107, C.R.S. The court may access the data only to obtain contact information for the conservator or the ward. Notwithstanding any provision of law to the contrary, the judicial department and the other state agencies listed in this paragraph (a) may enter into agreements for the sharing of this data. The judicial department and the courts shall not access data maintained pursuant to the "Address Confidentiality Program Act", part 21 of article 30 of title 24, C.R.S.

(b) The court shall preserve the confidentiality of the data obtained from the other state agencies and use the data only for the purposes set forth in this subsection (6). Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the court pursuant to this subsection (6) are not public records and shall be open to public inspection only upon an order of the court based on a finding of good cause, except to the extent they would otherwise be open to inspection from the providing state agency.

(c) For purposes of this subsection (6), "contact information" means name, residential address, business address, date of birth, date of death, phone number, e-mail address, or other identifying information as directed by the court.

**15-14-421. Title by appointment.** (1) Except as limited in the appointing order, the appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired, including title to any property held for the protected person by custodians or attorneys-in-fact. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order. Notwithstanding the language vesting title in the conservator in this section, this vesting of title shall not be construed to sever any joint tenancies.

(2) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(3) Subject to the requirements of other statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

(4) Neither the appointment of a conservator nor the establishment of a trust in accordance with sections 15-14-412.5 to 15-14-412.9 is a transfer or an alienation within the meaning of the general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument imposing restrictions upon or penalties for the transfer or alienation by the protected person of his or her rights or interest, but this section does not restrict the ability of a person to make specific provisions by contract or dispositive instrument relating to a conservator.

(5) Except as limited in the appointing order, a conservator has the authority to continue, modify, or revoke any financial power of attorney previously created by the protected person.

(6) (a) Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person:

(I) Shall take no further actions without the direct written authorization of the conservator;

(II) Shall promptly report to the conservator as to any action taken under the power of attorney; and

(III) Shall promptly account to the conservator for all actions taken under the power of attorney.

(b) Nothing in this section shall be construed to affect previously created medical decision-making authority. Any agent violating this section shall be liable to the protected person's estate for all costs incurred in attempting to obtain compliance, including but not limited to reasonable conservator and attorney fees and costs.

**15-14-422. Protected person's interest inalienable.** (1) Except as otherwise provided in subsections (3) and (4) of this section, the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise

to a claim against the protected person for restitution or damages that, subject to presentation and allowance, may be satisfied as provided in section 15-14-429.

(2) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under section 15-14-429.

(3) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(4) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

**15-14-423. Sale, encumbrance, or other transaction involving conflict of interest.** Any transaction involving the conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

**15-14-424. Protection of person dealing with conservator.** (1) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under section 15-14-410 or 15-14-411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 15-14-110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(2) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

(3) Any recorded instrument evidencing a transaction described in this section on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S., shall be prima facie evidence that such transaction was made for value.

**15-14-425. Powers of conservator in administration.** (1) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a

conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this state.

(2) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

(a) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

(b) Receive additions to the estate;

(c) Continue or participate in the operation of any business or other enterprise;

(d) Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) Invest assets of the estate as though the conservator were a trustee;

(f) Deposit money of the estate in a financial institution, including one operated by the conservator;

(g) Acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

(h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(i) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(j) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;

(m) Vote a security, in person or by general or limited proxy;

(n) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) Sell or exercise stock subscription or conversion rights;

(p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(r) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

(s) Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the

protected person for advances so made;

(t) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(u) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(v) Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(w) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:

(I) To the guardian of the distributee;

(II) To a distributee's custodian under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., or custodial trustee under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; or

(III) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(x) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and

(y) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(3) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator may exercise any of the powers enumerated in the "Colorado Fiduciaries' Powers Act", part 8 of article 1 of this title.

(4) The court may confer on a conservator at the time of appointment or later, in addition to the powers conferred by sections 15-14-425, 15-14-426, and 15-14-427, any power that the court itself could exercise under section 15-14-410. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 15-14-425, 15-14-426, and 15-14-427, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by section 15-14-425, 15-14-426, or 15-14-427 or specifies, as provided in section 15-14-421 (1) that title to some but not all assets of the protected person vest in the conservator, the limitation shall be endorsed upon the conservator's letters of appointment.

(5) In investing the estate, and in selecting assets of the estate for distribution under section 15-14-427, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, and in exercising any other powers vested in them, the conservator and the court should take into account any known estate plan of the protected person, including his or her will, any revocable trust of which he or she is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his or her death to another or others which he or she may have originated. The conservator may examine the will of the protected person.

**15-14-425.5. Authority to petition for dissolution of marriage or legal separation.** (1) The conservator may petition the court for authority to commence and maintain an action for dissolution of marriage or legal separation on behalf of the protected person. The court may grant such authority only if satisfied, after notice and hearing, that:

(a) It is in the best interests of the protected person based on evidence of abandonment, abuse, exploitation, or other compelling circumstances, and the protected person either is incapable of consenting; or

(b) The protected person has consented to the proposed dissolution of marriage or legal separation.

(2) Nothing in this section shall be construed as modifying the statutory grounds for dissolution of marriage and legal separation as set forth in section 14-10-106, C.R.S.

**15-14-426. Delegation.** (1) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(2) The conservator shall exercise reasonable care, skill, and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;

(c) Periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and

(d) Redressing an action or decision of an agent that would constitute a breach of trust if performed by the conservator.

(3) A conservator who complies with subsections (1) and (2) of this section is not liable to the protected person or to the estate or to the protected person's successors for the decisions or actions of the agent to whom a function was delegated.

(4) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(5) By accepting a delegation from a conservator subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

**15-14-427. Principles of distribution by conservator.** (1) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the financial plan filed pursuant to section 15-14-418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child support or spousal maintenance, in accordance with the following rules:

(a) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.

(b) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(c) In making distributions under this paragraph (c), the conservator shall consider:

(I) The size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage his or her business affairs and the estate;

(II) The accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and

(III) Other money or sources used for the support of the protected person.

(d) Money expended under this paragraph (d) may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(2) If an estate is ample to provide for the distributions authorized by subsection (1) of this section, a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year twenty percent of the income of the estate in that year.

**15-14-428. Death of protected person.** (1) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person that is in the conservator's possession or control, inform the personal representative or devisees named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.

(2) After the death of the protected person, the conservator shall make no expenditures of conservatorship funds except with court authorization other than necessary to preserve the assets of the estate. However, the conservator may release funds for the funeral, cremation, or burial of the deceased protected person if necessary to do so under the circumstances.

(3) When a protected person dies, all fees, costs, and expenses of administration of the conservatorship, including any unpaid conservator fees and costs and those of his or her counsel, may be submitted to the court for approval in conjunction with the termination of the conservatorship. Thereafter, all court-approved fees, costs, and expenses of administration arising from the conservatorship shall be paid as court-approved claims for costs and expenses of administration in the decedent's estate. In the event that there are insufficient moneys to pay all

claims in the decedent's estate in full, the fees, costs, and expenses of administration arising from the conservatorship shall retain their classification as "costs and expenses of administration" in the decedent's estate and shall be paid pursuant to section 15-12-805.

**15-14-429. Presentation and allowance of claims.** (1) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (4) of this section. A claimant may present a claim by:

(a) Delivering or mailing to the court-appointed conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(b) Filing a written statement of the claim with the clerk of the court, in the form approved by the supreme court, and delivering or mailing a copy of the statement to the conservator.

(2) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is deemed allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within sixty-three days after its presentation. The conservator before payment may change an allowance or deemed allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until thirty-five days after its disallowance. If a claim is not yet due, the claim shall state the date when it will become due. If a claim is contingent or unliquidated, the claim shall state the nature of the uncertainty or the anticipated due date of the claim.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(4) If it appears that the estate is likely to be exhausted before all existing claims are paid:

(a) The conservator may, without a court order, distribute the estate in money or in kind in payment of claims in the following order:

(I) Costs and expenses of administration;

(II) Claims of the federal or state government having priority under other law;

(III) Claims incurred by the conservator for support, care, education, health, and welfare provided to the protected person or individuals who are in fact dependent on the protected person;

(IV) Claims arising before the conservatorship; and

(V) All other claims.

(b) (I) At any time during the administration, if the payment of claims as set forth in

paragraph (a) of this subsection (4) would substantially deplete the conservatorship estate and leave the conservatorship estate with insufficient funds to pay for the protected person's basic living and health care expenses, the conservator may file a motion with the court seeking permission to withhold payment of allowed claims, both those existing and incurred after the date of the motion, and pay only the expenses, claims, and amounts requested by the conservator regardless of the priority of the claim, as set forth in said paragraph (a).

(II) If the conservator files a motion as described in subparagraph (I) of this paragraph (b), the factors to be considered by the court include, but are not limited to:

(A) The current and future projected care costs of the protected person;

(B) The current and projected assets of the protected person, including the assets of the conservatorship estate;

(C) The life expectancy of the protected person;

(D) The current and projected income of the protected person and the conservatorship estate;

(E) The protected person's eligibility for benefits to cover living and health care expenses; and

(F) Whether there are individuals who are in fact dependent on the protected person.

(III) Notice of a motion filed under this section shall be provided to all interested persons and to all creditors whose claims are affected.

(IV) If any order is entered restricting payments on any creditor's claims, the conservator shall provide information in the annual report regarding whether the order restricting payment of the creditor's claims should be modified.

(c) to (e) (Deleted by amendment, L. 2013.)

(5) Unless the court orders otherwise, allowed claims within the same class shall be paid pro rata. Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(6) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

(7) Nothing in this section affects or prevents:

(a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) To the limits of the insurance protection only, any proceeding to establish liability of the protected person for which he or she is protected by liability insurance.

(8) Unless otherwise provided in any judgment in another court entered against the protected person or the protected person's estate, an allowed claim bears interest at the legal rate for the period commencing sixty-three days after the time the claim was originally filed with the court or delivered to the conservator, unless based on a contract making a provision for interest, in which case, such claim bears interest in accordance with that contract's provisions.

(9) Each written statement of a claim shall include:

(a) A request or demand for payment from the protected person or the conservatorship estate; and

(b) Sufficient information to allow the conservator to investigate and respond to the

claim, including its basis, the name and address of the claimant, and the amount claimed.

**15-14-430. Personal liability of conservator.** (1) Except as otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(2) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(3) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(4) A question of liability between the estate and the conservator personally may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In another appropriate proceeding or action.

(5) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under section 15-14-421.

**15-14-431. Termination of proceedings.** (1) A conservatorship terminates upon the death of the protected person or upon order of the court determining that a conservatorship is no longer necessary or needed to protect the assets of the protected person. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains the age of twenty-one years. Upon learning of the protected person's death, the conservator shall promptly give notice of death to the court and all other persons designated to receive notice of subsequent actions in the order appointing the conservator.

(2) Upon receiving an order terminating the conservatorship or upon receiving notice of the death of a protected person, the conservator shall conclude the administration of the estate by filing a final report and a petition for discharge within sixty-three days after distribution unless otherwise directed by the court.

(3) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer meets the statutory requirements for the creation of a conservatorship. Termination of the conservatorship without a decree of discharge does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(4) Except as otherwise ordered by the court for good cause, before terminating a

conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. The court shall order termination unless it is proved by clear and convincing evidence that continuation of the conservatorship is still statutorily warranted and is still in the best interest of the protected person.

(4.5) The following provisions apply in a termination proceeding that is initiated by the protected person:

(a) The conservator may file a written report to the court regarding any matter relevant to the termination proceeding, and the conservator may file a motion for instructions concerning any relevant matter including, but not limited to, the following:

(I) Whether an attorney, guardian ad litem, or visitor should be appointed for the protected person;

(II) Whether any further investigation or professional evaluation of the protected person should be conducted, the scope of the investigation or professional evaluation, and when the investigation or professional evaluation should be completed; and

(III) Whether the conservator is to be involved in the termination proceedings, and if so, to what extent.

(b) If the conservator elects to file a written report or a motion for instructions, the conservator shall file such initial pleadings within twenty-one days after the petition to terminate has been filed. Any interested person shall then have fourteen days to file a response. If a response is filed, the conservator shall have seven days to file a reply. If a motion for instructions is filed by the conservator as his or her initial pleading, the court shall rule on that motion before the petition for termination of the conservatorship is set for hearing. Unless a hearing on the motion for instructions is requested by the court, the court may rule on the pleadings without a hearing after the time period for the filing of the last responsive pleading has expired. After the filing of the conservator's initial motion for instructions, the conservator may file subsequent motions for instruction as appropriate.

(c) Except for the actions authorized in paragraphs (a), (b), and (e) of this subsection (4.5) or as otherwise ordered by the court, the conservator may not take any action to oppose or interfere in the termination proceeding. The filing of the initial or subsequent motion for instructions by the conservator shall not, in and of itself, be deemed opposition or interference.

(d) Unless ordered by the court, the conservator shall have no duty to participate in the termination proceeding, and the conservator shall incur no liability for filing the report or motion for instruction or for failing to participate in the proceeding.

(e) Nothing in this subsection (4.5) shall prevent:

(I) The court, on its own motion and regardless of whether the conservator has filed a report or request for instructions, from ordering the conservator to take any action that the court deems appropriate, or from appointing an attorney, guardian ad litem, visitor, or professional evaluator;

(II) The court from ordering the conservator to appear at the termination proceeding and give testimony; or

(III) Any interested person from calling the conservator as a witness in the termination proceeding.

(f) Any individual who has been appointed as a conservator, is an interested person in his

or her individual capacity, and wants to participate in the termination proceeding in his or her individual capacity and not in his or her fiduciary capacity may do so without restriction or limitation. The payment of any fees and costs to the individual that are related to his or her decision to participate in the termination proceeding shall be governed by section 15-10-602 (7) and not section 15-10-602 (1).

(5) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person, the former protected person's successors, or as ordered by the court. The order of termination must provide for the payment of all fees, costs, and expenses of administration and direct the conservator to file appropriate instruments to evidence the transfer of title or confirm the ordered distribution pursuant to the schedule of distribution prior to receiving the decree of discharge.

(6) The court shall enter a decree of discharge upon being fully satisfied that the conservator has met all conditions required by the court for the conservator's discharge.

**15-14-432. Payment of debt and delivery of property to foreign conservator without local proceeding.** (1) A person who is indebted to or has the possession of tangible or intangible property of a protected person may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state of residence of the protected person. Payment or delivery may be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in this state and the foreign fiduciary is entitled to payment or to receive delivery.

(2) Payment or delivery in accordance with subsection (1) of this section discharges the debtor or possessor, absent knowledge of any protective proceeding pending in this state.

**15-14-433. Foreign conservator - proof of authority - bond - powers.** If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed in the state in which the protected person resides may file in a district or probate court of this state, in a county in which property belonging to the protected person is located, authenticated copies of the conservator's appointment documents and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this state as to property in this state and may maintain actions and proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

## PART 5

## POWERS OF ATTORNEY

**15-14-500.3. Legislative declaration.** (1) The general assembly hereby recognizes that each adult individual has the right as a principal to appoint an agent to deal with property or

make personal decisions for the individual, but that this right cannot be fully effective unless the principal may empower the agent to act throughout the principal's lifetime, including during periods of disability, and be sure that any third party will honor the agent's authority at all times.

(2) The general assembly hereby finds, determines, and declares that:

(a) In light of modern financial needs, the statutory recognition of the right of delegation in Colorado must be restated, among other things, to expand its application and the permissible scope of the agent's authority, to clarify the power of the individual to authorize an agent to make financial decisions for the individual, and to better protect any third party who relies in good faith on the agent so that reliance will be assured.

(b) The public interest requires a standard form for certification of agency that any third party may use to assure that an agent's authority under an agency has not been altered or terminated.

(3) The general assembly hereby finds, determines, and declares that nothing in this part 5 or part 6 or 7 of this article shall be deemed to authorize or encourage any course of action that violates the criminal laws of this state or the United States. Similarly, nothing in this part 5 or part 6 or 7 of this article shall be deemed to authorize or encourage any violation of any civil right expressed in the constitution, statutes, case law, or administrative rulings of this state or the United States or any course of action that violates the public policy expressed in the constitution, statutes, case law, or administrative rulings of this state or the United States.

(4) The general assembly hereby recognizes each adult's constitutional right to accept or reject medical treatment, artificial nourishment, and hydration and the right to create advanced medical directives and to appoint an agent to make health care decisions under a medical durable power of attorney. The "Colorado Patient Autonomy Act", sections 15-14-503 to 15-14-509, is intended to assist the exercise of such rights.

(5) In the event of a conflict between the provisions of part 7 of this article and the "Colorado Patient Autonomy Act" or between the provisions of powers of attorney prepared pursuant to part 7 of this article and the "Colorado Patient Autonomy Act", the provisions of the "Colorado Patient Autonomy Act" or provisions of powers of attorney prepared pursuant to the "Colorado Patient Autonomy Act" shall prevail.

(6) Parts 6 and 7 of this article do not abridge the right of any person to enter into a verbal principal and agent relationship. A brokerage relationship between a real estate broker and a seller, landlord, buyer, or tenant in a real estate transaction established pursuant to part 8 of article 61 of title 12, C.R.S., shall be governed by the provisions of part 8 of article 61 of title 12, C.R.S., and not by parts 6 and 7 of this article.

(7) Parts 6 and 7 of this article do not create any power or right in an agent that the agent's principal does not hold or possess and does not abridge contracts existing between principals and third parties.

**15-14-500.5. Definitions - excluded powers.** (1) (a) For purposes of sections 15-14-501 and 15-14-502, "power of attorney" means a power to make health care decisions granted by an individual.

(b) For purposes of section 15-14-502, "power of attorney" also includes a power or

delegation that is:

(I) Excluded from the application of part 7 of this article pursuant to section 15-14-703;

(II) Not a power to make health care decisions; and

(III) Not effective without application of section 15-14-502.

(c) For purposes of this part 5 and part 6 of this article, "medical durable power of attorney" and "medical power of attorney" means a power to make health care decisions.

(2) A power and delegation that is excluded from the application of part 7 of this article by section 15-14-703, other than a power to make health care decisions, may be exercised during the incapacity of the principal to the extent provided in the power or delegation or by applicable principles of law and equity.

**15-14-501. When power of attorney not affected by disability.** (1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal." or "This power of attorney shall become effective upon the disability of the principal." or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. The authority of the attorney-in-fact or agent to act on behalf of the principal shall be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or after acquires relating to the principal or any matter, transaction, or property, real or personal, tangible or intangible. The authority of the agent with regard to medical treatment decisions on behalf of a principal is set forth in sections 15-14-503 to 15-14-509. The attorney-in-fact or agent, however, is subject to the same limitations imposed upon court-appointed guardians contained in section 15-14-312 (1) (a). Additionally, the principal may expressly empower his attorney-in-fact or agent to renounce and disclaim interests and powers, to make gifts, in trust or otherwise, and to release and exercise powers of appointment. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. If a guardian or conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall consult with the guardian on matters concerning the principal's personal care or account to the conservator on matters concerning the principal's financial affairs. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency as it relates to financial matters. Subject to any limitation or restriction of the guardian's powers or duties set forth in the order of appointment and endorsed on the letters of guardianship, a guardian has the same power to revoke, suspend, or terminate all or any part of the power of attorney or agency as it relates to matters concerning the principal's personal care that the principal would have had if the principal were not disabled or incompetent, except with respect

to medical treatment decisions made by an agent pursuant to sections 15-14-506 to 15-14-509; however, such exception shall not preclude a court from removing an agent in the event an agent becomes incapacitated, or is unwilling or unable to serve as an agent.

(2) An affidavit, executed by the attorney-in-fact or agent, stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the termination of the power of attorney by death is, in the absence of fraud, conclusive proof of the nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

**15-14-502. Other powers of attorney not revoked until notice of death or disability.** (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing, other than a power as described by section 15-14-501, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney-in-fact or agent, stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

(4) All powers of attorney executed for real estate and other purposes, pursuant to law, shall be deemed valid until revoked as provided in the terms of the power of attorney or as provided by law.

**15-14-503. Short title.** Sections 15-14-503 to 15-14-509 shall be known and may be cited as the "Colorado Patient Autonomy Act".

**15-14-504. Legislative declaration - construction of statute.** (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado law recognizes the right of an adult to accept or reject medical treatment and artificial nourishment and hydration;

(b) Each adult has the right to establish, in advance of the need for medical treatment, any directives and instructions for the administration of medical treatment in the event the person lacks the decisional capacity to provide informed consent to or refusal of medical treatment; and

(c) The enactment of a "Colorado Patient Autonomy Act" is appropriate to affirm a patient's autonomy in accepting or rejecting medical treatment, which right includes the making of medical treatment decisions through an appointed agent under a medical durable power of attorney.

(2) The general assembly does not intend to encourage or discourage any particular medical treatment or to interfere with or affect any method of religious or spiritual healing otherwise permitted by law.

(3) The general assembly does not intend that this part 5 be construed to restrict any other manner in which a person may make advance medical directives.

(4) Nothing in this part 5 shall be construed as condoning, authorizing, or approving euthanasia or mercy killing. In addition, the general assembly does not intend that this part 5 be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by this part 5.

**15-14-505. Definitions.** As used in sections 15-14-503 to 15-14-509, unless the context otherwise requires:

(1) "Adult" means any person eighteen years of age or older.

(2) "Advance medical directive" means any written instructions concerning the making of medical treatment decisions on behalf of the person who has provided the instructions. An advance medical directive includes a medical durable power of attorney executed pursuant to section 15-14-506, a declaration executed pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title, a power of attorney granting medical treatment authority executed prior to July 1, 1992, pursuant to section 15-14-501, and a declaration executed pursuant to article 18.6 of this title.

(3) "Artificial nourishment and hydration" means any medical procedure whereby nourishment or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines or nutrients or fluids are injected intravenously into a person's bloodstream.

(4) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment or the ability to make an informed health care benefit decision.

(4.7) "Health care benefit decision" means any decision or action related to the application, enrollment, disenrollment, appeal, or other function necessary for private or public health care benefits that does not conflict with any known preference of the individual.

(5) "Health care facility" means any hospital, hospice, nursing facility, care center, dialysis treatment facility, assisted living facility, any entity that provides home and community-based services, home health care agency, or any other facility administering or contracting to administer medical treatment, and which is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment.

(6) "Health care provider" means any physician or any other individual who administers medical treatment to persons and who is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment or who is employed by or acting for such authorized person. Health care provider includes a health maintenance organization licensed and conducting

business in this state.

