

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0573.01 Richard Sweetman x4333

SENATE BILL 13-077

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

Pabon,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING CERTAIN PROVISIONS OF THE COLORADO PROBATE**
102 **CODE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

The bill clarifies provisions concerning the circumstances under which each party and person in interest with a party shall be allowed to testify regarding an oral statement of a person incapable of testifying when such statement is sought to be admitted into evidence.

The bill clarifies that, subject to certain limitations, a personal

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 2, 2013

SENATE
3rd Reading Unamended
February 27, 2013

SENATE
Amended 2nd Reading
February 26, 2013

representative, a person with priority for appointment as personal representative, and a court-appointed fiduciary:

- ! May ascertain the testator's probable intent or estate planning purpose on issues involving the decedent's estate; and
- ! Shall have standing to prosecute or defend that intent or purpose, at the expense of the estate, in probate proceedings.

Under current law, a personal representative must give certain information concerning his or her appointment to the heirs and devisees of the estate not later than 30 days after his or her appointment. The bill adds a requirement that this information must include a notice 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. The bill also makes changes to this law to align it with a provision of the Colorado rules of probate procedure.

The bill amends the probate code to grant a higher statutory priority to payment of child support claims in decedent's estates.

The bill gives a trustee of an intentionally defective grantor trust the discretionary authority to reimburse the grantor for payment of the income taxes attributable to the trust. This authority does not subject the trust to the grantor's creditors or cause the trust to be included in the grantor's estate.

The bill allows a trustee to acquire or retain a life insurance policy on the life of a person for whom the trustee has an insurable interest as a trust asset; however, a trust may expressly provide that this provision does not apply to the trust. A trustee is not relieved 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:

- ! The trustee has given written notice of such intended purchase to all qualified beneficiaries of the trust or their legal representatives, and receives written consent to such purchase; or
- ! The trust agreement contains a provision that permits purchases of life insurance from an affiliate; however, consent shall be conclusively presumed by any qualified beneficiary who has not responded to written notice by the trustee within 30 days after the mailing of such notice to the qualified beneficiary at his or her last known address.

The bill clarifies the applicability of the effective date of the Colorado probate code to conform Colorado law to the Uniform Probate Code's effective date provisions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 13-90-102 as

3 follows:

4 **13-90-102. Testimony concerning oral statements made by**

5 **person incapable of testifying - when allowed - definitions.** (1) Subject

6 to the law of evidence, in any civil action ~~by or against~~ OR PROCEEDING

7 IN WHICH AN ORAL STATEMENT OF a person incapable of testifying IS

8 SOUGHT TO BE ADMITTED INTO EVIDENCE, each party and person in

9 interest with a party shall be allowed to testify regarding ~~an~~ THE oral

10 statement ~~made by the person incapable of testifying~~ if:

11 (a) The statement was made under oath at a time when such

12 person was competent to testify;

13 (b) The TESTIMONY CONCERNING THE ORAL statement is

14 corroborated by material evidence of ~~an independent and~~ A trustworthy

15 nature; ~~or~~

16 (c) The opposing party introduces UNCORROBORATED evidence of

17 related communications THROUGH A PARTY OR PERSON IN INTEREST WITH

18 A PARTY; OR

19 (d) SUCH PARTY OR PERSON TESTIFIES AGAINST HIS OR HER OWN

20 INTERESTS.

21 (2) Questions of admissibility that arise under this section shall be

22 determined by the court as a matter of law.

23 (3) For purposes of this section:

24 (a) "CORROBORATED BY MATERIAL EVIDENCE" MEANS

25 CORROBORATED BY EVIDENCE THAT SUPPORTS ONE OR MORE OF THE

26 MATERIAL ALLEGATIONS OR ISSUES THAT ARE RAISED BY THE PLEADINGS

1 AND TO WHICH THE WITNESS WHOSE EVIDENCE MUST BE CORROBORATED
2 WILL TESTIFY. SUCH EVIDENCE MAY COME FROM ANY OTHER COMPETENT
3 WITNESS OR OTHER ADMISSIBLE SOURCE, INCLUDING TRUSTWORTHY
4 DOCUMENTARY EVIDENCE, AND SUCH EVIDENCE NEED NOT BE SUFFICIENT
5 STANDING ALONE TO SUPPORT THE VERDICT BUT MUST TEND TO CONFIRM
6 AND STRENGTHEN THE TESTIMONY OF THE WITNESS AND SHOW THE
7 PROBABILITY OF ITS TRUTH.

8 (b) "Person incapable of testifying" means any decedent or any
9 person who is otherwise not competent to testify.

10 (c) "Person in interest with a party" means a person having ~~an~~ A
11 DIRECT FINANCIAL interest in the outcome of the civil action OR
12 PROCEEDING, or HAVING any other SIGNIFICANT AND NON-SPECULATIVE
13 FINANCIAL interest that makes the person's testimony, standing alone,
14 untrustworthy. IN A PROCEEDING TO CONSTRUE, CONTEST, MODIFY,
15 PROBATE, REFORM, OR RESCIND A GOVERNING INSTRUMENT, AS DEFINED
16 IN SECTION 15-10-201 (22), C.R.S., "person in interest with a party" does
17 not include:

18 (I) AN ATTORNEY WHO PREPARED THE GOVERNING INSTRUMENT;

19 (II) A PERSONAL REPRESENTATIVE WHO IS NOT A SUCCESSOR OF
20 THE DECEDENT; OR

21 (III) A person whose only interest is an expectation of ~~receiving~~
22 just compensation for the value of services TO BE rendered ~~as a witness~~
23 BY THE PERSON.

24 **SECTION 2. In Colorado Revised Statutes, 15-10-603, amend (3)**
25 **(j) as follows:**

26 **15-10-603. Factors in determining the reasonableness of**
27 **compensation and costs. (3) The court shall consider all of the factors**

1 described in this subsection (3) in determining the reasonableness of any
2 compensation or cost. The court may determine the weight to be given to
3 each factor and to any other factor the court considers relevant in reaching
4 its decision:

5 (j) The expertise, SPECIAL SKILLS, reputation, and ability of the
6 person performing the services and, in the case of a fiduciary, whether
7 and to what extent the fiduciary has had any prior experience in
8 administering estates similar to those for which compensation is sought:

9 **SECTION 3.** In Colorado Revised Statutes, 15-12-703, **add** (6),
10 (7), and (8) as follows:

11 **15-12-703. General duties - relation and liability to persons**
12 **interested in estate - duty to search for a designated beneficiary**
13 **agreement - standing to sue.** (6) SUBJECT TO THE GOOD FAITH
14 STANDARD OF SECTION 15-10-602 (6), THE PROVISIONS OF SECTION
15 15-10-605, AND SUBSECTIONS (7) AND (8) OF THIS SECTION, PERSONAL
16 REPRESENTATIVES, PERSONS WITH PRIORITY FOR APPOINTMENT AS
17 PERSONAL REPRESENTATIVE, AND COURT-APPOINTED FIDUCIARIES MAY
18 ASCERTAIN THE TESTATOR'S PROBABLE INTENT OR ESTATE PLANNING
19 PURPOSE ON ISSUES INVOLVING THE DECEDENT'S ESTATE AND, WHERE NOT
20 CONTRARY TO PUBLIC POLICY OR LAW, SHALL HAVE STANDING AND MAY
21 PROSECUTE OR DEFEND THAT INTENT OR PURPOSE, AT THE EXPENSE OF THE
22 ESTATE, IN PROCEEDINGS BROUGHT UNDER THIS CODE.

