

Second 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. 14-0954.01 Richard Sweetman x4333

HOUSE BILL 14-1322

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HOUSE SPONSORSHIP

McLachlan,

SENATE SPONSORSHIP

Roberts,

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House Committees  
Judiciary

Senate Committees  
Judiciary

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A BILL FOR AN ACT

101 CONCERNING THE COLORADO PROBATE 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 repeals and reenacts, with amendments, certain provisions relating to the elective-share of a surviving spouse.

A specific devisee has a right to specifically devised property in a testator's estate at death and, in the absence of other statutorily described property and moneys, 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

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.

SENATE  
Amended 2nd Reading  
April 28, 2014

HOUSE  
3rd Reading Unamended  
April 14, 2014

HOUSE  
Amended 2nd Reading  
April 10, 2014

ademption would be inconsistent with the testator's manifested plan of distribution or that the testator did not intend ademption of the devise.

To be effective to nominate a personal representative, a will must be declared valid by an order of informal probate by the registrar or by the court.

Under current law, a successor of a decedent may collect from another person any debts owed to the decedent and any personal property belonging to the decedent if the fair market value of the property owned by the decedent at the time of his or her death does not exceed \$60,000. Under the bill, this amount may not exceed twice the value of property that the decedent's surviving spouse is entitled to exempt from the estate, as adjusted for cost of living.

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. A successor of the decedent or a person acting on behalf of a successor may endorse an instrument that is so payable and collect such amount.

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 to collect personal property of a decedent are the same as the duties of an agent to the agent's principal. The breach of this duty is subject to the same remedies as are available under the law with respect to an agent.

If a proof of right is established in a proceeding, 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 shall be liable for all costs, including reasonable attorneys' fees and costs, incurred by or on behalf of the persons entitled thereto.

A provision in a trust specifying a method to revoke or amend the trust does not make the specified method exclusive unless the 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.

The bill sets forth certain duties and powers of trustees and trust advisors.

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

2 **SECTION 1. In Colorado Revised Statutes, 15-10-111, amend**

3 **(1) (a) (I) as follows:**

4 **15-10-111. Entry into safe deposit box of decedent -**

5 **definitions. (1) (a) Whenever a decedent at the time of his or her death**

1 was a sole or joint lessee of a safe deposit box, the custodian shall, prior  
2 to notice that a personal representative or special administrator has been  
3 appointed, allow access to the box by:

4 (I) A PERSON CLAIMING TO BE A SUCCESSOR OF THE DECEDENT, OR  
5 ACTING ON BEHALF OF a successor of the decedent, if such decedent was  
6 the sole lessee of the box, upon presentation of an affidavit made pursuant  
7 to section 15-12-1201 for the purpose of delivering the contents of the  
8 box in accordance with said section; or

9 **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**  
10 **with amendments,** part 2 of article 11 of title 15 as follows:

11 PART 2

12 ELECTIVE-SHARE OF SURVIVING SPOUSE

13 **15-11-201. [Formerly 15-11-202 (1)] Definitions.** AS USED IN  
14 THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

15 (1) "BONA FIDE PURCHASER" MEANS A PURCHASER FOR VALUE IN  
16 GOOD FAITH AND WITHOUT NOTICE OF AN ADVERSE CLAIM. THE NOTATION  
17 OF A STATE DOCUMENTARY FEE ON A RECORDED INSTRUMENT PURSUANT  
18 TO SECTION 39-13-103, C.R.S., IS PRIMA FACIE EVIDENCE THAT THE  
19 TRANSFER DESCRIBED THEREIN WAS MADE TO A BONA FIDE PURCHASER.

20 (2) "DECEDENT'S NONPROBATE TRANSFERS TO OTHERS" MEANS  
21 AMOUNTS THAT ARE INCLUDED IN THE AUGMENTED ESTATE UNDER  
22 SECTION 15-11-205.

23 (3) "FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY  
24 WITH THE RIGHT OF SURVIVORSHIP", WHETHER THE FRACTIONAL INTEREST  
25 IS UNILATERALLY SEVERABLE OR NOT, AND IF THE INTERESTS ARE EQUAL,  
26 MEANS THE FRACTION, THE NUMERATOR OF WHICH IS ONE AND THE  
27 DENOMINATOR OF WHICH, IF THE DECEDENT WAS A JOINT TENANT, IS ONE

1 PLUS THE NUMBER OF JOINT TENANTS WHO SURVIVE THE DECEDENT AND  
2 WHICH, IF THE DECEDENT WAS NOT A JOINT TENANT, IS THE NUMBER OF  
3 JOINT TENANTS. IF THE INTERESTS ARE UNEQUAL, "FRACTIONAL INTEREST  
4 IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP"  
5 MEANS THE DECEDENT'S INTEREST IMMEDIATELY PRECEDING THE  
6 DECEDENT'S DEATH.

7 (4) "MARRIAGE", AS IT RELATES TO A TRANSFER BY THE DECEDENT  
8 DURING MARRIAGE, MEANS ANY MARRIAGE OF THE DECEDENT TO THE  
9 DECEDENT'S SURVIVING SPOUSE.

10 (5) "NONADVERSE PARTY" MEANS A PERSON WHO DOES NOT HAVE  
11 A SUBSTANTIAL BENEFICIAL INTEREST IN THE TRUST OR OTHER PROPERTY  
12 ARRANGEMENT THAT WOULD BE ADVERSELY AFFECTED BY THE EXERCISE  
13 OR NONEXERCISE OF THE POWER THAT HE OR SHE POSSESSES RESPECTING  
14 THE TRUST OR OTHER PROPERTY ARRANGEMENT. A PERSON HAVING A  
15 GENERAL POWER OF APPOINTMENT OVER PROPERTY IS DEEMED TO HAVE  
16 A BENEFICIAL INTEREST IN THE PROPERTY.

17 (6) "POWER" OR "POWER OF APPOINTMENT" INCLUDES A POWER TO  
18 DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION, INCLUDING  
19 BENEFICIARY DESIGNATIONS UNDER INDIVIDUAL RETIREMENT ACCOUNTS  
20 AND ANNUITIES DESCRIBED IN SECTION 408 OF THE FEDERAL "INTERNAL  
21 REVENUE CODE OF 1986", AS AMENDED, AS WELL AS OTHER PENSION  
22 PLANS OR ARRANGEMENTS NOT SUBJECT TO PART 2 (SECTION 201 ET SEQ.)  
23 OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF  
24 1974", AS AMENDED (29 U.S.C. SEC. 1051 ET SEQ.).

25 (7) "PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT"  
26 MEANS A POWER OF APPOINTMENT UNDER WHICH, AT THE TIME IN  
27 QUESTION, THE DECEDENT, WHETHER OR NOT HE OR SHE THEN HAD THE

1 CAPACITY TO EXERCISE THE POWER, HELD A POWER TO CREATE A PRESENT  
2 OR FUTURE INTEREST IN HIMSELF OR HERSELF, HIS OR HER CREDITORS, HIS  
3 OR HER ESTATE, OR THE CREDITORS OF HIS OR HER ESTATE, AND INCLUDES  
4 A POWER TO REVOKE OR INVADE THE PRINCIPAL OF A TRUST OR OTHER  
5 PROPERTY ARRANGEMENT.

6 (8) "PROPERTY" INCLUDES VALUES SUBJECT TO A BENEFICIARY  
7 DESIGNATION.

8 (9) "RIGHT TO INCOME" INCLUDES A RIGHT TO PAYMENTS UNDER  
9 A COMMERCIAL OR PRIVATE ANNUITY, AN ANNUITY TRUST, A UNITRUST, OR  
10 A SIMILAR ARRANGEMENT.

11 (10) "TRANSFER", AS IT RELATES TO A TRANSFER BY OR ON BEHALF  
12 OF THE DECEDENT, INCLUDES:

13 (a) AN EXERCISE OR RELEASE OF A PRESENTLY EXERCISABLE  
14 GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT;

15 (b) A LAPSE AT DEATH OF A PRESENTLY EXERCISABLE GENERAL  
16 POWER OF APPOINTMENT HELD BY THE DECEDENT; AND

17 (c) AN EXERCISE, RELEASE, OR LAPSE OF A PRESENTLY  
18 EXERCISABLE GENERAL POWER OF APPOINTMENT THAT THE DECEDENT  
19 CREATED IN HIMSELF OR HERSELF AND OF A POWER DESCRIBED IN SECTION  
20 15-11-205 (2) (b) THAT THE DECEDENT CONFERRED ON A NONADVERSE  
21 PARTY.

22 (11) "VALUE", UNLESS OTHERWISE INDICATED, MEANS FAIR  
23 MARKET VALUE AS OF THE DECEDENT'S DATE OF DEATH.

24 **15-11-202. [Formerly 15-11-201] Elective-share.**

25 (1) **Elective-share amount.** THE SURVIVING SPOUSE OF A DECEDENT WHO  
26 DIES DOMICILED IN THIS STATE HAS A RIGHT OF ELECTION, UNDER THE  
27 LIMITATIONS AND CONDITIONS STATED IN THIS PART 2, TO TAKE AN

1 ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY PERCENT OF THE VALUE OF THE  
2 MARITAL-PROPERTY PORTION OF THE AUGMENTED ESTATE.

3 (2) (a) **Supplemental elective-share amount.** IF THE SUM OF THE  
4 AMOUNTS DESCRIBED IN SECTIONS 15-11-207, 15-11-209 (1) (a), AND  
5 THAT PART OF THE ELECTIVE-SHARE AMOUNT PAYABLE FROM THE  
6 DECEDENT'S NET PROBATE ESTATE AND NONPROBATE TRANSFERS TO  
7 OTHERS UNDER SECTION 15-11-209 (3) (a) AND (3) (b) IS LESS THAN FIFTY  
8 THOUSAND DOLLARS, THE SURVIVING SPOUSE IS ENTITLED TO A  
9 SUPPLEMENTAL ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY THOUSAND  
10 DOLLARS, MINUS THE SUM OF THE AMOUNTS DESCRIBED IN THOSE  
11 SECTIONS. THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS PAYABLE  
12 FROM THE DECEDENT'S NET PROBATE ESTATE AND FROM RECIPIENTS OF  
13 THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN THE ORDER OF  
14 PRIORITY SET FORTH IN SECTION 15-11-209 (3) (a) AND (3) (b).