(7) "Medical treatment" means the provision, withholding, or withdrawal of any health care, medical procedure, including artificially provided nourishment and hydration, surgery, cardiopulmonary resuscitation, or service to maintain, diagnose, treat, or provide for a patient's physical or mental health or personal care.

(8) "Physician or designee" means the treating physician or a health care professional under the supervision of the treating physician.

**15-14-506. Medical durable power of attorney.** (1) The authority of an agent to act on behalf of the principal in consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a medical durable power of attorney. A medical durable power of attorney may include any directive, condition, or limitation of an agent's authority.

(2) The agent shall act in accordance with the terms, directives, conditions, or limitations stated in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent. If the medical durable power of attorney contains no directives, conditions, or limitations relating to the principal's medical condition, or if the principal's wishes are not otherwise known to the agent, the agent shall act in accordance with the best interests of the principal as determined by the agent.

(3) An agent appointed in a medical durable power of attorney may provide informed consent to or refusal of medical treatment on behalf of a principal who lacks decisional capacity and shall have the same power to make medical treatment decisions the principal would have if the principal did not lack such decisional capacity. An agent appointed in a medical durable power of attorney shall be considered a designated representative of the patient and shall have the same rights of access to the principal's medical records as the principal. In making medical treatment decisions on behalf of the principal, and subject to the terms of the medical durable power of attorney, the agent shall confer with the principal's attending physician concerning the principal's medical condition.

(3.5) Any medical durable power of attorney executed under sections 15-14-503 to 15-14-509 may also have a document with a written statement as provided in section 12-34-105 (b), C.R.S., or a statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S. Such a written statement may be in the following form:

I hereby make an anatomical gift, to be effective upon my death, of:

A.____ Any needed organs/tissues
B.____ The following organs/tissues:
_____
Donor signature: _____

(4) (a) Nothing in this section or in a medical durable power of attorney shall be construed to abrogate or limit any rights of the principal, including the right to revoke an agent's authority or the right to consent to or refuse any proposed medical treatment, and no agent may consent to or refuse medical treatment for a principal over the principal's objection.

(b) Nothing in this article shall be construed to supersede any provision of article 1 of title 25, C.R.S., or article 10.5 or article 65 of title 27, C.R.S.

(5) (a) Nothing in this part 5 shall have the effect of modifying or changing the standards of the practice of medicine or medical ethics or protocols.

(b) Nothing in this part 5 or in a medical durable power of attorney shall be construed to compel or authorize a health care provider or health care facility to administer medical treatment that is otherwise illegal, medically inappropriate, or contrary to any federal or state law.

(c) Unless otherwise expressly provided in the medical durable power of attorney under which the principal appointed the principal's spouse as the agent, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the principal and spouse appointed as agent automatically revokes such appointment. However, nothing in this paragraph (c) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(d) Unless otherwise specified in the medical durable power of attorney, if a principal revokes the appointment of an agent or the agent is unable or unwilling to serve, the appointment of the agent shall be revoked. However, nothing in this paragraph (d) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(6) (a) This part 5 shall apply to any medical durable power of attorney executed on or after July 1, 1992. Nothing in this part 5 shall be construed to modify or affect the terms of any durable power of attorney executed before such date and which grants medical treatment authority. Any such previously executed durable power of attorney may be amended to conform to the provisions of this part 5. In the event of a conflict between a medical durable power of attorney executed pursuant to this part 5 and a previously executed durable power of attorney, the provisions of the medical durable power of attorney executed pursuant to this part 5 shall prevail.

(b) Unless otherwise specified in a medical durable power of attorney, nothing in this part 5 shall be construed to modify or affect the terms of a declaration executed in accordance with the "Colorado Medical Treatment Decision Act", article 18 of this title.

**15-14-507. Transfer of principal.** (1) A health care provider or health care facility shall provide notice to a principal and an agent of any policies based on moral convictions or religious beliefs of the health care provider or health care facility relative to the withholding or withdrawal of medical treatment. Notice shall be provided, when reasonably possible, prior to the provision of medical treatment or prior to or upon the admission of the principal to the health care facility, or as soon as possible thereafter.

(2) A health care provider or health care facility shall provide for the prompt transfer of the principal to another health care provider or health care facility if such health care provider or

health care facility wishes not to comply with an agent's medical treatment decision on the basis of policies based on moral convictions or religious beliefs.

(3) An agent may transfer the principal to the care of another health care provider or health care facility if an attending physician or health care facility does not wish to comply with an agent's decision for any reason other than those described in subsection (1) of this section.

(4) The transfer of a principal to another health care provider or health care facility in accordance with the provisions of this section shall not constitute a violation of Title XIX of the federal "Social Security Act", 42 U.S.C., sec. 1395dd, regarding the transfer of patients.

(5) Nothing in this section shall relieve or exonerate an attending physician or health care facility from the duty to provide for the care and comfort of the principal pending transfer pursuant to this section.

**15-14-508. Immunities.** (1) An agent or proxy-decision maker, as established in article 18.5 of this title, who acts in good faith in making medical treatment decisions on behalf of a principal pursuant to the terms of a medical durable power of attorney shall not be subject to civil or criminal liability therefor.

(2) Each health care provider and health care facility shall, in good faith, comply, in respective order, with the wishes of the principal, the terms of an advance medical directive, or the decision of an agent acting pursuant to an advance medical directive. A health care provider or health care facility which, in good faith, complies with the medical treatment decision of an agent acting in accordance with an advance medical directive shall not be subject to civil or criminal liability or regulatory sanction therefor.

(3) Good faith actions by any health care provider or health care facility in complying with a medical durable power of attorney or at the direction of a health care agent of the principal which result in the death of the principal following trauma caused by a criminal act or criminal conduct, shall not affect the criminal prosecution of any person charged with the commission of a criminal act or conduct.

(4) Neither a medical durable power of attorney nor the failure of a person to execute one shall affect, impair, or modify any contract of life or health insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or any increase of a premium therefor.

**15-14-509. Interstate effect of medical durable power of attorney.** (1) Unless otherwise stated in a medical durable power of attorney, it shall be presumed that the principal intends to have a medical durable power of attorney executed pursuant to this part 5 recognized to the fullest extent possible by the courts of any other state.

(2) Unless otherwise provided therein, any medical durable power of attorney or similar instrument executed in another state shall be presumed to comply with the provisions of this part 5 and may, in good faith, be relied upon by a health care provider or health care facility in this state.

PART 6

POWER OF ATTORNEY

**15-14-601. Legislative declaration. (Repealed)**

**15-14-602. Definitions.** As used in this part 6:

(1) "Agency" means the relationship between the principal and the principal's agent.

(2) "Agency instrument" means the written power of attorney or other written instrument of agency governing the relationship between the principal and agent. An agency is subject to the provisions of this part 6 to the extent the agency relationship is established in writing and may be controlled by the principal, excluding agencies and powers for the benefit of the agent. This definition shall not apply to medical powers of attorney drafted pursuant to the "Colorado Patient Autonomy Act", sections 15-14-503 to 15-14-509, a power of attorney subject to the "Uniform Power of Attorney Act", part 7 of this article, or to any other power of attorney or instrument of agency granted by an individual.

(3) "Agent" means the attorney-in-fact or other person, including successors, who is authorized by the agency instrument to act for the principal.

(4) "Principal" means a corporation, trust, partnership, limited liability company, or other entity, including, but not limited to, an entity acting as trustee, personal representative, or other fiduciary, who signs a power of attorney or other instrument of agency granting powers to an agent.

(5) "Third party" means any person who is requested by an agent under an agency instrument to recognize the agent's authority to deal with the principal's property or who acts in good-faith reliance on a copy of the agency instrument. "Third party" includes an individual, corporation, trust, partnership, limited liability company, or other entity, as may be appropriate.

**15-14-603. Applicability.** (1) (a) The principal may specify in the agency instrument:

(I) The event upon which or time when the agency begins and terminates;

(II) The mode of revocation or amendment of the agency instrument; and

(III) The rights, powers, duties, limitations, immunities, and other terms applicable to the agent and to all third parties dealing with the agent.

(b) The provisions of the agency instrument control in the case of a conflict between the provisions of the agency instrument and the provisions of this part 6. In the agency instrument, the principal may authorize the agent to appoint a successor agent.

(2) (a) Except as otherwise provided in this part 6, on or after January 1, 1995:

(I) The provisions of this part 6 govern every agency instrument, whenever and wherever executed, and all acts of the agent, to the extent the provisions of this part 6 are not inconsistent with the agency instrument; and

(II) The provisions of this part 6 apply to all agency instruments exercised in Colorado

and to all other agency instruments if the principal is a resident of Colorado at the time the agency instrument is signed or at the time of exercise or if the agency instrument indicates that Colorado law is to apply.

(b) Repealed.

(3) (a) The authority of an attorney-in-fact or an agent to act on behalf of the principal may include, but is not limited to, the powers specified in sections 15-14-501 to 15-14-506.

(b) Repealed.

(4) Repealed.

**15-14-604. Duration of agency - amendment and revocation - resignation of agent.**

(1) (Deleted by amendment, L. 2009, (HB 09-1198), ch. 106, p. 422, § 9, effective January 1, 2010.)

(2) Any agency created by an agency instrument continues until the principal ceased to exist, regardless of the length of time that elapses, unless the agency instrument states an earlier termination date. The principal may amend or revoke the agency instrument at any time and in any manner that is communicated to the agent or to any other person who is related to the subject matter of the agency. Any agent who acts in good faith on behalf of the principal within the scope of an agency instrument is not liable for any acts that are no longer authorized by reason of an amendment or revocation of the agency instrument until the agent receives actual notice of the amendment or revocation. An agency may be temporarily continued under the conditions specified in section 15-14-607.

(3) (Deleted by amendment, L. 2009, (HB 09-1198), ch. 106, p. 422, § 9, effective January 1, 2010.)

(4) Any agent acting on behalf of a principal under an agency instrument has the right to resign under the terms and conditions stated in the agency instrument. If the agency instrument does not specify the terms and conditions of resignation, an agent may resign by notifying the principal, or the principal's receiver, custodian, trustee in bankruptcy, liquidating trustee, or similar representative if one has been appointed, in writing of the agent's resignation. The agent shall also notify in writing the successor agent, if any, and all reasonably ascertainable third parties who are affected by the resignation. In all cases, any party who receives notice of the resignation of an agent is bound by such notice.

**15-14-605. Dissolution of marriage. (Repealed)**

**15-14-606. Duty - standard of care - record keeping - exoneration.** Unless otherwise agreed by the principal and agent in the agency instrument, an agent is under no duty to exercise the powers granted by the agency or to assume control of or responsibility for any of the principal's property or affairs. Whenever the agent exercises the powers granted by the agency, the agent shall use due care to act in the best interests of the principal in accordance with the terms of the agency. Any agent who acts under an agency instrument shall be liable for any

breach of legal duty owed by the agent to the principal under Colorado law. The agent shall keep a record of all receipts, disbursements, and significant actions taken under the agency. The agent shall not be liable for any loss due to the act or default of any other person.

**15-14-607. Reliance on an agency instrument.** (1) (a) Any third party who acts in good-faith reliance on an agency instrument that is duly notarized shall be fully protected and released to the same extent as if such third party dealt directly with the principal as a fully competent person. Upon demand of any third party, the agent shall furnish an affidavit that states that the agency instrument relied upon is a true copy of the agency instrument and that, to the best of the agent's knowledge, the principal is alive and the relevant powers of the agent have not been altered or terminated; however, any third party who acts in good-faith reliance on an agency instrument shall be protected regardless of whether such third party demands or receives an affidavit.

(b) (I) Any third party who deals with an agent may presume, in the absence of actual knowledge to the contrary, that:

(A) The agency instrument naming the agent was validly executed;

(B) The principal had authority to act at the time of execution; and

(C) At the time of reliance, the principal exists, the agency instrument and the relevant powers of the agent have not terminated or been amended, and the acts of the agent conform to the standards of this part 6.

(II) Any third party who relies on an agency instrument shall not be responsible for the proper application of any property delivered to or controlled by the agent or for questioning the authority of the agent.

(2) Any person to whom the agent, operating under a duly notarized agency instrument, communicates a direction that is in accordance with the terms of the agency instrument shall comply with such direction. Any person who arbitrarily or without reasonable cause fails to comply with such direction shall be subject to the costs, expenses, and reasonable attorney fees required to appoint a conservator for the principal, to obtain a declaratory judgment, or to obtain an order pursuant to section 15-14-412. This subsection (2) shall not apply to the sale, transfer, encumbrance, or conveyance of real property.

(3) Any third party that has reasonable cause to question the authenticity, validity, or authority of an agency instrument or agency may make prompt and reasonable inquiry of the agent, the principal, or other persons involved for additional information and may submit an interpleader action to the district court or the probate court of the county in which the principal resides by depositing any funds or other assets that may be affected by the agency instrument with the appropriate court. In such an interpleader action, if the court finds that the third party had reasonable cause to commence the action, the third party shall be entitled to all reasonable expenses and costs incurred by the third party in bringing the interpleader action.

(4) Any third party may require an agent to present, as proof of the agency, either the original agency instrument naming such agent or a facsimile thereof certified by a notary. The third party has discretion to determine whether the agent shall provide the original agency instrument or a certified facsimile.

**15-14-608. Preservation of estate plan and trusts. (Repealed)**

**15-14-609. Agency - court relationship. (Repealed)**

**15-14-610. Statutory form agent's affidavit regarding power of attorney. (Repealed)**

**15-14-611. Applicability of part.** This part 6 does not in any way invalidate any agency or power of attorney executed or any act of any agent, guardian, or conservator done or affect any claim, right, or remedy that accrued prior to January 1, 1995.

PART 7

UNIFORM POWER OF ATTORNEY ACT

SUBPART 1

GENERAL PROVISIONS

**15-14-701. Short title.** This part 7 may be cited as the "Uniform Power of Attorney Act".

**15-14-702. Definitions.** Except as otherwise provided under this part 7, and except as the context may otherwise require, in this part 7:

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable", with respect to a power of attorney, means not terminated by the principal's incapacity.

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

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property or business affairs because the individual:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) Is:

(I) Missing;

(II) Detained, including incarcerated in a penal system; or

(III) Outside the United States and unable to return.

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

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) "Presently exercisable general power of appointment", with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(11) "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.

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

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

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

(13) "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.

(14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

**15-14-703. Applicability.** (1) This part 7 applies to all powers of attorney except:

(a) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(b) A power to make health care decisions;

(c) A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(d) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

**15-14-704. Power of attorney is durable.** (1) A power of attorney created on and after January 1, 2010, is durable unless it expressly provides that it is terminated by the incapacity of the principal.

(2) A power of attorney existing on December 31, 2009, is durable only if on that day the power of attorney is durable under section 15-14-501 or 15-14-745 (2).

**15-14-705. Execution of power of attorney.** A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

**15-14-706. Validity of power of attorney.** (1) A power of attorney executed in this state on or after January 1, 2010, is valid if its execution complies with section 15-14-705.

(2) A power of attorney executed in this state before January 1, 2010, is valid if its execution complied with the law of this state as it existed at the time of execution.

(2.5) It shall not be inferred from the portion of the definition of "incapacity" in section 15-14-702 (5) (b) that an individual who is either incarcerated in a penal system or otherwise detained or outside of the United States and unable to return lacks the capacity to execute a power of attorney as a consequence of such detention or inability to return.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 15-14-707; or

(b) The requirements for a military power of attorney pursuant to 10 U.S.C. sec. 1044b, as amended.

(4) Except as otherwise provided by statute other than this part 7, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. Nothing in this subsection (4) shall preclude a third party relying upon a power of attorney from requesting the original document.

**15-14-707. Meaning and effect of power of attorney.** The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

**15-14-708. Nomination of conservator or guardian - relation of agent to court-appointed fiduciary.** (1) In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

**15-14-709. When power of attorney effective.** (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) A physician or licensed psychologist that the principal is incapacitated within the meaning of section 15-14-702 (5) (a); or

(b) An attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of section 15-14-702 (5) (b).

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal "Health Insurance Portability and Accountability Act", sections 1171 to 1179 of the federal "Social Security Act", 42 U.S.C. sec. 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

**15-14-710. Termination of power of attorney or agent's authority.** (1) A power of attorney terminates when:

(a) The principal dies;

(b) The principal becomes incapacitated, if the power of attorney is not durable;

(c) The principal revokes the power of attorney;

(d) The power of attorney provides that it terminates;

(e) The express purpose of the power of attorney is accomplished; or

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(1.5) In the case of a power of attorney in existence on December 31, 2009, "incapacitated" shall mean an individual with an incapacity as specified in section 15-14-702 (5) (a) and not as specified in section 15-14-702 (5) (b) unless, on that date, this part 7 applies to the power of attorney as provided in section 15-14-745 (2).

(2) An agent's authority terminates when:

(a) The principal revokes the authority;

(b) The agent dies, becomes incapacitated, or resigns;

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

(d) The power of attorney terminates.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2) of this section, notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

**15-14-711. Coagents and successor agents.** (1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) Has the same authority as that granted to the original agent; and

(b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4) of this section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty

by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection (4) is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

**15-14-712. Reimbursement and compensation of agent.** Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

**15-14-713. Agent's acceptance.** Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

**15-14-714. Agent's duties.** (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(b) Act in good faith; and

(c) Act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(a) Act loyally for the principal's benefit;

(b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(e) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(f) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(I) The value and nature of the principal's property;

(II) The principal's foreseeable obligations and need for maintenance;

(III) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(IV) Eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that exercises authority provided in the power of attorney to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.

**15-14-715. Exoneration of agent.** (1) Provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(a) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(b) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

**15-14-716. Judicial relief.** (1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) The principal or the agent;

(b) A guardian, conservator, or other fiduciary acting for the principal;

(c) A person authorized to make health care decisions for the principal;

(d) The principal's spouse, parent, or descendant;

(e) An individual who would qualify as a presumptive heir of the principal;

(f) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) A governmental agency having authority to protect the welfare of the principal;

(h) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

**15-14-717. Agent's liability.** (1) An agent that violates this part 7 is liable to the principal or the principal's successors in interest for the amount required to:

(a) Restore the value of the principal's property to what it would have been had the violation not occurred; and

(b) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

**15-14-718. Agent's resignation - notice.** (1) Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(a) To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(b) If there is no person described in paragraph (a) of this subsection (1), to:

(I) The principal's caregiver;

(II) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(III) A governmental agency having authority to protect the welfare of the principal.

**15-14-719. Acceptance of and reliance upon acknowledged power of attorney.** (1) For purposes of this section and section 15-14-720, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(2) A person that in good faith accepts a purportedly acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 15-14-705 that the signature is genuine.

(3) A person that in good faith accepts a purportedly acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of

attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request and rely upon, without further investigation, one or more of the following:

(a) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; or

(c) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation, an agent's certification, or an opinion of counsel requested under this section must be provided at the principal's expense.

(6) For purposes of this section and section 15-14-720, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

**15-14-720. Liability for refusal to accept acknowledged power of attorney.** (1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under section 15-14-719 (4) no later than seven business days after presentation of the power of attorney for acceptance.

(b) If a person requests a certification, a translation, or an opinion of counsel under section 15-14-719 (4), the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel.

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances, including, without limitation, the circumstances set forth in paragraphs (a.3) and (a.5) of this subsection (2);

(a.3) The agent seeks to establish a customer relationship under the power of attorney and the principal is not currently a customer;

(a.5) The agent seeks services under the power of attorney that the person does not offer;

(b) Engaging in a transaction with the agent or the principal in the same circumstances or acceptance of the power of attorney in the same circumstances would be inconsistent with any federal or state law, rule, or regulation other than as set forth in this part 7;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under section 15-14-719 (4) is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under section 15-14-719 (4) has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to a governmental agency having authority to protect the welfare of the principal stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent; or

(f.5) The person has an apprehension, formed in good faith, that the agent or person acting for or with the agent has acted or is acting, in any capacity, either unlawfully or not in good faith in dealing with the person and the person is investigating in good faith to determine whether the person may, based on the results of the investigation, form a good faith belief that the principal may be subject to financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

**15-14-721. Principles of law and equity.** Unless displaced by a provision of this part 7, the principles of law and equity supplement this part 7.

**15-14-722. Laws applicable to financial institutions and entities.** This part 7 does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this part 7.

**15-14-723. Remedies under other law.** The remedies under this part 7 are not exclusive and do not abrogate any right or remedy under the law of this state other than this part 7.

SUBPART 2

AUTHORITY

**15-14-724. Authority that requires specific grant - grant of general authority.** (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke, or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate authority granted under the power of attorney;

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise:

(I) A power held by the principal in a fiduciary capacity that the principal has the authority to delegate;

(II) A power to nominate, appoint, or remove a fiduciary or to consent, veto, or otherwise participate in the designation or changing of a fiduciary; or

(III) A power to direct a fiduciary in the exercise of a power of the fiduciary with respect to property subject to the fiduciary relationship, including, but not limited to, a power to direct investments, or to consent, veto, or otherwise participate in controlling the exercise of such a power.

(h) Disclaim or release property or a power of appointment;

(i) Except for the exercise of a general power of appointment for the benefit of the principal, to the extent that the agent is authorized as provided in section 15-14-734, or for the benefit of persons other than the principal, to the extent that the agent is authorized to make gifts as provided in section 15-14-740, exercise a power of appointment; or

(j) Except with respect to an entity owned solely by the principal, exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the entity and has authority to delegate.

(2) Notwithstanding a grant of authority to do an act described in subsection (1) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 15-14-727 to 15-14-739.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 15-14-740.

(5) Subject to subsections (1), (2), and (4) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and

inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

**15-14-725. Incorporation of authority - incorporation by reference.** (1) An agent has authority described in this part 7 if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 15-14-727 to 15-14-740 or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 15-14-727 to 15-14-740 or a citation to a section of sections 15-14-727 to 15-14-740 incorporates the entire section as if it were set out in full in the power of attorney.

(2.5) In addition to the incorporation of authority as provided in subsections (1) and (2) of this section, a writing or other record in existence when a power of attorney is executed may be incorporated by reference if the language of the power of attorney manifests this intent and describes the writing or other record sufficiently to permit its identification. A writing or other record so incorporated by reference is considered as set out in full in the power of attorney.

(3) A principal may modify authority or a writing or other record incorporated by reference.

**15-14-726. Construction of authority generally.** (1) Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 15-14-727 to 15-14-740 or that grants to an agent authority to do all acts that a principal could do pursuant to section 15-14-724 (3), a principal authorizes the agent, with respect to that subject, to:

(a) Demand, receive, and obtain by litigation or otherwise money or another thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

(c) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(e) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(f) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

(g) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(h) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;

(i) Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(j) Do any lawful act with respect to the subject and all property related to the subject.