23 (7) WITHOUT LIMITING THE GENERAL APPLICABILITY OF
24 SUBSECTION (6) OF THIS SECTION:

25 (a) (I) A PERSON SERVING AS PERSONAL REPRESENTATIVE OR A
26 PERSON NOMINATED AS PERSONAL REPRESENTATIVE IN A WILL OR
27 APPOINTED AS PUBLIC OR SPECIAL ADMINISTRATOR HAS STANDING, BUT NO

1 DUTY, TO OFFER A WILL FOR PROBATE. IF SUCH PERSON DECLINES OR IS
2 UNABLE TO OFFER THE WILL FOR PROBATE, ANY PERSON WHO IS A
3 SUCCESSOR OF THE DECEDENT UNDER THE WILL MAY OFFER THE WILL FOR
4 PROBATE AND DEFEND THE VALIDITY OF THE WILL IN PROCEEDINGS UNDER
5 THIS CODE. IN EITHER CASE, THE PERSON MAY ACT NOTWITHSTANDING THE
6 FACT THAT HE OR SHE MAY BE A DEVISEE UNDER THE WILL. THE WILL
7 PROPONENT'S REASONABLE FEES AND COSTS ARE PAYABLE AS AN EXPENSE
8 OF ADMINISTRATION.

9 (II) FOR PURPOSES OF THIS SUBSECTION (7), A PROPONENT OTHER
10 THAN THE NOMINATED PERSONAL REPRESENTATIVE SHOULD BE TREATED
11 AS A NOMINATED PERSONAL REPRESENTATIVE IN CASES WHERE THE
12 NOMINATED PERSONAL REPRESENTATIVE HAS DECLINED OR IS UNABLE TO
13 OFFER THE WILL FOR PROBATE. SUCH TREATMENT SHALL NOT CONFER
14 UPON THE PROPONENT A HIGHER PRIORITY FOR APPOINTMENT THAN WAS
15 CONFERRED UPON SUCH PROPONENT PURSUANT TO SECTION 15-12-203
16 BEFORE THE WILL WAS OFFERED FOR PROBATE.

17 (b) THE PERSONAL REPRESENTATIVE HAS STANDING TO OPPOSE, AT
18 ESTATE EXPENSE, A PERSON'S CLAIM TO BE AN HEIR; AN OMITTED SPOUSE
19 OR CHILD; A SPOUSE, INCLUDING A COMMON LAW SPOUSE; OR A DEVISEE.

20 (c) THE PERSONAL REPRESENTATIVE HAS STANDING TO OPPOSE, AT
21 ESTATE EXPENSE, A SURVIVING SPOUSE'S ATTEMPT TO INVALIDATE A
22 MARITAL AGREEMENT THAT LIMITS HIS OR HER SHARE IN THE ESTATE.

23 (d) WHERE A SURVIVING SPOUSE PETITIONS FOR AN ELECTIVE
24 SHARE, THE COURT PROCEEDING IS AN ACTION BETWEEN THE SPOUSE AND
25 THE INTERESTED PERSON OR PERSONS WHOSE INTERESTS MAY BE
26 AFFECTED, AND THE PERSONAL REPRESENTATIVE IS A NEUTRAL PARTY TO
27 THE PROCEEDING. IN SUCH A PROCEEDING, THE FEES AND COSTS

1 REASONABLY INCURRED BY THE PERSONAL REPRESENTATIVE AND HIS OR
2 HER AGENTS IN PROVIDING BASIC INFORMATION TO THE PARTIES
3 REGARDING THE AUGMENTED ESTATE ARE PAYABLE AS AN ESTATE
4 EXPENSE. THE PERSONAL REPRESENTATIVE MAY PREPARE A CALCULATION
5 OF THE AUGMENTED ESTATE AT ESTATE EXPENSE.

6 (8) (a) IN ANY PROCEEDING BROUGHT UNDER THIS CODE WHERE
7 ANY PERSONAL REPRESENTATIVE, PERSON WITH PRIORITY FOR
8 APPOINTMENT AS A PERSONAL REPRESENTATIVE, NOMINATED PERSONAL
9 REPRESENTATIVE, OR COURT-APPOINTED FIDUCIARY PURPORTS TO
10 PARTICIPATE IN THE PROCEEDING AT ESTATE EXPENSE AND HAS A
11 MATERIAL CONFLICT OF INTEREST, ANY INTERESTED PERSON MAY PETITION
12 THE COURT PURSUANT TO SECTION 15-12-614 (1) (b) OR 15-12-713 FOR
13 THE APPOINTMENT OF AN INDEPENDENT SPECIAL ADMINISTRATOR TO
14 REPRESENT, TO THE EXTENT THE COURT DIRECTS, THE ESTATE'S INTERESTS
15 IN THE LITIGATION AT ESTATE EXPENSE.

16 (b) FOR PURPOSES OF THIS SUBSECTION (8), THE FACT THAT A
17 PERSONAL REPRESENTATIVE, A PERSON WITH PRIORITY FOR APPOINTMENT
18 AS A PERSONAL REPRESENTATIVE, A NOMINATED PERSONAL
19 REPRESENTATIVE, OR A COURT-APPOINTED FIDUCIARY IS ALSO A
20 SUCCESSOR OR A POTENTIAL SUCCESSOR OF THE ESTATE IS NOT, IN AND OF
21 ITSELF, A MATERIAL CONFLICT OF INTEREST.