15 (b) THE COURT SHALL INCREASE OR DECREASE THE DOLLAR  
16 AMOUNT STATED IN PARAGRAPH (a) OF THIS SUBSECTION (2) BASED ON  
17 THE COST OF LIVING ADJUSTMENT AS CALCULATED AND SPECIFIED IN  
18 SECTION 15-10-112.

19 (3) **Effect of election on statutory benefits.** IF THE RIGHT OF  
20 ELECTION IS EXERCISED BY OR ON BEHALF OF THE SURVIVING SPOUSE, THE  
21 EXEMPT PROPERTY AND FAMILY ALLOWANCE, IF ANY, ARE NOT CHARGED  
22 AGAINST BUT ARE IN ADDITION TO THE ELECTIVE-SHARE AND  
23 SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS.

24 (4) **Nondomiciliary.** THE RIGHT, IF ANY, OF THE SURVIVING  
25 SPOUSE OF A DECEDENT WHO DIES DOMICILED OUTSIDE THIS STATE TO  
26 TAKE AN ELECTIVE-SHARE IN PROPERTY IN THIS STATE IS GOVERNED BY  
27 THE LAW OF THE DECEDENT'S DOMICILE AT DEATH.



1	7 YEARS BUT LESS THAN 8 YEARS	70%
2	8 YEARS BUT LESS THAN 9 YEARS	80%
3	9 YEARS BUT LESS THAN 10 YEARS	90%
4	10 YEARS OR MORE	100%

5           **15-11-204. [Formerly 15-11-201 (2) (a)] Decedent's net probate**  
6 **estate.** THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF  
7 THE DECEDENT'S PROBATE ESTATE, REDUCED BY FUNERAL AND  
8 ADMINISTRATIVE EXPENSES, FAMILY ALLOWANCE, EXEMPT PROPERTY,  
9 AND ENFORCEABLE CLAIMS.

10           **15-11-205. [Formerly 15-11-201 (2) (b)] Decedent's**  
11 **nonprobate transfers to others.** THE VALUE OF THE AUGMENTED  
12 ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE  
13 TRANSFERS TO OTHERS, NOT INCLUDED IN THE DECEDENT'S PROBATE  
14 ESTATE UNDER SECTION 15-11-204, OF ANY OF THE FOLLOWING TYPES, IN  
15 THE AMOUNT PROVIDED RESPECTIVELY FOR EACH TYPE OF TRANSFER:

16           (1) PROPERTY OWNED OR OWNED IN SUBSTANCE BY THE DECEDENT  
17 IMMEDIATELY BEFORE DEATH THAT PASSED OUTSIDE PROBATE AT THE  
18 DECEDENT'S DEATH. PROPERTY INCLUDED UNDER THIS CATEGORY  
19 CONSISTS OF:

20           (a) PROPERTY OVER WHICH THE DECEDENT ALONE, IMMEDIATELY  
21 BEFORE DEATH, HELD OR RETAINED A PRESENTLY EXERCISABLE GENERAL  
22 POWER OF APPOINTMENT. THE AMOUNT INCLUDED IS THE VALUE OF THE  
23 PROPERTY SUBJECT TO THE POWER, TO THE EXTENT THAT THE PROPERTY  
24 PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN  
25 DEFAULT, OR OTHERWISE TO OR FOR THE BENEFIT OF ANY PERSON OTHER  
26 THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; EXCEPT THAT  
27 PROPERTY OVER WHICH THE DECEDENT HAD ONLY A TESTAMENTARY



1 POWER OF APPOINTMENT IS NOT INCLUDED. PROPERTY OVER WHICH THE  
2 DECEDENT HAD A GENERAL INTER VIVOS POWER OF APPOINTMENT OR  
3 WITHDRAWAL CREATED IN THE DECEDENT BY A THIRD PARTY IS  
4 INCLUDABLE UNLESS THE GOVERNING INSTRUMENT CONTAINS A PROVISION  
5 FOR ITS TERMINATION OR LAPSE, IN FULL OR IN PART, DURING THE LIFE OF  
6 THE DECEDENT.

7 (b) THE DECEDENT'S FRACTIONAL INTEREST IN REAL PROPERTY  
8 HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF  
9 SURVIVORSHIP CREATED DURING THE MARRIAGE TO THE SURVIVING  
10 SPOUSE, EXCEPT AS PROVIDED IN SECTION 15-11-208, AND THE  
11 DECEDENT'S FRACTIONAL INTEREST IN PERSONAL PROPERTY HELD BY THE  
12 DECEDENT IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP. THE  
13 AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S FRACTIONAL  
14 INTEREST, TO THE EXTENT THAT THE FRACTIONAL INTEREST PASSED BY  
15 RIGHT OF SURVIVORSHIP AT THE DECEDENT'S DEATH TO A SURVIVING JOINT  
16 TENANT OTHER THAN THE DECEDENT'S SURVIVING SPOUSE.

17 (c) THE DECEDENT'S OWNERSHIP INTEREST IN PROPERTY OR  
18 ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH  
19 THE RIGHT OF SURVIVORSHIP. THE AMOUNT INCLUDED IS THE VALUE OF  
20 THE DECEDENT'S OWNERSHIP INTEREST, TO THE EXTENT THAT THE  
21 DECEDENT'S OWNERSHIP INTEREST PASSED AT THE DECEDENT'S DEATH TO  
22 OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S  
23 ESTATE OR SURVIVING SPOUSE.

24 (d) EXCEPT AS PROVIDED IN SECTION 15-11-208, PROCEEDS OF  
25 INSURANCE, INCLUDING ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE  
26 DECEDENT IF THE DECEDENT OWNED THE INSURANCE POLICY  
27 IMMEDIATELY BEFORE DEATH OR IF AND TO THE EXTENT THAT THE

1 DECEDENT ALONE AND IMMEDIATELY BEFORE DEATH HELD A PRESENTLY  
2 EXERCISABLE GENERAL POWER OF APPOINTMENT OVER THE POLICY OR ITS  
3 PROCEEDS. THE AMOUNT INCLUDED IS THE VALUE OF THE PROCEEDS, TO  
4 THE EXTENT THAT THEY WERE PAYABLE AT THE DECEDENT'S DEATH TO OR  
5 FOR THE BENEFIT OF THE DECEDENT'S ESTATE OR SURVIVING SPOUSE.

6 (2) PROPERTY TRANSFERRED IN ANY OF THE FOLLOWING FORMS BY  
7 THE DECEDENT DURING MARRIAGE:

8 (a) ANY IRREVOCABLE TRANSFER IN WHICH THE DECEDENT  
9 RETAINED THE RIGHT TO THE POSSESSION OR ENJOYMENT OF, OR TO THE  
10 INCOME FROM, THE PROPERTY IF AND TO THE EXTENT THAT THE  
11 DECEDENT'S RIGHT TERMINATED AT OR CONTINUED BEYOND THE  
12 DECEDENT'S DEATH. THE AMOUNT INCLUDED IS THE VALUE OF THE  
13 FRACTION OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT RELATED,  
14 TO THE EXTENT THAT THE FRACTION OF THE PROPERTY PASSED OUTSIDE  
15 PROBATE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE  
16 DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

17 (b) ANY TRANSFER IN WHICH THE DECEDENT CREATED A POWER  
18 OVER THE INCOME OR PRINCIPAL OF THE TRANSFERRED PROPERTY,  
19 EXERCISABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY  
20 OTHER PERSON OR EXERCISABLE BY A NONADVERSE PARTY, FOR THE  
21 BENEFIT OF THE DECEDENT, THE DECEDENT'S CREDITORS, THE DECEDENT'S  
22 ESTATE, OR THE CREDITORS OF THE DECEDENT'S ESTATE. THE AMOUNT  
23 INCLUDED WITH RESPECT TO A POWER OVER PROPERTY IS THE VALUE OF  
24 THE PROPERTY SUBJECT TO THE POWER, AND THE AMOUNT INCLUDED WITH  
25 RESPECT TO A POWER OVER INCOME IS THE VALUE OF THE PROPERTY THAT  
26 PRODUCES OR PRODUCED THE INCOME, TO THE EXTENT THAT THE POWER  
27 IN EITHER CASE WAS EXERCISABLE AT THE DECEDENT'S DEATH TO OR FOR

1 THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S SURVIVING  
2 SPOUSE OR TO THE EXTENT THAT THE PROPERTY SUBJECT TO THE POWER  
3 PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN  
4 DEFAULT, OR OTHERWISE TO OR FOR THE BENEFIT OF ANY PERSON OTHER  
5 THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE. IF THE POWER IS A  
6 POWER OVER BOTH INCOME AND PROPERTY AND THE PRECEDING SENTENCE  
7 PRODUCES DIFFERENT AMOUNTS, THE AMOUNT INCLUDED IS THE GREATER  
8 AMOUNT.

9 (3) PROPERTY THAT PASSED DURING MARRIAGE AND DURING THE  
10 TWO-YEAR PERIOD NEXT PRECEDING THE DECEDENT'S DEATH AS A RESULT  
11 OF A TRANSFER BY THE DECEDENT IF THE TRANSFER WAS OF ANY OF THE  
12 FOLLOWING TYPES:

13 (a) ANY PROPERTY THAT PASSED AS A RESULT OF THE  
14 TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY  
15 THAT WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER  
16 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION OR UNDER  
17 SUBSECTION (2) OF THIS SECTION IF THE RIGHT, INTEREST, OR POWER HAD  
18 NOT TERMINATED UNTIL THE DECEDENT'S DEATH. THE AMOUNT INCLUDED  
19 IS THE VALUE OF THE PROPERTY THAT WOULD HAVE BEEN INCLUDED  
20 UNDER THOSE PROVISIONS IF THE PROPERTY WERE VALUED AT THE TIME  
21 THAT THE RIGHT, INTEREST, OR POWER TERMINATED AND IS INCLUDED  
22 ONLY TO THE EXTENT THAT THE PROPERTY PASSED UPON TERMINATION TO  
23 OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT OR THE  
24 DECEDENT'S ESTATE, SPOUSE, OR SURVIVING SPOUSE. AS USED IN THIS  
25 SUBPARAGRAPH (I), "TERMINATION", WITH RESPECT TO A RIGHT OR AN  
26 INTEREST IN PROPERTY, OCCURS WHEN THE RIGHT OR INTEREST  
27 TERMINATES BY THE TERMS OF THE GOVERNING INSTRUMENT OR THE

1 DECEDENT TRANSFERS OR RELINQUISHES THE RIGHT OF INTEREST AND,  
2 WITH RESPECT TO A POWER OVER PROPERTY, WHEN THE POWER  
3 TERMINATES BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE;  
4 EXCEPT THAT, WITH RESPECT TO A POWER DESCRIBED IN SUBPARAGRAPH  
5 (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1), "TERMINATION" OCCURS  
6 WHEN THE POWER IS TERMINATED BY EXERCISE OR RELEASE BUT NOT  
7 OTHERWISE.