**15-14-727. Real property.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(a) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(b) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(c) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(d) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(e) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(I) Insuring against liability or casualty or other loss;

(II) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(III) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(IV) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(f) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(g) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(I) Selling or otherwise disposing of them;

(II) Exercising or selling an option, right of conversion, or similar right with respect to them; and

(III) Exercising any voting rights in person or by proxy;

(h) Change the form of title of an interest in or right incident to real property; and

(i) Dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

**15-14-728. Tangible personal property.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(a) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(b) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

(c) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(d) Release, assign, satisfy, or enforce by litigation or otherwise a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

(e) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(I) Insuring against liability or casualty or other loss;

(II) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(III) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(IV) Moving the property from place to place;

(V) Storing the property for hire or on a gratuitous bailment; and

(VI) Using and making repairs, alterations, or improvements to the property; and

(f) Change the form of title of an interest in tangible personal property.

**15-14-729. Stocks and bonds.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(a) Buy, sell, and exchange stocks and bonds;

(b) Establish, continue, modify, or terminate an account with respect to stocks and bonds;

(c) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(d) Receive certificates and other evidences of ownership with respect to stocks and bonds; and

(e) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

**15-14-730. Commodities and options.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(b) Establish, continue, modify, and terminate option accounts.

**15-14-731. Banks and other financial institutions.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(c) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(d) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(e) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(f) Enter a safe deposit box or vault and withdraw or add to the contents;

(g) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(h) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

(i) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic or other negotiable or nonnegotiable instrument;

(j) Apply for, receive, and use letters of credit, credit and debit cards, electronic

transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(k) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

**15-14-732. Operation of entity or business.** (1) Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(a) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(b) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(c) Enforce the terms of an ownership agreement;

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(e) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

(f) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(g) With respect to an entity or business owned solely by the principal:

(I) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(II) Determine:

(A) The location of its operation;

(B) The nature and extent of its business;

(C) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(D) The amount and types of insurance carried; and

(E) The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

(III) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(IV) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(h) Put additional capital into an entity or business in which the principal has an interest;

(i) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(j) Sell or liquidate all or part of an entity or business;

(k) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(l) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(m) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

**15-14-733. Insurance and annuities.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(a) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, select the amount, type of insurance or annuity, and mode of payment, and designate a beneficiary that will be the estate of the principal;

(c) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(d) Apply for and receive a loan secured by a contract of insurance or annuity;

(e) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(f) Exercise an election;

(g) Exercise investment powers available under a contract of insurance or annuity;

(h) Change the manner of paying premiums on a contract of insurance or annuity;

(i) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(j) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(k) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(l) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(m) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

**15-14-734. Estates, trusts, and other beneficial interests.** (1) In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled as a beneficiary to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(f) Conserve, invest, disburse, or use anything received for an authorized purpose; and

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

(h) (Deleted by amendment, L. 2011, (SB 11-083), ch. 101, p. 306, § 14, effective August 10, 2011.)

**15-14-735. Claims and litigation.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(a) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(b) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(c) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(d) Make or accept a tender, offer of judgment, or admission of facts, submit a

controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(e) Submit to alternative dispute resolution, settle, and propose or accept a compromise;

(f) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(g) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

(h) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(i) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

**15-14-736. Personal and family maintenance.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

(I) The principal's children;

(II) Other individuals legally entitled to be supported by the principal; and

(III) The individuals whom the principal has customarily supported or indicated the intent to support;

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) Provide living quarters for the individuals described in paragraph (a) of this subsection (1) by:

(I) Purchase, lease, or other contract; or

(II) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (a) of this subsection (1);

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (a) of this subsection (1);

(f) Act as the principal's personal representative pursuant to the federal "Health Insurance Portability and Accountability Act", sections 1171 to 1179 of the federal "Social Security Act", 42 U.S.C. sec. 1320d, as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(g) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (a) of this subsection (1);

(h) Maintain credit and debit accounts for the convenience of the individuals described in paragraph (a) of this subsection (1) and open new accounts; and

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this part 7.

**15-14-737. Benefits from governmental programs or civil or military service.** (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation including social security, medicare, and medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 15-14-736 (1) (a), and for shipment of their household effects;

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(f) Receive the financial proceeds of a claim described in paragraph (d) of this subsection (2) and conserve, invest, disburse, or use for a lawful purpose anything so received.

**15-14-738. Retirement plans.** (1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the federal "Internal Revenue Code of 1986", as amended:

(a) An individual retirement account under Internal Revenue Code section 408, 26 U.S.C. sec. 408, as amended;

(b) A Roth individual retirement account under Internal Revenue Code section 408A, 26 U.S.C. sec. 408A, as amended;

(c) A deemed individual retirement account under Internal Revenue Code section 408 (q), 26 U.S.C. sec. 408 (q), as amended;

(d) An annuity or mutual fund custodial account under Internal Revenue Code section 403 (b), 26 U.S.C. sec. 403 (b), as amended;

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code section 401 (a), 26 U.S.C. sec. 401 (a), as amended;

(f) A plan under Internal Revenue Code section 457 (b), 26 U.S.C. sec. 457 (b), as amended; and

(g) A nonqualified deferred compensation plan under Internal Revenue Code section 409A, 26 U.S.C. sec. 409A, as amended.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(c) Establish a retirement plan in the principal's name and designate a beneficiary that will be the estate of the principal;

(d) Make contributions to a retirement plan;

(e) Exercise investment powers available under a retirement plan; and

(f) Borrow from, sell assets to, or purchase assets from a retirement plan.

**15-14-739. Taxes.** (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, "Federal Insurance Contributions Act", and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code section 2032A, 26 U.S.C. sec. 2032A, as amended, closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and

contest deficiencies determined by the internal revenue service or other taxing authority;

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(d) Act for the principal in all tax matters for all periods before the internal revenue service, or other taxing authority.

**15-14-740. Gifts.** (1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the federal "Uniform Transfers to Minors Act", and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. sec. 529, as amended.

(2) (a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(I) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code section 2503 (b), 26 U.S.C. sec. 2503 (b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code section 2513, 26 U.S.C. sec. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(II) Consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. sec. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(b) Paragraph (a) of this subsection (2) does not apply to, or affect by inference or otherwise, a power of attorney in existence on December 31, 2009, unless, on that date, this part 7 applies to the power of attorney as provided in section 15-14-745 (2).

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(a) The value and nature of the principal's property;

(b) The principal's foreseeable obligations and need for maintenance;

(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(d) Eligibility for a benefit, a program, or assistance under a statute or regulation; and

(e) The principal's personal history of making or joining in making gifts.

SUBPART 3

STATUTORY FORMS

**15-14-741. Statutory form - power of attorney.** A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this part 7.

**STATE OF COLORADO STATUTORY FORM**
**POWER OF ATTORNEY**
**IMPORTANT INFORMATION**

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the special instructions. Coagents are not required to act together unless you include that requirement in the special instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the special instructions.

**If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.**

**DESIGNATION OF AGENT**

I _____ (name of principal) name the following person as my agent:

Name of agent: _____
Agent's address: _____
Agent's telephone number: _____

**DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: _____
Successor agent's address: _____
Successor agent's telephone number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of second successor agent: _____
Second successor agent's address: _____
Second successor agent's telephone number: _____

**GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All preceding subjects" instead of initialing each subject.)

(__) Real property
(__) Tangible personal property
(__) Stocks and bonds
(__) Commodities and options

(__) Banks and other financial institutions

(__) Operation of entity or business

(__) Insurance and annuities

(__) Estates, trusts, and other beneficial interests

(__) Claims and litigation

(__) Personal and family maintenance

(__) Benefits from governmental programs or civil or military service

(__) Retirement plans

(__) Taxes

(__) All preceding subjects

**GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

(__) Create, amend, revoke, or terminate an inter vivos trust

(__) Make a gift, subject to the limitations of the "Uniform Power of Attorney Act" set forth in section 15-14-740, Colorado Revised Statutes, and any special instructions in this power of attorney

(__) Create or change rights of survivorship

(__) Create or change a beneficiary designation

(__) Authorize another person to exercise the authority granted under this power of attorney

(__) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

(__) Exercise fiduciary powers that the principal has authority to delegate, including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers

(__) Disclaim, refuse, or release an interest in property or a power of appointment

(__) Exercise a power of appointment other than: (1) The exercise of a general power of appointment for the benefit of the principal which may, if the subject of estates, trusts, and other beneficial interests is authorized above, be exercised as provided under the subject of estates, trusts, and other beneficial interests; or (2) the exercise of a general power of appointment for the benefit of persons other than the principal which may, if the making of a gift is specifically authorized above, be exercised under the specific authorization to make gifts

(__) Exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the entity and has authority to delegate excluding the exercise of such powers, rights, and authority with respect to an entity owned solely by the principal which may, if operation of entity or business is authorized above, be exercised as provided under the subject of operation of the entity or business

**LIMITATION ON AGENT'S AUTHORITY**

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.

**SPECIAL INSTRUCTIONS (OPTIONAL)**

You may give special instructions on the following lines:

_____
_____
_____
_____
_____
_____
_____

**EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

**NOMINATION OF CONSERVATOR**

**OR GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for conservator of my estate:_____
Nominee's address: _____
Nominee's telephone number: _____
Name of nominee for guardian of my person:_____
Nominee's address: _____
Nominee's telephone number: _____

**RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

**SIGNATURE AND ACKNOWLEDGMENT**

_____ _____
Your signature Date

_____
Your name printed

_____
_____
Your address

_____
Your telephone number

State of _____
[County] of _____

This document was acknowledged before me on _____,
(Date)
by _____.
(Name of principal)

_____ (Seal, if any)

Signature of notary

My commission expires: _____

This document prepared by:
_____
_____

**IMPORTANT INFORMATION FOR AGENT**

**Agent's duties**

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) Act in good faith;

(3) Do nothing beyond the authority granted in this power of attorney; and

(4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's name) by (Your signature) as agent

Unless the special instructions in this power of attorney state otherwise, you must also:

(1) Act loyally for the principal's benefit;

(2) Avoid conflicts that would impair your ability to act in the principal's best interest;

(3) Act with care, competence, and diligence;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

**Termination of agent's authority**

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) Death of the principal;

(2) The principal's revocation of the power of attorney or your authority;

(3) The occurrence of a termination event stated in the power of attorney;

(4) The purpose of the power of attorney is fully accomplished; or

(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the special instructions in this power of attorney state that such an action will not terminate your authority.

**Liability of agent**

The meaning of the authority granted to you is defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes. If you violate the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

**15-14-742. Certification.** The following optional form may be used by an agent to certify facts concerning a power of attorney.

**AGENT'S CERTIFICATION AS TO THE VALIDITY OF**

**POWER OF ATTORNEY AND AGENT'S AUTHORITY**

State of _____ County of _____

I, _____ (Name of agent), certify under penalty of perjury that _____ (Name of principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the

power of attorney have not terminated;

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) _____
_____
_____
_____
_____

(Insert other relevant statements)

**SIGNATURE AND ACKNOWLEDGMENT**

_____ _____
Agent signature Date

_____
Agent's name printed

_____
_____
Agent's address

_____
Agent's telephone number

This document was acknowledged before me on _____,
(Date)
by _____.
(Name of agent)

_____ (Seal, if any)

Signature of notary

My commission expires:_____

This document prepared by:

_____

SUBPART 4

MISCELLANEOUS PROVISIONS

**15-14-743. Uniformity of application and construction.** In applying and construing this part 7, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**15-14-744. Relation to "Electronic Signatures in Global and National Commerce Act".** This part 7, modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

**15-14-745. Effect on existing powers of attorney.** (1) Except as otherwise provided in this part 7, on January 1, 2010:

(a) This part 7 applies to a power of attorney created before, on, or after January 1, 2010;

(b) This part 7 applies to a judicial proceeding concerning a power of attorney commenced on or after January 1, 2010;

(c) This part 7 applies to a judicial proceeding concerning a power of attorney commenced before January 1, 2010, unless the court finds that application of a provision of this part 7 would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(d) An act done before January 1, 2010, is not affected by this part 7.

(2) (a) A power of attorney is durable as determined pursuant to section 15-14-704 (1) and is otherwise construed and applied in accordance with this part 7 prior to January 1, 2010, if the power of attorney:

(I) Is signed on or after the date this part 7 becomes law and before January 1, 2010;

(II) Is either:

(A) Substantially in the form set forth in section 15-14-741; or

(B) States that it is subject to the "Uniform Power of Attorney Act" or to this part 7.

(b) To the extent of any conflict between this subsection (2) and either part 13 of article 1 of this title or section 15-14-501, this subsection (2) shall control.

## ARTICLE 14.5

Uniform Adult Guardianship and
Protective Proceedings Jurisdiction Act

### PART 1

### GENERAL PROVISIONS

**15-14.5-101. Short title.** This article may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

**15-14.5-102. Definitions.** In this article:

(1) "Adult" means an individual who has attained eighteen years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under section 15-14-401.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under section 15-14-301.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "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.

(13) "Respondent" means an adult for whom a protective order or the appointment of a

guardian is sought.

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

**15-14.5-103. International application of article.** A court of this state may treat a foreign country as if it were a state for the purpose of applying this part 1 and parts 2, 3, and 5 of this article.

**15-14.5-104. Communication between courts.** (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this article. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

**15-14.5-105. Cooperation between courts.** (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (a) of this subsection (1) or any other proceeding, any evidence otherwise produced under paragraph (b) of this subsection (1), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d) of this subsection (1);

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 164.504, as amended.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

**15-14.5-106. Taking testimony in another state.** (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

## PART 2

## JURISDICTION

**15-14.5-201. Definitions - significant connection factors.** (1) In this part 2:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under sections 15-14.5-203 and 15-14.5-301(5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

**15-14.5-202. Exclusive basis.** This part 2 provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

**15-14.5-203. Jurisdiction.** (1) A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(a) This state is the respondent's home state;

(b) On the date the petition is filed, this state is a significant-connection state and:

(I) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(II) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(A) A petition for an appointment or order is not filed in the respondent's home state;

(B) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(C) The court in this state concludes that it is an appropriate forum under the factors set forth in section 15-14.5-206;

(c) This state does not have jurisdiction under either paragraph (a) or (b) of this subsection (1), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(d) The requirements for special jurisdiction under section 15-14.5-204 are met.

**15-14.5-204. Special jurisdiction.** (1) A court of this state lacking jurisdiction under section 15-14.5-203 has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding sixty days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state;

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 15-14.5-301.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

**15-14.5-205. Exclusive and continuing jurisdiction.** Except as otherwise provided in section 15-14.5-204, a court that has appointed a guardian or issued a protective order consistent with this article has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

**15-14.5-206. Appropriate forum.** (1) A court of this state having jurisdiction under section 15-14.5-203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

**15-14.5-207. Jurisdiction declined by reason of conduct.** (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(I) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(II) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 15-14.5-206 (3); and

(III) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 15-14.5-203.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this article.

**15-14.5-208. Notice of proceeding.** If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

**15-14.5-209. Proceedings in more than one state.** (1) Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 15-14.5-204 (1) (a) or (1) (b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(a) If the court in this state has jurisdiction under section 15-14.5-203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 15-14.5-203 before the appointment or issuance of the order.

(b) If the court in this state does not have jurisdiction under section 15-14.5-203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

## PART 3

## TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

**15-14.5-301. Transfer of guardianship or conservatorship to another state.** (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship

or conservatorship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 15-14.5-201 (2);

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 15-14.5-302; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

**15-14.5-302. Accepting guardianship or conservatorship transferred from another state.** (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 15-14.5-301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those

persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 15-14.5-301 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under article 14 of this title if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

## PART 4

## REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

**15-14.5-401. Registration of guardianship orders.** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

**15-14.5-402. Registration of protective orders.** If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this

state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

**15-14.5-403. Effect of registration.** (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this article and other law of this state to enforce a registered order.

PART 5

MISCELLANEOUS PROVISIONS

**15-14.5-501. Uniformity of application and construction.** In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**15-14.5-502. Relation to electronic signatures in global and national commerce act.** This article modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001, et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

**15-14.5-503. Transitional provision.** (1) This article applies to guardianship and protective proceedings begun on or after May 14, 2008.

(2) Parts 1, 3, and 4 of this article and sections 15-14.5-501 and 15-14.5-502 apply to proceedings begun before May 14, 2008, regardless of whether a guardianship or protective order has been issued.

## ARTICLE 15

Nonprobate Transfers on Death

PART 1

**15-15-101. Nonprobate transfers on death.** (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection (1) includes a written provision that:

(a) Money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) Any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(1.5) A conveyance or deed of gift described in subsection (1) of this section that relates to an interest in real property may be created pursuant to part 4 of this article and, if so created, shall be subject to the rights of third parties described in part 4 of this article.

(2) Under the provisions of subsection (1) of this section, it is permissible to designate as a beneficiary, payee, or owner a trustee named in an inter vivos or testamentary trust in existence at the date of such designation. It is not necessary to the validity of any such trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation. It is also permissible to designate as a beneficiary, payee, or owner a trustee named in, or ascertainable under, the will of the designator. The benefits or rights resulting from such a designation shall be payable or transferable to the trustee upon admission of the will to probate if a testamentary trustee is the designated payee or transferee, subject to the right of the payor to impose requirements and take actions as may a personal representative acting under section 15-12-913. A trustee shall not be disqualified to receive such benefits or rights merely because the trust under which he was to act or is acting fails to come into existence or has been distributed in part or whole, but such a trustee shall receive and distribute the proceeds in accord with the terms of such trust.

(3) If a trustee is designated pursuant to subsection (2) of this section and no qualified trustee makes claim to the benefits or rights resulting from such a designation within one year after the death of the designator, or if evidence satisfactory to the person obligated to make the payment or transfer is furnished within such one-year period that there is or will be no trustee to receive the proceeds, payment or transfer shall be made to the personal representative of the designator, unless otherwise provided by such designation or other controlling agreement made during the lifetime of the designator.

(4) The payment of the benefits due or a transfer of the rights given under a designation pursuant to subsection (2) or (3) of this section and the receipt for such payment or transfer executed by the trustee or other authorized payee thereof shall constitute a full discharge and acquittance of the person obligated to make the payment or transfer.

(5) Payment of the benefits due or the transfer of the rights given in accordance with a designation under the provisions of subsection (2) of this section shall not cause such benefits or rights to be included in the property administered as part of the designator's estate under this code or to be subject to the claims of his or her creditors, except as provided in part 2 of article 11 of this title and in section 15-15-103.

(6) Except as otherwise provided in part 2 of article 11 of this title and in section 15-15-103, the express provisions of the trust agreement, declaration of trust, or testamentary trust shall control and regulate the extent to which the benefits or rights payable or transferable under such a designation shall be subject to the debts of the designator if paid or transferred under the provisions of subsection (2) of this section.

(7) Repealed.

**15-15-102. Will not to affect joint tenancy in real property or personalty.** No will or other testamentary disposition or testamentary provision of one of the owners in joint tenancy of real or personal property or of an interest in real or personal property shall destroy or affect the joint tenancy or prevent the entire title and interest owned by the joint tenants from becoming vested upon his death in the joint tenants who shall have survived him. Upon the death of an owner in joint tenancy of real or personal property or of an interest in real or personal property, leaving surviving him coowners under such joint tenancy, all of the interest and title which, immediately before such death was owned by all of the joint tenants under such joint tenancy, shall become vested in the survivors of such joint tenants in spite of and without regard to the provisions of a will of the joint tenant so dying or the admission to probate of such will and without regard to whether such will was executed before or after the creation of the joint tenancy.

**15-15-103. Liability of nonprobate transferees for creditor claims and statutory allowances.** (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), as used in this section, "nonprobate transfer" means a valid transfer effective at death by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(b) This section shall not apply to:

(I) A survivorship interest in joint tenancy real estate; and

(II) Property transferred by the exercise or default in the exercise of a power of appointment, including a power of withdrawal, created by a person other than the transferor; and

(III) Proceeds transferred pursuant to a beneficiary designation under a life insurance,

accident insurance, or annuity policy contract; and

(IV) Property or funds held in or payable from a pension or retirement plan, individual retirement account, deferred compensation plan, internal revenue code section 529 plan, or other similar arrangement.

(2) Except as otherwise provided by paragraph (b) of subsection (1) of this section, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) of this section in the following order of priority:

(a) A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other acts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) Other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devisees under that will.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another instrument, the provision of the later instrument shall prevail.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the decedent's surviving spouse or a child of the decedent, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section shall be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty-three days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor to a

nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

(10) The receipt of funds derived from nonprobate transferees by a person as provided in this section in satisfaction of such person's claim for a debt or statutory allowances does not constitute the receipt of nonprobate property by such person for purposes of this section or part 2 of article 11 of this title.

(11) In the event of any conflict in the provisions of this section with the provisions of parts 2 and 4 of article 11 of this title, the provisions of this section shall control.

## PART 2

## MULTIPLE-PERSON ACCOUNTS

### SUBPART 1

### DEFINITIONS AND GENERAL PROVISIONS

**15-15-201. Definitions.** In this part 2:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as

trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of this part 2, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

**15-15-202. Limitation on scope of part.** This part 2 does not apply to (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

**15-15-203. Types of account; existing accounts.** (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to section 15-15-212 (3), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after July 1, 1990, whether in the form prescribed in section 15-15-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this part 2, and is governed by this part 2.

**15-15-204. Forms.** (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part 2 applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One Or More Parties]:

_____

_____

OWNERSHIP [Select One And Initial]:
_____ SINGLE-PARTY ACCOUNT
_____ MULTIPLE-PARTY ACCOUNT
Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One And Initial]:
_____ SINGLE-PARTY ACCOUNT
At death of party, ownership passes as part of party's estate.
_____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION
[Name One Or More Beneficiaries]:

_____
At death of party, ownership passes to POD beneficiaries and is not part of party's estate.
_____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
At death of party, ownership passes to surviving parties.
_____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION
[Name One Or More Beneficiaries]:

_____

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.
_____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP
At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]
Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.
[To Add Agency Designation To Account, Name One Or More Agents]:

_____
[Select One And Initial]:
_____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
_____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of this part 2 applicable to the type of

account that most nearly conforms to the depositor's intent.

**15-15-205. Designation of agent.** (1) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(2) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(3) Death of the sole party or last surviving party terminates the authority of an agent.