22 **SECTION 4.** In Colorado Revised Statutes, 15-12-705, **amend**
23 (1); and **add** (3) as follows:

24 **15-12-705. Duty of personal representative - information to**
25 **heirs and devisees.** (1) Not later than thirty days after appointment,
26 every personal representative, except any special administrator, shall give
27 information of his or her appointment to the heirs and devisees, including,

1 if there has been no formal testacy proceeding and if the personal
2 representative was appointed on the assumption that the decedent died
3 intestate, the devisees in any will mentioned in the application for
4 appointment of a personal representative. The information shall be
5 delivered or sent by ordinary mail to each of the heirs and devisees whose
6 address is reasonably available to the personal representative. The duty
7 does not extend to require information to persons who have been
8 adjudicated in a prior formal testacy proceeding to have no interest in the
9 estate. The information shall:

10 (a) Include the name, ~~and~~ address, AND DATE OF APPOINTMENT of
11 the personal representative;

12 (b) INCLUDE THE DATE OF DEATH OF THE DECEDENT;

13 (c) INDICATE WHETHER THE DECEDENT DIED INTESTATE OR
14 TESTATE AND, IF THE DECEDENT DIED TESTATE, THE DATES OF THE WILL
15 AND ANY CODICILS THERETO, THE DATE OF ADMISSION TO PROBATE, AND
16 WHETHER THE PROBATE WAS FORMAL OR INFORMAL;

17 ~~(b)~~ (d) Indicate that it is being sent to persons who have or may
18 have some interest in the estate being administered;

19 ~~(c)~~ (e) Indicate whether bond has been filed;

20 (f) INDICATE WHETHER ADMINISTRATION IS SUPERVISED AND, IF
21 ADMINISTRATION IS UNSUPERVISED, THAT THE COURT WILL CONSIDER
22 ORDERING SUPERVISED ADMINISTRATION IF REQUESTED BY AN INTERESTED
23 PERSON;

24 ~~(d)~~ (g) ~~Describe the court where~~ INDICATE THAT papers relating
25 to the estate, INCLUDING AN INVENTORY OF ESTATE ASSETS, AS DESCRIBED
26 IN SECTION 15-12-706, are EITHER on file WITH THE COURT OR AVAILABLE
27 TO BE OBTAINED BY INTERESTED PERSONS FROM THE PERSONAL

1 REPRESENTATIVE;

2 (h) INDICATE THAT INTERESTED PERSONS ARE ENTITLED TO

3 RECEIVE AN ACCOUNTING;

4 ~~(e)~~ (i) Indicate that the surviving spouse, children under

5 twenty-one years of age, and dependent children may be entitled to

6 exempt property and a family allowance if a request for payment is made

7 in the manner and within the time limits prescribed by statutes;

8 ~~(f)~~ (j) Indicate that the surviving spouse may have a right of

9 election to take a portion of the augmented estate if a petition is filed

10 within the time limits prescribed by statute;

11 ~~(g)~~ (k) Indicate that, because a court will not routinely review or

12 adjudicate matters unless it is specifically requested to do so by a

13 beneficiary, creditor, or other interested person, all interested persons,

14 including beneficiaries and creditors, have the responsibility to protect

15 their own rights and interests in the estate in the manner provided by the

16 provisions of this code by filing an appropriate pleading with the court by

17 which the estate is being administered and serving it on all interested

18 persons pursuant to section 15-10-401;

19 ~~(h)~~ (l) Indicate that all interested parties have the right to obtain

20 information about the estate by filing a demand for notice pursuant to

21 section 15-12-204; ~~and~~

22 ~~(i)~~ (m) Indicate that any individual who has knowledge that there

23 is or may be an intention to use an individual's genetic material to create

24 a child and that the birth of the child could affect the distribution of the

25 decedent's estate should give written notice of such knowledge to the

26 personal representative of the decedent's estate; AND

27 (n) INDICATE THAT ANY INDIVIDUAL WHO HAS KNOWLEDGE THAT

1 THERE IS A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN
2 WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION
3 SHOULD GIVE WRITTEN NOTICE OF SUCH KNOWLEDGE TO THE PERSONAL
4 REPRESENTATIVE OF THE DECEDENT'S ESTATE.

5 (3) THE PERSONAL REPRESENTATIVE SHALL FILE WITH THE COURT
6 A COPY OF THE INFORMATION PROVIDED AND A STATEMENT OF WHEN, TO
7 WHOM, AND AT WHICH ADDRESS OR ADDRESSES IT WAS PROVIDED.

8 **SECTION 5. In Colorado Revised Statutes, 15-12-805, amend**
9 **(1) (g); and add (1) (h) as follows:**

10 **15-12-805. Classification of claims. (1) The allowed claims**
11 **against the estate of a decedent shall be paid by the personal**
12 **representative in the following order:**

13 **(g) ~~All other claims~~ ANY CHILD SUPPORT CLAIMS OF THE**
14 **DECEDENT THAT WERE DUE AND UNPAID AT DEATH IN ACCORDANCE WITH**
15 **A VALID COURT ORDER OR AGREEMENT OF RECORD IN WHICH THE**
16 **DECEDENT WAS A PARTY, AND ANY FUTURE CHILD SUPPORT OBLIGATIONS**
17 **OF THE DECEDENT AS DETERMINED BY THE COURT;**

18 **(h) ALL OTHER CLAIMS.**

19 **SECTION 6. In Colorado Revised Statutes, 15-12-1201, amend**
20 **(1) introductory portion as follows:**

21 **15-12-1201. Collection of personal property by affidavit.**

22 **(1) At any time ten or more days after the date of death of a decedent,**
23 **any person indebted to the decedent or having possession of ANY**
24 **PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO FUNDS ON DEPOSIT**
25 **AT ANY FINANCIAL INSTITUTION; tangible personal property; or an**
26 **instrument evidencing a debt, obligation, stock, chose in action, or stock**
27 **brand belonging to the decedent shall ~~make payment of the indebtedness~~**

1 or deliver the tangible personal property or an instrument evidencing a
2 debt, obligation, stock, chose in action, or stock brand PAY OR DELIVER
3 SUCH PROPERTY to a person claiming to be the successor of the decedent
4 upon being presented an affidavit made by or on behalf of the successor
5 stating that:

6 **SECTION 7.** In Colorado Revised Statutes, 15-14-406, amend
7 (6); and repeal (7) as follows:

8 **15-14-406. Original petition - persons under disability -**
9 **preliminaries to hearing.** (6) The court may also appoint a physician,
10 psychologist, or other individual qualified to evaluate the alleged
11 impairment to conduct an examination of the respondent. WHILE A
12 PETITION TO ESTABLISH A CONSERVATORSHIP OR FOR ANOTHER
13 PROTECTIVE ORDER IS PENDING, AFTER PRELIMINARY HEARING AND
14 WITHOUT NOTICE TO OTHERS, THE COURT MAY ISSUE ORDERS TO PRESERVE
15 AND APPLY THE PROPERTY OF THE RESPONDENT AS MAY BE REQUIRED FOR
16 THE SUPPORT OF THE RESPONDENT OR INDIVIDUALS WHO ARE IN FACT
17 DEPENDENT UPON THE RESPONDENT. THE COURT MAY APPOINT A SPECIAL
18 CONSERVATOR TO ASSIST IN THAT TASK.