8 (b) ANY TRANSFER OF, OR RELATING TO, AN INSURANCE POLICY ON  
9 THE LIFE OF THE DECEDENT IF THE PROCEEDS WOULD HAVE BEEN  
10 INCLUDED IN THE AUGMENTED ESTATE UNDER SUBPARAGRAPH (IV) OF  
11 PARAGRAPH (a) OF THIS SUBSECTION (1) HAD THE TRANSFER NOT  
12 OCCURRED. THE AMOUNT INCLUDED IS THE VALUE OF THE INSURANCE  
13 PROCEEDS TO THE EXTENT THAT THE PROCEEDS WERE PAYABLE AT THE  
14 DECEDENT'S DEATH TO OR FOR THE BENEFIT OF THE DECEDENT'S ESTATE  
15 OR SURVIVING SPOUSE.

16 (c) ANY TRANSFER OF PROPERTY, TO THE EXTENT NOT OTHERWISE  
17 INCLUDED IN THE AUGMENTED ESTATE, MADE TO OR FOR THE BENEFIT OF  
18 A PERSON OTHER THAN THE DECEDENT'S SURVIVING SPOUSE. THE AMOUNT  
19 INCLUDED IS THE VALUE OF THE TRANSFERRED PROPERTY TO THE EXTENT  
20 THAT THE AGGREGATE TRANSFERS TO ANY ONE DONEE IN EITHER OF THE  
21 TWO YEARS EXCEEDED THE AMOUNT EXCLUDABLE FROM TAXABLE GIFTS  
22 UNDER 26 U.S.C. SEC. 2503 (b) OR ITS SUCCESSOR ON THE DATE NEXT  
23 PRECEDING THE DATE OF THE DECEDENT'S DEATH.

24 **15-11-206. [Formerly 15-11-202 (2) (c)] Decedent's nonprobate**  
25 **transfers to the surviving spouse.** EXCLUDING PROPERTY PASSING TO  
26 THE SURVIVING SPOUSE UNDER THE FEDERAL SOCIAL SECURITY SYSTEM  
27 AFTER THE DECEDENT'S DATE OF DEATH, THE VALUE OF THE AUGMENTED

1 ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE  
2 TRANSFERS TO THE DECEDENT'S SURVIVING SPOUSE, WHICH CONSIST OF  
3 ALL PROPERTY THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH  
4 FROM THE DECEDENT TO THE SURVIVING SPOUSE BY REASON OF THE  
5 DECEDENT'S DEATH, INCLUDING:

6 (1) THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY HELD AS  
7 A JOINT TENANT WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THAT  
8 THE DECEDENT'S FRACTIONAL INTEREST PASSED TO THE SURVIVING SPOUSE  
9 AS SURVIVING JOINT TENANT;

10 (2) THE DECEDENT'S OWNERSHIP INTEREST IN PROPERTY OR  
11 ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH  
12 THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THE DECEDENT'S OWNERSHIP  
13 INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING CO-OWNER;  
14 AND

15 (3) ALL OTHER PROPERTY THAT WOULD HAVE BEEN INCLUDED IN  
16 THE AUGMENTED ESTATE UNDER SECTION 15-11-205 (1) OR (2) HAD IT  
17 PASSED TO OR FOR THE BENEFIT OF A PERSON OTHER THAN THE  
18 DECEDENT'S SPOUSE, SURVIVING SPOUSE, THE DECEDENT, OR THE  
19 DECEDENT'S CREDITORS, ESTATE, OR ESTATE CREDITORS.

20 **15-11-207. [Formerly 15-11-202 (2) (d)] Surviving spouse's**  
21 **property and nonprobate transfers to others.** (1) EXCEPT TO THE  
22 EXTENT INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-204  
23 OR 15-11-206, THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE  
24 VALUE OF:

25 (a) PROPERTY THAT WAS OWNED BY THE DECEDENT'S SURVIVING  
26 SPOUSE AT THE DECEDENT'S DEATH, INCLUDING:

27 (I) THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN REAL

1 PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP  
2 CREATED DURING THE MARRIAGE TO THE DECEDENT, EXCEPT AS PROVIDED  
3 IN SECTION 15-11-208, AND THE SURVIVING SPOUSE'S FRACTIONAL  
4 INTEREST IN PERSONAL PROPERTY HELD BY THE SURVIVING SPOUSE IN  
5 JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP;

6 (II) THE SURVIVING SPOUSE'S OWNERSHIP INTEREST IN PROPERTY  
7 OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION  
8 WITH THE RIGHT OF SURVIVORSHIP; AND

9 (III) PROPERTY THAT PASSED TO THE SURVIVING SPOUSE BY  
10 REASON OF THE DECEDENT'S DEATH BUT NOT INCLUDING THE SPOUSE'S  
11 RIGHT TO FAMILY ALLOWANCE, EXEMPT PROPERTY, OR PAYMENTS UNDER  
12 THE FEDERAL SOCIAL SECURITY SYSTEM AFTER THE DECEDENT'S DATE OF  
13 DEATH; AND

14 (b) PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE  
15 SURVIVING SPOUSE'S NONPROBATE TRANSFERS TO OTHERS, OTHER THAN  
16 THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS INCLUDED UNDER  
17 SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1)  
18 HAD THE SPOUSE BEEN THE DECEDENT.

19 (2) PROPERTY INCLUDED UNDER THIS SECTION IS VALUED AT THE  
20 DECEDENT'S DEATH, TAKING THE FACT THAT THE DECEDENT PREDECEASED  
21 THE SPOUSE INTO ACCOUNT, BUT FOR PURPOSES OF SUBPARAGRAPHS (I)  
22 AND (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE  
23 VALUES OF THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS ARE  
24 DETERMINED IMMEDIATELY BEFORE THE DECEDENT'S DEATH IF THE  
25 DECEDENT WAS THEN A JOINT TENANT OR A CO-OWNER OF THE PROPERTY  
26 OR ACCOUNTS. FOR PURPOSES OF THIS SUBSECTION (2), PROCEEDS OF  
27 INSURANCE THAT WOULD HAVE BEEN INCLUDED IN THE SPOUSE'S

1 NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-205 (1) (d)  
2 ARE NOT VALUED AS IF HE OR SHE WERE DECEASED.

3 (3) THE VALUE OF PROPERTY INCLUDED UNDER THIS SECTION IS  
4 REDUCED BY ENFORCEABLE CLAIMS AGAINST THE SURVIVING SPOUSE.

5 **15-11-208. [Formerly 15-11-202 (3)] Exclusions, valuations,**  
6 **and overlapping application. (1) Exclusions. (a)** THE VALUE OF ANY  
7 PROPERTY IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS  
8 TO OTHERS:

9 (I) TO THE EXTENT THE DECEDENT RECEIVED ADEQUATE AND FULL  
10 CONSIDERATION IN MONEY OR MONEY'S WORTH FOR A TRANSFER OF THE  
11 PROPERTY; OR

12 (II) IF THE PROPERTY WAS TRANSFERRED WITH THE WRITTEN  
13 JOINDER OF, OR IF THE TRANSFER WAS CONSENTED TO IN WRITING BY, THE  
14 SURVIVING SPOUSE; OR

15 (III) IF THE PROPERTY WAS TRANSFERRED TO A BONA FIDE  
16 PURCHASER.

17 (b) FOR PURPOSES OF THIS SUBSECTION (1), IN THE ABSENCE OF A  
18 FINDING OF A CONTRARY INTENT, JOINDER IN THE FILING OF A GIFT TAX  
19 RETURN DOES NOT CONSTITUTE CONSENT OR JOINDER.

20 (c) ANY LIFE INSURANCE MAINTAINED PURSUANT TO A MARRIAGE  
21 DISSOLUTION SETTLEMENT AGREEMENT OR COURT ORDER OR ANY  
22 DISTRIBUTION FROM A PLAN QUALIFIED UNDER SECTION 401 (a) OF THE  
23 FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IS  
24 EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS TO  
25 THE EXTENT SUCH ITEMS ARE PAYABLE TO A PERSON OTHER THAN THE  
26 SURVIVING SPOUSE.

27 (d) LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT

1 SHARING, RETIREMENT, AND OTHER BENEFIT PLANS PAYABLE TO PERSONS  
2 OTHER THAN THE DECEDENT'S SURVIVING SPOUSE OR THE DECEDENT'S  
3 ESTATE ARE EXCLUDED FROM THE AUGMENTED ESTATE.

4 (e) ANY COMPLETED TRANSFERS MADE BY THE DECEDENT PRIOR  
5 TO JULY 1, 1974, ARE EXCLUDED FROM THE DECEDENT'S NONPROBATE  
6 TRANSFERS TO OTHERS.

7 (f) ANY FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT  
8 TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS  
9 CREATED BY A DONATIVE TRANSFER BY SOMEONE OTHER THAN THE  
10 DECEDENT OR THE SURVIVING SPOUSE, IS EXCLUDED FROM THE  
11 AUGMENTED ESTATE.

12 (2) **Valuations.** THE VALUE OF PROPERTY:

13 (a) INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION  
14 15-11-205, 15-11-206, OR 15-11-207 IS REDUCED IN EACH CATEGORY BY  
15 ENFORCEABLE CLAIMS AGAINST THE INCLUDED PROPERTY; AND

16 (b) INCLUDES THE COMMUTED VALUE OF ANY PRESENT OR FUTURE  
17 INTEREST AND THE COMMUTED VALUE OF AMOUNTS PAYABLE UNDER ANY  
18 TRUST, LIFE INSURANCE SETTLEMENT OPTION, ANNUITY CONTRACT, PUBLIC  
19 OR PRIVATE PENSION, DISABILITY COMPENSATION, DEATH BENEFIT OR  
20 RETIREMENT PLAN, OR ANY SIMILAR ARRANGEMENT, EXCLUSIVE OF THE  
21 FEDERAL SOCIAL SECURITY SYSTEM.