**15-15-206. Applicability of part.** The provisions of sections 15-15-211 to 15-15-216 (subpart 2) concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 15-15-221 to 15-15-227 (subpart 3) governs the liability and set-off rights of financial institutions that make payments pursuant to it.

SUBPART 2

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

**15-15-211. Ownership during lifetime.** (1) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

**15-15-212. Rights at death.** (1) Except as otherwise provided in this section, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If

two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 15-15-211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 15-15-211 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 15-15-211, and the right of survivorship continues between the surviving parties.

(2) In an account with a POD designation:

(a) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (1).

(b) (I) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares; and there is no right of survivorship in the event of death of a beneficiary thereafter.

(II) If there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subparagraph (I) of this paragraph (b).

(III) If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(IV) Neither the provisions of section 15-11-706 nor the provisions of any other anti-lapse statute apply to the disposition of an account with a POD designation.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 15-15-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

(5) Sums remaining on deposit at the death of a party to a multiple-party account, which are not subject to a POD designation, belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention.

**15-15-213. Alteration of rights.** (1) Rights at death under section 15-15-212 are

determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, section 15-15-212, or a POD designation, may not be altered by will.

**15-15-214. Accounts and transfers nontestamentary.** Except as provided in part 2 of article 11 of this title (elective share of surviving spouse), a transfer resulting from the application of section 15-15-212 is effective by reason of the terms of the account involved and this part 2 and is not testamentary or subject to articles 10 to 13 of this title (estate administration).

**15-15-215. Rights of creditors and others. (Repealed)**

**15-15-216. Community property and tenancy by the entireties.** (1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or section 15-15-212 may not be altered by will.

(2) This part 2 does not affect the law governing tenancy by the entireties.

SUBPART 3

PROTECTION OF FINANCIAL INSTITUTIONS

**15-15-221. Authority of financial institution.** A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

**15-15-222. Payment on multiple-party account.** A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) One or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 15-15-212.

**15-15-223. Payment on POD designation.** A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) One or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) The beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

**15-15-224. Payment to designated agent.** A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

**15-15-225. Payment to minor.** If a financial institution is required or permitted to make payment pursuant to this part 2 to a minor designated as a beneficiary, payment may be made pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

**15-15-226. Discharge.** (1) Payment made pursuant to this part 2 in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section.

Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

**15-15-227. Set-off.** Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under section 15-15-211 or, in the absence of proof of that proportion, an equal share with all parties.

## PART 3

## UNIFORM TOD SECURITY REGISTRATION ACT

**15-15-301. Definitions.** In this part 3:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account, including but not limited to an account held on the books of the registering entity, showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker, bank, or trust company maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; (ii) an investment management or custody account with a trust company or a trust division of a bank with trust powers, including the securities in the account, a cash balance in the account, and

cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

**15-15-302. Registration in beneficiary form; sole or joint tenancy ownership.** Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

**15-15-303. Registration in beneficiary form; applicable law.** A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

**15-15-304. Origination of registration in beneficiary form.** A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

**15-15-305. Form of registration in beneficiary form.** Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

**15-15-306. Effect of registration in beneficiary form.** The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

**15-15-307. Ownership on death of owner.** On death of a sole owner or the last to die of

all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

**15-15-308. Protection of registering entity.** (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part 3.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this part 3.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 15-15-307 and does so in good faith reliance (i) on the registration, (ii) on this part 3, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this part 3 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part 3.

(4) The protection provided by this part 3 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

**15-15-309. Nontestamentary transfer on death.** (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part 3 and is not testamentary.

(2) Repealed.

**15-15-310. Terms, conditions, and forms for registration.** (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(b) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(c) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown, JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

**15-15-311. Application of part.** This part 3 applies to registrations of securities in beneficiary form made before or after July 1, 1990, by decedents dying on or after July 1, 1990.

## PART 4

## TRANSFER OF REAL PROPERTY EFFECTIVE ON DEATH

**15-15-401. Definitions.** As used in this part 4, unless the context otherwise requires:

(1) "Beneficiary deed" means a deed, subject to revocation by the owner, which conveys an interest in real property and which contains language that the conveyance is to be effective upon the death of the owner and which may be in substantially the form described in section 15-15-404.

(2) "Deed" means any instrument of conveyance of real property.

(3) "Grantee-beneficiary" means one or more persons or entities capable of holding title to real property designated in a beneficiary deed to receive an interest in real property upon the death of the owner. "Grantee-beneficiary" includes, but is not limited to, a successor grantee-beneficiary.

(4) "Owner" means the grantor of a beneficiary deed.

(5) "Successor grantee-beneficiary" means the person or entity designated in a

beneficiary deed to receive an interest in the property if the primary grantee-beneficiary does not survive the owner.

(6) (a) "Transfer", when used as a verb, means to convey.

(b) "Transfer", when used as a noun, means a conveyance.

**15-15-402. Real property - beneficiary deed.** (1) In addition to any method allowed by law to effect a transfer at death, title to an interest in real property may be transferred on the death of the owner by recording, prior to the owner's death, a beneficiary deed signed by the owner of such interest, as grantor, designating a grantee-beneficiary of the interest. The transfer by a beneficiary deed shall be effective only upon the death of the owner. A beneficiary deed need not be supported by consideration.

(2) The joinder, signature, consent, or agreement of, or notice to, a grantee-beneficiary of a beneficiary deed prior to the death of the grantor shall not be required. Subject to the right of the grantee-beneficiary to disclaim or refuse to accept the property, the conveyance shall be effective upon the death of the owner.

(3) During the lifetime of the owner, the grantee-beneficiary shall have no right, title, or interest in or to the property, and the owner shall retain the full power and authority with respect to the property without the joinder, signature, consent, or agreement of, or notice to, the grantee-beneficiary for any purpose.

**15-15-403. Medicaid eligibility exclusion.** No person who is an applicant for or recipient of medical assistance for which it would be permissible for the department of health care policy and financing to assert a claim pursuant to section 25.5-4-301 or 25.5-4-302, C.R.S., shall be entitled to such medical assistance if the person has in effect a beneficiary deed. Notwithstanding the provisions of section 15-15-402 (1), the execution of a beneficiary deed by an applicant for or recipient of medical assistance as described in this section shall cause the property to be considered a countable resource in accordance with section 25.5-4-302 (6), C.R.S., and applicable rules.

**15-15-404. Form of beneficiary deed - recording.** (1) An owner may transfer an interest in real property effective on the death of the owner by executing a beneficiary deed that contains the words "conveys on death" or "transfers on death" or otherwise indicates the transfer is to be effective on the death of the owner and recording the beneficiary deed prior to the death of the owner in the office of the clerk and recorder in the county where the real property is located. A beneficiary deed may be in substantially the following form:

**BENEFICIARY DEED**

**(§§ 15-15-401 et seq., Colorado Revised Statutes)**

**CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.**

_____ , as grantor,
(Name of grantor)
designates_____ as
(Name of grantee-beneficiary)
grantee-beneficiary whose address is _____ (Note to Assessor and Treasurer: This address is for identification purposes only, all notices and tax statements should continue to be sent to grantor.)
(Optional)[or if grantee-beneficiary fails to survive grantor, grantor designates _____, as
(Name of successor grantee-beneficiary)
successor grantee-beneficiary whose address is
_____]
and grantor transfers, sells, and conveys on grantor's death to the grantee-beneficiary, the following described real property located in the County of _____, State of Colorado:
(insert legal description here)
Known and numbered as _____
THIS BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS REAL PROPERTY.
WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY DISQUALIFY THE GRANTOR FROM BEING DETERMINED ELIGIBLE FOR, OR FROM RECEIVING, MEDICAID UNDER TITLE 26, COLORADO REVISED STATUTES.
WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY NOT AVOID PROBATE.
Executed this_____.
(Date)

_____
(Grantor)

(2) Unless the owner designates otherwise in a beneficiary deed, a beneficiary deed shall not be deemed to contain any warranties of title and shall have the same force and effect as a conveyance made using a bargain and sale deed.

**15-15-405. Revocation - change - revocation by will prohibited.** (1) An owner may revoke a beneficiary deed by executing an instrument that describes the real property affected,

that revokes the deed, and that is recorded prior to the death of the owner in the office of the clerk and recorder in the county where the real property is located. The joinder, signature, consent, agreement of, or notice to, the grantee-beneficiary is not required for the revocation to be effective. A revocation may be in substantially the following form:

**REVOCATION OF BENEFICIARY DEED**

**(§§ 15-15-401 et seq., Colorado Revised Statutes)**

**CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.**

_____, as grantor, hereby
(Name of grantor)
REVOKES all beneficiary deeds concerning the following described real property located in the County of
_____, State of Colorado:
(insert legal description here)
Known and numbered as _____
Executed this _____.
(Date)

_____
(Grantor)

(2) A subsequent beneficiary deed revokes all prior grantee-beneficiary designations by the owner for the described real property in their entirety even if the subsequent beneficiary deed fails to convey all of the owner's interest in the described real property. The joinder, signature, consent, or agreement of, or notice to, either the original or new grantee-beneficiary is not required for the change to be effective.

(3) The most recently executed beneficiary deed or revocation of all beneficiary deeds or revocations that have been recorded prior to the owner's death shall control regardless of the order of recording.

(4) A beneficiary deed that complies with the requirements of this part 4 may not be revoked, altered, or amended by the provisions of the will of the owner.

**15-15-406. Acknowledgment.** A beneficiary deed or revocation of a beneficiary deed shall be subject to the requirements of section 38-35-109 (2), C.R.S., and may be acknowledged in accordance with section 38-35-101, C.R.S.

**15-15-407. Vesting of ownership in grantee-beneficiary.** (1) Title to the interest in

real property transferred by a beneficiary deed shall vest in the designated grantee-beneficiary only on the death of the owner.

(2) A grantee-beneficiary of a beneficiary deed takes title to the owner's interest in the real property conveyed by the beneficiary deed at the death of the owner subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests, affecting title to the property, whether created before or after the recording of the beneficiary deed, or to which the owner was subject during the owner's lifetime including, but not limited to, any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust, or other lien. The grantee-beneficiary also takes title subject to any interest in the property of which the grantee-beneficiary has either actual or constructive notice.

(3) (a) A person having an interest described in subsection (2) of this section whose interest is not recorded in the records of the office of the clerk and recorder of the county in which the property is located at the time of the death of the owner, shall record evidence or a notice of the interest in the property not later than four months after the death of the owner. The notice shall name the person asserting the interest, describe the real property, and describe the nature of the interest asserted.

(b) Failure to record evidence or notice of interest in the property described in subsection (2) of this section within four months after the death of the owner shall forever bar the person from asserting an interest in the property as against all persons who do not have notice of the interest. A person who, without notice, obtains an interest in the property acquired by the grantee-beneficiary shall take the interest free from all persons who have not recorded their notice of interest in the property or evidence of their interest prior to the expiration of the four-month period.

(4) The interest of the grantee-beneficiary shall be subject to any claim of the department of health care policy and financing for recovery of medical assistance payments pursuant to section 25.5-4-301 or 25.5-4-302, C.R.S., which shall be enforced in accordance with section 15-15-103.

(5) The provisions of any anti-lapse statute shall not apply to beneficiary deeds. If one of multiple grantee-beneficiaries fails to survive the owner, and no provision for such contingency is made in the beneficiary deed, the share of the deceased grantee-beneficiary shall be proportionately added to, and pass as a part of, the shares of the surviving grantee-beneficiaries.

**15-15-408. Joint tenancy - definitions.** (1) A joint tenant of an interest in real property may use the procedures described in this part 4 to transfer his or her interest effective upon the death of such joint tenant. However, title to the interest shall vest in the designated grantee-beneficiary only if the joint tenant-grantor is the last to die of all of the joint tenants of such interest. If a joint tenant-grantor is not the last joint tenant to die, the beneficiary deed shall not be effective, and the beneficiary deed shall not make the grantee-beneficiary an owner in joint tenancy with the surviving joint tenant or tenants. A beneficiary deed shall not sever a joint tenancy.

(2) As used in this section, "joint tenant" means a person who owns an interest in real property as a joint tenant with right of survivorship.

**15-15-409. Rights of creditors and others. (Repealed)**

**15-15-410. Purchaser from grantee-beneficiary protected.** (1) Subject to the rights of claimants under section 15-15-407 (2), if the property acquired by a grantee-beneficiary or a security interest therein is acquired for value and without notice by a purchaser from, or lender to, a grantee-beneficiary, the purchaser or lender shall take title free of rights of an interested person in the deceased owner's estate and shall not incur personal liability to the estate or to any interested person.

(2) For purposes of this section, any recorded instrument evidencing a transfer to a purchaser from, or lender to, a grantee-beneficiary on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S., shall be prima facie evidence that the transfer was made for value. Any such sale or loan by the grantee-beneficiary shall not relieve the grantee-beneficiary of the obligation to the personal representative of the deceased owner's estate under section 15-15-103.

**15-15-411. Limitations on actions and proceedings against grantee-beneficiaries.** (1) Unless previously adjudicated or otherwise barred, the claim of a claimant to recover from a grantee-beneficiary who is liable to pay the claim, and the right of an heir or devisee or of a personal representative acting on behalf of an heir or devisee, to recover property from a grantee-beneficiary or the value thereof from a grantee-beneficiary is forever barred as follows:

(a) A claim by a creditor of the owner is forever barred at one year after the owner's death.

(b) Any other claimant or an heir or devisee is forever barred at the earlier of the following:

(I) Three years after the owner's death; or

(II) One year after the time of recording the proof of death of the owner in the office of the clerk and recorder in the county in which the legal property is located.

(2) Nothing in this section shall be construed to bar an action to recover property or value received as the result of fraud.

**15-15-412. Nontestamentary disposition.** A beneficiary deed shall not be construed to be a testamentary disposition and shall not be invalidated due to nonconformity with the provisions of the "Colorado Probate Code" governing wills.

**15-15-413. Proof of death.** Proof of the death of the owner or a grantee-beneficiary shall be established in the same manner as for proving the death of a joint tenant.

**15-15-414. Disclaimer.** A grantee-beneficiary may refuse to accept all or any part of the real property interest described in a beneficiary deed. A grantee-beneficiary may disclaim all or any part of the real property interest described in a beneficiary deed by any method provided by law. If a grantee-beneficiary refuses to accept or disclaims any real property interest, the grantee-beneficiary shall have no liability by reason of being designated as a grantee-beneficiary under this part 4.

**15-15-415. Applicability.** The provisions of this part 4 shall apply to beneficiary deeds executed by owners who die on or after August 4, 2004.

## ARTICLE 16

Trust Administration

### PART 1

TRUST REGISTRATION

**15-16-101. Duty to register trusts.** (1) Subject to the provisions of section 15-10-108 and to subsections (2), (3), and (4) of this section, the trustee of a trust having its principal place of administration in this state shall, within thirty days after his acceptance of the trust, register the trust in the court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept or at the trustee's residence, if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is the usual place of business of the corporate trustee if there is but one corporate cotrustee or the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise the usual place of business or residence of any of the cotrustees as agreed upon by them. The duty to register does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

(2) Registration of a trust which has no asset other than the right to receive property upon the occurrence of some future event or a trust nominally funded with assets having a value of five hundred dollars or less shall not be required until the occurrence of such event or assets having a value in excess of five hundred dollars are deposited therein.

(3) Registration of a fully and presently revocable inter vivos trust shall not be required until such time as the grantor's power to revoke such trust has terminated, nor shall registration be required if all the assets of such a trust become then distributable outright to the beneficiaries.

(4) A trust which is required to be registered and which divides the corpus into multiple trusts or a will which creates multiple trusts shall require only one registration rather than a registration for each separate trust.

(5) The provisions of this part 1 shall not apply to any trust created under sections 15-14-412.5 and 15-14-412.6.

**15-16-102. Registration procedures and content of statement.** (1) Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere.

(2) The statement shall identify the trust as follows:

(a) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;

(b) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument;

(c) In the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

(2.5) The trust registration statement shall contain language indicating that, because a court will not routinely review or adjudicate matters unless it is specifically requested to do so by a beneficiary, creditor, or other interested person, all interested persons, including beneficiaries and creditors, have the responsibility to protect their own rights and interests in the estate in the manner provided by the provisions of this code by filing an appropriate pleading with the court by which the estate is being administered and serving it on all interested persons pursuant to section 15-10-401.

(3) If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.

**15-16-103. Effect of registration.** (1) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 15-16-201 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be provided pursuant to section 15-10-401.

(2) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 15-16-201, provided notice is given pursuant to section 15-10-401.

**15-16-104. Effect of failure to register.** A trustee who fails to register a trust in a proper place, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered and otherwise as provided by the Colorado rules of civil procedure. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required is subject to removal and denial of compensation or to surcharge as the court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective. If any trustee wrongfully and willfully fails to register prior to December 31, 1975, a trust which is in existence on July 1, 1975, and which is required to be registered, or wrongfully and willfully fails to register within thirty days of his acceptance of a trust which comes into existence thereafter and which is required to be registered, the court in which the trust should have been registered shall impose on the trustee a civil penalty of one hundred dollars per day for each day the trustee fails to register the trust, but not more than one thousand dollars. Such civil penalty shall not be paid from the corpus or income of the trust.

**15-16-105. Registration, qualification of foreign trustee.** A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

## PART 2

## JURISDICTION OF COURT CONCERNING TRUSTS

**15-16-201. Court - exclusive jurisdiction of trusts.** (1) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(a) Appoint or remove a trustee;

(b) Review trustees' fees and to review and settle interim or final accounts;

(c) Ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees,

and determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and

(d) Release registration of a trust.

(2) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

**15-16-202. Trust proceedings - venue.** Venue for proceedings under section 15-16-201 or 15-16-205 involving registered trusts is in the place of registration. Venue for proceedings under section 15-16-201 or 15-16-205 involving trusts not registered in this state is in any place where the trust properly could have been registered and otherwise as provided by the Colorado rules of civil procedure.

**15-16-203. Trust proceedings - dismissal of matters relating to foreign trusts.** The court will not, over the objection of a party, entertain proceedings under section 15-16-201 involving a trust registered or having its principal place of administration in another state, except when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration, or when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

**15-16-204. Court - concurrent jurisdiction of litigation involving trusts and third parties.** The court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

**15-16-205. Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.** On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the

reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

**15-16-206. Trust proceedings - initiation by notice - necessary parties.** Proceedings under section 15-16-201 are initiated by filing a petition in the court and giving notice pursuant to section 15-10-401 to interested parties. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

PART 3

DUTIES AND LIABILITIES OF TRUSTEES

**15-16-301. General duties not limited.** Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this code.

**15-16-302. Trustee's standard of care and performance.** Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

**15-16-303. Duty to inform and account to beneficiaries.** (1) The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration.

(2) Within thirty days after registration, in accordance with the provisions of part 1 of this article, of a trust created on or after July 1, 1975, the trustee shall inform in writing the current beneficiaries and, if possible, one or more persons who, under section 15-10-403, represent beneficiaries with future interests of the court in which the trust is registered and of his name and address.

(3) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(4) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

(5) Not more than thirty days after receiving a request pursuant to this section, the trustee shall comply with the request or respond in writing as to why additional time is needed to respond or why the requested information will not be provided.

(6) A beneficiary is presumed to have received information or a statement of account when the trustee has procedures in place requiring the mailing or delivery of information or a statement of account to a beneficiary. This presumption applies to:

(a) The mailing or delivery of information or a statement of account by electronic means or the provision of access to an account by electronic means if the beneficiary has agreed to receive such electronic delivery or access; and

(b) A beneficiary's receipt of a final account or statement as required by section 15-16-307 if the delivery meets the other requirements of section 15-16-307.

**15-16-304. Duty to provide bond.** A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 15-12-604 and 15-12-606 relating to bonds of personal representatives.

**15-16-305. Trustee's duties - appropriate place of administration - deviation.** A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control, unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

**15-16-306. Personal liability of trustee to third parties.** (1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration, may be asserted against the trust estate by proceeding against the

trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(4) The question of liability as between the trust estate and the trustee individually may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In other appropriate proceedings.

(5) and (6) Repealed.

(7) A trustee is not personally liable for making a distribution of property that does not take into consideration the possible birth of a posthumously conceived child unless, prior to the distribution, the trustee received notice or acquired actual knowledge that:

(a) There is or may be an intention to use an individual's genetic material to create a child; and

(b) The birth of the child could affect the distribution of the trust assets.

(8) If a trustee has reviewed the records of the county clerk and recorder in every county in Colorado in which the trustee has actual knowledge that the decedent was domiciled at any time during the three years prior to the decedent's death and the trustee does not have actual notice or actual knowledge of the existence of a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession, the trustee shall not be individually liable for distributions made to devisees or heirs at law that do not take into consideration the designated beneficiary agreement.

**15-16-307. Limitations on proceedings against trustees after final account.** Unless previously barred by adjudication, consent, or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure, an action for breach of trust against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his or her examination must be brought within the time period prescribed in section 13-80-101, C.R.S. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him or her personally or if, being a minor or an individual with a disability, it is received by his or her representative as described in section 15-10-403.

## PART 4

## CONSOLIDATION AND DIVISION OF TRUSTS

**15-16-401. Authority to consolidate and divide trusts.** (1) Upon petition by a trustee, beneficiary, or any other interested person, the court may, for good cause shown, after a hearing and upon notice pursuant to section 15-10-401 to those interested persons as the court may direct,

divide a trust into two or more separate trusts, or may consolidate two or more separate trusts into a single trust, upon such terms and conditions as it deems appropriate, if the court finds that such consolidation or division:

(a) Is not inconsistent with the intent of the settlor or testator with regard to any trust to be consolidated or divided;

(b) Would facilitate administration of each trust; and

(c) Would be in the best interest of all the beneficiaries of each trust and not materially impair their respective interests.

(2) Subsection (1) of this section shall apply to all trusts, whenever created, whether inter vivos or testamentary, whether created by the same or different instruments or by the same or different persons, and regardless of where created or administered.

(3) Subsection (1) of this section shall not limit the right of a trustee acting in accordance with the applicable provisions of the governing instruments to divide or consolidate trusts.

## PART 5

## INSURABLE INTEREST OF TRUSTEE

**15-16-501. Insurable interest of trustee - definition.** (1) In this part 5, "settlor" means a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

(2) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(a) The insured is:

(I) A settlor of the trust; or

(II) An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(b) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have:

(I) An insurable interest in the life of the insured; or

(II) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (I) of this paragraph (b), who are:

(A) Related within the fifth degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured;

(B) Stepchildren of the insured or their descendants; or

(C) Individuals who are designated as beneficiaries of insurance policies for life insurance coverage on the life of the insured under a designated beneficiary agreement executed pursuant to article 22 of this title.