19 (7) While a petition to establish a conservatorship or for another
20 protective order is pending, after preliminary hearing and without notice
21 to others, the court may issue orders to preserve and apply the property of
22 the respondent as may be required for the support of the respondent or
23 individuals who are in fact dependent upon the respondent. The court may
24 appoint a special conservator to assist in that task.

25 **SECTION 8.** In Colorado Revised Statutes, add 15-14-406.5 as
26 follows:

27 **15-14-406.5. Professional evaluation.** (1) AT OR BEFORE A

1 HEARING UNDER THIS PART 4, THE COURT MAY ORDER A PROFESSIONAL
2 EVALUATION OF THE RESPONDENT AND SHALL ORDER THE EVALUATION IF
3 THE RESPONDENT SO DEMANDS. IF THE COURT ORDERS THE EVALUATION,
4 THE RESPONDENT MUST BE EXAMINED BY A PHYSICIAN, PSYCHOLOGIST, OR
5 OTHER INDIVIDUAL APPOINTED BY THE COURT WHO IS QUALIFIED TO
6 EVALUATE THE RESPONDENT'S ALLEGED IMPAIRMENT. THE EXAMINER
7 SHALL PROMPTLY FILE A WRITTEN REPORT WITH THE COURT. UNLESS THE
8 COURT DIRECTS OTHERWISE, THE REPORT MUST CONTAIN:

9 (a) A DESCRIPTION OF THE NATURE, TYPE, AND EXTENT OF THE
10 RESPONDENT'S SPECIFIC COGNITIVE AND FUNCTIONAL LIMITATIONS, IF
11 ANY;

12 (b) AN EVALUATION OF THE RESPONDENT'S MENTAL AND PHYSICAL
13 CONDITION AND, IF APPROPRIATE, EDUCATIONAL POTENTIAL, ADAPTIVE
14 BEHAVIOR, AND SOCIAL SKILLS;

15 (c) A PROGNOSIS FOR IMPROVEMENT AND A RECOMMENDATION AS
16 TO THE APPROPRIATE TREATMENT OF HABILITATION PLAN; AND

17 (d) THE DATE OF ANY ASSESSMENT OR EXAMINATION UPON WHICH
18 THE REPORT IS BASED.

19 **SECTION 9.** In Colorado Revised Statutes, 15-14-429, amend
20 (4) and (5) as follows:

21 **15-14-429. Presentation and allowance of claims.** (4) If it
22 appears that the estate is likely to be exhausted before all existing claims
23 are paid: ~~the conservator shall distribute the estate in money or in kind in~~
24 ~~payment of claims in the following order:~~

25 (a) ~~Costs and expenses of administration~~ THE CONSERVATOR MAY,
26 WITHOUT A COURT ORDER, DISTRIBUTE THE ESTATE IN MONEY OR IN KIND
27 IN PAYMENT OF CLAIMS IN THE FOLLOWING ORDER:

1 (I) COSTS AND EXPENSES OF ADMINISTRATION;
2 (II) CLAIMS OF THE FEDERAL OR STATE GOVERNMENT HAVING
3 PRIORITY UNDER OTHER LAW;
4 (III) CLAIMS INCURRED BY THE CONSERVATOR FOR SUPPORT,
5 CARE, EDUCATION, HEALTH, AND WELFARE PROVIDED TO THE PROTECTED
6 PERSON OR INDIVIDUALS WHO ARE IN FACT DEPENDENT ON THE PROTECTED
7 PERSON;
8 (IV) CLAIMS ARISING BEFORE THE CONSERVATORSHIP; AND
9 (V) ALL OTHER CLAIMS.
10 ~~(b) Claims of the federal or state government having priority~~
11 ~~under other law~~ (I) AT ANY TIME DURING THE ADMINISTRATION, IF THE
12 PAYMENT OF CLAIMS AS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION
13 (4) WOULD SUBSTANTIALLY DEplete THE CONSERVATORSHIP ESTATE AND
14 LEAVE THE CONSERVATORSHIP ESTATE WITH INSUFFICIENT FUNDS TO PAY
15 FOR THE PROTECTED PERSON'S BASIC LIVING AND HEALTH CARE EXPENSES,
16 THE CONSERVATOR MAY FILE A MOTION WITH THE COURT SEEKING
17 PERMISSION TO WITHHOLD PAYMENT OF ALLOWED CLAIMS, BOTH THOSE
18 EXISTING AND INCURRED AFTER THE DATE OF THE MOTION, AND PAY ONLY
19 THE EXPENSES, CLAIMS, AND AMOUNTS REQUESTED BY THE CONSERVATOR
20 REGARDLESS OF THE PRIORITY OF THE CLAIM, AS SET FORTH IN SAID
21 PARAGRAPH (a).
22 (II) IF THE CONSERVATOR FILES A MOTION AS DESCRIBED IN
23 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE FACTORS TO BE
24 CONSIDERED BY THE COURT INCLUDE, BUT ARE NOT LIMITED TO:
25 (A) THE CURRENT AND FUTURE PROJECTED CARE COSTS OF THE
26 PROTECTED PERSON;
27 (B) THE CURRENT AND PROJECTED ASSETS OF THE PROTECTED

1 PERSON, INCLUDING THE ASSETS OF THE CONSERVATORSHIP ESTATE;
2 (C) THE LIFE EXPECTANCY OF THE PROTECTED PERSON;
3 (D) THE CURRENT AND PROJECTED INCOME OF THE PROTECTED
4 PERSON AND THE CONSERVATORSHIP ESTATE;
5 (E) THE PROTECTED PERSON'S ELIGIBILITY FOR BENEFITS TO COVER
6 LIVING AND HEALTH CARE EXPENSES; AND
7 (F) WHETHER THERE ARE INDIVIDUALS WHO ARE IN FACT
8 DEPENDENT ON THE PROTECTED PERSON.
9 (III) NOTICE OF A MOTION FILED UNDER THIS SECTION SHALL BE
10 PROVIDED TO ALL INTERESTED PERSONS AND TO ALL CREDITORS WHOSE
11 CLAIMS ARE AFFECTED.
12 (IV) IF ANY ORDER IS ENTERED RESTRICTING PAYMENTS ON ANY
13 CREDITOR'S CLAIMS, THE CONSERVATOR SHALL PROVIDE INFORMATION IN
14 THE ANNUAL REPORT REGARDING WHETHER THE ORDER RESTRICTING
15 PAYMENT OF THE CREDITOR'S CLAIMS SHOULD BE MODIFIED.
16 (c) Claims incurred by the conservator for support, care,
17 education, health, and welfare previously provided to the protected person
18 or individuals who are in fact dependent on the protected person;
19 (d) Claims arising before the conservatorship; and
20 (e) All other claims.
21 (5) UNLESS THE COURT ORDERS OTHERWISE, allowed claims within
22 the same class shall be paid pro rata. Preference may not be given in the
23 payment of a claim over any other claim of the same class, and a claim
24 due and payable may not be preferred over a claim not due.

