

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-1054.01 Richard Sweetman x4333

SENATE BILL 16-133

SENATE SPONSORSHIP

Tate, Johnston

HOUSE SPONSORSHIP

Pabon and Willett,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE TRANSFER OF PROPERTY RIGHTS UPON THE DEATH**
102 **OF A PERSON, AND, IN CONNECTION THEREWITH, INCLUDING**
103 **INHERITED INDIVIDUAL RETIREMENT ACCOUNTS AND INHERITED**
104 **ROTH INDIVIDUAL RETIREMENT ACCOUNTS AS PROPERTY**
105 **EXEMPT FROM LEVY AND SALE UNDER WRIT OF ATTACHMENT OR**
106 **WRIT OF EXECUTION, CLARIFYING**
107 **DETERMINATION-OF-HEIRSHIP PROCEEDINGS IN PROBATE, AND**
108 **ENACTING PORTIONS OF THE "UNIFORM POWER OF**
109 **APPOINTMENT ACT".**

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

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.*

applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

Under current law, a certificate of death, a verification of death document, or a certified copy thereof, of a person who is a joint tenant may be placed of record with the county clerk and recorder of the county in which the real property affected by the joint tenancy is located, together with a supplementary affidavit. The bill removes the requirement that the person who swears to and affirms the supplementary affidavit has no record interest in the real property.

The bill includes inherited individual retirement accounts and inherited Roth individual retirement accounts as property exempt from levy and sale under writ of attachment or writ of execution.

The bill amends provisions concerning determination-of-heirship proceedings, as follows:

- ! Clarifies the definition of "interested person" so that anyone affected by the ownership of property may commence a proceeding;
- ! Describes when an unprobated will may be used as part of a proceeding;
- ! Clarifies notice requirements; and
- ! Ensures that a judgment and decree will convey legal title as opposed to equitable title.

The bill enacts portions of section 5 of the "Uniform Power of Appointment Act", with amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-31-102, **amend**
3 (1) as follows:

4 **38-31-102. Proof of death - certificate of death available -**
5 **definitions.** (1) A certificate of death, a verification of death document,
6 or a certified copy thereof, of a person who is a joint tenant may be placed
7 of record with the county clerk and recorder of the county in which the
8 real property affected by the joint tenancy is located, together with a
9 supplementary affidavit. The supplementary affidavit, which shall be
10 properly sworn to or affirmed by a person of legal age having personal
11 knowledge of the facts, ~~and having no record interest in the real property,~~

1 ~~shall~~ MUST include the legal description of the real property. ~~and a~~
2 ~~statement that the person referred to in the certificate was at the time of~~
3 ~~death the owner of a joint tenancy interest in the real property.~~ When
4 recorded, the original certificate or verification document and
5 supplementary affidavit, or certified copies thereof, ~~shall~~ MUST be
6 accepted in all courts of the state of Colorado as prima facie proof of the
7 death of the joint tenant. The certificate or verification document and
8 supplementary affidavit provided for in this section may also be used to
9 provide proof of the death of a life tenant, THE OWNER UNDER A
10 BENEFICIARY DEED, or any other person whose record interest in real
11 property terminates upon the death of such person to the same extent as
12 a joint tenant as provided in this section.

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14 **SECTION 2.** In Colorado Revised Statutes, 15-12-1301, **amend**
15 (1) and (2) as follows:

16 **15-12-1301. Definitions.** As used in this part 13, unless the
17 context otherwise requires:

18 (1) "Interested person" means an OWNER BY DESCENT OR
19 SUCCESSION, AN alleged heir or devisee of a decedent, ~~or~~ any OTHER
20 person claiming an OWNERSHIP interest derived from an OWNER BY
21 DESCENT OR SUCCESSION, OR AN alleged heir or devisee in any property
22 the descent or succession of which is to be determined pursuant to this
23 part 13, BUT EXCLUDING ANY PERSON HOLDING A NON-OWNERSHIP
24 INTEREST IN SUCH PROPERTY.

