



**HB 14-1322. Concerning the Colorado Probate Code
By Rep. McLachlan & Sen. Roberts**

The Colorado Bar Association (CBA) Requests Support of HB 14-1322

SECTION 1. Pages 2-27 (15-11-201, et seq.) Elective Share of Surviving Spouse. The proposed changes to the elective share provisions re-format Colorado's elective share statutes. The formatting and numbering follow the current version of the Uniform Probate Code (UPC), including the technical amendments that were made in 2008 by the Uniform Law Commissioners. Colorado's calculation of the elective share will be the same, but will now be coordinated with the structure of the UPC. The amendments provide a better breakdown of the elective share components and improve readability and usability of the statutes governing this complex calculation.

What are Elective Shares? Elective share statutes give a surviving spouse the right to seek a minimum share of a deceased spouse's estate, regardless of how the deceased spouse's will or trust disposes of the estate. Numerous factors go into the elective share calculation, including the respective spouses' property ownership, types of property, and the length of the marriage.

SECTION 2. Page 27 (15-11-606) Nonademption of specified devises. This section provides that, if a will leaves specific property to someone but the testator (the person who made the will) no longer owns that property at death, the gift is "adeemed" and does not take effect, unless the testator did not intend that the gift would be adeemed or doing so would be contrary to the testator's stated plan of distribution. This technical amendment would clarify that the burden is on the beneficiary to show that the exception applies.

SECTION 3. Pages 27 & 28 (15-12-102) Necessity of order of probate for will. Makes a technical correction for the more appropriate word. The amendment substitutes "personal representative" for the term "executor." Executor is no longer used in our probate code.

SECTION 4. Page 28 (15-12-805) Classification of claims. Makes a technical correction for a more appropriate word. Substitutes the word "obligations" for "claims."

(over)

SECTIONS 5 & 6. Pages 28-31 (15-12-1201 & 15-12-1202) Collection of personal property by affidavit. The Small Estate Affidavit procedure was designed to protect a small estate from the expense of court proceedings and also help alleviate the ever-increasing load on overcrowded court dockets. The proposed changes will correct problems that have arisen in the use of the current affidavit and clarify how the affidavit can be used.

SECTION 7. Page 31 (15-16-702) Revocation or amendment of revocable trust. This amendment would overrule *In re Estate of McCreath*, 240 P.3d 413 (Colo. App. 2009), so that stating a method of revocation in a trust does not make that method the only method of revoking the trust.

SECTION 8. Pages 32-36 (15-16-801, et seq) Directed Trustees. This is a new statutory concept for Colorado. A "Directed Trust" allows a trust creator ("settlor") to establish a trustee-beneficiary relationship among multiple people, all while keeping responsibilities and liabilities distinct to each person. Under this type of trust, a settlor can appoint multiple people to act in separate fiduciary capacities (e.g., with respect to investments, planning distributions, managing family businesses, etc.). The key feature of this relationship is liability: the appointed parties are not co-trustees, they do not share joint liability for the acts of all parties. Rather, each separate fiduciary (called a "trust advisor") is responsible or liable only for acts under his or her purview. This type of statute has been adopted by nearly 30 states in the recent past.

SECTION 9. Pages 36 & 37 (15-1-307) Power of investment in persons other than fiduciary. Repeals 15-1-307. With the adoption of Directed Trust provisions (Section 8, pages 32-36) this section is unnecessary.

SECTION 10. Page 37 (15-10-112) Cost of living adjustments of certain dollar amounts. With the adoption of small estate affidavit provisions (Sections 5 & 6, pages 28-31) there is no longer a need to include the affidavit amount in the cost of living adjustments.

SECTION 11. Page 38 (15-12-916) Appointment of estate taxes. Eliminates an unnecessary cross reference.

SECTION 12. Pages 38 & 39 (15-10-201) General definitions. Eliminates an unnecessary cross reference and inserts new cross references to conform to new numbering found in the augmented estate sections created in this bill (Section 2, pages 2-27).

SECTION 13. Page 39 (15-15-101) Nonprobate transfers on death. Conforms a cross reference to Part 2 of Article II (Elective Shares) for nonprobate transfers on death.

SECTION 14. Pages 39 & 40 (39-33.3-316) Lien for assessments. Eliminates an unnecessary cross reference.