(3) This section does not limit or abridge any insurable interest or right to insure under the common law or any other statute.

**15-16-502. Reimbursement for taxes - definitions.** (1) As used in this section:

(a) "Independent trustee" means a trustee who is not related or subordinate to the settlor within the meaning of section 672 (c) of the federal "Internal Revenue Code of 1986", as amended.

(b) "Settlor" means the grantor or another person treated as the owner of any portion of a trust under section 671 of the federal "Internal Revenue Code of 1986", as amended.

(2) An independent trustee of a trust, unless otherwise provided in the governing instrument, may, from time to time, in the trustee's discretion, distribute to the settlor an amount equal to any income taxes on any portion of the trust's taxable income for which the settlor is liable.

(3) A trustee shall not exercise or participate in the exercise of discretion pursuant to this section that would cause the inclusion of the trust assets in the settlor's gross taxable estate for federal estate tax purposes at the time of exercise or in a manner inconsistent with the qualification of all or any portion of the trust for the federal gift or estate tax marital deduction, to the extent the trust is intended to qualify for such deduction.

(4) The provisions of this section do not apply to:

(a) Any trust by which a future estate is indefeasibly vested in the United States or a political subdivision thereof for exclusively public purposes;

(b) A corporation organized exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation;

(c) A trustee, or a fraternal society, order, or association operating under the lodge system, provided the principal or income of such trust is to be used by such trustee or by such fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or of such fraternal society, order, or association is carrying on propaganda or otherwise attempting to influence legislation; or

(d) Any veterans' organization incorporated by an act of congress, or of its department or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(5) A creditor of the settlor of an irrevocable trust is not entitled to attach or otherwise reach any trust property due to the power granted to a trustee or other third party by the terms of the trust, court order, agreement of the beneficiaries, or any other provision of law, including subsection (2) of this section, to reimburse the settlor of the trust an amount for which the settlor is liable for income tax on the taxable income of the trust.

(6) The provisions of this section apply to all trusts unless an independent trustee of a trust elects otherwise in writing.

PART 6

**15-16-601. Life insurance policy owned by a trustee.** (1) Notwithstanding any other provision of law and the provisions of the Colorado uniform prudent investor act, article 1.1 of this title, a trustee may not acquire or hold as a trust asset a life insurance policy on the life of a person unless the trustee has an insurable interest, as defined in section 15-16-501, in the person. A trustee who acquires as a trust asset a life insurance policy on the life of a person in whom the trustee has an insurable interest may continue to hold the life insurance policy without liability for loss arising from the trustee's failure to:

(a) Determine whether the policy is or remains a proper investment;

(b) Investigate the financial strength of the life insurance company;

(c) Exercise or not exercise any option, right, or privilege available under the policy, including financing the payment of premiums, unless there is sufficient cash or there are other readily marketable trust assets from which to pay premiums, regardless of whether the exercise or nonexercise of these powers results in the lapse or termination of the policy;

(d) Inquire about or investigate the health or financial condition of any insured under the policy; or

(e) Retain the policy without regard to any lack of diversification of trust assets resulting from ownership of such policy and without regard to the terms and conditions of the policy.

(2) (a) This section does not relieve a trustee of liability with respect to any life insurance policy purchased from an affiliated company, or with respect to which the trustee or any affiliated company of the trustee receives any commission, unless either:

(I) The trustee has given written notice of such intended purchase to all qualified beneficiaries of the trust as defined in section 15-1-402 (10.5), or to their legal representatives, and either receives written consent to such purchase from qualified beneficiaries or does not receive from a qualified beneficiary a response to written notice by the trustee within thirty days after the mailing of such notice to the qualified beneficiary or legal representative at his or her last known address; or

(II) The trust agreement contains a provision that permits purchases of life insurance from an affiliate.

(b) For purposes of this section, an "affiliated company" shall have the same meaning as set forth in 15 U.S.C. sec. 80a-2 (a) (2).

(3) This section applies to a trust established before, on, or after August 7, 2013, and to a life insurance policy acquired, retained, or owned by a trustee before, on, or after August 7, 2013.

(4) Notwithstanding the provisions of this section, this section does not apply to any trust that expressly provides that this section shall not apply to such trust, or to any trust that otherwise provides for a different standard of fiduciary care or obligation greater than that provided in this section; except that a trust may not permit a trustee to acquire or hold as a trust asset a life insurance policy on the life of a person in whom the trustee does not hold an insurable interest.

PART 7

**15-16-701. (Reserved)**

**15-16-702. Revocation or amendment of revocable trust.** (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection (1) does not apply to a trust created under an instrument executed before August 7, 2013.

(2) Unless the terms of a trust expressly provide otherwise, if a revocable trust is created or funded by more than one settlor:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone, with regard to the portion of the trust property attributable to that settlor's contribution, but may be amended only by joint action of both spouses;

(b) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear and convincing evidence of the settlor's intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust. A provision in a trust specifying a method to revoke or amend the trust does not make the specified method exclusive unless the specified method is referred to as the "sole", "exclusive", or "only" method of revoking or amending the trust or the provision includes similar language manifesting the settlor's intent that the trust may not be revoked or amended by any other method.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(6) Unless the terms of a trust expressly provide otherwise, or the power to do so has been expressly granted to another person, a conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor, may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property, but only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or the settlor's successors interest for distributions made and other actions taken on the

assumption that the trust has not been amended or revoked.

**15-16-703. Settlor's powers.** Unless the terms of the trust expressly provide otherwise, while a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

**15-16-704. Limitation on action contesting validity of revocable trust.** (1) (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(I) Three years after the settlor's death; or

(II) One hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. A trustee shall not be liable to any person for giving or failing to give notice under this section.

(b) The applicable time limit described in paragraph (a) of this subsection (1) is an absolute bar that may not be waived or tolled.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) Unless a distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a beneficiary of a trust that is determined to have been invalid, or a distributee of property improperly distributed or paid, or a claimant who is improperly paid, is liable for the return of the property improperly received and its income, if any, since the distribution if he or she has the property. If he or she does not have the property, then he or she is liable for the return of the value as of the date of his or her disposition of the property improperly received, and its income and gain, if any received by him or her.

## PART 8

## DIRECTED TRUSTEES

**15-16-801. Definitions.** As used in this part 8, unless the context otherwise requires:

(1) "Action", with respect to an act of a fiduciary, includes a failure to act.

(2) "Excluded trustee" means any trustee that, under the terms of the governing instrument, is precluded from exercising certain powers, which powers may be exercised only by

a trust advisor designated by the governing instrument.

(3) "Investment decision" means a fiduciary decision regarding the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in any property owned by a trust and, with respect to non-publicly traded investments, the determination of the value of such investments.

(4) "Governing instrument" means a will, trust agreement or declaration, or a court order appointing a trust advisor.

(5) "Non-investment decision" means a fiduciary decision regarding the distribution, administration, or management of any property owned by a trust, other than an investment decision.

(6) "Qualified beneficiary" has the same meaning set forth in section 15-1-402 (10.5).

(7) "Settlor" includes a grantor, a trustor, and a testator.

(8) (a) "Trust advisor" means a person who is:

(I) Acting in a fiduciary capacity; and

(II) Vested under a governing instrument with fiduciary powers to direct a trustee's actual or proposed investment decisions or non-investment decisions.

(b) A person who holds a nonfiduciary power over a trust, including a power of appointment as defined in section 15-2-102, is not subject to the provisions of this part 8, regardless of whether he or she is described as a "trust advisor" within a governing instrument.

(9) "Willful misconduct" means intentional wrongdoing and not mere negligence, gross negligence, or recklessness.

**15-16-802. Default rules for directed trusts.** Excluding the requirement that a trust advisor act in a fiduciary capacity, the provisions of this part 8 are default rules that apply to any trust for which a trust advisor is then acting, and such rules may be expanded, restricted, eliminated, or otherwise altered by the provisions of a governing instrument.

**15-16-803. Trust advisor and excluded trustee.** (1) A trust advisor with power over investment decisions is subject to the "Uniform Prudent Investor Act", article 1.1 of this title. A trust advisor who has special skills or expertise or who is named a trust advisor in reliance upon his or her representation that he or she has special skills or expertise has a duty to use those special skills or expertise.

(2) The powers and duties of a trust advisor, and the extent of such powers and duties, are established by the governing instrument, and the exercise or nonexercise of such powers and duties is binding on all other persons.

(3) The powers and duties of a trust advisor may include, but are not limited to:

(a) The exercise of a specific power or the performance of a specific duty or function that would normally be performed by a trustee;

(b) The direction of a trustee's actions regarding all investment decisions or one or more specific investment decisions; or

(c) The direction of a trustee's actions relating to one or more specific non-investment

decisions, including the exercise of discretion to make distributions to beneficiaries.

(4) If a governing instrument provides that a trustee must follow the direction of a trust advisor and the trustee acts in accordance with such direction, the trustee is an excluded trustee.

**15-16-804. Appointment and removal of trust advisors.** If a governing instrument does not include express provisions for the removal of a trust advisor but does include provisions for the removal of one or more trustees, the provisions for the removal of trustees also govern the removal of any then-serving trust advisor.

**15-16-805. No duty to review actions of trust advisor.** An excluded trustee has no duty to review or monitor the actions of a trust advisor.

**15-16-806. Duty to communicate - no duty to warn.** (1) A trustee has a duty to keep a trust advisor reasonably informed about the administration of the trust with respect to any specific duty or function being performed by the trust advisor to the extent that providing such information is reasonably necessary for the trust advisor to perform the duty or function. A trust advisor requesting or receiving any such information from a trustee has no duty to monitor the conduct of the trustee or to provide advice to or consult with the trustee.

(2) A trust advisor has a duty to keep the trustee and any other trust advisors reasonably informed about the administration of the trust with respect to all duties or functions being performed by the trust advisor to the extent that providing such information is reasonably necessary for the trustee and any other trust advisors to perform their duties or functions. A trustee requesting or receiving any such information from a trust advisor has no duty to monitor the conduct of the trust advisor or to provide advice to or consult with the trust advisor.

(3) A trust advisor has a duty to keep the beneficiaries of a trust reasonably informed of the trust and its administration, to the extent that such information relates to a duty or function being performed by the trust advisor. This duty is governed by section 15-16-303.

(4) A trust advisor has no duty to communicate with or warn any beneficiary or third party concerning any action or actions taken by any other trust advisor or trustee.

**15-16-807. Excluded trustee not liable for action of trust advisor.** (1) If an excluded trustee is required to follow the direction of a trust advisor and the excluded trustee acts in accordance with such direction, the excluded trustee is not liable for any cause of action resulting from the act of complying therewith, except in cases of willful misconduct on the part of the excluded trustee so directed.

(2) An excluded trustee has no liability for any action of a trust advisor.

**15-16-808. Power of trust advisor to act after death or incapacity of settlor.** The

power and authority of a trust advisor does not lapse at the death or incapacity of the settlor.

**15-16-809. Trust advisor subject to district court jurisdiction.** By accepting appointment to serve as a trust advisor of a trust having its principal place of administration in the state of Colorado, the trust advisor is subject to the jurisdiction of the courts of the state of Colorado even if other related agreements provide otherwise, and the trust advisor may be made a party to any action or proceeding if issues relate to a decision or action of the trust advisor.

## ARTICLE 17

Effective Date - Transition

**15-17-101. Time of taking effect - provisions for transition.** (1) This code takes effect on July 1, 1974.

(2) Except as provided elsewhere in this code, including but not limited to sections 15-11-601, 15-11-701, 15-11-1106, 15-16-702, and 15-17-103, on the effective date of this code or of any amendment to this code:

(a) The code or the amendment applies to governing instruments executed by decedents dying thereafter;

(b) The code or the amendment applies to any proceedings in court then pending or thereafter commenced, regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code or any amendment to this code;

(c) Every personal representative or other fiduciary holding an appointment on July 1, 1974, or before the effective date of an amendment to this code continues, to hold the appointment but has only the powers conferred by this code and by any amendment to this code and is subject to the duties imposed by this code and by any amendment to this code with respect to any act occurring or done thereafter;

(d) An act done before July 1, 1974, or before the effective date of an amendment to this code, in any proceeding is not impaired by this code or by any amendment to this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1974, or before the effective date of an amendment to this code, the provisions of that statute shall remain in force with respect to that right;

(e) Any rule of construction or presumption provided in this code or in any amendment to this code applies to governing instruments executed before July 1, 1974, or before the effective date of an amendment to this code, unless there is a clear indication of a contrary intent;

(f) No provision of this code or of any amendment to this code shall apply retroactively if the court determines that such application would cause the provisions to be retrospective in its operation in violation of section 11 of article II of the state constitution; and

(g) The law in effect at the time of death identifies the heirs and determines the shares under intestacy in accordance with sections 15-11-101 to 15-11-103.

**15-17-102. Effective date - applicability for reenactment of article 11. (Repealed)**

**15-17-103. Effective date - applicability of repealed and reenacted parts 1 to 4 of article 14 of this title.** (1) Parts 1 to 4 of article 14 of this title, as repealed and reenacted effective January 1, 2001, shall apply to any and all estates, trusts, or protective proceedings whether created or filed prior to or on or after said date.

(2) In circumstances where the terms of an instrument creating an estate or trust created prior to January 1, 2001, or in cases where court orders have been issued prior to January 1, 2001, which are contrary to, or inconsistent with, the law or procedure set forth in parts 1 to 4 of article 14 of this title, as repealed and reenacted effective January 1, 2001, the court orders or terms of the instrument will control unless and until the court issues subsequent orders as authorized under said parts 1 to 4.

## DECLARATIONS - FUTURE MEDICAL TREATMENT

## ARTICLE 18

Colorado Medical Treatment
Decision Act

**15-18-101. Short title.** This article shall be known and may be cited as the "Colorado Medical Treatment Decision Act".

**15-18-102. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado law has traditionally recognized the right of an adult to accept or reject medical or surgical treatment;

(b) Recent advances in medical science have made it possible to prolong the dying process through the use of medical or surgical procedures;

(c) The use of such medical or surgical procedures increasingly involves patients who have a terminal condition or are in a persistent vegetative state, and lack decisional capacity to accept or reject medical or surgical treatment;

(d) The traditional right to accept or reject medical or surgical treatment should be available to an adult while he or she has decisional capacity, notwithstanding the fact that such medical or surgical treatment may be offered or applied when he or she has a terminal condition or is in a persistent vegetative state, and lacks decisional capacity to accept or reject medical or surgical treatment;

(e) This article affirms the traditional right to accept or reject medical or surgical treatment, and creates a procedure by which an adult with decisional capacity may make such decisions in advance of medical need;

(f) It is the intent of the general assembly that nothing in this article shall have the effect of modifying or changing currently practiced medical ethics or protocol with respect to any patient in the absence of a declaration as provided for in section 15-18-104;

(g) It is the intent of the general assembly that nothing in this article shall require any adult to execute a declaration.

**15-18-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Adult" means any person eighteen years of age or older.

(2) "Advanced practice nurse" means a nurse who is included in the advanced practice registry pursuant to section 12-38-111.5, C.R.S.

(3) "Artificial nutrition and hydration" means:

(a) Nutrition or hydration supplied through a tube inserted into the stomach or intestines; or

(b) Nutrients or fluids injected intravenously into the bloodstream.

(4) "Attending physician" means the physician, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(5) "Court" means the district court of the county in which a declarant having a terminal condition or in a persistent vegetative state is located at the time of commencement of a proceeding pursuant to this article or, if in the city and county of Denver, the probate court.

(6) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment or the ability to make an informed health care benefit decision.

(7) "Declarant" means an adult possessing decisional capacity who executes a declaration.

(8) "Declaration" means a written document voluntarily executed by a declarant in accordance with the requirements of section 15-18-104.

(9) "Hospital" means an institution holding a license or certificate of compliance as a hospital issued by the department of public health and environment and includes hospitals operated by the federal government in Colorado.

(10) "Life-sustaining procedure" means any medical procedure or intervention that, if administered to a qualified patient, would serve only to prolong the dying process, and shall not include any medical procedure or intervention for nourishment of the qualified patient or

considered necessary by the attending physician or advanced practice nurse to provide comfort or alleviate pain.

(11) "Persistent vegetative state" is defined by reference to the criteria and definitions employed by prevailing community medical standards of practice.

(12) "Physician" means a person duly licensed under the provisions of article 36 of title 12, C.R.S.

(13) "Qualified patient" means a patient who has executed a declaration in accordance with this article and who has been certified by his or her attending physician and one other physician to have a terminal condition or be in a persistent vegetative state.

(14) "Terminal condition" means an incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to prolong the dying process.

**15-18-104. Declaration as to medical treatment.** (1) Any adult with decisional capacity may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he or she has a terminal condition or is in a persistent vegetative state, and lacks decisional capacity to accept or reject medical or surgical treatment. It shall be the responsibility of the declarant or someone acting for the declarant to provide the declaration to the attending physician or advanced practice nurse for entry in the declarant's medical record.

(2) In the case of a declaration of a qualified patient known to the attending physician to be pregnant, a medical evaluation shall be made as to whether the fetus is viable. If the fetus is viable, the declaration shall be given no force or effect until the patient is no longer pregnant.

(3) (a) A declaration may contain separate written statements regarding the declarant's preference concerning life-sustaining procedures and artificial nutrition and hydration if the declarant has a terminal condition or is in a persistent vegetative state.

(b) The declarant may provide in his or her declaration one of the following actions:

(I) That artificial nutrition and hydration not be continued;

(II) That artificial nutrition and hydration be continued for a specified period; or

(III) That artificial nutrition and hydration be continued.

(4) Notwithstanding the provisions of subsection (3) of this section and section 15-18-103 (10), when an attending physician or advanced practice nurse has determined that pain results from a discontinuance of artificial nutrition and hydration, the physician or advanced practice nurse may order that artificial nutrition and hydration be continued to the extent necessary to provide comfort and alleviate pain.

(5) A declaration executed before two witnesses by any adult with decisional capacity shall be legally effective for the purposes of this article.

(6) A declaration executed pursuant to this article may include a document with a written statement as provided in section 12-34-105 (a), C.R.S., or a written statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S.

(7) A declaration executed pursuant to this article may be combined with a medical

power of attorney to create a single document. Such a document shall comply with all requirements of this title and in accordance with the provisions of the "Colorado Patient Autonomy Act", sections 15-14-503 to 15-14-509.

(8) A declaration executed pursuant to this article may include a written statement in which the declarant designates individuals with whom the declarant's attending physician, any other treating physician, or another medical professional may speak concerning the declarant's medical condition prior to a final determination as to the withholding or withdrawal of life-sustaining procedures, including artificial nutrition and hydration. The designation of such individuals in the document shall be considered to be consistent with the privacy requirements of the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d to 1320d-8, as amended, referred to in this section as "HIPAA", regarding waiver of confidentiality.

(9) A declaration executed pursuant to this article may include a written statement providing individual medical directives from the declarant to the attending physician or any other treating medical personnel.

**15-18-105. Inability of declarant to sign.** (1) In the event that the declarant is physically unable to sign the declaration, it may be signed by some other person in the declarant's presence and at the declarant's direction. The other person shall not be:

(a) The attending physician or any other physician;

(b) An employee of the attending physician or health care facility in which the declarant is a patient;

(c) A person who has a claim against any portion of the estate of the declarant at his or her death at the time the declaration is signed; or

(d) A person who knows or believes that he or she is entitled to any portion of the estate of the declarant upon the declarant's death either as a beneficiary of a will in existence at the time the declaration is signed or as an heir at law.

**15-18-106. Witnesses.** (1) Except as otherwise provided in section 15-18-105, a declaration shall be signed by the declarant in the presence of two witnesses. The witnesses shall not include any person specified in section 15-18-105.

(2) A declaration may be notarized. The absence of notarization shall have no impact on the validity of a declaration.

**15-18-107. Withdrawal - withholding of life-sustaining procedures.** In the event that an attending physician is presented with an unrevoked declaration executed by a declarant whom the physician believes has a terminal condition or is in a persistent vegetative state, and lacks decisional capacity to accept or reject medical or surgical treatment, the attending physician shall order the declarant to be examined by one other physician. If both physicians find that the declarant has a terminal condition or is in a persistent vegetative state, and lacks decisional

capacity to accept or reject medical or surgical treatment, they shall certify such fact in writing and enter such in the qualified patient's medical record of the hospital in which the withholding or withdrawal of life-sustaining procedures or artificial nutrition and hydration may occur, together with a copy of the declaration. If the attending physician has actual knowledge of the whereabouts of either the qualified patient's agent under a medical power of attorney or, without regard to order, the patient's spouse, a person designated under the "Colorado Designated Beneficiary Agreement Act", as described in article 22 of this title, any of his or her adult children, a parent, sibling, or any other person designated in writing by the qualified patient, the attending physician shall immediately make a reasonable effort to notify at least one of said persons that a certificate has been signed. If no action to challenge the validity of a declaration has been filed within forty-eight hours after the certification is made by the physicians, the attending physician shall then withdraw or withhold all life-sustaining procedures or artificial nutrition and hydration pursuant to the terms of the declaration.

**15-18-108. Determination of validity.** (1) Any person who is the parent, adult child, spouse, designated beneficiary under the "Colorado Designated Beneficiary Agreement Act", article 22 of this title, or attorney-in-fact under a durable power of attorney of the qualified patient may challenge the validity of a declaration in the appropriate court of the county in which the qualified patient is located. Upon the filing of a petition to challenge the validity of a declaration and notification to the attending physician, a temporary restraining order shall be issued until a final determination as to validity is made.

(2) (a) In proceedings pursuant to this section, the court shall appoint a guardian ad litem for the qualified patient, and the guardian ad litem shall take such actions as he or she deems necessary and prudent in the best interests of the qualified patient and shall present to the court a report of his or her actions, findings, conclusions, and recommendations.

(b) (I) Unless the court, for good cause shown, provides for a different method or time of notice, the petitioner, at least seven days prior to the hearing, shall cause notice of the time and place of hearing to be given as follows:

(A) To the qualified patient's guardian or conservator, if any, and the court-appointed guardian ad litem; and

(B) To the qualified patient's spouse or beneficiary under the "Colorado Designated Beneficiary Agreement Act", article 22 of this title, if the identity and whereabouts of such person is known to the petitioner, or otherwise to an adult child or parent of the qualified patient.