25 (2) "Owner by ~~inheritance~~ DESCENT OR SUCCESSION" means a
26 person in whom all or any part of the decedent's interest in the property
27 vests as a result of intestate or testate succession.

1 **SECTION 3.** In Colorado Revised Statutes, **amend** 15-12-1302
2 as follows:

3 **15-12-1302. Petition to determine heirship - devisees - interests**
4 **in property.** (1) When any person dies leaving an interest in real
5 property in this state, or dies domiciled in this state leaving an interest in
6 personal property wherever located, AND THERE IS NO PROBATE
7 PROCEEDING PRESENTLY PENDING FOR SUCH PERSON IN ANY JURISDICTION,
8 any interested person OR PERSON WHO MAY BE AFFECTED BY THE
9 OWNERSHIP OF SUCH PROPERTY may petition the court having jurisdiction
10 over probate matters in and for THE COUNTY IN WHICH THE REAL
11 PROPERTY OR SOME PORTION THEREOF IS SITUATED, OR, IF THE
12 PROCEEDING IS TO AFFECT AN INTEREST IN PERSONAL PROPERTY, the
13 county in which the decedent was domiciled or resided at the time of
14 death ~~or the county in which the property or some portion thereof is~~
15 ~~situated~~; to determine:

16 (a) The heirs of the decedent and the descent of all or any portion
17 of intestate property; or

18 (b) ~~to determine~~ The devisees of the decedent under a will
19 ~~previously admitted to probate in this or any other state~~ and the
20 succession of ALL OR ANY PORTION OF testate property.

21 (2) ~~The petition shall be in writing, signed, and verified and shall~~
22 ~~include the following:~~ THE PETITION MAY INCLUDE MORE THAN ONE
23 DECEDENT IF THEY ARE RELATED BY SUCCESSIVE INTERESTS IN THE
24 PROPERTY.

25 (a) ~~A statement that one year has passed since the date of death of~~
26 ~~the decedent;~~

27 (b) ~~A statement that administration of the decedent's estate has not~~

1 ~~been granted in this state, or if administration has been granted in this~~
2 ~~state the estate has been settled without determination of the descent or~~
3 ~~succession of all or a portion of the decedent's property;~~

4 ~~(c) A statement containing the name, age, and disability of any~~
5 ~~interested person who is known to the petitioner to be a minor or under~~
6 ~~legal disability;~~

7 ~~(d) A statement of the time and place of death of the decedent;~~

8 ~~(e) A statement of the last place of domicile or residence of the~~
9 ~~decedent;~~

10 ~~(f) A statement of whether the decedent died intestate or testate~~
11 ~~and, if testate, the name of the court which admitted the decedent's will~~
12 ~~to probate and a certified copy of the will and the order admitting the will~~
13 ~~to probate;~~

14 ~~(g) The names, addresses, and relationship of all interested~~
15 ~~persons, owners by inheritance, and all the heirs and devisees entitled to~~
16 ~~any part of the property;~~

17 ~~(h) A description of the decedent's interest in the property the~~
18 ~~descent or succession of which is to be determined through the petition;~~
19 ~~and~~

20 ~~(i) The name and address of the petitioner and a statement of the~~
21 ~~petitioner's interest in the property.~~

22 ~~(3) The petition may include more than one decedent if related by~~
23 ~~successive interests in the property. THE PETITION MUST BE IN WRITING,~~
24 ~~SIGNED, AND VERIFIED, AND IT MUST INCLUDE THE FOLLOWING:~~