22 (3) **Overlapping application - no double inclusion.** IN CASE OF  
23 OVERLAPPING APPLICATION TO THE SAME PROPERTY OF THE PROVISIONS  
24 OF SECTION 15-11-205, 15-11-206, OR 15-11-207, THE PROPERTY IS  
25 INCLUDED IN THE AUGMENTED ESTATE UNDER THE PROVISION YIELDING  
26 THE HIGHEST VALUE AND UNDER ONLY ONE OVERLAPPING PROVISION IF  
27 THEY ALL YIELD THE SAME VALUE.



1           **15-11-209. [Formerly 15-11-203] Sources from which**  
2 **elective-share payable. (1) Elective-share amount only.** (a) IN A  
3 PROCEEDING FOR AN ELECTIVE-SHARE, THE FOLLOWING ARE APPLIED FIRST  
4 TO SATISFY THE ELECTIVE-SHARE AMOUNT AND TO REDUCE OR ELIMINATE  
5 ANY CONTRIBUTIONS DUE FROM THE DECEDENT'S PROBATE ESTATE AND  
6 RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS:

7           (I) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER  
8 SECTION 15-11-204 (THE NET PROBATE ESTATE) WHICH PASS OR HAVE  
9 PASSED TO THE SURVIVING SPOUSE BY TESTATE OR INTESTATE SUCCESSION  
10 AND AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION  
11 15-11-206; AND

12           (II) THE MARITAL-PROPERTY PORTION OF AMOUNTS INCLUDED IN  
13 THE AUGMENTED ESTATE UNDER SECTION 15-11-207 (THE SPOUSE'S  
14 PROPERTY).

15           (b) FOR THE PURPOSES OF THIS SUBSECTION (1), IF THE SURVIVING  
16 SPOUSE DISCLAIMS ANY PROPERTY, INCLUDING INTERESTS IN TRUST  
17 CREATED BY THE DECEDENT, SUCH PROPERTY SHALL NOT BE APPLIED  
18 UNDER THIS SUBSECTION (1) TO THE EXTENT THAT SUCH PROPERTY PASSES  
19 TO A PERSON OTHER THAN THE SURVIVING SPOUSE.

20           (2) **Marital-property portion.** THE MARITAL-PROPERTY PORTION  
21 UNDER SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS  
22 SECTION IS COMPUTED BY MULTIPLYING THE VALUE OF THE AMOUNTS  
23 INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-207 BY THE  
24 PERCENTAGE OF THE AUGMENTED ESTATE SET FORTH IN THE SCHEDULE IN  
25 SECTION 15-11-203 (2) APPROPRIATE TO THE LENGTH OF TIME THE SPOUSE  
26 AND THE DECEDENT WERE MARRIED TO EACH OTHER.

27           (3) **Unsatisfied balance - order of contribution.** IF, AFTER THE

1 APPLICATION OF SUBSECTION (1) OF THIS SECTION, THE ELECTIVE-SHARE  
2 AMOUNT IS NOT FULLY SATISFIED OR THE SURVIVING SPOUSE IS ENTITLED  
3 TO A SUPPLEMENTAL ELECTIVE-SHARE AMOUNT:

4 (a) AMOUNTS INCLUDED IN THE DECEDENT'S NET PROBATE ESTATE  
5 AFTER APPLICATION OF SUBSECTION (1) OF THIS SECTION AND IN THE  
6 DECEDENT'S NONPROBATE TRANSFERS TO OTHERS DESCRIBED IN SECTION  
7 15-11-205 (3) (a) (DURING THE MARRIAGE AND THE TWO-YEAR PERIOD  
8 NEXT PRECEDING THE DECEDENT'S DEATH, THE DECEDENT'S INTEREST  
9 TERMINATED AND THE PROPERTY WAS TRANSFERRED TO SOMEONE OTHER  
10 THAN THE SPOUSE), AND IN SECTION 15-11-205 (3) (c) (ANY TRANSFER  
11 DURING THE SAME TWO-YEAR PERIOD BUT ONLY TO THE EXTENT THE  
12 TRANSFER EXCEEDED THE APPLICABLE GIFT TAX ANNUAL EXCLUSION) ARE  
13 APPLIED FIRST TO SATISFY THE UNSATISFIED BALANCE OF THE  
14 ELECTIVE-SHARE AMOUNT OR THE SUPPLEMENTAL ELECTIVE-SHARE  
15 AMOUNT. THE DECEDENT'S NET PROBATE ESTATE AND THAT PORTION OF  
16 THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE SO APPLIED  
17 THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE  
18 AMOUNT OR FOR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS  
19 APPORTIONED AMONG THE RECIPIENTS OF THE DECEDENT'S NET PROBATE  
20 ESTATE AND OF THAT PORTION OF THE DECEDENT'S NONPROBATE  
21 TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS  
22 THEREIN.

23 (b) IF, AFTER THE APPLICATION OF SUBSECTION (1) OF THIS  
24 SECTION AND PARAGRAPH (a) OF THIS SUBSECTION (3), THE  
25 ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS NOT  
26 FULLY SATISFIED, THE REMAINING PORTION OF THE DECEDENT'S  
27 NONPROBATE TRANSFERS TO OTHERS IS SO APPLIED THAT LIABILITY FOR

1 THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL  
2 ELECTIVE-SHARE AMOUNT IS APPORTIONED AMONG THE RECIPIENTS OF  
3 THAT REMAINING PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS  
4 TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.

5 (4) **Unsatisfied balance treated as general pecuniary devise.**

6 THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL  
7 ELECTIVE-SHARE AMOUNT AS DETERMINED UNDER SUBSECTION (3) OF THIS  
8 SECTION IS TREATED AS A GENERAL PECUNIARY DEVISE FOR PURPOSES OF  
9 SECTION 15-12-904, BUT INTEREST SHALL COMMENCE TO RUN ONE YEAR  
10 AFTER DETERMINATION OF THE ELECTIVE SHARE AMOUNT BY THE COURT.  
11 THIS SUBSECTION (4) APPLIES ONLY TO ESTATES OF DECEDENTS WHO DIE  
12 ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

13 **15-11-210. [Formerly 15-11-204] Personal liability of**

14 **recipients.** (1) ONLY ORIGINAL RECIPIENTS OF THE DECEDENT'S  
15 NONPROBATE TRANSFERS TO OTHERS, AND THE DONEES OF THE RECIPIENTS  
16 OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, TO THE EXTENT  
17 THE DONEES HAVE THE PROPERTY OR ITS PROCEEDS, ARE LIABLE TO MAKE  
18 A PROPORTIONAL CONTRIBUTION TOWARD SATISFACTION OF THE  
19 SURVIVING SPOUSE'S ELECTIVE-SHARE OR SUPPLEMENTAL  
20 ELECTIVE-SHARE AMOUNT. A PERSON LIABLE TO MAKE A CONTRIBUTION  
21 MAY CHOOSE TO GIVE UP THE PROPORTIONAL PART OF THE DECEDENT'S  
22 NONPROBATE TRANSFERS TO HIM OR HER OR TO PAY THE VALUE OF THE  
23 AMOUNT FOR WHICH HE OR SHE IS LIABLE.

24 (2) IF ANY SECTION OR ANY PART OF ANY SECTION OF THIS PART 2  
25 IS PREEMPTED BY ANY FEDERAL LAW OTHER THAN THE FEDERAL  
26 "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED,  
27 WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER

1 BENEFIT INCLUDED IN THE DECEDENT'S NONPROBATE TRANSFERS TO  
2 OTHERS, A PERSON, WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM  
3 OF PROPERTY, OR ANY OTHER BENEFIT IS OBLIGATED TO RETURN THAT  
4 PAYMENT, ITEM OF PROPERTY, OR BENEFIT OR IS PERSONALLY LIABLE FOR  
5 THE AMOUNT OF THAT PAYMENT OR THE VALUE OF THAT ITEM OF  
6 PROPERTY OR BENEFIT, AS PROVIDED IN SECTION 15-11-209, TO THE  
7 PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THAT SECTION OR  
8 PART OF THAT SECTION NOT PREEMPTED.

9 (3) A BONA FIDE PURCHASER WHO PURCHASES PROPERTY FROM A  
10 RECIPIENT OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN  
11 PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION,  
12 IS NEITHER OBLIGATED UNDER THIS PART 2 TO RETURN THE PAYMENT,  
13 ITEM OF PROPERTY, OR BENEFIT NOR LIABLE UNDER THIS PART 2 FOR THE  
14 AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR  
15 BENEFIT.

16 **15-11-211. [Formerly 15-11-205] Proceeding for elective-share**  
17 **- time limit.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS  
18 SECTION, THE ELECTION MUST BE MADE BY FILING IN THE COURT AND  
19 MAILING OR DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A  
20 PETITION FOR THE ELECTIVE-SHARE WITHIN NINE MONTHS AFTER THE DATE  
21 OF THE DECEDENT'S DEATH OR WITHIN SIX MONTHS AFTER THE PROBATE  
22 OF THE DECEDENT'S WILL, WHICHEVER LIMITATION LATER EXPIRES. THE  
23 SURVIVING SPOUSE MUST GIVE WRITTEN NOTICE OF THE TIME AND PLACE  
24 SET FOR HEARING TO PERSONS INTERESTED IN THE ESTATE AND TO THE  
25 DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE  
26 WHOSE INTERESTS WILL BE ADVERSELY AFFECTED BY THE TAKING OF THE  
27 ELECTIVE-SHARE.

1           (2) WITHIN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE  
2 SURVIVING SPOUSE MAY PETITION THE COURT FOR AN EXTENSION OF TIME  
3 FOR MAKING AN ELECTION. IF, WITHIN NINE MONTHS AFTER THE  
4 DECEDENT'S DEATH, THE SPOUSE GIVES NOTICE OF THE PETITION TO ALL  
5 PERSONS INTERESTED IN THE DECEDENT'S NONPROBATE TRANSFERS TO  
6 OTHERS, THE COURT, FOR CAUSE SHOWN BY THE SURVIVING SPOUSE, MAY  
7 EXTEND THE TIME FOR ELECTION.