(II) Notice as required in this paragraph (b) shall be made in accordance with the Colorado rules of civil procedure.

(c) The court may require evidence, including independent medical evidence, as it deems necessary.

(3) Upon a determination of the validity of the declaration, the court shall enter any appropriate order.

(4) If the court determines that any proceedings pursuant to this section or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and costs, including reasonable attorney fees, incurred by the affected parties in responding

to the proceedings or pleadings, against a party that brought or defended the proceedings or filed the pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction, or surcharge provided by law.

(5) Any declaration executed in compliance with the requirements of Colorado law in effect at the time the declaration was made shall continue to be an effective declaration after August 11, 2010.

(6) Any declaration executed in compliance with the laws of the state in which the declaration was executed shall be considered effective for use within the state of Colorado to the extent that such declaration does not violate any laws of the state of Colorado.

**15-18-109. Revocation of declaration.** A declaration may be revoked by the declarant orally, in writing, or by burning, tearing, cancelling, obliterating, or destroying said declaration.

**15-18-110. Liability.** (1) With respect to any declaration that appears on its face to have been executed in accordance with the requirements of this article:

(a) Any physician or advanced practice nurse may act in compliance with such declaration in the absence of actual notice of revocation, fraud, misrepresentation, or improper execution;

(b) A physician who signs a certificate withholding or withdrawing life-sustaining procedures in compliance with a declaration shall not be subject to civil liability, criminal penalty, or licensing sanctions therefor;

(c) A hospital or person acting under the direction of a physician and participating in the withholding or withdrawal of life-sustaining procedures in compliance with a declaration shall not be subject to civil liability, criminal penalty, or licensing sanctions therefor; and

(d) An advanced practice nurse who withholds or withdraws life-sustaining procedures in compliance with a declaration shall not be subject to civil liability, criminal penalty, or licensing sanctions therefor.

**15-18-111. Determination of suicide or homicide - effect of declaration on insurance.** The withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to this article shall not, for any purpose, constitute a suicide or a homicide. The existence of a declaration shall not affect, impair, or modify any contract of life insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life insurance or any increase of the premium therefor. No insurer or provider of health care shall require any person to execute a declaration as a condition of being insured for or receiving health care services, nor shall the failure to execute a declaration be the basis for any increased or additional premium for a contract or policy for medical or health insurance.

**15-18-112. Application of article.** (1) Nothing in this article shall be construed as

altering or amending the standards of the practice of medicine or nursing or establishing any presumption, absent a valid declaration, nor as condoning, authorizing, or approving euthanasia or mercy killing, nor as permitting any affirmative or deliberate act or omission to end life, except to permit natural death as provided in this article. Nothing in this article shall require the provision or continuation of medical treatment contrary to the standards of the practice of medicine.

(2) A diagnosis of persistent vegetative state shall be performed by a qualified medical professional according to standards of the practice of medicine. Nothing in this article shall be interpreted to define "persistent vegetative state" in contradiction of standards of the practice of medicine.

(3) In the event of any conflict between the provisions of this article, or a declaration executed under this article, and the provisions of section 15-14-501, the provisions of this article and the declaration shall prevail.

(4) Notwithstanding the provisions of subsection (3) of this section, a declarant may include within the declaration or within any power of attorney executed by the declarant a written statement to the effect that the agent under power of attorney may override the provisions of the declaration.

**15-18-113. Penalties - refusal - transfer.** (1) A person who willfully conceals, defaces, damages, or destroys a declaration of another person, without the knowledge and consent of the declarant, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A person who falsifies or forges a declaration of another person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) If a person falsifies or forges a declaration of another person and the terms of the declaration are carried out, resulting in the death of the purported declarant, the person commits a class 2 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(4) A person who willfully withholds information concerning the revocation of a declaration of another person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(5) An attending physician or advanced practice nurse who refuses to comply with the terms of a declaration valid on its face shall transfer the care of the declarant to another physician or advanced practice nurse who is willing to comply with the declaration. Refusal of an attending physician or advanced practice nurse to comply with a declaration and failure to transfer the care of the declarant to another physician or advanced practice nurse shall constitute unprofessional conduct as defined in section 12-36-117, C.R.S., or grounds for discipline pursuant to section 12-38-117, C.R.S.

## ARTICLE 18.5

Proxy Decision-makers for Medical Treatment and

**15-18.5-101. Legislative declaration - construction of statute.** (1) The general assembly hereby finds, determines, and declares that:

(a) All adult persons have a fundamental right to make their own medical treatment and health care benefit decisions, including decisions regarding medical treatment, artificial nourishment and hydration, and private or public health care benefits;

(b) The lack of decisional capacity to provide informed consent to or refusal of medical treatment should not preclude such decisions from being made on behalf of a person who lacks such decisional capacity and who has no known advance medical directive, or whose wishes are not otherwise known; and

(c) The enactment of legislation to authorize proxy decision-makers to make medical treatment decisions and surrogate decision-makers to make health care benefit decisions on behalf of persons lacking the decisional capacity to provide informed consent to or refusal of medical treatment is appropriate.

(2) The general assembly does not intend to encourage or discourage any particular medical treatment or to interfere with or affect any method of religious or spiritual healing otherwise permitted by law.

(3) Nothing in this article shall be construed as condoning, authorizing, or approving euthanasia or mercy killing. In addition, the general assembly does not intend that this article be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by this article.

**15-18.5-102. Definitions applicable to medical durable power of attorney - applicability.** (1) The definitions set forth in section 15-14-505 shall apply to the provisions of this article.

(2) The provisions of sections 15-14-506 to 15-14-509 shall apply to this article. In addition, proxy decision-makers, surrogate decision-makers for health care benefits, health care providers, and health care facilities shall be subject to the provisions of this article.

**15-18.5-103. Proxy decision-makers for medical treatment authorized.** (1) A health care provider or health care facility may rely, in good faith, upon the medical treatment decision of a proxy decision-maker selected in accordance with subsection (4) of this section if an adult patient's attending physician determines that such patient lacks the decisional capacity to provide informed consent to or refusal of medical treatment and no guardian with medical decision-making authority, agent appointed in a medical durable power of attorney, person with the right to act as a proxy decision-maker in a designated beneficiary agreement made pursuant to article 22 of this title, or other known person has the legal authority to provide such consent or refusal

on the patient's behalf.

(2) The determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment may be made by a court or the attending physician, and the determination shall be documented in such patient's medical record. The determination may also be made by an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically. The advanced practice nurse shall document in the patient's record the name of the physician with whom the advanced practice nurse collaborated. The attending physician shall make specific findings regarding the cause, nature, and projected duration of the patient's lack of decisional capacity, which findings shall be included in the patient's medical record.

(3) Upon a determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, the advanced practice nurse, or such physician's or nurse's designee, shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity. In addition, the attending physician, or such physician's designee, shall make reasonable efforts to locate as many interested persons as defined in this subsection (3) as practicable and the attending physician or advanced practice nurse may rely on such individuals to notify other family members or interested persons. For the purposes of this section, "interested persons" means the patient's spouse, either parent of the patient, any adult child, sibling, or grandchild of the patient, or any close friend of the patient. Upon locating an interested person, the attending physician, advanced practice nurse, or such physician's or nurse's designee, shall inform such person of the patient's lack of decisional capacity and that a proxy decision-maker should be selected for the patient.

(4) (a) It shall be the responsibility of the interested persons specified in subsection (3) of this section to make reasonable efforts to reach a consensus as to whom among them shall make medical treatment decisions on behalf of the patient. The person selected to act as the patient's proxy decision-maker should be the person who has a close relationship with the patient and who is most likely to be currently informed of the patient's wishes regarding medical treatment decisions. If any of the interested persons specified in subsection (3) of this section disagrees with the selection or the decision of the proxy decision-maker or, if, after reasonable efforts, the interested persons specified in subsection (3) of this section are unable to reach a consensus as to who should act as the proxy decision-maker, then any of the interested persons specified in subsection (3) of this section may seek guardianship of the patient by initiating guardianship proceedings pursuant to part 3 of article 14 of this title. Only said persons may initiate such proceedings with regard to the patient.

(b) Nothing in this section shall be construed to preclude any interested person described in subsection (3) of this section from initiating a guardianship proceeding pursuant to part 3 of article 14 of this title for any reason any time after said persons have conformed with paragraph (a) of this subsection (4).

(5) When an attending physician determines that an adult patient lacks decisional capacity, the attending physician or another health care provider shall make reasonable efforts to advise the patient of such determination, of the identity of the proxy decision-maker, and of the patient's right to object, pursuant to section 15-14-506 (4) (a).

(6) Artificial nourishment and hydration may be withheld or withdrawn from a patient

upon a decision of a proxy only when the attending physician and a second independent physician trained in neurology or neurosurgery certify in the patient's medical record that the provision or continuation of artificial nourishment or hydration is merely prolonging the act of dying and is unlikely to result in the restoration of the patient to independent neurological functioning.

(6.5) The assistance of a health care facility's medical ethics committee shall be provided upon the request of a proxy decision-maker or any other interested person specified in subsection (3) of this section whenever the proxy decision-maker is considering or has made a decision to withhold or withdraw medical treatment. If there is no medical ethics committee for a health care facility, such facility may provide an outside referral for such assistance or consultation.

(7) If any of the interested persons specified in subsection (3) of this section or the guardian or the attending physician believes the patient has regained decisional capacity, then the attending physician shall reexamine the patient and determine whether or not the patient has regained such decisional capacity and shall enter the decision and the basis therefore into the patient's medical record and shall notify the patient, the proxy decision-maker, and the person who initiated the redetermination of decisional capacity.

(8) Except for a court acting on its own motion, no governmental entity, including the state department of human services and the county departments of social services, may petition the court as an interested person pursuant to part 3 of article 14 of this title. In addition, nothing in this article shall be construed to authorize the county director of any county department of social services, or designee of such director, to petition the court pursuant to section 26-3.1-104, C.R.S., in regard to any patient subject to the provisions of this article.

(9) Any attending physician, health care provider, or health care facility that makes reasonable attempts to locate and communicate with a proxy decision-maker shall not be subject to civil or criminal liability or regulatory sanction therefor.

**15-18.5-104. Surrogate decision-makers for health care benefits.** (1) A proxy decision-maker for medical treatment selected in accordance with section 15-18.5-103 or a person with the right to act as a surrogate decision-maker in a designated beneficiary agreement made pursuant to article 22 of this title shall have authority to make health care benefit decisions on behalf of an adult patient and may be known additionally as a surrogate decision-maker for health care benefits.

(2) A court or the attending physician may make the determination that a person lacks the decisional capacity to make health care benefit decisions. The determination shall be documented in such patient's medical record. The determination may also be made by an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically. The advanced practice nurse shall document in the patient's record the name of the physician with whom the advanced practice nurse collaborated. The attending physician or nurse shall make specific findings regarding the cause, nature, and projected duration of the person's lack of decisional capacity regarding health care benefit decisions. Such determination and findings shall be documented in the person's medical record.

(3) Upon a determination that an adult patient lacks decisional capacity to make health

care benefit decisions, the attending physician, advanced practice nurse, or the physician's or nurse's designee shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity. In addition, the attending physician or advanced practice nurse or the physician's or nurse's designee shall make reasonable efforts to locate as many interested persons as defined in this subsection (3) as practicable, and the attending physician or advanced practice nurse may rely on such individuals to notify other family members or interested persons. For the purposes of this section, "interested persons" means the patient's spouse; either parent of the patient; any adult child, sibling, or grandchild of the patient; or any close friend of the patient. Upon locating an interested person, the attending physician or advanced practice nurse or the physician's or nurse's designee shall inform such person of the patient's lack of decisional capacity and determine whether such interested person is available, willing, and has the capability to act as a surrogate decision-maker for health care benefits for the patient.

(4) If a proxy decision-maker for medical treatment or an interested person, as defined in subsection (3) of this section, is unavailable, unwilling, or does not have the capability to make a health care benefit decision on behalf of a person lacking the decisional capacity to make a health care benefit decision pursuant to this section, then the attending physician or his or her designee may appoint a surrogate decision-maker for health care benefits as described in subsection (5) of this section.

(5) The surrogate decision-maker for health care benefits appointed by an attending physician or his or her designee may be a private individual or an individual acting on behalf of an organization, including an employee of the organization, willing to voluntarily assume the fiduciary responsibility to make health care benefit decisions in the best interests of the person who lacks the decisional capacity to make health care benefit decisions. The appointed surrogate decision-maker for health care benefits shall be free of conflicts specified in subsection (9) of this section.

(6) Community and charitable organizations may provide volunteers or employees to serve as surrogate decision-makers for health care benefits. The division of insurance, established in section 10-1-103, C.R.S., shall be available to provide assistance to surrogate decision-makers for health care benefits regarding medicare benefits. A physician or his or her designee may contact nonprofit entities that serve the elderly or disability communities for assistance in locating an appropriate surrogate decision-maker for health care benefits.

(7) After a physician or his or her designee locates an individual willing to act as the surrogate decision-maker for health care benefits pursuant to subsection (3) of this section, the physician shall certify the appointment in writing on the form set forth in section 15-18.5-105.

(8) If the surrogate decision-maker for health care benefits, a proxy decision-maker for medical treatment, an interested person, the person's guardian, or the attending physician believes the patient has regained decisional capacity, then the attending physician shall reexamine the patient and determine whether or not the patient has regained such decisional capacity and shall enter the decision and the basis therefor into the patient's medical record and shall notify the patient, the surrogate decision-maker for health care benefits, and the person who initiated the redetermination of decisional capacity.

(9) A surrogate decision-maker for health care benefits may not be an employee, a contractor, or an official representative of, or receive any remuneration of any kind from, a health

care provider, medical benefit provider, pharmaceutical company, pharmacy benefit management company, pharmacy, or any person or entity engaged in the sale of insurance.

(10) A surrogate decision-maker for health care benefits shall have access to all necessary information, including but not limited to:

(a) Personal health information as defined by the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d-7 (a) (2); and

(b) Financial information needed to make appropriate health care benefit decisions; except that any bank, trust company, savings and loan association, credit union, or insurance company regulated under any laws of this state or the United States and any officer, employee, agent, or affiliate of any of the foregoing entities shall be exempt from any requirement to provide financial information to a surrogate decision-maker under the provisions of this section.

(11) A surrogate decision-maker for health care benefits shall make decisions that are in the best interests of the person on whose behalf the decisions are made.

(12) Any entity, including a financial entity, that relies in good faith on a certificate of appointment of a surrogate decision-maker for health care benefits received directly from the attending physician or his or her designee shall be immune from liability for actions taken on the basis of said certificate.

(13) A surrogate decision-maker for health care benefits shall be immune from liability for decisions made in good faith.

(14) An attending physician, health care provider, or health care facility that acts in substantial compliance with this section shall not be subject to civil or criminal liability or regulatory sanction relating to the selection or actions of a surrogate decision-maker for health care benefits.

(15) Nothing in this section shall be construed as requiring a surrogate decision-maker for health care benefits to make a decision or from prohibiting an individual from consulting another person or entity to obtain assistance in making a health care benefit decision.

**15-18.5-105. Statutory form for certificate of appointment of surrogate decision-makers for health care benefits.** The following statutory form for certificate of appointment of surrogate decision-maker for health care benefits is legally sufficient:

CERTIFICATE OF APPOINTMENT OF A SURROGATE DECISION-MAKER FOR HEALTH CARE BENEFITS

(1) I, (name of attending physician), the attending physician, certify that (name of person for whom decisions are being made) lacks the decisional capacity to make health care benefit decisions. I further certify that I have made the necessary documentation to the medical record.

(2) I, (name of attending physician), the attending physician or designee, hereby appoint (name of surrogate), (driver's license number or state ID number) as the surrogate decision-maker for health care benefits on behalf of (name of person for whom decisions are being made),

(address, city, state) pursuant to section 15-18.5-104, C.R.S.

(3) (Name of surrogate) shall have access to all necessary personal health information as defined by the federal Health Insurance Portability and Accountability Act and any financial information necessary to make appropriate health care benefit decisions on behalf of (name of person for whom decisions are being made), as provided for in section 15-18.5-104, C.R.S. (Name of surrogate) shall make such decisions in the best interests of (name of person for whom decisions are being made).

Executed this _____ day of _____, ____.

_____

(Attending physician)
(Business address)
(Business phone)
(Business fax)

## ARTICLE 18.6

Directive Relating to
Cardiopulmonary Resuscitation

**15-18.6-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function or to support breathing in the event of cardiac or respiratory arrest or malfunction. "CPR" includes, but is not limited to, chest compression, delivering electric shock to the chest, or placing tubes in the airway to assist breathing.

(2) "CPR directive" means an advance medical directive pertaining to the administration of cardiopulmonary resuscitation.

(3) "Emergency medical service personnel" means an emergency medical service provider at any level who is certified or licensed by the department of public health and environment. "Emergency medical service personnel" includes a first responder certified by the department of public health and environment or the division of fire prevention and control in the department of public safety, in accordance with section 24-33.5-1205 (2) (c), C.R.S.

**15-18.6-102. CPR directives for CPR - who may execute.** Any adult over age eighteen who has the decisional capacity to provide informed consent to or refusal of medical treatment or any other person who is, pursuant to the laws of this state or any other state, authorized to make medical treatment decisions on behalf of an adult who lacks such decisional capacity, may execute a CPR directive. After a physician issues a "do not resuscitate" order for a minor child,

and only then, may the parents of the minor, if married and living together, the custodial parent or parent with decision-making responsibility for such a decision, or the legal guardian execute a CPR directive.

**15-18.6-103. CPR directive forms - duties of state board of health.** (1) On or before January 1, 1993, the state board of health shall promulgate rules and protocols for the implementation of CPR directives by emergency medical service personnel. The protocols adopted by the board of health shall include uniform methods of identifying persons who have executed a CPR directive. Protocols adopted by the board of health shall include methods for rapid identification of persons who have executed a CPR directive, controlled distribution of the methods of identifying persons who have executed a CPR directive, and the information described in subsection (2) of this section. Nothing in this subsection (1) shall be construed to restrict any other manner in which a person may make a CPR directive.

(2) CPR directive protocols to be adopted by the state board shall require the following information concerning the person who is the subject of the CPR directive:

(a) The person's name, date of birth, and sex;

(b) The person's eye and hair color;

(c) The person's race or ethnic background;

(d) If applicable, the name of a hospice program in which the person is enrolled;

(e) The name, address, and telephone number of the person's attending physician;

(f) The person's signature or mark or, if applicable, the signature of a person authorized by this article to execute a CPR directive;

(g) The date on which the CPR directive form was signed;

(h) The person's directive concerning the administration of CPR, countersigned by the person's attending physician;

(i) The person's directive in the form of a document with a written statement as provided in section 12-34-105 (b), C.R.S., or a statement in substantially similar form, indicating a decision regarding tissue donation. Such a document shall be executed in accordance with the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S. Such a written statement may be in the following form:

I hereby make an anatomical gift, to be effective upon my death, of:

A.___ Any needed tissues
B.___ The following tissues:
___ Skin
___ Cornea
___ Bone, related tissues, and tendons
Donor signature: _____

**15-18.6-104. Duty to comply with CPR directive - immunity - effect on criminal charges against another person.** (1) Emergency medical service personnel, health care providers, and health care facilities shall comply with a person's CPR directive that is apparent and immediately available. Any emergency medical service personnel, health care provider, health care facility, or any other person who, in good faith, complies with a CPR directive shall not be subject to civil or criminal liability or regulatory sanction for such compliance.

(2) Compliance by emergency medical service personnel, health care providers, or health care facilities with a CPR directive shall not affect the criminal prosecution of any person otherwise charged with the commission of a criminal act.

(3) In the absence of a CPR directive, a person's consent to CPR shall be presumed.

**15-18.6-105. Effect of declaration after inpatient admission.** A CPR directive for any person who is admitted to a health care facility shall be implemented as a physician's order concerning resuscitation as directed by the person in the CPR directive, pending further physicians' orders.

**15-18.6-106. Effect of CPR directive - absence - on life or health insurance.** Neither a CPR directive nor the failure of a person to execute one shall affect, impair, or modify any contract of life or health insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or any increase of a premium therefor.

**15-18.6-107. Revocation of CPR directive.** A CPR directive may be revoked at any time by a person who is the subject of such directive or by the agent or proxy decision-maker for such person. However, only those CPR directives executed originally by a guardian, agent, or proxy decision-maker may be revoked by a guardian, agent, or proxy decision-maker.

**15-18.6-108. Effect of article on euthanasia - mercy killing - construction of statute.** Nothing in this article shall be construed as condoning, authorizing, or approving euthanasia or mercy killing. In addition, the general assembly does not intend that this article be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by this article.

## ARTICLE 18.7

Directives Concerning Medical Orders
for Scope of Treatment

**15-18.7-101. Legislative declaration.** (1) The general assembly hereby finds that:

(a) Colorado law has traditionally recognized the right of an adult or his or her authorized surrogate decision-maker to accept or reject medical treatment and artificial nutrition or hydration;

(b) Each adult has the right to establish, in advance of the need for medical treatment, directives and instructions for the administration of medical treatment in the event the adult later lacks the decisional capacity to provide informed consent to, withdraw from, or refuse medical treatment;

(c) Current instruments for making advance medical directives are often underutilized, hampered by certain institutional barriers, and inconsistently interpreted and implemented; and

(d) The frail elderly, chronically or terminally ill, and nursing home resident population is in particular need of a consistent method for identifying and communicating critical treatment preferences that each sector of the health care community will recognize and follow.

(2) The general assembly therefore concludes that it is in the best interests of the people of Colorado to adopt statutes providing for medical orders for scope of treatment. Consistent with the goal of enhancing patient-centered, compassionate care through methods to enhance continuity across health care settings, medical orders for scope of treatment will provide a process for timely discussion between individuals and their health care providers about choices to accept, withdraw, or refuse life-sustaining treatment and, through the use of standardized forms, will ensure those preferences are clearly and unequivocally documented.

**15-18.7-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Adult" means a person eighteen years of age or older.

(2) "Advance medical directive" means a written instruction concerning medical treatment decisions to be made on behalf of the adult who provided the instruction in the event that he or she becomes incapacitated. An advance medical directive includes, but need not be limited to:

(a) A medical durable power of attorney executed pursuant to section 15-14-506;

(b) A declaration executed pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title;

(c) A power of attorney granting medical treatment authority executed prior to July 1, 1992, pursuant to section 15-14-501, as it existed prior to that date; or

(d) A CPR directive or declaration executed pursuant to article 18.6 of this title.