25 ~~(a) THE NAME AND ADDRESS OF THE PETITIONER;~~

26 ~~(b) A STATEMENT OF THE INTEREST OF THE PETITIONER;~~

27 ~~(c) A DESCRIPTION OF THE PROPERTY, INCLUDING A LEGAL~~

1 DESCRIPTION IF THE PROPERTY IS REAL PROPERTY;
2 (d) AS TO EACH DECEDENT ADDRESSED IN THE PETITION:
3 (I) THE NAME OF THE DECEDENT;
4 (II) THE AGE OF THE DECEDENT AT THE DECEDENT'S DEATH;
5 (III) A STATEMENT OF THE DATE AND PLACE OF THE DECEDENT'S
6 DEATH;
7 (IV) A STATEMENT THAT ONE YEAR HAS PASSED SINCE THE
8 DECEDENT'S DATE OF DEATH;
9 (V) A STATEMENT THAT EITHER ADMINISTRATION OF THE
10 DECEDENT'S ESTATE HAS NOT BEEN GRANTED OR COMMENCED IN ANY
11 JURISDICTION, OR, IF ADMINISTRATION HAS BEEN GRANTED OR
12 COMMENCED IN ANY JURISDICTION, THE ESTATE HAS BEEN SETTLED
13 WITHOUT DETERMINATION OF THE DESCENT OR SUCCESSION OF ALL OR A
14 PORTION OF THE DECEDENT'S PROPERTY;
15 (VI) A STATEMENT AS TO THE COUNTY AND STATE OF THE
16 DECEDENT'S LAST PLACE OF DOMICILE OR RESIDENCE;
17 (VII) A STATEMENT OF WHETHER THE DECEDENT DIED INTESTATE
18 OR TESTATE, AND, IF TESTATE, THE ADDITIONAL INFORMATION REQUIRED
19 BY SUBSECTION (4) OF THIS SECTION;
20 (VIII) THE NAMES, ADDRESSES, AND RELATIONSHIPS OF ALL
21 INTERESTED PERSONS;
22 (IX) A STATEMENT CONTAINING THE AGE AND DISABILITY OF ANY
23 INTERESTED PERSON WHO IS KNOWN TO THE PETITIONER TO BE A MINOR OR
24 UNDER LEGAL DISABILITY;
25 (X) A DESCRIPTION OF THE DECEDENT'S INTEREST IN THE
26 PROPERTY THE DESCENT OR SUCCESSION OF WHICH IS TO BE DETERMINED
27 THROUGH THE PETITION, WHICH DESCRIPTION INCLUDES PROPERTY

1 LOCATED IN THE COUNTY WHERE THE PETITION IS FILED AND REAL
2 PROPERTY LOCATED IN ANY OTHER COLORADO COUNTY;

3 (XI) A DESCRIPTION OF THE INTERESTS HELD BY ALL OWNERS BY
4 DESCENT OR SUCCESSION FOR THE DECEDENT IN THE PROPERTY; AND

5 (XII) A STATEMENT THAT THE RELIEF SOUGHT BY THE PETITION IS
6 CONSISTENT WITH ANY PREVIOUS ADMINISTRATION OF THE DECEDENT'S
7 PROPERTY; AND

8 (e) IF THE NAME OR ADDRESS OF ANY INTERESTED PERSON IS
9 UNKNOWN, A STATEMENT DETAILING THE REASONABLE, DILIGENT EFFORTS
10 MADE TO DETERMINE THE NAME OR ADDRESS OF THE INTERESTED PERSON.

11 (4) ~~Upon filing of the petition, the court shall set a time and date~~
12 ~~for hearing the petition.~~ IF THE DECEDENT DIED TESTATE, ONE OF THE
13 FOLLOWING CONDITIONS MUST BE SATISFIED:

14 (a) IF THE DECEDENT'S WILL HAS BEEN PREVIOUSLY ADMITTED TO
15 PROBATE, THE PETITION MUST INCLUDE THE NAME OF THE COURT THAT
16 ADMITTED THE WILL TO PROBATE, THE CASE NUMBER, AND THE DATE UPON
17 WHICH THE WILL WAS ADMITTED TO PROBATE, AND THE PETITIONER SHALL
18 PROVIDE A CERTIFIED COPY OF THE WILL AND THE ORDER ADMITTING THE
19 WILL TO PROBATE; OR