25

26 **SECTION 10.** In Colorado Revised Statutes, **add** 15-16-502 as
27 follows:

1 **15-16-502. Reimbursement for taxes.** (1) AS USED IN THIS
2 SECTION:

3 (a) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO IS NOT
4 RELATED OR SUBORDINATE TO THE SETTLOR WITHIN THE MEANING OF
5 SECTION 672 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986",
6 AS AMENDED.

7 (b) "SETTLOR" MEANS THE GRANTOR OR ANOTHER PERSON
8 TREATED AS THE OWNER OF ANY PORTION OF A TRUST UNDER SECTION 671
9 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

10 (2) AN INDEPENDENT TRUSTEE OF A TRUST, UNLESS OTHERWISE
11 PROVIDED IN THE GOVERNING INSTRUMENT, MAY, FROM TIME TO TIME, IN
12 THE TRUSTEE'S DISCRETION, DISTRIBUTE TO THE SETTLOR AN AMOUNT
13 EQUAL TO ANY INCOME TAXES ON ANY PORTION OF THE TRUST'S TAXABLE
14 INCOME FOR WHICH THE SETTLOR IS LIABLE.

15 (3) A TRUSTEE SHALL NOT EXERCISE OR PARTICIPATE IN THE
16 EXERCISE OF DISCRETION PURSUANT TO THIS SECTION THAT WOULD CAUSE
17 THE INCLUSION OF THE TRUST ASSETS IN THE SETTLOR'S GROSS TAXABLE
18 ESTATE FOR FEDERAL ESTATE TAX PURPOSES AT THE TIME OF EXERCISE OR
19 IN A MANNER INCONSISTENT WITH THE QUALIFICATION OF ALL OR ANY
20 PORTION OF THE TRUST FOR THE FEDERAL GIFT OR ESTATE TAX MARITAL
21 DEDUCTION, TO THE EXTENT THE TRUST IS INTENDED TO QUALIFY FOR
22 SUCH DEDUCTION.

23 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

24 (a) ANY TRUST BY WHICH A FUTURE ESTATE IS INDEFEASIBLY
25 VESTED IN THE UNITED STATES OR A POLITICAL SUBDIVISION THEREOF FOR
26 EXCLUSIVELY PUBLIC PURPOSES;

27 (b) A CORPORATION ORGANIZED EXCLUSIVELY FOR RELIGIOUS,

1 CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES,
2 INCLUDING THE ENCOURAGEMENT OF ART AND THE PREVENTION OF
3 CRUELTY TO CHILDREN OR ANIMALS, NO PART OF THE NET EARNINGS OF
4 WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR
5 INDIVIDUAL, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH IS
6 CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE
7 LEGISLATION;

8 (c) A TRUSTEE, OR A FRATERNAL SOCIETY, ORDER, OR
9 ASSOCIATION OPERATING UNDER THE LODGE SYSTEM, PROVIDED THE
10 PRINCIPAL OR INCOME OF SUCH TRUST IS TO BE USED BY SUCH TRUSTEE OR
11 BY SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION EXCLUSIVELY FOR
12 RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL
13 PURPOSES, OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR
14 ANIMALS, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF SUCH
15 TRUSTEE OR OF SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION IS
16 CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE
17 LEGISLATION; OR

18 (d) ANY VETERANS' ORGANIZATION INCORPORATED BY AN ACT OF
19 CONGRESS, OR OF ITS DEPARTMENT OR LOCAL CHAPTERS OR POSTS, NO
20 PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY
21 PRIVATE SHAREHOLDER OR INDIVIDUAL.

22 (5) A CREDITOR OF THE SETTLOR OF AN IRREVOCABLE TRUST IS
23 NOT ENTITLED TO ATTACH OR OTHERWISE REACH ANY TRUST PROPERTY
24 DUE TO THE POWER GRANTED TO A TRUSTEE OR OTHER THIRD PARTY BY
25 THE TERMS OF THE TRUST, COURT ORDER, AGREEMENT OF THE
26 BENEFICIARIES, OR ANY OTHER PROVISION OF LAW, INCLUDING
27 SUBSECTION (2) OF THIS SECTION, TO REIMBURSE THE SETTLOR OF THE

1 TRUST AN AMOUNT FOR WHICH THE SETTLOR IS LIABLE FOR INCOME TAX
2 ON THE TAXABLE INCOME OF THE TRUST.

3 (6) THE PROVISIONS OF THIS SECTION APPLY TO ALL TRUSTS
4 UNLESS AN INDEPENDENT TRUSTEE OF A TRUST ELECTS OTHERWISE IN
5 WRITING.

6 **SECTION 11.** In Colorado Revised Statutes, **add** part 6 of article
7 16 of title 15 as follows:

8 PART 6

9 LIFE INSURANCE POLICY OWNED BY A TRUSTEE

10 **15-16-601. Life insurance policy owned by a trustee.**

11 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND THE
12 PROVISIONS OF THE COLORADO UNIFORM PRUDENT INVESTOR ACT,
13 ARTICLE 1.1 OF THIS TITLE, A TRUSTEE MAY NOT ACQUIRE OR HOLD AS A
14 TRUST ASSET A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON UNLESS
15 THE TRUSTEE HAS AN INSURABLE INTEREST, AS DEFINED SECTION
16 15-16-501, IN THE PERSON. A TRUSTEE WHO ACQUIRES AS A TRUST ASSET
17 A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON IN WHOM THE
18 TRUSTEE HAS AN INSURABLE INTEREST MAY CONTINUE TO HOLD THE LIFE
19 INSURANCE POLICY WITHOUT LIABILITY FOR LOSS ARISING FROM THE
20 TRUSTEE'S FAILURE TO:

21 (a) DETERMINE WHETHER THE POLICY IS OR REMAINS A PROPER
22 INVESTMENT;

23 (b) INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE
24 INSURANCE COMPANY;

25 (c) EXERCISE OR NOT EXERCISE ANY OPTION, RIGHT, OR PRIVILEGE
26 AVAILABLE UNDER THE POLICY, INCLUDING FINANCING THE PAYMENT OF
27 PREMIUMS, UNLESS THERE IS SUFFICIENT CASH OR THERE ARE OTHER

1 READILY MARKETABLE TRUST ASSETS FROM WHICH TO PAY PREMIUMS,
2 REGARDLESS OF WHETHER THE EXERCISE OR NONEXERCISE OF THESE
3 POWERS RESULTS IN THE LAPSE OR TERMINATION OF THE POLICY;

4 (d) INQUIRE ABOUT OR INVESTIGATE THE HEALTH OR FINANCIAL
5 CONDITION OF ANY INSURED UNDER THE POLICY; OR

6 (e) RETAIN THE POLICY WITHOUT REGARD TO ANY LACK OF
7 DIVERSIFICATION OF TRUST ASSETS RESULTING FROM OWNERSHIP OF SUCH
8 POLICY AND WITHOUT REGARD TO THE TERMS AND CONDITIONS OF THE
9 POLICY.