(3) "Artificial nutrition or hydration" means:

(a) Nutrition or hydration supplied through a tube inserted into the stomach or intestines; or

(b) Nutrients or fluids injected intravenously into the bloodstream.

(4) "Authorized surrogate decision-maker" means a guardian appointed pursuant to article 14 of this title, an agent appointed pursuant to a medical durable power of attorney, a proxy decision-maker for medical treatment decisions appointed pursuant to article 18.5 of this title, or a similarly authorized surrogate, as defined by the laws of another state, who is authorized to make medical decisions for an individual who lacks decisional capacity.

(5) "Cardiopulmonary resuscitation" or "CPR" shall have the same meaning as set forth in section 15-18.6-101 (1).

(6) "CPR directive" shall have the same meaning as set forth in section 15-18.6-101 (2).

(7) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment or the ability to make an informed health care benefit decision.

(8) "Emergency medical service personnel" means an emergency medical service provider who is certified or licensed by the department of public health and environment, created and existing under section 25-1-102, C.R.S., or a first responder certified by the department of public health and environment or the division of fire prevention and control in the department of public safety, in accordance with part 12 of article 33.5 of title 24, C.R.S.

(9) "Health care facility" means a hospital, a hospice inpatient residence, a nursing facility, a dialysis treatment facility, an assisted living residence, an entity that provides home- and community-based services, a hospice or home health care agency, or another facility that provides or contracts to provide health care services, which facility is licensed, certified, or otherwise authorized or permitted by law to provide medical treatment.

(10) "Health care provider" means:

(a) A physician or other individual who provides medical treatment to an adult and who is licensed, certified, or otherwise authorized or permitted by law to provide medical treatment or who is employed by or acting for such an authorized person; or

(b) A health maintenance organization licensed and conducting business in this state.

(11) "Medical treatment" means the provision, withholding, or withdrawal of any:

(a) Health care;

(b) Medical procedure, including but not limited to surgery, CPR, and artificial nutrition or hydration; or

(c) Service to maintain, diagnose, treat, or provide for a patient's physical or mental health care.

**15-18.7-103. Medical orders for scope of treatment forms - form contents.** (1) A medical orders for scope of treatment form shall include the following information concerning the adult whose medical treatment is the subject of the medical orders for scope of treatment form:

(a) The adult's name, date of birth, and sex;

(b) The adult's eye and hair color;

(c) The adult's race or ethnic background;

(d) If applicable, the name of the hospice program in which the adult is enrolled;

(e) The name, address, and telephone number of the adult's physician, advanced practice

nurse, or physician's assistant;

(f) The adult's signature or mark or, if applicable, the signature of the adult's authorized surrogate decision-maker;

(g) The date upon which the medical orders for scope of treatment form was signed;

(h) The adult's instructions concerning:

(I) The administration of CPR;

(II) Other medical interventions, including but not limited to consent to comfort measures only, transfer to a hospital, limited intervention, or full treatment; and

(III) Other treatment options;

(i) The signature of the adult's physician, advanced practice nurse, or, if under the supervision or authority of the physician, physician's assistant.

**15-18.7-104. Duty to comply with medical orders for scope of treatment form - immunity - effect on criminal charges against another person - transferability.** (1) (a) Except as provided in sections 15-18.7-105 and 15-18.7-107 (1), emergency medical service personnel, a health care provider, or a health care facility shall comply with an adult's executed medical orders for scope of treatment form that:

(I) Has been executed in this state or another state;

(II) Is apparent and immediately available; and

(III) Reasonably satisfies the requirements of a medical orders for scope of treatment form specified in section 15-18.7-103.

(b) The fact that the physician, advanced practice nurse, or physician's assistant who signed an adult's medical orders for scope of treatment form does not have admitting privileges at the hospital or health care facility where the adult is being treated does not remove the duty of emergency medical service personnel, a health care provider, or a health care facility to comply with the medical orders for scope of treatment form as required by paragraph (a) of this subsection (1).

(2) Emergency medical service personnel, a health care provider, a health care facility, or any other person who complies with a legally executed medical orders for scope of treatment form that is apparent and immediately available and that he or she believes to be the most current version of the form shall not be subject to civil or criminal liability or regulatory sanction for such compliance.

(3) Compliance by emergency medical service personnel, a health care provider, or a health care facility with an executed medical orders for scope of treatment form shall not affect the criminal prosecution of a person otherwise charged with the commission of a criminal act.

(4) In the absence of an executed medical orders for scope of treatment form declining CPR or a CPR directive, an adult's consent to CPR shall be presumed.

(5) An adult's physician, advanced practice nurse, or, if under the supervision of the physician, physician's assistant may provide a verbal confirmation to a health care provider who shall annotate on the medical orders for scope of treatment form the time and date of the verbal confirmation and the name and license number of the physician, advanced practice nurse, or physician's assistant. The physician, advanced practice nurse, or physician's assistant shall

countersign the annotation of the verbal confirmation on the medical orders for scope of treatment form within a time period that satisfies any applicable state law or within thirty days, whichever period is less, after providing the verbal confirmation. The signature of the physician, advanced practice nurse, or physician's assistant may be provided by photocopy, fax, or electronic means. A medical orders for scope of treatment form with annotated verbal confirmation, and a photocopy, fax, or other electronic reproduction thereof, shall be given the same force and effect as the original form signed by the physician, advanced practice nurse, or physician's assistant.

(6) (a) Nothing in this article shall be construed to modify or alter any generally accepted ethics, standards, protocols, or laws for the practice of medicine or nursing, including the provisions in section 15-18.6-108 concerning euthanasia and mercy killing.

(b) A medical orders for scope of treatment form shall not be construed to compel or authorize a health care provider or health care facility to administer medical treatment that is medically inappropriate or prohibited by state or federal law.

(7) If an adult who is known to have properly executed and signed a medical orders for scope of treatment form is transferred from one health care facility or health care provider to another, the transferring health care facility or health care provider shall communicate the existence of the form to the receiving health care facility or health care provider before the transfer. The transferring health care facility or health care provider shall ensure that the form or a copy of the form accompanies the adult upon admission to or discharge from a health care facility.

**15-18.7-105. Moral convictions and religious beliefs - notice required - transfer of a patient.** (1) A health care provider or health care facility that provides care to an adult whom the health care provider or health care facility knows to have executed a medical orders for scope of treatment form shall provide notice to the adult or, if appropriate, to the authorized surrogate decision-maker of the adult, of any policies based on moral convictions or religious beliefs of the health care provider or health care facility relative to the withholding or withdrawal of medical treatment. The health care provider or health care facility shall provide the notice, when reasonably possible, prior to providing medical treatment or prior to or upon the admission of the adult to the health care facility, or as soon as possible thereafter.

(2) A health care provider or health care facility shall provide for the prompt transfer of an adult who has executed a medical orders for scope of treatment form to another health care provider or health care facility if the transferring health care provider or health care facility chooses not to comply with the provisions of the form on the basis of policies based on moral convictions or religious beliefs.

(3) Nothing in this section shall relieve or exonerate an attending physician or health care facility from the duty to provide for the care and comfort of an adult pending transfer pursuant to this section.

**15-18.7-106. Medical orders for scope of treatment form - who may consent.** (1) An

adult who has decisional capacity may execute a medical orders for scope of treatment form.

(2) Except as provided in section 15-18.7-110 (3), the authorized surrogate decision-maker for an adult who lacks decisional capacity may execute a medical orders for scope of treatment form for said adult.

**15-18.7-107. Revision and revocation of a medical orders for scope of treatment form - duty to inform.** (1) (a) A health care provider may revise the provisions of an adult's executed medical orders for scope of treatment form only if:

(I) (A) The adult's medical condition has changed since the adult or the adult's authorized surrogate decision-maker executed the form; or

(B) The provisions of the form are not, in the provider's independent medical judgment, medically appropriate;

(II) The provider consults with the adult or, if the adult lacks decisional capacity, the adult's authorized surrogate decision-maker concerning the revision of the form; and

(III) The adult or, if the adult lacks decisional capacity, the adult's authorized surrogate decision-maker consents to the revision of the provisions of the form.

(b) If a health care provider revises an adult's executed medical orders for scope of treatment form pursuant to paragraph (a) of this subsection (1):

(I) The provider shall record the revisions on the form; and

(II) The provider and the adult or, if the adult lacks decisional capacity, the adult's authorized surrogate decision-maker, shall sign and date the form.

(2) An adult who has decisional capacity and has executed a medical orders for scope of treatment form may revoke his or her consent to all or part of the form at any time and in any manner that clearly communicates an intent to revoke all or part of the form.

(3) Except as provided in section 15-18.7-110 (3), the authorized surrogate decision-maker for an adult who lacks decisional capacity may revoke the adult's previously executed medical orders for scope of treatment form.

(4) Emergency medical service personnel, a health care provider, or an authorized surrogate decision-maker who becomes aware of the revocation of a medical orders for scope of treatment form shall promptly communicate the fact of the revocation to a physician, advanced practice nurse, or physician's assistant who is providing care to the adult who is the subject of the form.

**15-18.7-108. Medical orders for scope of treatment form not required for treatment.** A health care facility shall not require a person to have executed a medical orders for scope of treatment form as a condition of being admitted to, or receiving medical treatment from, the health care facility.

**15-18.7-109. Effect of a medical orders for scope of treatment form on life or health insurance.** Neither a medical orders for scope of treatment form nor the failure of an adult to

execute a medical orders for scope of treatment form shall affect, impair, or modify a contract of life or health insurance or an annuity or be the basis for a delay in issuing or refusal to issue an annuity or policy of life or health insurance or for any increase of a premium therefor.

**15-18.7-110. Effect of article on existing advance medical directives.** (1) In executing a medical orders for scope of treatment form, an adult, or the adult's authorized surrogate decision-maker, and the physician, advanced practice nurse, or physician's assistant who signs the form shall make a good faith effort to locate and incorporate, as appropriate and desired, treatment preferences documented in the adult's previously executed advance medical directives, if any.

(2) Except as otherwise provided in paragraph (a) of subsection (3) of this section, in case of a conflict between a medical orders for scope of treatment form and an adult's advance medical directives, the document most recently executed shall take precedence for the medical decision or treatment preference at issue. Medical decisions and treatment preferences documented in an adult's advance medical directives or asserted by an authorized surrogate decision-maker on the adult's behalf, but not specifically addressed in a more recently executed medical orders for scope of treatment form, shall not be affected by the medical orders for scope of treatment form.

(3) Notwithstanding the provisions of subsection (1) of this section:

(a) An authorized surrogate decision-maker or a physician, advanced practice nurse, or physician's assistant may not revoke or alter an adult's previously executed advance medical directive regarding provision of artificial nutrition or hydration if the directive is documented in a declaration executed by the adult pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title.

(b) An authorized surrogate decision-maker may not revoke a preexisting CPR directive unless it was originally executed by an authorized surrogate decision-maker.

(c) An authorized surrogate decision-maker who is a proxy decision-maker pursuant to article 18.5 of this title may authorize the withdrawal of artificial nutrition or hydration only in accordance with section 15-18.5-103 (6).

## LAST REMAINS

## ARTICLE 19

Disposition of Last Remains

**15-19-101. Short title.** This article shall be known and may be cited as the "Disposition of Last Remains Act".

**15-19-102. Legislative declaration - construction.** (1) The general assembly finds and declares that:

(a) A competent adult individual has the right and power to direct the disposition of his or her remains after death and should be protected from interested persons who may try to impose their wishes regarding such disposition contrary to the deceased's desires.

(b) A statute that determines priority of individuals to direct the disposition of a decedent's remains is necessary if the decedent fails to direct such disposition or fails to provide the resources necessary to carry out such disposition or if a dispute arises between interested persons regarding such disposition.

(c) The right to direct the disposition of one's remains must be stated in writing to better protect a third party who relies in good faith on such decisions.

(2) This article shall be interpreted liberally to carry out a decedent's intent when not conflicting with this article.

(3) This article shall not be construed to:

(a) Subject to section 15-19-104 (3), invalidate a declaration or a will, codicil, trust, power of appointment, or power of attorney;

(b) Invalidate any act of an agent, guardian, or conservator;

(c) Affect any claim, right, or remedy that accrued prior to August 6, 2003;

(d) Authorize or encourage acts that violate the constitution, statutes, rules, case law, or public policy of Colorado or the United States;

(e) Abridge contracts;

(f) Modify the standards, ethics, or protocols of the practice of medicine;

(g) Compel or authorize a health care provider or health care facility, as defined in section 15-14-505, to administer medical treatment that is medically inappropriate or contrary to federal or other Colorado law; or

(h) Permit or authorize euthanasia or an affirmative or deliberate act to end a person's life.

**15-19-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Adult" means a natural person eighteen years of age or older.

(2) "Declarant" means a competent adult who signs a declaration pursuant to the provisions of this article.

(3) "Declaration" means a written instrument directing the lawful disposition of the declarant's last remains and the ceremonies planned after a declarant's death, in accordance with this article. A declaration may be made within a will; prepaid funeral, burial, or cremation contract; durable or medical power of attorney; a designated beneficiary agreement as described in article 22 of this title; a federal record of emergency data; or any other written document, including, but not limited to, a document governing the disposition of last remains under part 7 of article 11 of this title.

(3.5) "Federal record of emergency data" means the United States department of defense

record of emergency data, DD form 93, or any successor form.

(4) "Interested person" means the deceased's spouse, parent, designated beneficiary, adult child, sibling, grandchild, and other person designated in a declaration.

(5) "Last remains" means the deceased's body or cremains after death.

(6) (Deleted by amendment, L. 2006, p. 897, § 2, effective August 7, 2006.)

(7) (a) "Third party" means a person:

(I) Who is requested by a declaration to act in good faith in reliance upon the declaration;

(II) Who is asked to dispose of last remains by the person with priority to dispose of the decedent's last remains under section 15-19-106; or

(III) Who is delegated discretion over ceremonial or dispositional arrangements in a declaration.

(b) "Third party" includes, but is not limited to, a funeral director, mortuary science practitioner, mortuary, crematorium, or cemetery.

(8) (Deleted by amendment, L. 2006, p. 897, § 2, effective August 7, 2006.)

**15-19-104. Declaration of disposition of last remains.** (1) The declarant may specify, in a declaration, any one or more of the following:

(a) The disposition to be made of the declarant's last remains;

(b) The person appointed to direct the disposition of the declarant's last remains;

(c) The ceremonial arrangements to be performed after the declarant's death;

(d) The person appointed to direct the ceremonial arrangements after the declarant's death;

(e) The rights, limitations, immunities, and other terms of third parties dealing with the declaration.

(2) (Deleted by amendment, L. 2006, p. 898, § 3, effective August 7, 2006.)

(3) (a) (I) The provisions of the most recent declaration shall control over any other document regarding the disposition of the declarant's last remains.

(II) (A) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), if the declarant is a member of the United States armed forces or the United States reserve forces or a member of a state National Guard called into federal service and the declarant has executed a federal record of emergency data that is valid and enforceable at the time of the declarant's death, then the federal record of emergency data shall control over any other declaration concerning the person authorized to direct the disposition of the declarant's last remains, even if the federal record of emergency data was executed prior to the execution of the most recent declaration pursuant to this article. The person authorized to direct disposition of the decedent's last remains pursuant to the federal record of emergency data shall do so in accordance with the provisions for the disposition of the remains and the ceremonial arrangements made by the declarant in his or her most recent declaration concerning such disposition and ceremonial arrangements.

(B) For purposes of sub-subparagraph (A) of this subparagraph (II), a federal record of emergency data is valid and enforceable for any declarant who is a covered decedent at the time of his or her death, pursuant to 10 U.S.C. sec. 1481, or any successor section concerning recovery, care, and disposition of remains.

(b) This article shall govern all current and prior declarations.

(c) If article 54 of title 12, C.R.S., conflicts with this article, this article shall govern.

(4) (Deleted by amendment, L. 2006, p. 898, § 3, effective August 7, 2006.)

(5) A declaration shall be signed and dated by the declarant and may be notarized or witnessed in writing by at least one adult who confirms that he or she was present when the declarant signed the declaration.

**15-19-105. Reliance - declarations.** (1) (a) A third party who provides for the lawful disposition of a declarant's remains in reliance on a declaration that appears to be legally executed shall not be subject to civil liability or administrative discipline for such reliance.

(b) (I) A third party, when presented with a declaration, may presume in the absence of actual knowledge to the contrary:

(A) That the declaration was validly executed;

(B) That the declarant was competent when the instrument was executed; and

(C) That the declaration has not been revoked.

(II) A third party who provides for the lawful disposition of a declarant's remains in reliance on a declaration shall not be civilly or criminally liable for the proper application of property delivered or surrendered to comply with the declarant's instructions in the declaration.

(2) A declaration shall be binding on all persons with an interest in the disposition of the declarant's remains. Section 15-19-106 (1) shall not vest a right to control disposition or ceremonial arrangements that conflict with those made by a declaration. If the declaration conflicts with the directions of any other person, the declaration shall control, and a third party shall provide for the lawful disposition according to the declaration so long as:

(a) No challenge to the validity of the declaration exists under subsection (3) of this section; and

(b) The deceased provided the resources necessary to carry out the disposition.

(3) A challenge to the validity of the declaration or the competency of the declarant when the declaration was executed shall be resolved by the probate court. A third party who knows a declaration has been challenged shall not be liable for refusing to accept, inter, cremate, or otherwise dispose of a declarant's remains until the third party receives a court order or other reasonable confirmation that the challenge has been resolved or settled.

**15-19-106. Right to dispose of remains.** (1) Subject to section 15-19-105 (2), the right to control disposition of the last remains or ceremonial arrangements of a decedent vests in and devolves upon the following persons, at the time of the decedent's death, in the following order:

(a) The decedent if acting through a declaration pursuant to section 15-19-104, subject to the provisions of section 15-19-104 (3) (a) (II);

(b) (I) Either the appointed personal representative or special administrator of the decedent's estate if such person has been appointed; or

(II) The nominee for appointment as personal representative under the decedent's will if a personal representative or special administrator has not been appointed;

(c) The surviving spouse of the decedent, if not legally separated from the decedent;

(c.5) A person with the right to direct the disposition of the decedent's last remains in a designated beneficiary agreement made pursuant to article 22 of this title;

(d) A majority of the surviving adult children of the decedent;

(e) A majority of the surviving parents or legal guardians of the decedent, who shall act in writing;

(f) A majority of the surviving adult siblings of the decedent;

(g) (Deleted by amendment, L. 2006, p. 900, 5, effective August 7, 2006.)

(h) Any person who is willing to assume legal and financial responsibility for the final disposition of the decedent's last remains.

(2) (Deleted by amendment, L. 2006, p. 900, § 5, effective August 7, 2006.)

(3) Disputes among the persons listed under subsection (1) of this section shall be resolved by the probate court. A third party shall not be liable for refusing to accept the decedent's remains or dispose of the decedent's remains until the party receives a court order or other reasonable confirmation that the dispute has been resolved or settled.

(4) (a) If the person with the right to control disposition is unable or unwilling to make such disposition, or if the person's whereabouts cannot be reasonably ascertained, then that person's rights shall terminate and pass to the following, in the following order:

(I) The rest of the persons in the class with the same degree of relationship granting the same priority of control over the disposition pursuant to subsection (1) of this section;

(II) The next class of persons in the order listed in subsection (1) of this section if no one else with the same degree of relationship granting the same priority of control over the disposition of this section exists or possesses the right of final disposition pursuant to subsection (1) of this section.

(b) (I) The person with the right to control disposition shall be presumed to be unable or unwilling to provide for such disposition, or the person's whereabouts shall be presumed unknown, if the person has failed to make or appoint another person to make final arrangements for the disposition of the decedent within five days after receiving notice of the decedent's death or within ten days after the decedent's death, whichever is earlier.

(II) Any member or veteran of the armed forces of the United States or of an organization supporting members or veterans of the armed forces of the United States shall have the right to access the human remains and records thereof in order to identify the remains if no person with the right of final disposition has provided for final disposition for at least one hundred eighty days after death. If the remains are those of a veteran of the armed forces of the United States, the person who possesses the remains shall make arrangements for the remains to be transferred to the closest United States military cemetery. This subparagraph (II) shall not be construed to authorize the exhumation of dead human bodies nor the possession of dead human bodies by any person seeking to identify the identity of the remains.

(c) If a person is unable or unwilling to make a disposition under this subsection (4), such person shall not be counted as a member of the class with the same degree of relationship granting the same priority of control over the disposition pursuant to subsection (1) of this section when determining the number that makes a majority of such class.

(5) If the persons enumerated in subsection (1) of this section are not willing or able to

provide for the final disposition of a decedent's remains, or if the persons' whereabouts cannot be reasonably ascertained, then the public administrator responsible for the decedent's estate or the person who controls indigent burials in the county in which the death occurred shall make arrangements for the final disposition of the decedent's remains.

(6) A third party who provides for the final disposition of a decedent's remains upon authorization from a person who claimed to have the right to control the final disposition shall be immune from civil liability and administrative discipline.

**15-19-107. Declaration of disposition of last remains.** (1) **Form.** The following statutory declaration of disposition of last remains is legally sufficient:

DECLARATION OF DISPOSITION OF LAST REMAINS

I, (name of declarant), being of sound mind and lawful age, hereby revoke all prior declarations concerning the disposition of my last remains and those provisions concerning disposition of my last remains found in a will, codicil, or power of attorney, and I declare and direct that after my death the following provisions be taken:

1. If permitted by law, my body shall be (initial ONE choice):

_____ Buried. I direct that my body be buried at .

_____ Cremated. I direct that my cremated remains be disposed of as follows: _____ . _____

_____ Entombed. I direct that my body be entombed at .

_____ Other. I direct that my body be disposed of as follows: _____ . _____

_____ Disposed of as (name of designee) shall decide in writing. If _____ is unwilling or unable to act, I nominate _____ as my alternate designee.

2. I request that the following ceremonial arrangements be made (initial desired choice or choices):

_____ I request _____ (name of designee) make all arrangements for any ceremonies, consistent with my directions set forth in this declaration. If _____ is unwilling or unable to act, I nominate _____ as my alternate designee.

_____ Funeral. I request the following arrangements for my funeral: _____.

_____ Memorial Service. I request the following arrangements for my memorial service: _____.

3. Special instructions. In addition to the instructions above, I request (on the following lines you may make special requests regarding ceremonies or lack of ceremonies): _____.