20 (b) IF THE ADMISSIBILITY OF THE DECEDENT'S WILL TO PROBATE
21 HAS NOT BEEN PREVIOUSLY DETERMINED BY A COURT, THE PETITION MUST
22 INCLUDE A STATEMENT THAT THE ORIGINAL WILL HAS BEEN LODGED WITH
23 A COURT, THAT THE PETITIONER BELIEVES THE WILL TO BE THE
24 DECEDENT'S LAST WILL, THAT THE WILL WAS VALIDLY EXECUTED, AND
25 THAT THE PETITIONER IS UNAWARE OF ANY INSTRUMENT REVOKING THE
26 WILL OR OF ANY PRIOR WILL RELATING TO THE PROPERTY THAT HAS NOT
27 BEEN EXPRESSLY REVOKED BY A LATER INSTRUMENT, AND THE PETITIONER

1 SHALL PROVIDE A CERTIFIED COPY OF SUCH WILL OR, IF CERTIFICATION IS
2 NOT POSSIBLE, A COPY OF SUCH WILL AND A STATEMENT CONCERNING THE
3 ABSENT CERTIFICATION; OR

4 (c) IF THE ADMISSIBILITY OF THE DECEDENT'S WILL TO PROBATE
5 HAS NOT BEEN PREVIOUSLY DETERMINED BY A COURT AND THE ORIGINAL
6 WILL HAS NOT BEEN LODGED WITH A COURT, THE PROVISIONS OF SECTION
7 15-12-402 (3) APPLY AND THE PETITION MUST INCLUDE A STATEMENT
8 THAT THE ORIGINAL WILL IS LOST, DESTROYED, OR OTHERWISE
9 UNAVAILABLE; THAT THE WILL WAS VALIDLY EXECUTED; THAT THE
10 PETITIONER BELIEVES THE WILL TO BE THE DECEDENT'S LAST WILL; AND
11 THAT THE PETITIONER IS UNAWARE OF ANY INSTRUMENT REVOKING THE
12 WILL OR OF ANY PRIOR WILL RELATING TO THE PROPERTY THAT HAS NOT
13 BEEN EXPRESSLY REVOKED BY A LATER INSTRUMENT, AND THE PETITIONER
14 SHALL PROVIDE A COPY OF THE WILL OR OTHERWISE ESTABLISH THE
15 CONTENTS OF THE WILL TO THE SATISFACTION OF THE COURT.

16 (5) UPON FILING OF THE PETITION, THE COURT SHALL SET A TIME
17 AND DATE FOR HEARING THE PETITION.

18 **SECTION 4.** In Colorado Revised Statutes, **amend** 15-12-1303
19 as follows:

20 **15-12-1303. Hearing - notice - service.** (1) The petitioner shall
21 prepare a notice ~~of the filing of the petition which notice shall include~~
22 THAT IDENTIFIES THE PETITION AND INCLUDES the name of ~~the~~ EACH
23 decedent; THE NAME OF EACH INTERESTED PERSON; a description of the
24 property set forth in the petition, ~~the name of each interested person, and~~
25 ~~the name of each owner by inheritance. The notice may be served by~~
26 ~~personal service or by mailing a copy thereof, postage prepaid, addressed~~
27 ~~to the person at the address given and shall be directed to the interested~~

1 ~~persons and owners by inheritance set forth in the petition.~~ INCLUDING A
2 LEGAL DESCRIPTION IF THE PROPERTY IS REAL PROPERTY; AND THE TIME
3 AND PLACE OF THE HEARING ON THE PETITION. The notice ~~shall~~ MUST
4 direct all interested persons ~~and owners by inheritance~~ to appear and
5 ~~answer~~ OBJECT TO the petition ~~within twenty-one days after service of the~~
6 ~~notice if personal service occurs within the state of Colorado or thirty-five~~
7 ~~days after service if personal service occurs outside the state of Colorado~~
8 ~~or service is had by mail or by publication~~ ON OR BEFORE THE HEARING
9 DATE AND TIME SPECIFIED IN THE NOTICE. The notice ~~shall~~ MUST further
10 ~~provide~~ DIRECT that all objections to the petition must be filed in writing
11 with the court AND BE SERVED ON THE PETITIONER, and THAT the filing fee
12 MUST BE paid ~~within the time required for answering the petition and that~~
13 ON OR BEFORE THE HEARING DATE AND TIME SPECIFIED IN THE NOTICE.
14 THE NOTICE MUST SET FORTH THAT the hearing ~~shall~~ WILL be limited to
15 ~~the objections timely filed and the parties answering the petition in a~~
16 ~~timely manner. The notice shall set forth the time and place of the hearing~~
17 ~~on the petition~~ AND SERVED AND THAT, IF NO OBJECTIONS ARE TIMELY
18 FILED AND SERVED, THEN THE COURT MAY ENTER A DECREE WITHOUT A
19 HEARING.