10 (2) (a) THIS SECTION DOES NOT RELIEVE A TRUSTEE OF LIABILITY
11 WITH RESPECT TO ANY LIFE INSURANCE POLICY PURCHASED FROM AN
12 AFFILIATED COMPANY, OR WITH RESPECT TO WHICH THE TRUSTEE OR ANY
13 AFFILIATED COMPANY OF THE TRUSTEE RECEIVES ANY COMMISSION,
14 UNLESS EITHER:

15 (I) THE TRUSTEE HAS GIVEN WRITTEN NOTICE OF SUCH INTENDED
16 PURCHASE TO ALL QUALIFIED BENEFICIARIES OF THE TRUST AS DEFINED IN
17 SECTION 15-1-402 (10.5), OR TO THEIR LEGAL REPRESENTATIVES, AND
18 EITHER RECEIVES WRITTEN CONSENT TO SUCH PURCHASE FROM QUALIFIED
19 BENEFICIARIES OR DOES NOT RECEIVE FROM A QUALIFIED BENEFICIARY A
20 RESPONSE TO WRITTEN NOTICE BY THE TRUSTEE WITHIN THIRTY DAYS
21 AFTER THE MAILING OF SUCH NOTICE TO THE QUALIFIED BENEFICIARY OR
22 LEGAL REPRESENTATIVE AT HIS OR HER LAST KNOWN ADDRESS ; OR

23 (II) THE TRUST AGREEMENT CONTAINS A PROVISION THAT PERMITS
24 PURCHASES OF LIFE INSURANCE FROM AN AFFILIATE.

25 (b) FOR PURPOSES OF THIS SECTION AN "AFFILIATED COMPANY"
26 SHALL HAVE THE SAME MEANING AS SET FORTH IN 15 U.S.C. SEC. 80a-2 (a)
27 (2).

1 (3) THIS SECTION APPLIES TO A TRUST ESTABLISHED BEFORE, ON,
2 OR AFTER THE EFFECTIVE DATE OF THIS PART 6 AND TO A LIFE INSURANCE
3 POLICY ACQUIRED, RETAINED, OR OWNED BY A TRUSTEE BEFORE, ON, OR
4 AFTER THE EFFECTIVE DATE OF THIS PART 6.

5 (4) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THIS
6 SECTION DOES NOT APPLY TO ANY TRUST THAT EXPRESSLY PROVIDES THAT
7 THIS SECTION SHALL NOT APPLY TO SUCH TRUST, OR TO ANY TRUST THAT
8 OTHERWISE PROVIDES FOR A DIFFERENT STANDARD OF FIDUCIARY CARE OR
9 OBLIGATION GREATER THAN THAT PROVIDED IN THIS SECTION; EXCEPT
10 THAT A TRUST MAY NOT PERMIT A TRUSTEE TO ACQUIRE OR HOLD AS A
11 TRUST ASSET A LIFE INSURANCE POLICY ON THE LIFE OF A PERSON IN WHOM
12 THE TRUSTEE DOES NOT HOLD AN INSURABLE INTEREST.

13 **SECTION 12.** In Colorado Revised Statutes, add part 7 to article
14 16 of title 15 as follows:

15 PART 7
16 REVOCABLE TRUSTS

17 **15-16-701. Reserved.**

18 **15-16-702. Revocation or amendment of revocable trust.**

19 (1) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST
20 IS IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS
21 SUBSECTION (1) DOES NOT APPLY TO A TRUST CREATED UNDER AN
22 INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS PART 7.

23 (2) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE
24 OTHERWISE, IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE
25 THAN ONE SETTLOR:

26 (a) TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY
27 PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING

1 ALONE, WITH REGARD TO THE PORTION OF THE TRUST PROPERTY
2 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, BUT MAY BE AMENDED
3 ONLY BY JOINT ACTION OF BOTH SPOUSES;

4 (b) TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER
5 THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE
6 TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY
7 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION; AND

8 (c) UPON THE REVOCATION OR AMENDMENT OF THE TRUST BY
9 FEWER THAN ALL OF THE SETTLORS, THE TRUSTEE SHALL PROMPTLY
10 NOTIFY THE OTHER SETTLORS OF THE REVOCATION OR AMENDMENT.

11 (3) THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST:

12 (a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN
13 THE TERMS OF THE TRUST; OR

14 (b) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR
15 THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE
16 EXCLUSIVE, BY ANY OTHER METHOD MANIFESTING CLEAR AND
17 CONVINCING EVIDENCE OF THE SETTLOR'S INTENT, WHICH MAY INCLUDE
18 A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR
19 SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED
20 ACCORDING TO THE TERMS OF THE TRUST.

21 (4) UPON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE
22 SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

23 (5) A SETTLOR'S POWERS WITH RESPECT TO REVOCATION,
24 AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED
25 BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT
26 EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR THE POWER.

27 (6) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE

1 OTHERWISE, OR THE POWER TO DO SO HAS BEEN EXPRESSLY GRANTED TO
2 ANOTHER PERSON, A CONSERVATOR OF THE SETTLOR OR, IF NO
3 CONSERVATOR HAS BEEN APPOINTED, A GUARDIAN OF THE SETTLOR, MAY
4 EXERCISE THE SETTLOR'S POWERS WITH RESPECT TO REVOCATION,
5 AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY, BUT ONLY WITH THE
6 APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR
7 GUARDIANSHIP.

8 (7) A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN
9 REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR THE SETTLOR'S
10 SUCCESSORS INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS
11 TAKEN ON THE ASSUMPTION THAT THE TRUST HAS NOT BEEN AMENDED OR
12 REVOKED.

13 **15-16-703. Settlor's powers.** UNLESS THE TERMS OF THE TRUST
14 EXPRESSLY PROVIDE OTHERWISE, WHILE A TRUST IS REVOCABLE, THE
15 RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE
16 DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

17 **15-16-704. Limitation on action contesting validity of**
18 **revocable trust.** (1) (a) A PERSON MUST COMMENCE A JUDICIAL
19 PROCEEDING TO CONTEST THE VALIDITY OF A TRUST THAT WAS
20 REVOCABLE AT THE SETTLOR'S DEATH WITHIN THE EARLIER OF:

21 (I) THREE YEARS AFTER THE SETTLOR'S DEATH; OR

22 (II) ONE HUNDRED TWENTY DAYS AFTER THE TRUSTEE SENT THE
23 PERSON A COPY OF THE TRUST INSTRUMENT AND A NOTICE INFORMING THE
24 PERSON OF THE TRUST'S EXISTENCE, OF THE TRUSTEE'S NAME AND
25 ADDRESS, AND OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.
26 A TRUSTEE SHALL NOT BE LIABLE TO ANY PERSON FOR GIVING OR FAILING
27 TO GIVE NOTICE UNDER THIS SECTION.