8           (3) IF THE SPOUSE MAKES AN ELECTION BY FILING A PETITION FOR  
9 THE ELECTIVE-SHARE MORE THAN NINE MONTHS AFTER THE DECEDENT'S  
10 DEATH, THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE NOT  
11 INCLUDED WITHIN THE AUGMENTED ESTATE UNLESS THE SPOUSE HAD  
12 FILED A PETITION FOR EXTENSION PRIOR TO THE EXPIRATION OF THE  
13 NINE-MONTH PERIOD AND THE COURT GRANTED THE EXTENSION.

14           (4) THE SURVIVING SPOUSE MAY WITHDRAW HIS OR HER DEMAND  
15 FOR AN ELECTIVE-SHARE AT ANY TIME BEFORE ENTRY OF A FINAL  
16 DETERMINATION BY THE COURT. WRITTEN NOTICE OF SUCH WITHDRAWAL  
17 MUST BE GIVEN TO PERSONS INTERESTED IN THE ESTATE AND THE  
18 DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE  
19 WHOSE INTERESTS MAY BE ADVERSELY AFFECTED BY THE TAKING OF THE  
20 ELECTIVE-SHARE.

21           (5) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE  
22 THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS  
23 AND SHALL ORDER ITS PAYMENT FROM THE ASSETS OF THE AUGMENTED  
24 ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER SECTIONS  
25 15-11-209 AND 15-11-210. IF IT APPEARS THAT A FUND OR PROPERTY  
26 INCLUDED IN THE AUGMENTED ESTATE HAS NOT COME INTO THE  
27 POSSESSION OF THE PERSONAL REPRESENTATIVE OR HAS BEEN

1 DISTRIBUTED BY THE PERSONAL REPRESENTATIVE, THE COURT  
2 NEVERTHELESS SHALL FIX THE LIABILITY OF ANY PERSON WHO HAS ANY  
3 INTEREST IN THE FUND OR PROPERTY OR WHO HAS POSSESSION THEREOF,  
4 WHETHER AS TRUSTEE OR OTHERWISE. THE PROCEEDING MAY BE  
5 MAINTAINED AGAINST FEWER THAN ALL PERSONS AGAINST WHOM RELIEF  
6 COULD BE SOUGHT, BUT NO PERSON IS SUBJECT TO CONTRIBUTION IN ANY  
7 GREATER AMOUNT THAN HE OR SHE WOULD HAVE BEEN UNDER SECTIONS  
8 15-11-209 AND 15-11-210 HAD RELIEF BEEN SECURED AGAINST ALL  
9 PERSONS SUBJECT TO CONTRIBUTION.

10 (6) AN ORDER OR JUDGMENT OF THE COURT MAY BE ENFORCED AS  
11 NECESSARY IN SUIT FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS OF  
12 THIS STATE OR OTHER JURISDICTIONS.

13 **15-11-212. [Formerly 15-11-206] Right of election personal to**  
14 **surviving spouse - incapacitated surviving spouse. (1) Surviving**  
15 **spouse must be living at time of election.** THE RIGHT OF ELECTION MAY  
16 BE EXERCISED ONLY BY A SURVIVING SPOUSE WHO IS LIVING WHEN THE  
17 PETITION FOR THE ELECTIVE-SHARE IS FILED IN THE COURT UNDER SECTION  
18 15-11-211. IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING SPOUSE  
19 PERSONALLY, IT MAY BE EXERCISED ON THE SURVIVING SPOUSE'S BEHALF  
20 BY HIS OR HER CONSERVATOR, GUARDIAN, OR AGENT UNDER THE  
21 AUTHORITY OF A POWER OF ATTORNEY.

22 (2) **Incapacitated surviving spouse.** IF THE ELECTION IS  
23 EXERCISED ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED  
24 PERSON, THE COURT MUST SET ASIDE THAT PORTION OF THE  
25 ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS DUE  
26 FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE  
27 DECEDENT'S NONPROBATE TRANSFERS TO OTHERS UNDER SECTION

1 15-11-209 (1) AND (3) AND MUST APPOINT A TRUSTEE TO ADMINISTER  
2 THAT PROPERTY FOR THE SUPPORT OF THE SURVIVING SPOUSE. FOR THE  
3 PURPOSES OF THIS SUBSECTION (2), AN ELECTION ON BEHALF OF A  
4 SURVIVING SPOUSE BY AN AGENT UNDER A DURABLE POWER OF ATTORNEY  
5 IS PRESUMED TO BE ON BEHALF OF A SURVIVING SPOUSE WHO IS AN  
6 INCAPACITATED PERSON. THE TRUSTEE MUST ADMINISTER THE TRUST IN  
7 ACCORDANCE WITH THE FOLLOWING TERMS AND SUCH ADDITIONAL TERMS  
8 AS THE COURT DETERMINES APPROPRIATE:

9 (a) EXPENDITURES OF INCOME AND PRINCIPAL MAY BE MADE IN  
10 THE MANNER, WHEN, AND TO THE EXTENT THAT THE TRUSTEE DETERMINES  
11 SUITABLE AND PROPER FOR THE SURVIVING SPOUSE'S SUPPORT, WITHOUT  
12 COURT ORDER BUT WITH REGARD TO OTHER SUPPORT, INCOME, AND  
13 PROPERTY OF THE SURVIVING SPOUSE AND BENEFITS OF MEDICAL OR  
14 OTHER FORMS OF ASSISTANCE FROM ANY STATE OR FEDERAL GOVERNMENT  
15 OR GOVERNMENTAL AGENCY FOR WHICH THE SURVIVING SPOUSE MUST  
16 QUALIFY ON THE BASIS OF NEED;

17 (b) DURING THE SURVIVING SPOUSE'S INCAPACITY, NEITHER THE  
18 SURVIVING SPOUSE NOR ANYONE ACTING ON BEHALF OF THE SURVIVING  
19 SPOUSE HAS A POWER TO TERMINATE THE TRUST, BUT IF THE SURVIVING  
20 SPOUSE REGAINS CAPACITY, THE SURVIVING SPOUSE THEN ACQUIRES THE  
21 POWER TO TERMINATE THE TRUST AND ACQUIRE FULL OWNERSHIP OF THE  
22 TRUST PROPERTY FREE OF TRUST, BY DELIVERING TO THE TRUSTEE A  
23 WRITING SIGNED BY THE SURVIVING SPOUSE DECLARING THE  
24 TERMINATION; AND

25 (c) UPON THE SURVIVING SPOUSE'S DEATH, THE TRUSTEE SHALL  
26 TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER:

27 (I) UNDER THE RESIDUARY CLAUSE, IF ANY, OF THE WILL OF THE

1 PREDECEASED SPOUSE AGAINST WHOM THE ELECTIVE-SHARE WAS TAKEN,  
2 AS IF THAT PREDECEASED SPOUSE DIED IMMEDIATELY AFTER THE  
3 SURVIVING SPOUSE; OR

4 (II) TO THAT PREDECEASED SPOUSE'S HEIRS UNDER SECTION  
5 15-11-711.

6 **15-11-213. [Formerly 15-11-207] Waiver of right to elect and**  
7 **of other rights.** (1) ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A  
8 MARITAL RIGHT OR OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S.,  
9 MADE ON OR AFTER JULY 1, 2014, IS UNENFORCEABLE UNLESS THE  
10 AFFIRMATION, MODIFICATION, OR WAIVER IS CONTAINED IN A PREMARITAL  
11 OR MARITAL AGREEMENT, AS DEFINED IN SECTION 14-2-302, C.R.S., THAT  
12 IS ENFORCEABLE UNDER PART 3 OF ARTICLE 2 OF TITLE 14, C.R.S.

13 (2) ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A MARITAL  
14 RIGHT OR OBLIGATION MADE BEFORE JULY 1, 2014, IS GOVERNED BY THE  
15 LAW IN EFFECT AT THE TIME THE AFFIRMATION, MODIFICATION, OR WAIVER  
16 WAS MADE.

17 **15-11-214. [Formerly 15-11-208] Protection of payors and**  
18 **other third parties.** (1) ALTHOUGH UNDER THIS PART 2, A PAYMENT,  
19 ITEM OF PROPERTY, OR OTHER BENEFIT IS INCLUDED IN THE DECEDENT'S  
20 NONPROBATE TRANSFERS TO OTHERS, A PAYOR OR OTHER THIRD PARTY IS  
21 NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF  
22 PROPERTY OR OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A  
23 GOVERNING INSTRUMENT OR FOR HAVING TAKEN ANY OTHER ACTION IN  
24 GOOD-FAITH RELIANCE ON THE VALIDITY OF A GOVERNING INSTRUMENT,  
25 UPON REQUEST AND SATISFACTORY PROOF OF THE DECEDENT'S DEATH,  
26 BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE  
27 FROM THE SURVIVING SPOUSE OR THE SPOUSE'S REPRESENTATIVE OF AN



1 INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A  
2 PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. A PAYOR OR OTHER  
3 THIRD PARTY IS LIABLE FOR PAYMENTS MADE OR OTHER ACTIONS TAKEN  
4 AFTER THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE OF  
5 AN INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A  
6 PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. ANY FORM OR  
7 SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) OF  
8 THIS SECTION IS NOT SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR  
9 OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING  
10 INSTRUMENT.

11 (2) A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR THE  
12 ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN  
13 FILED MUST BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN  
14 OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL WITH RETURN  
15 RECEIPT REQUESTED OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY  
16 IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION. NOTICE TO A  
17 SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY DOES NOT  
18 CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY.

19 (3) UPON RECEIPT OF A WRITTEN NOTICE OF INTENTION TO FILE A  
20 PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE  
21 ELECTIVE-SHARE HAS BEEN FILED, A PAYOR OR OTHER THIRD PARTY MAY  
22 PAY ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT ANY ITEM OF  
23 PROPERTY HELD BY IT TO OR WITH THE COURT HAVING JURISDICTION OF  
24 THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF  
25 NO PROCEEDINGS HAVE BEEN COMMENCED, TO OR WITH THE COURT  
26 HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO  
27 DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S

1 RESIDENCE. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION  
2 DOES NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY  
3 OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT.  
4 THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE  
5 PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF NO  
6 PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION  
7 OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED  
8 IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE  
9 PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD  
10 PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE  
11 RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF  
12 FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT  
13 CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE  
14 PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT  
15 WITH THE COURT OF ANY ITEM OF PROPERTY EVEN IF NO PROBATE  
16 PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT,  
17 TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR  
18 TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY  
19 PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY  
20 DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER  
21 THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF  
22 AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO  
23 OR DEPOSITED WITH THE COURT.