20 (2) ~~The notice shall be published once a week for three~~
21 ~~consecutive weeks, as defined in section 15-10-401 (4), in a newspaper~~
22 ~~of general circulation in the county where the proceeding is filed, or if~~
23 ~~there is no such newspaper in such county, then in some newspaper of~~
24 ~~general circulation in an adjoining Colorado county. Service by~~
25 ~~publication shall be complete on the last day of publication. Prior to the~~
26 ~~hearing the petitioner shall file with the court the publisher's affidavit of~~
27 ~~publication stating the dates of publication. The petition itself need not be~~

1 ~~published~~ THE NOTICE MUST BE SERVED ON EACH INTERESTED PERSON
2 NAMED IN THE PETITION WHOSE ADDRESS IS SHOWN ON THE PETITION AND
3 WHO DOES NOT JOIN IN THE PETITION; OR WHO DOES NOT CONSENT TO THE
4 GRANTING OF THE PETITION OR ENTER A PERSONAL APPEARANCE; OR WHO
5 DOES NOT ADMIT, ACCEPT, OR WAIVE SERVICE. SERVICE MAY BE BY
6 PERSONAL SERVICE OR BY MAILING. IF SERVICE IS BY PERSONAL SERVICE
7 WITHIN THE STATE, SERVICE MUST BE COMPLETED AT LEAST TWENTY-ONE
8 DAYS PRIOR TO THE HEARING. IF SERVICE IS BY PERSONAL SERVICE
9 OUTSIDE THE STATE OR BY MAILING A COPY THEREOF, POSTAGE PREPAID,
10 ADDRESSED TO THE ADDRESS SHOWN ON THE PETITION EITHER WITHIN OR
11 OUTSIDE THE STATE, SERVICE MUST BE COMPLETED AT LEAST THIRTY-FIVE
12 DAYS PRIOR TO THE HEARING. THE PETITIONER SHALL FILE A RETURN OF
13 SERVICE FOR EACH INSTANCE OF PERSONAL SERVICE AND SHALL MAKE
14 AND FILE A CERTIFICATE OF MAILING STATING THE NAME OF THE PERSON
15 TO WHOM THE COPY WAS MAILED, THE ADDRESS TO WHICH THE COPY WAS
16 MAILED, THAT IT WAS MAILED POSTAGE PREPAID, AND THE DATE OF
17 MAILING. A COPY OF THE PETITION MUST BE SERVED WITH THE NOTICE.

18 (3) ~~The notice, in addition to publication, shall be served on each~~
19 ~~person named in the petition whose address is shown on the petition and~~
20 ~~who does not join in the petition, or does not consent to the granting of~~
21 ~~the petition or enter a personal appearance, or does not admit, accept, or~~
22 ~~waive service. If service is by personal service within the state, service~~
23 ~~must be completed at least twenty-one days prior to the hearing. If service~~
24 ~~is by personal service outside the state or by mail within or outside the~~
25 ~~state or by publication, service must be completed at least thirty-five days~~
26 ~~prior to the hearing. The petitioner shall file a return of service or shall~~
27 ~~make and file a certificate of mailing, stating the name of the person to~~