1 (b) THE APPLICABLE TIME LIMIT DESCRIBED IN PARAGRAPH (a) OF
2 THIS SUBSECTION (1) IS AN ABSOLUTE BAR THAT MAY NOT BE WAIVED OR
3 TOLLED.

4 (2) UPON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS
5 REVOCABLE AT THE SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO
6 DISTRIBUTE THE TRUST PROPERTY IN ACCORDANCE WITH THE TERMS OF
7 THE TRUST. THE TRUSTEE IS NOT SUBJECT TO LIABILITY FOR DOING SO
8 UNLESS:

9 (a) THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING
10 CONTESTING THE VALIDITY OF THE TRUST; OR

11 (b) A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE OF A
12 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL
13 PROCEEDING IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT
14 SENT THE NOTIFICATION.

15 (3) UNLESS A DISTRIBUTION OR PAYMENT NO LONGER CAN BE
16 QUESTIONED BECAUSE OF ADJUDICATION, ESTOPPEL, OR LIMITATION, A
17 BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID, OR
18 A DISTRIBUTE OF PROPERTY IMPROPERLY DISTRIBUTED OR PAID, OR A
19 CLAIMANT WHO IS IMPROPERLY PAID, IS LIABLE FOR THE RETURN OF THE
20 PROPERTY IMPROPERLY RECEIVED AND ITS INCOME, IF ANY, SINCE THE
21 DISTRIBUTION IF HE OR SHE HAS THE PROPERTY. IF HE OR SHE DOES NOT
22 HAVE THE PROPERTY, THEN HE OR SHE IS LIABLE FOR THE RETURN OF THE
23 VALUE AS OF THE DATE OF HIS OR HER DISPOSITION OF THE PROPERTY
24 IMPROPERLY RECEIVED, AND ITS INCOME AND GAIN, IF ANY RECEIVED BY
25 HIM OR HER.

26 **SECTION 13.** In Colorado Revised Statutes, 15-10-201, **amend**
27 introductory portion and (56); and **add** (6.5) as follows:

1 **15-10-201. General definitions.** Subject to additional definitions
2 contained in THIS ARTICLE AND the subsequent articles that are applicable
3 to specific articles, parts, or sections, and unless the context otherwise
4 requires, in this code:

5 (6.5) "BUSINESS TRUST" INCLUDES, BUT IS NOT LIMITED TO,
6 MASSACHUSETTS BUSINESS TRUSTS CREATED FOR BUSINESS OR
7 INVESTMENT PURPOSES; DELAWARE STATUTORY TRUSTS; ILLINOIS LAND
8 TRUSTS; MUTUAL FUND TRUSTS; COMMON TRUST FUNDS; VOTING TRUSTS;
9 LIQUIDATION TRUSTS; REAL ESTATE INVESTMENT TRUSTS;
10 ENVIRONMENTAL REMEDIATION TRUSTS; TRUSTS FOR THE PRIMARY
11 PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST, SALARIES, WAGES,
12 COMPENSATION, ANNUITIES, PROFITS, PENSIONS, OR EMPLOYEE BENEFITS
13 OF ANY KIND; AND OTHER TRUSTS WITH PURPOSES THAT ARE THE SAME OR
14 SIMILAR TO ANY OF THE TRUSTS ENUMERATED IN THIS SUBSECTION (6.5),
15 REGARDLESS OF WHETHER SUCH OTHER TRUSTS ARE CREATED UNDER
16 STATUTORY OR COMMON LAW, AND REGARDLESS OF WHETHER THE
17 BENEFICIAL INTERESTS IN SUCH OTHER TRUSTS ARE EVIDENCED BY
18 CERTIFICATES.

19 (56) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
20 SUBSECTION (56):

21 (I) "Trust" includes an express trust, private or charitable, with
22 additions thereto, wherever and however created and any amendments to
23 such trusts.

24 (II) "Trust" also includes a trust created or determined by
25 judgment or decree under which the trust is to be administered in the
26 manner of an express trust.

27 (b) (I) "Trust" excludes ~~other~~ constructive trusts and UNLESS A

1 COURT, IN DETERMINING SUCH A TRUST, PROVIDES THAT THE TRUST IS TO
2 BE ADMINISTERED AS AN EXPRESS TRUST.

3 (II) "TRUST" ALSO excludes resulting trusts; conservatorships;
4 personal representatives; accounts as defined in section 15-15-201 (1);
5 custodial arrangements pursuant to the "Colorado Uniform Transfers to
6 Minors Act", article 50 of title 11, C.R.S.; ~~business trusts providing for~~
7 ~~certificates to be issued to beneficiaries; common trust funds; voting~~
8 ~~trusts; security arrangements; liquidation trusts; trusts for the primary~~
9 ~~purpose of paying debts, dividends, interest, salaries, wages, profits,~~
10 ~~pensions, or employee benefits of any kind; BUSINESS TRUSTS, AS DEFINED~~
11 IN SUBSECTION (6.5) OF THIS SECTION; and any arrangement under which
12 a person is nominee or escrowee for another.

13 **SECTION 14.** In Colorado Revised Statutes, **amend** 15-17-101
14 as follows:

15 **15-17-101. Time of taking effect - provisions for transition.**

16 (1) This code takes effect on July 1, 1974.

17 (2) Except as provided elsewhere in this code, INCLUDING BUT
18 NOT LIMITED TO SECTIONS 15-11-601, 15-11-701, 15-11-1106, 15-16-702,
19 AND 15-17-103, on the effective date of this code OR OF ANY AMENDMENT
20 TO THIS CODE:

21 (a) The code OR THE AMENDMENT applies to ~~any wills of~~
22 GOVERNING INSTRUMENTS EXECUTED BY decedents dying thereafter;

23 (b) The code OR THE AMENDMENT applies to any ~~estates or~~
24 proceedings ~~whether in court or not, whether then pending or thereafter~~
25 commenced, regardless of the time of the death of decedent, ~~or the time~~
26 ~~of creation of any trust,~~ except to the extent that in the opinion of the
27 court ~~in a court proceeding~~ the former law and procedure should be made

1 applicable in a particular case in the interest of justice or because of
2 infeasibility of application of the procedure of this code OR ANY
3 AMENDMENT TO THIS CODE;