I may revoke or amend this declaration in writing at any time. I agree that a third party who receives a copy of this declaration may act according to it. Revocation of this declaration is not effective as to a third party until the third party learns of my revocation. My estate shall indemnify any third party for costs incurred as a result of claims that arise against the third party because of good-faith reliance on this declaration.

I execute this declaration as my free and voluntary act, on _____, _____.

_____

(Declarant)

THE FOLLOWING SECTION REGARDING ORGAN AND TISSUE DONATION IS OPTIONAL. To make a donation, initial the option you select and sign below.

In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

A._____ Any needed organs/tissues

B._____ The following organs/tissues: _____

Donor signature: _____

Notarization optional:

STATE OF COLORADO )
) ss.
COUNTY OF _____)

Acknowledged before me by _____, Declarant, on _____, ___.

My commission expires: _____

[seal]

_____

Notary Public

(2) **Requirements.** The form set forth in subsection (1) of this section is not exclusive, and a person may use another form of declaration if the wording of the form complies substantially with subsection (1) of this section, the form is properly completed, and the form is in writing, dated, and signed by the declarant. A declaration may be witnessed or notarized by at least one person who attests that he or she was present when the document was signed by the declarant.

(3) A declaration may be revoked by the declarant in writing or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke such declaration.

(4) (a) Unless otherwise expressly provided in a declaration, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the declarant and spouse automatically revokes a delegation to the declarant's spouse to direct the disposition of the declarant's last remains or ceremonies after the declarant's death. This paragraph (a) shall not be construed to revoke the remaining provisions of the declaration.

(b) Unless otherwise specified in the declaration, if a declarant revokes a delegation to a person to direct the disposition of the declarant's last remains or ceremonies after the declarant's death, or if such person is unable or unwilling to serve, the nomination of such person shall be ineffective as to such person. If an alternate designee is not nominated by the declarant, section 15-19-106 shall govern. This paragraph (b) shall not be construed to revoke the remaining provisions of the declaration.

**15-19-108. Interstate effect of declaration.** (1) Unless otherwise stated in a declaration, it shall be presumed that the declarant intends to have his or her declaration executed pursuant to this article and recognized to the fullest extent possible by other states.

(2) Unless otherwise provided in the declaration, a declaration or similar instrument executed in another state that complies with the requirements of this article may, in good faith, be relied upon by a third party in this state if an action requested by such declarant does not violate any law of the federal government, Colorado, or a political subdivision.

**15-19-109. Effect of criminal charges.** A person who has been arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person, shall not direct the

final disposition of the deceased person or arrange the ceremonies for the deceased person. If charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body, this section shall not apply.

## COMMUNITY PROPERTY RIGHTS

## ARTICLE 20

Disposition of Community Property Rights
at Death

**15-20-101. Short title.** This article shall be known and may be cited as the "Uniform Disposition of Community Property Rights at Death Act".

**15-20-102. Application.** (1) This article applies to the disposition at death of the following property acquired by a married person:

(a) All personal property, wherever situated:

(I) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or

(II) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(III) Traceable to that community property.

(b) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

**15-20-103. Rebuttable presumptions.** (1) In determining whether this article applies to specific property, the following rebuttable presumptions apply:

(a) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this article applies; and

(b) Real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of

survivorship, is presumed not to be property to which this article applies.

**15-20-104. Disposition upon death.** Upon death of a married person, one-half of the property to which this article applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.

**15-20-105. Perfection of title of surviving spouse.** If the title to any property to which this article applies was held at the time of the decedent's death by the decedent or by a trustee of an inter vivos trust created by the decedent, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. The personal representative shall have no duty to discover or attempt to discover whether property held by the decedent is property to which this article applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

**15-20-106. Perfection of title of personal representative, heir, or devisee.** (1) If the title to any property to which this article applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this article applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

(2) Written demand in this section and in section 15-20-105 shall be made by a surviving spouse, the spouse's successor in interest, or the decedent's heirs or devisees not later than six months after the decedent's will has been admitted to probate, or not later than six months after the appointment of an administrator if there is no will, or not later than six months after the decedent's death if the property to which this article applies is held in an inter vivos trust created by the decedent; and written demand by a creditor of the decedent shall be made not later than six months from the decedent's date of death.

(3) Written demand in this section and in section 15-20-105 shall be delivered in person or by registered mail to the personal representative. As used in this article, the personal representative may also mean the trustee of an inter vivos trust created by the decedent who has legal title to, or possession of, the property to which this article applies.

**15-20-107. Purchaser for value or lender.** (1) If a surviving spouse has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal

representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

**15-20-108. Creditor's rights.** This article does not affect rights of creditors with respect to property to which this article applies.

**15-20-109. Acts of married persons.** This article does not prevent married persons from severing or altering their interests in property to which this article applies.

**15-20-110. Limitations on testamentary disposition.** This article does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

**15-20-111. Uniformity of application and construction.** This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

## DESIGNATED BENEFICIARY AGREEMENTS

## ARTICLE 22

Designated Beneficiary Agreements

**15-22-101. Short title.** This article shall be known and may be cited as the "Colorado Designated Beneficiary Agreement Act".

**15-22-102. Legislative declaration.** (1) The general assembly finds and determines that:

(a) Not all Coloradans are adequately protected by the provisions of the "Colorado Probate Code", articles 10 to 17 of this title, and other provisions of Colorado law. Current state and federal laws present impediments and disincentives for people wishing to avail themselves of the protections of this title.

(b) Beyond legal impediments, people often fail to plan for their own mortality. Studies have found that significant numbers of Americans do not have a valid will, and even fewer have executed powers of attorney or other estate planning documents.

(c) A body of law has been enacted to operate by default in situations in which individuals do not prepare estate plans. However, failure to plan for disability, incapacity, or death places people at the mercy of state laws that may vest the power to act in such situations in persons other than those they would wish to have exercise those powers. Many lack access to legal services due to the expense of drafting legal instruments and the necessity to keep these documents current.

(d) The power of individuals to care for one another and take action to be personally responsible for themselves and their loved ones is of tremendous societal benefit, enabling self-determination and reducing reliance on public programs and services.

(2) Therefore, the general assembly declares that:

(a) The public policy of the state should encourage residents to execute appropriate legal documents to effectuate their wishes;

(b) The purposes of this article are to:

(I) Make existing laws relating to health care, medical emergencies, incapacity, death, and administration of decedent's estates available to more persons through a process of documenting designated beneficiary agreements; and

(II) Allow individuals to elect to have certain default provisions in state statutes provide rights, benefits, and protections to a designated beneficiary in situations in which no valid and enforceable estate planning documents exist.

(c) It is the intent of the general assembly that this article be liberally construed to give effect to the purposes stated in this article.

**15-22-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Designated beneficiary" means a person who has entered into a designated beneficiary agreement pursuant to this article.

(2) "Designated beneficiary agreement" means an agreement that is entered into pursuant to this article by two people for the purpose of designating each person as the beneficiary of the other person and for the purpose of ensuring that each person has certain rights and financial protections based upon the designation.

(3) "Superseding legal document" means a legal document, regardless of the date of execution, that is valid and enforceable and conflicts with all or a portion of a designated beneficiary agreement and, therefore, causes the designated beneficiary agreement in whole or in part to be replaced or set aside. To the extent there is a conflict between a superseding legal document and a designated beneficiary agreement, the superseding legal document controls. A superseding legal document may include, but need not be limited to, any of the following:

(a) A will;

(b) A codicil;

(c) A power of attorney;

(d) A medical durable power of attorney;

(e) A trust instrument;

(f) A beneficiary designation in an insurance policy or policy of health care coverage;

(g) A beneficiary designation in a retirement or pension plan;

(h) A beneficiary designation for a deposit or account, including but not limited to demand, savings, and time deposit accounts;

(i) A declaration as to medical treatment executed pursuant to article 18 of this title;

(j) A declaration as to disposition of last remains executed pursuant to article 19 of this title;

(k) A marriage license; or

(l) A civil union certificate.

**15-22-104. Requirements for a valid designated beneficiary agreement.** (1) A designated beneficiary agreement shall be legally recognized if:

(a) The parties to the designated beneficiary agreement satisfy all of the following criteria:

(I) Both are at least eighteen years of age;

(II) Both are competent to enter into a contract;

(III) Neither party is married to another person;

(III.5) Neither party is a party to a civil union;

(IV) Neither party is a party to another designated beneficiary agreement; and

(V) Both parties enter into the designated beneficiary agreement without force, fraud, or duress; and

(b) The agreement is in substantial compliance with the requirements set forth in this article. For purposes of this article, "substantial compliance" shall mean that the agreement includes the disclaimer contained in section 15-22-106, the instructions and headings about how to grant or withhold a right or protection, the statements about the effective date of the agreement and how to record the agreement, the signatures for the two parties, and the acknowledgments for the notary public.

(2) A designated beneficiary agreement is legally sufficient under this article if:

(a) The wording of the designated beneficiary agreement complies substantially with the standard form set forth in section 15-22-106 (1) and the form is in compliance with the requirements of section 30-10-406 (3), C.R.S.;

(b) The designated beneficiary agreement is properly completed and signed;

(c) The designated beneficiary agreement is acknowledged; and

(d) The designated beneficiary agreement is recorded with a county clerk and recorder as provided in section 15-22-107.

**15-22-105. Effects and applicability of a designated beneficiary agreement.** (1) A person named as a designated beneficiary in a designated beneficiary agreement shall be entitled to exercise the rights and protections specified in the agreement by virtue of having been so named.

(2) A designated beneficiary agreement that is properly executed and recorded as provided in section 15-22-104 (2) shall be valid and legally enforceable in the absence of a superseding legal document that conflicts with the provisions specified in the designated beneficiary agreement.

(3) A designated beneficiary agreement shall entitle the parties to exercise the following rights and enjoy the following protections, unless specifically excluded from the designated beneficiary agreement:

(a) The right to acquire, hold title to, own jointly, or transfer inter vivos or at death real or personal property as joint tenants with right of survivorship or as tenants in common;

(b) The right to be designated as a beneficiary, payee, or owner as a trustee named in an inter vivos or testamentary trust for the purposes of a nonprobate transfer on death;

(c) For purposes of the following benefits, the right to be designated as a beneficiary and recognized as a dependent so long as notice is given in accordance with any applicable statute, rule, contract, policy, procedure, or other government document of the following benefits:

(I) Public employees' retirement systems pursuant to articles 51 to 54.6 of title 24, C.R.S.;

(II) Local government firefighter and police pensions;

(III) Insurance policies for life insurance coverage; and

(IV) Health insurance policies or health coverage if the employer of the designated beneficiary elects to provide coverage for designated beneficiaries as dependents;

(d) The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for the other designated beneficiary;

(e) The right to visitation by the other designated beneficiary in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary resides or is receiving care, including the right to initiate a formal complaint alleging a violation of the rights of nursing home patients specified in section 25-1-120, C.R.S.;

(f) The right to act as a proxy decision-maker or surrogate decision-maker to make medical treatment decisions for the other designated beneficiary as if selected pursuant to section 15-18.5-103 or 15-18.5-104;

(g) The right to receive notice of the withholding or withdrawal of life-sustaining procedures for the other designated beneficiary pursuant to section 15-18-107 and the right to challenge the validity of a declaration as to medical or surgical treatment of the other designated beneficiary pursuant to section 15-18-107;

(h) The right, with respect to the other designated beneficiary, to act as an agent and to make, revoke, or object to anatomical gifts pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S.;

(i) The right to inherit real or personal property from the other designated beneficiary through intestate succession;

(j) The right to have standing to receive benefits pursuant to the "Workers' Compensation

Act of Colorado", articles 40 to 47 of title 8, C.R.S., made on behalf of the other designated beneficiary;

(k) The right to have standing to sue for wrongful death on behalf of the other designated beneficiary; and

(l) The right to direct the disposition of the other designated beneficiary's last remains pursuant to article 19 of this title.

(4) This article shall not be construed to create any rights, protections, or responsibilities for designated beneficiaries that are not specifically enumerated in the designated beneficiary agreement as authorized in this article.

(5) Nothing in this article shall be construed to create evidence of a party's intent to form a common law marriage.

(6) Execution of a designated beneficiary agreement shall in no way impede the ability of individuals to make specific determinations as to any or all of the matters specified in this article by acting through superseding legal documents or other contracts or instruments.

(7) In the event that a superseding legal document is found to be invalid or unenforceable, the designated beneficiary agreement shall control despite the attempt to supersede its provisions.

**15-22-106. Statutory form of a designated beneficiary agreement.** (1) The following statutory form shall be the standard form for a designated beneficiary agreement:

**DESIGNATED BENEFICIARY AGREEMENT**

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**DISCLAIMER**

**Warning: While this document may indicate your wishes, certain additional documents may be needed to protect these rights.**

**This designated beneficiary agreement is operative in the absence of other estate planning documents and will be superseded and set aside to the extent it conflicts with valid instruments such as a will, power of attorney, or beneficiary designation on an insurance policy or pension plan. This designated beneficiary agreement is superseded by such other documents and does not cause any changes to be made to those documents or designations. The parties understand that executing and signing this agreement is not sufficient to designate the other party for purposes of any insurance policy, pension plan, payable upon death designation or manner in**

**which title to property is held and that additional action will be required to make or change such designations. The parties understand that this designated beneficiary agreement may be one component of estate planning instructions and that they are encouraged to consult an attorney to ensure their estate planning wishes are accomplished.**

_____

We, _____, (insert full name and address) referred to as party A, and _____, (insert full name and address) referred to as party B, hereby designate each other as the other's designated beneficiary with the following rights and protections, granted or withheld as indicated by our initials:

TO GRANT ONE OR MORE OF THE RIGHTS OR PROTECTIONS SPECIFIED IN THIS FORM, INITIAL THE LINE TO THE LEFT OF EACH RIGHT OR PROTECTION YOU ARE GRANTING. TO WITHHOLD A RIGHT OR PROTECTION, INITIAL THE LINE TO THE RIGHT OF EACH RIGHT OR PROTECTION YOU ARE WITHHOLDING.

A DESIGNATED BENEFICIARY AGREEMENT SHALL BE PRESUMED TO GRANT ALL OF THE RIGHTS AND PROTECTIONS LISTED IN THIS FORM UNLESS THE PARTIES WITHHOLD A RIGHT OR PROTECTION IN THE MANNER SET FORTH IMMEDIATELY ABOVE.

TO GRANT A RIGHT
TO WITHHOLD A RIGHT OR PROTECTION
OR PROTECTION INITIAL
INITIAL

Party A Party B Party A Party B ___ ___ The right to acquire, hold title to, own___ ___ jointly, or transfer inter vivos or at death real or personal property as a joint tenant with me with right of survivorship or as a tenant in common with me; ___ ___ The right to be designated by me as a ___ ___ beneficiary, payee, or owner as a trustee named in an inter vivos or testamentary trust for the purposes of a nonprobate transfer on death; ___ ___ The right to be designated by me as a ___ ___ beneficiary and recognized as a dependent in an insurance policy for life insurance; ___ ___ The right to be designated by me as a ___ ___ beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries; ___ ___ The right to be designated by me as a ___ ___ beneficiary in a retirement or pension plan; ___ ___ The right to petition for and have ___ ___ priority for appointment as a conservator, guardian, or personal representative for me; ___ ___ The right to visit me in a hospital, ___ ___ nursing home, hospice, or similar health care facility in which a party to a designated

beneficiary agreement resides or is receiving care; ___ ___ The right to initiate a formal ___ ___ complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes; ___ ___ The right to act as a proxy ___ ___ decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes; ___ ___ The right to notice of the withholding ___ ___ or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes; ___ ___ The right to challenge the validity of ___ ___ a declaration as to medical or surgical treatment of me pursuant to section 15-18-108, Colorado Revised Statutes; ___ ___ The right to act as my agent to make, ___ ___ revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, Colorado Revised Statutes; ___ ___ The right to inherit real or personal ___ ___ property from me through intestate succession; ___ ___ The right to have standing to receive ___ ___ benefits pursuant to the "Workers' Compensation Act of Colorado", article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job; ___ ___ The right to have standing to sue for ___ ___ wrongful death in the event of my death; and ___ ___ The right to direct the disposition of ___ ___ my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.

THIS DESIGNATED BENEFICIARY AGREEMENT IS EFFECTIVE WHEN RECEIVED FOR RECORDING BY THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH ONE OF THE DESIGNATED BENEFICIARIES RESIDES. THIS DESIGNATED BENEFICIARY AGREEMENT WILL CONTINUE IN EFFECT UNTIL ONE OF THE DESIGNATED BENEFICIARIES REVOKES THIS AGREEMENT BY RECORDING A REVOCATION OF DESIGNATED BENEFICIARY FORM WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THIS AGREEMENT WAS RECORDED OR UNTIL THIS AGREEMENT IS SUPERSEDED IN PART OR IN WHOLE BY A SUPERSEDING LEGAL DOCUMENT.

_____ _____ Signature of designated beneficiary Signature of designated beneficiary

STATE OF COLORADO

County of _____ This document was acknowledged before me on _____date

by

_____

My commission expires _____

[Seal]

_____ Notary Public

(2) The instructions to each party regarding how to grant or withhold a right or protection by initialing and the words "Party A" and "Party B" shall appear at the top of each page of the statutory form above the columns for the initials of the designated beneficiaries.

(3) A designated beneficiary agreement shall be presumed to extend all of the rights and protections listed in the statutory form unless the parties to the agreement explicitly exclude a right or protection.

(4) A party to a designated beneficiary agreement may limit the scope of a designated beneficiary agreement by the terms of the agreement or by executing a superseding legal document that controls and supersedes part or all of the designated beneficiary agreement.

**15-22-107. Recording - duties of the county clerk and recorder - fee.** (1) A signed and acknowledged designated beneficiary agreement shall be recorded with the county clerk and recorder in the county in which one of the parties resides. The designated beneficiary agreement shall be effective as of the date and time as received for recording by the county clerk and recorder. The county clerk and recorder shall assess a recording fee for recording the designated beneficiary agreement in that county, a fee for issuing two certified copies of the designated beneficiary agreement that indicate the date and time of recording with the county, and a fee for taking acknowledgments, if applicable, as provided in section 30-1-103, C.R.S. All fees collected by the county clerk and recorder shall be deposited in the county clerk's fee fund maintained as required in section 30-1-119, C.R.S. The county clerk and recorder may require the person recording the designated beneficiary agreement to indicate the mailing address to which the original document should be returned after recording.

(2) The clerk and recorder of the county is encouraged to make available copies of the statutory forms as prescribed in sections 15-22-106 and 15-22-111.

(3) The clerk and recorder of the county shall have the following duties:

(a) To indicate on the designated beneficiary agreement or a revocation of a designated beneficiary agreement the date and time that it is recorded with the clerk and recorder;

(b) To issue two certified copies of the recorded designated beneficiary agreement that indicate the date and time of the recording;

(c) To issue replacement certified copies of a designated beneficiary agreement or a revocation of a designated beneficiary agreement upon payment of a replacement fee.

(4) Designated beneficiary agreements and revocations of designated beneficiary agreements shall be considered open records for purposes of part 2 of article 72 of title 24, C.R.S.

**15-22-108. Designated beneficiary agreement - effect on other legal documents.** Execution of a designated beneficiary agreement shall not constitute evidence of an intent to revoke a prior will or codicil nor shall it affect any beneficiary designation, transfer, or bequest contained in any other legal documents.

**15-22-109. Affirmation of validity of designated beneficiary agreement.** A person exercising rights or protections pursuant to a designated beneficiary agreement shall affirm the validity of a designated beneficiary agreement and disclose any knowledge of any superseding legal documents.

**15-22-110. Reliance - immunity.** A third party who acts in good faith reliance on the affirmation of the existence of a valid designated beneficiary agreement shall not be subject to civil liability or administrative discipline for such reliance.

**15-22-111. Revocation of a designated beneficiary agreement.** (1) A designated beneficiary agreement that has been recorded with a county clerk and recorder may be unilaterally revoked by either party to the agreement by recording a revocation with the clerk and recorder of the county in which the agreement was recorded. A revocation shall be dated, signed, and acknowledged. The revocation shall be effective on the date and time the revocation is received for recording by the county clerk and recorder. The clerk and recorder shall issue a certified copy to the party recording the revocation and shall mail a certified copy of the revocation to the last-known address of the other party to the designated beneficiary agreement.

(2) The county clerk and recorder shall assess fees, as provided in section 30-1-103, C.R.S., for recording a revocation agreement and issuing two certified copies of the revocation agreement, plus an additional amount to cover the cost of first class postage for mailing a certified copy of the revoked designated beneficiary agreement to the other party. The fees collected by the clerk and recorder shall be deposited in the county clerk's fee fund maintained as required in section 30-1-119, C.R.S.

(3) A designated beneficiary agreement shall be deemed revoked upon the marriage or the civil union of either party. In the case of a common law marriage, a designated beneficiary agreement shall be deemed revoked as of the date the court determines that a valid common law marriage exists.

(4) The following statutory form shall be the standard form for a revocation of a designated beneficiary agreement:

**REVOCATION**

**OF DESIGNATED BENEFICIARY AGREEMENT**

I _____ (insert your full name), reside at _____ (insert your current address) and I entered into a designated beneficiary agreement on _____ (insert the date) with the following person _____ (insert the other person's name) whose last-known address is

_____ in which I designated such person as a designated beneficiary. This designated beneficiary agreement was recorded on _____ (insert the date) in the county of _____. The indexing file number of the designated beneficiary agreement is _____. I hereby revoke that designated beneficiary agreement, effective on the date and time that this revocation is received for recording by the clerk and recorder of _____ county.

_____ _____
Name Date

STATE OF COLORADO
County of _____
This document was subscribed, sworn to, and acknowledged before me on _____ date by

_____

My commission expires _____

[Seal]

_____
Notary Public

This revocation of beneficiary agreement was recorded in my office on , , at o'clock, and, pursuant to section 15-22-111, Colorado Revised Statutes, I mailed a copy of this revocation of beneficiary agreement to at the address contained in this revocation of beneficiary agreement.

Clerk and Recorder of
_____ County
By: _____

**15-22-112. Death of a designated beneficiary - effect on designated beneficiary agreement.** (1) A designated beneficiary agreement is terminated upon the death of either of the parties to the designated beneficiary agreement; however, a right or power which a designated beneficiary agreement conferred upon a designated beneficiary survives the death of the other designated beneficiary.

(2) A party to a designated beneficiary agreement who survives a designated beneficiary may enter into a designated beneficiary agreement with a different person so long as it meets the requirements of this article.