1 ~~whom the copy was mailed and the address to which mailed, that it was~~
2 ~~mailed, postage prepaid, and the date of mailing. A copy of the petition~~
3 ~~shall be served with the notice~~ THE PETITIONER SHALL ALSO CAUSE THE
4 NOTICE TO BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS,
5 AS DEFINED IN SECTION 15-10-401 (4), IN A NEWSPAPER OF GENERAL
6 CIRCULATION IN THE COUNTY IN WHICH THE PROCEEDING IS FILED, OR IF
7 THERE IS NO SUCH NEWSPAPER IN THE COUNTY, THEN IN A NEWSPAPER OF
8 GENERAL CIRCULATION IN AN ADJOINING COLORADO COUNTY.
9 ADDITIONALLY, SUCH NOTICE MUST ALSO BE PUBLISHED ONCE A WEEK FOR
10 THREE CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION
11 IN ANY OTHER COUNTY IN WHICH REAL PROPERTY THAT IS SUBJECT TO THE
12 PROCEEDING IS LOCATED, OR IF THERE IS NO SUCH NEWSPAPER IN SUCH
13 COUNTY, THEN IN A NEWSPAPER OF GENERAL CIRCULATION IN AN
14 ADJOINING COLORADO COUNTY. SERVICE BY PUBLICATION IS COMPLETE
15 ON THE LAST DAY OF PUBLICATION, WHICH MUST OCCUR ON OR BEFORE
16 THIRTY-FIVE DAYS BEFORE THE HEARING. THE PETITIONER SHALL FILE
17 WITH THE COURT THE PUBLISHER'S AFFIDAVIT OR AFFIDAVITS OF
18 PUBLICATION STATING THE DATES OF PUBLICATION.

19 **SECTION 5.** In Colorado Revised Statutes, **amend** 15-12-1304
20 as follows:

21 **15-12-1304. Appearance - hearing.** Any interested person or
22 ~~owner by inheritance~~ PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP
23 OF THE DECEDENT'S INTEREST IN THE PROPERTY, THE DESCENT OR
24 SUCCESSION OF WHICH IS TO BE DETERMINED IN THE PETITION, may appear
25 and ~~answer such petition~~ OBJECT and establish any proper defense to the
26 petition or any part thereof, or assert or protect any interest the person
27 may claim. ~~at any time within the time for filing an answer as set forth in~~

1 ~~the notice. After the expiration of the time periods allowed for appearance~~
2 ~~and answer, AN APPEARANCE AND OBJECTION MUST BE PRESENTED IN~~
3 ~~WRITING WITHIN THE TIME PERIOD FOR FILING AN OBJECTION AS SET FORTH~~
4 ~~IN THE NOTICE; EXCEPT THAT, FOR GOOD CAUSE, THE COURT MAY ALLOW~~
5 ~~AN ENTRY OF APPEARANCE AND OBJECTION BY AN INTERESTED PERSON OR~~
6 ~~PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF THE PROPERTY AT~~
7 ~~ANY TIME PRIOR TO THE ENTRY OF THE COURT'S JUDGMENT AND DECREE.~~
8 ~~IF AN INTERESTED PERSON OR PERSON WHO MAY BE AFFECTED BY THE~~
9 ~~OWNERSHIP OF THE PROPERTY APPEARS AND FILES A TIMELY OBJECTION,~~
10 ~~the court shall proceed with the hearing on the petition; Any person who~~
11 ~~objects to the relief prayed for in the petition must present all such~~
12 ~~objections in writing within the time period for filing an answer; except~~
13 ~~that the court, for good cause, may allow an entry of appearance by any~~
14 ~~interested person at any time prior to the entry of the court's judgment and~~
15 ~~decree. EXCEPT THAT THE COURT MAY CONTINUE THE HEARING IN ITS~~
16 ~~DISCRETION OR DIRECT SUCH FURTHER PROCEEDING AS THE COURT MAY~~
17 ~~DETERMINE. OTHERWISE, IF AFTER PROPER SERVICE PURSUANT TO SECTION~~
18 ~~15-12-1303 THERE ARE NO OBJECTIONS FILED TO THE PETITION, THEN THE~~
19 ~~COURT MAY ENTER A JUDGMENT AND DECREE PURSUANT TO THIS PART 13~~
20 ~~WITHOUT A HEARING.~~