24 (4) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY  
25 AND, UPON ITS DETERMINATION UNDER SECTION 15-11-211 (5), SHALL  
26 ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. IF NO  
27 PETITION IS FILED IN THE COURT WITHIN THE SPECIFIED TIME UNDER

1 SECTION 15-11-211 (1), OR, IF FILED, THE DEMAND FOR AN  
2 ELECTIVE-SHARE IS WITHDRAWN UNDER SECTION 15-11-211 (4), THE  
3 COURT SHALL ORDER DISBURSEMENT TO THE DESIGNATED BENEFICIARY.  
4 A FILING FEE, IF ANY, MAY BE CHARGED UPON DISBURSEMENT EITHER TO  
5 THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH  
6 THE COURT IN THE DISCRETION OF THE COURT. PAYMENTS OR TRANSFERS  
7 TO THE COURT OR DEPOSITS MADE INTO THE COURT DISCHARGE THE PAYOR  
8 OR OTHER THIRD PARTY FROM ALL CLAIMS FOR AMOUNTS SO PAID OR THE  
9 VALUE OF PROPERTY SO TRANSFERRED OR DEPOSITED.

10 (5) UPON PETITION TO THE COURT BY THE BENEFICIARY  
11 DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT  
12 ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN  
13 AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

14 **SECTION 3.** In Colorado Revised Statutes, 15-11-606, **amend**  
15 (1) (f) as follows:

16 **15-11-606. Nonademption of specified devises - unpaid**  
17 **proceeds of sale, condemnation, or insurance - sale by conservator or**  
18 **agent.** (1) A specific devisee has a right to the specifically devised  
19 property in the testator's estate at death and:

20 (f) ~~Unless the facts and circumstances indicate that ademption of~~  
21 ~~the devise was intended by the testator or ademption of the devise is~~  
22 ~~consistent with the testator's manifested plan of distribution, the value of~~  
23 ~~the specifically devised property to the extent the specifically devised~~  
24 ~~property is not in the testator's estate at death and its value or its~~  
25 ~~replacement is not covered by paragraphs (a) to (e) of this subsection (1).~~  
26 IF NOT COVERED BY ANY OF PARAGRAPHS (a) TO (e) OF THIS SUBSECTION  
27 (1), A GENERAL PECUNIARY DEVISE EQUAL TO THE VALUE AS OF ITS DATE

1 OF DISPOSITION OF OTHER SPECIFICALLY DEVISED PROPERTY DISPOSED OF  
2 DURING THE TESTATOR'S LIFETIME, BUT ONLY TO THE EXTENT IT IS  
3 ESTABLISHED THAT ADEMPTION WOULD BE INCONSISTENT WITH THE  
4 TESTATOR'S MANIFESTED PLAN OF DISTRIBUTION OR THAT AT THE TIME  
5 THE WILL WAS MADE, THE DATE OF DISPOSITION, OR OTHERWISE, THE  
6 TESTATOR DID NOT INTEND ADEMPTION OF THE DEVISE.

7 **SECTION 4.** In Colorado Revised Statutes, **amend** 15-12-102 as  
8 follows:

9 **15-12-102. Necessity of order of probate for will.** Except as  
10 provided in sections 15-12-901, 15-12-1201, 15-13-204, and 15-13-205  
11 and in part 13 of this article, to be effective to prove the transfer of any  
12 property or to nominate ~~an executor~~ A PERSONAL REPRESENTATIVE, a will  
13 must be declared to be valid by an order of informal probate by the  
14 registrar, or an adjudication of probate by the court.

15 **SECTION 5.** In Colorado Revised Statutes, 15-12-805, **amend**  
16 (1) introductory portion and (1) (g) as follows:

17 **15-12-805. Classification of claims.** (1) The PERSONAL  
18 REPRESENTATIVE SHALL PAY allowed claims against the estate of a  
19 decedent ~~shall be paid by the personal representative~~ in the following  
20 order:

21 (g) Any child support ~~claims~~ OBLIGATIONS of the decedent that  
22 were due and unpaid at death in accordance with a valid court order or  
23 agreement of record in which the decedent was a party, and any future  
24 child support obligations of the decedent as determined by the court;

25 **SECTION 6.** In Colorado Revised Statutes, 15-12-1201, **amend**  
26 (1) introductory portion, (1) (a), and (1) (d); and **add** (1.5), (3.5), (3.7),  
27 and (4) as follows:

1           **15-12-1201. Collection of personal property by affidavit.**

2           (1) At any time ten or more days after the date of death of a decedent,  
3           any person indebted to the decedent or having possession of any personal  
4           property, including but not limited to funds on deposit at, OR ANY  
5           CONTENTS OF A SAFE DEPOSIT BOX AT, any financial institution; tangible  
6           personal property; or an instrument evidencing a debt, obligation, stock,  
7           chase in action, or stock brand belonging to the decedent shall pay or  
8           deliver such property to a person claiming to be ~~the~~ A successor OF THE  
9           DECEDENT OR ACTING ON BEHALF OF A SUCCESSOR of the decedent upon  
10          being presented an affidavit made by or on behalf of the successor stating:  
11          that

12                 (a) The fair market value of property owned by the decedent and  
13                 subject to disposition by will or intestate succession at the time of his or  
14                 her death, wherever that property is located, less liens and encumbrances,  
15                 does not exceed ~~sixty thousand dollars~~ TWICE THE AMOUNT SET FORTH IN  
16                 SECTION 15-11-403, AS ADJUSTED BY SECTION 15-10-112;

17                 (d) Each ~~claiming successor~~ PERSON is entitled to payment or  
18                 delivery of the property ~~in the respective proportion~~ AS set forth in such  
19                 affidavit.

20                 (1.5) AN INSTRUMENT OR OTHER PROPERTY THAT IS PAYABLE OR  
21                 DELIVERABLE TO A DECEDENT OR TO THE ESTATE OF A DECEDENT IS  
22                 CONSIDERED PROPERTY OF THE DECEDENT SUBJECT TO SUBSECTION (1) OF  
23                 THIS SECTION. A SUCCESSOR OR PERSON ACTING ON BEHALF OF A  
24                 SUCCESSOR UNDER SUBSECTION (1) OF THIS SECTION MAY ENDORSE AN  
25                 INSTRUMENT THAT IS SO PAYABLE AND COLLECT SUCH AMOUNT.

26                 (3.5) IN THE EVENT THAT AN INSTRUMENT OR OTHER EVIDENCE OF  
27                 AN INDEBTEDNESS IS SECURED BY REAL PROPERTY, IN ORDER TO ACT ON

1 BEHALF OF THE HOLDER OF THE INDEBTEDNESS SECURED BY A MORTGAGE,  
2 DEED OF TRUST, OR OTHER SECURITY DOCUMENT, THE PERSON MAKING  
3 THE AFFIDAVIT MUST RECORD, WITH THE CLERK AND RECORDER OF THE  
4 COUNTY WHERE THE REAL PROPERTY IS LOCATED, A COPY OF THE  
5 AFFIDAVIT AND A COPY OF THE DECEDENT'S DEATH CERTIFICATE OR A  
6 VERIFICATION OF DEATH DOCUMENT.

7 (3.7) PURSUANT TO SECTION 15-10-111 (1) (a) (I) AND (1) (b), A  
8 SAFE DEPOSIT BOX MAY BE ENTERED AND ITS CONTENTS SHALL BE  
9 DELIVERED UPON PRESENTATION OF AN AFFIDAVIT MADE PURSUANT TO  
10 SUBSECTION (1) OF THIS SECTION.

11 (4) THE DUTIES OWED TO A SUCCESSOR BY A PERSON ACTING ON  
12 BEHALF OF THE SUCCESSOR IN THE MAKING, PRESENTATION, OR OTHER USE  
13 OF AN AFFIDAVIT UNDER THIS SECTION ARE THE SAME AS THE DUTIES OF  
14 AN AGENT TO THE AGENT'S PRINCIPAL, AND THE BREACH OF SUCH DUTY IS  
15 SUBJECT TO THE SAME REMEDIES AS ARE AVAILABLE UNDER THE LAW OF  
16 THIS STATE WITH RESPECT TO AN AGENT SUBJECT TO PART 7 OF ARTICLE  
17 14 OF THIS TITLE, INCLUDING BUT NOT LIMITED TO THE REMEDIES  
18 AVAILABLE UNDER PART 5 OF ARTICLE 10 OF THIS TITLE. A SUCCESSOR  
19 WHO MAKES, PRESENTS, OR USES SUCH AN AFFIDAVIT WHERE THERE ARE  
20 TWO OR MORE SUCCESSORS IS A PERSON ACTING ON BEHALF OF EACH  
21 OTHER SUCCESSOR.

22 **SECTION 7.** In Colorado Revised Statutes, **amend** 15-12-1202  
23 as follows:

24 **15-12-1202. Effect of affidavit.** (1) The person paying,  
25 delivering, transferring, or issuing personal property or the evidence  
26 thereof pursuant to affidavit is discharged and released to the same extent  
27 as if he OR SHE dealt with a personal representative of the decedent. He

1 OR SHE is not required to see to the application of the personal property  
2 or evidence thereof or to inquire into the truth of any statement in the  
3 affidavit.

4 (2) If any person to whom an affidavit is delivered refuses to pay,  
5 deliver, transfer, or issue any personal property or evidence thereof, it  
6 may be recovered or its payment, delivery, transfer, or issuance compelled  
7 upon proof of ~~their~~ THE right OF PERSONS ENTITLED THERETO in a  
8 proceeding brought for the purpose by or on behalf of ~~the~~ SUCH persons.  
9 ~~entitled thereto.~~

10 (3) IF A PROOF OF RIGHT HAS BEEN ESTABLISHED IN A PROCEEDING  
11 UNDER SUBSECTION (2) OF THIS SECTION, ANY PERSON TO WHOM AN  
12 AFFIDAVIT WAS DELIVERED AND WHO REFUSED, WITHOUT REASONABLE  
13 CAUSE, TO PAY, DELIVER, TRANSFER, OR ISSUE ANY PERSONAL PROPERTY  
14 OR EVIDENCE THEREOF BELONGING TO THE DECEDENT, AS PROVIDED IN  
15 SECTION 15-12-1201, SHALL BE LIABLE FOR ALL COSTS, INCLUDING  
16 REASONABLE ATTORNEY FEES AND COSTS, INCURRED BY OR ON BEHALF OF  
17 THE PERSONS ENTITLED THERETO. THE PERSON TO WHOM AN AFFIDAVIT  
18 WAS DELIVERED BEARS THE BURDEN OF PROVING REASONABLE CAUSE BY  
19 A PREPONDERANCE OF THE EVIDENCE.