4 (c) Every personal representative ~~including a person administering~~
5 ~~an estate of a minor or an incompetent~~, OR OTHER FIDUCIARY holding an
6 appointment on ~~that date~~ JULY 1, 1974, OR BEFORE THE EFFECTIVE DATE
7 OF AN AMENDMENT TO THIS CODE continues to hold the appointment but
8 has only the powers conferred by this code AND BY ANY AMENDMENT TO
9 THIS CODE and is subject to the duties ~~and liabilities imposed with respect~~
10 ~~to any act or omission occurring or done thereafter~~; every trustee of a trust
11 ~~existing on July 1, 1975, is subject to the duties and liabilities imposed by~~
12 this code AND BY ANY AMENDMENT TO THIS CODE with respect to any act
13 ~~or omission~~ occurring or done thereafter;

14 (d) An act done before July 1, 1974, OR BEFORE THE EFFECTIVE
15 DATE OF AN AMENDMENT TO THIS CODE, in any proceeding ~~and any~~
16 ~~accrued right~~ is not impaired by this code OR BY ANY AMENDMENT TO
17 THIS CODE. If a right is acquired, extinguished, or barred upon the
18 expiration of a prescribed period of time which has commenced to run by
19 the provisions of any statute before July 1, 1974, OR BEFORE THE
20 EFFECTIVE DATE OF AN AMENDMENT TO THIS CODE, the provisions OF
21 THAT STATUTE shall remain in force with respect to that right;

22 (e) Any rule of construction or presumption provided in this code
23 OR IN ANY AMENDMENT TO THIS CODE applies to GOVERNING instruments
24 ~~executed and multiple-party accounts opened~~ before July 1, 1974, OR
25 BEFORE THE EFFECTIVE DATE OF AN AMENDMENT TO THIS CODE, unless
26 there is a clear indication of a contrary intent.

27 (f) NO PROVISION OF THIS CODE OR OF ANY AMENDMENT TO THIS

1 CODE SHALL APPLY RETROACTIVELY IF THE COURT DETERMINES THAT
2 SUCH APPLICATION WOULD CAUSE THE PROVISIONS TO BE RETROSPECTIVE
3 IN ITS OPERATION IN VIOLATION OF SECTION 11 OF ARTICLE II OF THE
4 STATE CONSTITUTION; AND

5 (g) THE LAW IN EFFECT AT THE TIME OF DEATH IDENTIFIES THE
6 HEIRS AND DETERMINES THE SHARES UNDER INTESTACY IN ACCORDANCE
7 WITH SECTIONS 15-11-101 TO 15-11-103.

8 **SECTION 15.** In Colorado Revised Statutes, **repeal** 15-17-102.

9 **SECTION 16.** In Session Laws of Colorado 2009, **amend** section
10 17 of chapter 310 as follows:

11 Section 17. **Effective date. -applicability.** (1) This act takes
12 effect on July 1, 2010.

13 (2) ~~This act applies on or after July 1, 2010, to:~~

14 (a) ~~Governing instruments executed by decedents dying on or after~~
15 ~~July 1, 2010;~~

16 (b) ~~Any proceedings in court then pending or thereafter~~
17 ~~commenced regardless of the time of death of the decedent except to the~~
18 ~~extent that, in the opinion of the court, the former procedure should be~~
19 ~~made applicable in a particular case in the interest of justice or because~~
20 ~~of infeasibility of application of the procedure of the "Colorado Probate~~
21 ~~Code", articles 10 to 17 of title 15, Colorado Revised Statutes;~~

22 (c) ~~An act done before the effective date of this act in any~~
23 ~~proceeding and any accrued right is not impaired by this act. If a right is~~
24 ~~acquired, extinguished, or barred upon the expiration of a prescribed~~
25 ~~period of time which has commenced to run by the provisions of any~~
26 ~~statute before the effective date of this act, the provisions shall remain in~~
27 ~~force with respect to that right; and~~

1 ~~(d) Any rule of construction or presumption provided in this act~~
2 ~~applies to governing instruments executed before the effective date of this~~
3 ~~act unless there is a clear indication of a contrary intent.~~

4 **SECTION 17.** In Session Laws of Colorado 2010, **amend** section
5 24 of chapter 374, as amended, as follows:

6 Section 24. Section 17 of chapter 310, Session Laws of Colorado
7 2009, is amended to read:

8 Section 17. **Effective date. -applicability.** (1) This act takes
9 effect on July 1, 2010.

10 (2) ~~This act applies on or after July 1, 2010, to:~~

11 (a) ~~Governing instruments executed by decedents dying on or after~~
12 ~~July 1, 2010; and~~

13 (b) ~~Any proceedings in court then pending or thereafter~~
14 ~~commenced regardless of the time of death of the decedent except to the~~
15 ~~extent that, in the opinion of the court, the former statute should be made~~
16 ~~applicable in a particular case in the interest of justice or because of~~
17 ~~infeasibility of application a provision of this act.~~

18 (c) ~~An act done before the effective date of this act in any~~
19 ~~proceeding and any accrued right is not impaired by this act. If a right is~~
20 ~~acquired, extinguished, or barred upon the expiration of a prescribed~~
21 ~~period of time which has commenced to run by the provisions of any~~
22 ~~statute before the effective date of this act, the provisions shall remain in~~
23 ~~force with respect to that right; and~~

24 (d) ~~Any rule of construction or presumption provided in this act~~
25 ~~applies to governing instruments executed before the effective date of this~~
26 ~~act unless there is a clear indication of a contrary intent.~~

27 (3) This act shall not apply to:

1 (a) An action performed before the effective date of this act in any
2 proceeding;

3 (b) An accrued right;

4 (c) A right that is acquired, extinguished, or barred upon the
5 expiration of a prescribed period of time that has commenced to run by
6 the provisions of any statute before July 1, 2010; or

7 (d) A provision of a governing instrument that was executed
8 before July 1, 2010, and includes a clear indication of a contrary intent.

9 **SECTION 18.** In Session Laws of Colorado 2010, **amend** section
10 25 of chapter 374 as follows:

11 Section 25. **Specified effective date. -applicability.** (1) This act
12 shall take effect July 1, 2010.

13 (2) This act shall apply to:

14 (a) Governing instruments executed by decedents who die on or
15 after July 1, 2010; and

16 (b) Any proceeding in court then pending or thereafter
17 commenced regardless of the time of death of the decedent except to the
18 extent that, in the opinion of the court, the former statute should be made
19 applicable in a particular case in the interest of justice or because of
20 infeasibility of application of a provision of this act.

21 (3) This act shall not apply to:

22 (a) An action performed before the effective date of this act in any
23 proceeding;

24 (b) An accrued right;

25 (c) A right that is acquired, extinguished, or barred upon the
26 expiration of a prescribed period of time that has commenced to run by
27 the provisions of any statute before July 1, 2010; or

1 ~~(d) A provision of a governing instrument that was executed~~
2 ~~before July 1, 2010, and includes a clear indication of a contrary intent.~~

3 **SECTION 19. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2014 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.