21 **SECTION 6.** In Colorado Revised Statutes, **amend** 15-12-1305
22 as follows:

23 **15-12-1305. Judgment.** The court shall determine the standing of
24 the petitioner to bring the action; the heirs and devisees of the decedent;
25 the owners by ~~inheritance~~ DESCENT OR SUCCESSION of the property; a
26 description of the property, INCLUDING A LEGAL DESCRIPTION IF THE
27 PROPERTY IS REAL PROPERTY; and any other pertinent facts, and shall

1 enter judgment on the petition. ~~If after proper service pursuant to section~~
2 ~~15-12-1303 there are no objections or answers filed to the petition, then~~
3 ~~the court may enter a decree pursuant to this part 13 without a hearing.~~

4 **SECTION 7.** In Colorado Revised Statutes, **amend** 15-12-1306
5 as follows:

6 **15-12-1306. Decree - conclusive and when - reopening.** A
7 decree entered pursuant to this part 13 ~~shall be~~ IS conclusive as to the
8 rights of heirs or devisees in the property described in the order from the
9 date of its entry. IF SUCH A DECREE AFFECTS TITLE TO REAL PROPERTY, A
10 CERTIFIED COPY OF THE DECREE MUST BE RECORDED AND INDEXED IN THE
11 OFFICE OF THE COUNTY CLERK AND RECORDER OF EACH COUNTY IN WHICH
12 REAL PROPERTY IS LOCATED IN LIKE MANNER AND IN LIKE EFFECT AS IF IT
13 WERE A DEED OF CONVEYANCE FROM THE DECEDENT TO THE HEIRS OR
14 DEVISEES. Any person claiming to be an heir or devisee, or the grantee or
15 successor in interest of an heir or devisee, not served with notice by
16 personal service or by mail, and who did not admit, accept, or waive
17 service, or consent to the granting of the petition or enter a personal
18 appearance, may petition to reopen the proceeding and modify the decree
19 within one year after the entry thereof, but not thereafter; except that no
20 such modification of the decree ~~shall~~ MAY serve to impair the rights of
21 any person who, in reliance upon such decree, in good faith, for value,
22 and without notice, purchased property or acquired a lien upon property.
23 NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE CONTRARY,
24 THE ADMISSION OF A PREVIOUSLY UNPROBATED WILL AS PART OF A
25 PROCEEDING UNDER THIS PART 13 APPLIES ONLY TO THE DECEDENT'S
26 PARTICULAR PROPERTY INTERESTS DESCRIBED IN THE PETITION, IN
27 ACCORDANCE WITH SECTION 15-12-1302 (3) (d) (X), FOR THE DECEDENT.

1 **SECTION 8.** In Colorado Revised Statutes, **add** part 5 to article
2 2.5 of title 15 as follows:

3 PART 5

4 RIGHTS OF POWERHOLDER'S

5 CREDITORS IN APPOINTIVE PROPERTY

6 **15-2.5-501. General power created by powerholder.** (1) IN
7 THIS SECTION, "POWER OF APPOINTMENT CREATED BY THE POWERHOLDER"
8 INCLUDES A POWER OF APPOINTMENT CREATED IN A TRANSFER BY
9 ANOTHER PERSON TO THE EXTENT THE POWERHOLDER HOLDS A GENERAL
10 POWER OF APPOINTMENT AND CONTRIBUTED VALUE TO THE TRANSFER.
11 CONTRIBUTED VALUE TO A TRANSFER DOES NOT APPLY TO A GENERAL
12 POWER OF APPOINTMENT CREATED IN SETTLEMENT, AWARD, OR JUDGMENT
13 IN CONNECTION WITH A GOOD FAITH CONTROVERSY.

14 (2) APPOINTIVE PROPERTY SUBJECT TO A GENERAL POWER OF
15 APPOINTMENT CREATED BY THE POWERHOLDER IS SUBJECT TO A CLAIM OF
16 A CREDITOR OF THE POWERHOLDER OR OF THE POWERHOLDER'S ESTATE TO
17 THE EXTENT PROVIDED IN THE "COLORADO UNIFORM FRAUDULENT
18 TRANSFER ACT", ARTICLE 8 OF TITLE 38, C.R.S.