20 (4) Any person to whom payment, delivery, transfer, or issuance  
21 is made is answerable and accountable therefor to any personal  
22 representative of the estate or to any other person having a superior right.

23 **SECTION 8.** In Colorado Revised Statutes, 15-14-724, **amend**  
24 (1) (g) (I) as follows:

25 **15-14-724. Authority that requires specific grant - grant of**  
26 **general authority.** (1) An agent under a power of attorney may do the  
27 following on behalf of the principal or with the principal's property only

1 if the power of attorney expressly grants the agent the authority and  
2 exercise of the authority is not otherwise prohibited by another agreement  
3 or instrument to which the authority or property is subject:

4 (g) Exercise:

5 (I) A power held by the principal in a fiduciary capacity THAT THE  
6 PRINCIPAL HAS THE AUTHORITY TO DELEGATE;

7 **SECTION 9.** In Colorado Revised Statutes, 15-16-702, **amend**  
8 (3) (b) as follows:

9 **15-16-702. Revocation or amendment of revocable trust.**

10 (3) The settlor may revoke or amend a revocable trust:

11 (b) If the terms of the trust do not provide a method or the method  
12 provided in the terms is not expressly made exclusive, by any other  
13 method manifesting clear and convincing evidence of the settlor's intent,  
14 which may include a later will or codicil that expressly refers to the trust  
15 or specifically devises property that would otherwise have passed  
16 according to the terms of the trust. A PROVISION IN A TRUST SPECIFYING  
17 A METHOD TO REVOKE OR AMEND THE TRUST DOES NOT MAKE THE  
18 SPECIFIED METHOD EXCLUSIVE UNLESS THE SPECIFIED METHOD IS  
19 REFERRED TO AS THE "SOLE", "EXCLUSIVE", OR "ONLY" METHOD OF  
20 REVOKING OR AMENDING THE TRUST OR THE PROVISION INCLUDES SIMILAR  
21 LANGUAGE MANIFESTING THE SETTLOR'S INTENT THAT THE TRUST MAY  
22 NOT BE REVOKED OR AMENDED BY ANY OTHER METHOD.

23 **SECTION 10.** In Colorado Revised Statutes, **add** part 8 to article  
24 16 of title 15 as follows:

25 PART 8

26 DIRECTED TRUSTEES

27 **15-16-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE



1 CONTEXT OTHERWISE REQUIRES:

2 (1) "ACTION", WITH RESPECT TO AN ACT OF A FIDUCIARY,  
3 INCLUDES A FAILURE TO ACT.

4 (2) "EXCLUDED TRUSTEE" MEANS ANY TRUSTEE THAT, UNDER THE  
5 TERMS OF THE GOVERNING INSTRUMENT, IS PRECLUDED FROM EXERCISING  
6 CERTAIN POWERS, WHICH POWERS MAY BE EXERCISED ONLY BY A TRUST  
7 ADVISOR DESIGNATED BY THE GOVERNING INSTRUMENT.

8 (3) "INVESTMENT DECISION" MEANS A FIDUCIARY DECISION  
9 REGARDING THE RETENTION, PURCHASE, SALE, EXCHANGE, TENDER, OR  
10 OTHER TRANSACTION AFFECTING THE OWNERSHIP OF OR RIGHTS IN ANY  
11 PROPERTY OWNED BY A TRUST AND, WITH RESPECT TO NON-PUBLICLY  
12 TRADED INVESTMENTS, THE DETERMINATION OF THE VALUE OF SUCH  
13 INVESTMENTS.

14 (4) "GOVERNING INSTRUMENT" MEANS A WILL, TRUST AGREEMENT  
15 OR DECLARATION, OR A COURT ORDER APPOINTING A TRUST ADVISOR.

16 (5) "NON-INVESTMENT DECISION" MEANS A FIDUCIARY DECISION  
17 REGARDING THE DISTRIBUTION, ADMINISTRATION, OR MANAGEMENT OF  
18 ANY PROPERTY OWNED BY A TRUST, OTHER THAN AN INVESTMENT  
19 DECISION.

20 (6) "QUALIFIED BENEFICIARY" HAS THE SAME MEANING SET FORTH  
21 IN SECTION 15-1-402 (10.5).

22 (7) "SETTLOR" INCLUDES A GRANTOR, A TRUSTOR, AND A  
23 TESTATOR.

24 (8) (a) "TRUST ADVISOR" MEANS A PERSON WHO IS:

25 (I) ACTING IN A FIDUCIARY CAPACITY; AND

26 (II) VESTED UNDER A GOVERNING INSTRUMENT WITH FIDUCIARY  
27 POWERS TO DIRECT A TRUSTEE'S ACTUAL OR PROPOSED INVESTMENT

1 DECISIONS OR NON-INVESTMENT DECISIONS.

2 (b) A PERSON WHO HOLDS A NONFIDUCIARY POWER OVER A TRUST,  
3 INCLUDING A POWER OF APPOINTMENT AS DEFINED IN SECTION 15-2-102,  
4 IS NOT SUBJECT TO THE PROVISIONS OF THIS PART 8, REGARDLESS OF  
5 WHETHER HE OR SHE IS DESCRIBED AS A "TRUST ADVISOR" WITHIN A  
6 GOVERNING INSTRUMENT.

7 (9) "WILLFUL MISCONDUCT" MEANS INTENTIONAL WRONGDOING  
8 AND NOT MERE NEGLIGENCE, GROSS NEGLIGENCE, OR RECKLESSNESS.

9 **15-16-802. Default rules for directed trusts.** EXCLUDING THE  
10 REQUIREMENT THAT A TRUST ADVISOR ACT IN A FIDUCIARY CAPACITY, THE  
11 PROVISIONS OF THIS PART 8 ARE DEFAULT RULES THAT APPLY TO ANY  
12 TRUST FOR WHICH A TRUST ADVISOR IS THEN ACTING, AND SUCH RULES  
13 MAY BE EXPANDED, RESTRICTED, ELIMINATED, OR OTHERWISE ALTERED BY  
14 THE PROVISIONS OF A GOVERNING INSTRUMENT.

15 **15-16-803. Trust advisor and excluded trustee.** (1) A TRUST  
16 ADVISOR WITH POWER OVER INVESTMENT DECISIONS IS SUBJECT TO THE  
17 "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF THIS TITLE. A TRUST  
18 ADVISOR WHO HAS SPECIAL SKILLS OR EXPERTISE OR WHO IS NAMED A  
19 TRUST ADVISOR IN RELIANCE UPON HIS OR HER REPRESENTATION THAT HE  
20 OR SHE HAS SPECIAL SKILLS OR EXPERTISE HAS A DUTY TO USE THOSE  
21 SPECIAL SKILLS OR EXPERTISE.

22 (2) THE POWERS AND DUTIES OF A TRUST ADVISOR, AND THE  
23 EXTENT OF SUCH POWERS AND DUTIES, ARE ESTABLISHED BY THE  
24 GOVERNING INSTRUMENT, AND THE EXERCISE OR NONEXERCISE OF SUCH  
25 POWERS AND DUTIES IS BINDING ON ALL OTHER PERSONS.

26 (3) THE POWERS AND DUTIES OF A TRUST ADVISOR MAY INCLUDE,  
27 BUT ARE NOT LIMITED TO:

1 (a) THE EXERCISE OF A SPECIFIC POWER OR THE PERFORMANCE OF  
2 A SPECIFIC DUTY OR FUNCTION THAT WOULD NORMALLY BE PERFORMED  
3 BY A TRUSTEE;

4 (b) THE DIRECTION OF A TRUSTEE'S ACTIONS REGARDING ALL  
5 INVESTMENT DECISIONS OR ONE OR MORE SPECIFIC INVESTMENT  
6 DECISIONS; OR

7 (c) THE DIRECTION OF A TRUSTEE'S ACTIONS RELATING TO ONE OR  
8 MORE SPECIFIC NON-INVESTMENT DECISIONS, INCLUDING THE EXERCISE OF  
9 DISCRETION TO MAKE DISTRIBUTIONS TO BENEFICIARIES.

10 (4) IF A GOVERNING INSTRUMENT PROVIDES THAT A TRUSTEE MUST  
11 FOLLOW THE DIRECTION OF A TRUST ADVISOR AND THE TRUSTEE ACTS IN  
12 ACCORDANCE WITH SUCH DIRECTION, THE TRUSTEE IS AN EXCLUDED  
13 TRUSTEE.

14 **15-16-804. Appointment and removal of trust advisors.** IF A  
15 GOVERNING INSTRUMENT DOES NOT INCLUDE EXPRESS PROVISIONS FOR  
16 THE REMOVAL OF A TRUST ADVISOR BUT DOES INCLUDE PROVISIONS FOR  
17 THE REMOVAL OF ONE OR MORE TRUSTEES, THE PROVISIONS FOR THE  
18 REMOVAL OF TRUSTEES ALSO GOVERN THE REMOVAL OF ANY  
19 THEN-SERVING TRUST ADVISOR.

20 **15-16-805. No duty to review actions of trust advisor.** AN  
21 EXCLUDED TRUSTEE HAS NO DUTY TO REVIEW OR MONITOR THE ACTIONS  
22 OF A TRUST ADVISOR.

23 **15-16-806. Duty to communicate - no duty to warn.** (1) A  
24 TRUSTEE HAS A DUTY TO KEEP A TRUST ADVISOR REASONABLY INFORMED  
25 ABOUT THE ADMINISTRATION OF THE TRUST WITH RESPECT TO ANY  
26 SPECIFIC DUTY OR FUNCTION BEING PERFORMED BY THE TRUST ADVISOR  
27 TO THE EXTENT THAT PROVIDING SUCH INFORMATION IS REASONABLY

1 NECESSARY FOR THE TRUST ADVISOR TO PERFORM THE DUTY OR  
2 FUNCTION. A TRUST ADVISOR REQUESTING OR RECEIVING ANY SUCH  
3 INFORMATION FROM A TRUSTEE HAS NO DUTY TO MONITOR THE CONDUCT  
4 OF THE TRUSTEE OR TO PROVIDE ADVICE TO OR CONSULT WITH THE  
5 TRUSTEE.

6 (2) A TRUST ADVISOR HAS A DUTY TO KEEP THE TRUSTEE AND ANY  
7 OTHER TRUST ADVISORS REASONABLY INFORMED ABOUT THE  
8 ADMINISTRATION OF THE TRUST WITH RESPECT TO ALL DUTIES OR  
9 FUNCTIONS BEING PERFORMED BY THE TRUST ADVISOR TO THE EXTENT  
10 THAT PROVIDING SUCH INFORMATION IS REASONABLY NECESSARY FOR THE  
11 TRUSTEE AND ANY OTHER TRUST ADVISORS TO PERFORM THEIR DUTIES OR  
12 FUNCTIONS. A TRUSTEE REQUESTING OR RECEIVING ANY SUCH  
13 INFORMATION FROM A TRUST ADVISOR HAS NO DUTY TO MONITOR THE  
14 CONDUCT OF THE TRUST ADVISOR OR TO PROVIDE ADVICE TO OR CONSULT  
15 WITH THE TRUST ADVISOR.

16 (3) A TRUST ADVISOR HAS A DUTY TO KEEP THE BENEFICIARIES OF  
17 A TRUST REASONABLY INFORMED OF THE TRUST AND ITS ADMINISTRATION,  
18 TO THE EXTENT THAT SUCH INFORMATION RELATES TO A DUTY OR  
19 FUNCTION BEING PERFORMED BY THE TRUST ADVISOR. THIS DUTY IS  
20 GOVERNED BY SECTION 15-16-303.

21 (4) A TRUST ADVISOR HAS NO DUTY TO COMMUNICATE WITH OR  
22 WARN ANY BENEFICIARY OR THIRD PARTY CONCERNING ANY ACTION OR  
23 ACTIONS TAKEN BY ANY OTHER TRUST ADVISOR OR TRUSTEE.

24 **15-16-807. Excluded trustee not liable for action of trust**  
25 **advisor.** (1) IF AN EXCLUDED TRUSTEE IS REQUIRED TO FOLLOW THE  
26 DIRECTION OF A TRUST ADVISOR AND THE EXCLUDED TRUSTEE ACTS IN  
27 ACCORDANCE WITH SUCH DIRECTION, THE EXCLUDED TRUSTEE IS NOT

1 LIABLE FOR ANY CAUSE OF ACTION RESULTING FROM THE ACT OF  
2 COMPLYING THEREWITH, EXCEPT IN CASES OF WILLFUL MISCONDUCT ON  
3 THE PART OF THE EXCLUDED TRUSTEE SO DIRECTED.

4 (2) AN EXCLUDED TRUSTEE HAS NO LIABILITY FOR ANY ACTION OF  
5 A TRUST ADVISOR.

6 **15-16-808. Power of trust advisor to act after death or**  
7 **incapacity of settlor.** THE POWER AND AUTHORITY OF A TRUST ADVISOR  
8 DOES NOT LAPSE AT THE DEATH OR INCAPACITY OF THE SETTLOR.

9 **15-16-809. Trust advisor subject to district court jurisdiction.**  
10 BY ACCEPTING APPOINTMENT TO SERVE AS A TRUST ADVISOR OF A TRUST  
11 HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THE STATE OF  
12 COLORADO, THE TRUST ADVISOR IS SUBJECT TO THE JURISDICTION OF THE  
13 COURTS OF THE STATE OF COLORADO EVEN IF OTHER RELATED  
14 AGREEMENTS PROVIDE OTHERWISE, AND THE TRUST ADVISOR MAY BE  
15 MADE A PARTY TO ANY ACTION OR PROCEEDING IF ISSUES RELATE TO A  
16 DECISION OR ACTION OF THE TRUST ADVISOR.

17 **SECTION 11.** In Colorado Revised Statutes, **repeal** 15-1-307 as  
18 follows:

19 **15-1-307. Powers of investment in persons other than**  
20 **fiduciary.** ~~Whenever an instrument under which a fiduciary is acting~~  
21 ~~reserves to the settlor or vests in an advisory or investment committee or~~  
22 ~~in any other person or persons including one or more other fiduciaries, to~~  
23 ~~the exclusion of the fiduciary or to the exclusion of one or more of several~~  
24 ~~fiduciaries, authority to direct the making or retention of any investment,~~  
25 ~~the excluded fiduciary or fiduciaries shall not be liable, either individually~~  
26 ~~or as a fiduciary, for any loss resulting from the making or retention of~~  
27 ~~any investment pursuant to such direction.~~

1           **SECTION 12**. In Colorado Revised Statutes, 15-10-112, **amend**  
2 (2) as follows:

3           **15-10-112. Cost of living adjustment of certain dollar**  
4 **amounts.** (2) The dollar amounts stated in sections 15-11-102,  
5 ~~15-11-201(2)~~, 15-11-202 (2), 15-11-403, AND 15-11-405 ~~and 15-12-1201~~  
6 apply to the estate of a decedent who died during or after 2010, but for the  
7 estate of a decedent who died after 2011, these dollar amounts must be  
8 increased or decreased if the CPI for the calendar year immediately  
9 preceding the year of death exceeds or is less than the reference base  
10 index. The amount of any increase or decrease is computed by  
11 multiplying each dollar amount by the percentage by which the CPI for  
12 the calendar year immediately preceding the year of death exceeds or is  
13 less than the reference base index. If the amount of the increase or  
14 decrease produced by the computation is not a multiple of one thousand  
15 dollars, then the amount of the increase or decrease is rounded down if it  
16 is an increase, or rounded up if it is a decrease, to the next multiple of one  
17 thousand dollars, but for the purpose of section 15-11-405, the periodic  
18 installment amount is the lump-sum amount divided by twelve. If the CPI  
19 for 2010 is changed by the bureau of labor statistics, the reference base  
20 index must be revised using the rebasing factor reported by the bureau of  
21 labor statistics, or other comparable data if a rebasing factor is not  
22 reported.

23           **SECTION 13**. In Colorado Revised Statutes, 15-12-916, **amend**  
24 (2) as follows:

25           **15-12-916. Apportionment of estate taxes.** (2) Unless otherwise  
26 provided in the will or other dispositive instrument, the tax shall be  
27 apportioned among all persons interested in the estate, subject to the

1 exceptions specified in this section. The apportionment is to be made in  
2 the proportion that the value of the interest of each person interested in  
3 the estate bears to the total value of the interests of all persons interested  
4 in the estate. The values used in determining the tax are to be used for tax  
5 apportionment purposes. In all instances not involving a spouse  
6 unprovided for in a will as provided in section 15-11-301 or an election  
7 by a surviving spouse as provided in ~~section 15-11-201~~ SECTION  
8 15-11-202, if the decedent's will or other dispositive instrument directs a  
9 method of apportionment of tax different from the method described in  
10 this code, the method described in the will or other dispositive instrument  
11 controls. In instances involving such a spouse unprovided for in a will or  
12 election, if the decedent's will or other dispositive instrument directs a  
13 method of apportionment of tax different from the method described in  
14 this code, the apportionment of tax to the spouse unprovided for in the  
15 will or to the surviving spouse shall be in accordance with the method  
16 described in this code, and the apportionment of tax to the remaining  
17 persons interested in the estate shall be in accordance with the method  
18 described in the will or other dispositive instrument.

19 **SECTION 14.** In Colorado Revised Statutes, 15-10-201, **amend**  
20 (3) as follows:

21 **15-10-201. General definitions.** Subject to additional definitions  
22 contained in this article and the subsequent articles that are applicable to  
23 specific articles, parts, or sections, and unless the context otherwise  
24 requires, in this code:

25 (3) "Augmented estate" means the estate described in ~~section~~  
26 ~~15-11-202~~ SECTIONS 15-11-203, 15-11-204, 15-11-205, 15-11-206,  
27 15-11-207, AND 15-11-208.

1           **SECTION 15.** In Colorado Revised Statutes, 15-15-101, **amend**  
2 (5) and (6) as follows:

3           **15-15-101. Nonprobate transfers on death.** (5) Payment of the  
4 benefits due or the transfer of the rights given in accordance with a  
5 designation under the provisions of subsection (2) of this section shall not  
6 cause such benefits or rights to be included in the property administered  
7 as part of the designator's estate under this code or to be subject to the  
8 claims of his or her creditors, except as provided in ~~sections 15-11-202~~  
9 PART 2 OF ARTICLE 11 OF THIS TITLE and IN SECTION 15-15-103.

10           (6) Except as otherwise provided in ~~sections 15-11-202~~ PART 2 OF  
11 ARTICLE 11 OF THIS TITLE and IN SECTION 15-15-103, the express  
12 provisions of the trust agreement, declaration of trust, or testamentary  
13 trust shall control and regulate the extent to which the benefits or rights  
14 payable or transferable under such a designation shall be subject to the  
15 debts of the designator if paid or transferred under the provisions of  
16 subsection (2) of this section.

17           **SECTION 16.** In Colorado Revised Statutes, 38-33.3-316,  
18 **amend** (2) (c) as follows:

19           **38-33.3-316. Lien for assessments.** (2) (c) This subsection (2)  
20 does not affect the priority of mechanics' or materialmen's liens or the  
21 priority of liens for other assessments made by the association. A lien  
22 under this section is not subject to the provisions of part 2 of article 41 of  
23 this title or to the provisions of section ~~15-11-201~~ 15-11-202, C.R.S.

24           **SECTION 17.** **Act subject to petition - effective date.** This act  
25 takes effect at 12:01 a.m. on the day following the expiration of the  
26 ninety-day period after final adjournment of the general assembly (August  
27 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a



1 referendum petition is filed pursuant to section 1 (3) of article V of the  
2 state constitution against this act or an item, section, or part of this act  
3 within such period, then the act, item, section, or part will not take effect  
4 unless approved by the people at the general election to be held in  
5 November 2014 and, in such case, will take effect on the date of the  
6 official declaration of the vote thereon by the governor.