19 (3) SUBJECT TO SUBSECTION (2) OF THIS SECTION, APPOINTIVE
20 PROPERTY SUBJECT TO A GENERAL POWER OF APPOINTMENT CREATED BY
21 THE POWERHOLDER IS NOT SUBJECT TO A CLAIM OF A CREDITOR OF THE
22 POWERHOLDER OR THE POWERHOLDER'S ESTATE TO THE EXTENT THE
23 POWERHOLDER IRREVOCABLY APPOINTED THE PROPERTY IN FAVOR OF A
24 PERSON OTHER THAN THE POWERHOLDER OR THE POWERHOLDER'S ESTATE.

25 (4) SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION, AND
26 NOTWITHSTANDING THE PRESENCE OF A SPENDTHRIFT PROVISION OR
27 WHETHER THE CLAIM AROSE BEFORE OR AFTER THE CREATION OF THE

1 POWER OF APPOINTMENT, APPOINTIVE PROPERTY SUBJECT TO A GENERAL
2 POWER OF APPOINTMENT CREATED BY THE POWERHOLDER IS SUBJECT TO
3 A CLAIM OF A CREDITOR OF:

4 (a) THE POWERHOLDER, TO THE SAME EXTENT AS IF THE
5 POWERHOLDER OWNED THE APPOINTIVE PROPERTY, IF THE POWER IS
6 PRESENTLY EXERCISABLE; AND

7 (b) THE POWERHOLDER'S ESTATE, TO THE EXTENT THE ESTATE IS
8 INSUFFICIENT TO SATISFY THE CLAIM AND SUBJECT TO THE RIGHT OF A
9 DECEDENT TO DIRECT THE SOURCE FROM WHICH LIABILITIES ARE PAID, IF
10 THE POWERHOLDER IS DECEASED.

11 **15-2.5-502. Reserved.**

12 **15-2.5-503. Reserved.**

13 **15-2.5-504. Creditor claim - nongeneral power.** (1) EXCEPT AS
14 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, APPOINTIVE
15 PROPERTY SUBJECT TO A NONGENERAL POWER OF APPOINTMENT IS EXEMPT
16 FROM A CLAIM OF A CREDITOR OF THE POWERHOLDER OR THE
17 POWERHOLDER'S ESTATE.

18 (2) APPOINTIVE PROPERTY SUBJECT TO A NONGENERAL POWER OF
19 APPOINTMENT IS SUBJECT TO A CLAIM OF A CREDITOR OF THE
20 POWERHOLDER OR THE POWERHOLDER'S ESTATE TO THE EXTENT THAT THE
21 POWERHOLDER OWNED THE PROPERTY, AND, RESERVING THE NONGENERAL
22 POWER, TRANSFERRED THE PROPERTY IN VIOLATION OF THE "COLORADO
23 UNIFORM FRAUDULENT TRANSFER ACT", ARTICLE 8 OF TITLE 38, C.R.S.

24 (3) (Reserved)

25 **15-2.5-505. Applicability - limitations.** NOTHING IN THIS PART 5
26 MAY BE CONSTRUED AS PERMITTING ANY TRANSFER THAT VIOLATES THE
27 "COLORADO UNIFORM FRAUDULENT TRANSFERS ACT", ARTICLE 8 OF

1 TITLE 38, C.R.S.

2 **SECTION 9. Inclusion of official comments.** The revisor of
3 statutes shall include, as nonstatutory matter, following each section of
4 the "Colorado Uniform Powers of Appointment Act", article 2.5 of title
5 15, C.R.S., the full text of the official comment to each such section
6 contained in the official volume containing the "Uniform Powers of
7 Appointment Act" issued by the Uniform Law Commission, with any
8 changes in the official comments to correspond to Colorado changes in
9 the uniform act. The revisor shall prepare the comments for approval by
10 the committee on legal services.

11 **SECTION 10. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2016 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.