

CHAPTER 190

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 02-200

BY SENATOR(S) Evans;
also REPRESENTATIVE(S) Williams T.**AN ACT****CONCERNING PROBATE MATTERS.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 15-1-103 (2), Colorado Revised Statutes, is amended to read:**15-1-103. Definitions.** As used in this part 1, unless the context otherwise requires:

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

SECTION 2. 15-1-701, Colorado Revised Statutes, is amended to read:

15-1-701. Power to become partner. SUBJECT TO THE TERMS OF THE PARTNERSHIP AGREEMENT, if permitted by the trust instrument or will under which ~~he~~ THE FIDUCIARY serves or by order of a court having jurisdiction of the estate or trust, ~~an executor, administrator, trustee, conservator, or guardian~~ A FIDUCIARY may enter into a partnership agreement and accept the assignment of or otherwise acquire, hold, and dispose of an interest in a partnership and in so doing may become either a general or a limited partner.

SECTION 3. 15-1-804 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:**15-1-804. Powers available.** (2) Subject to subsection (1) of this section, a

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

fiduciary has the power:

(ii) SUBJECT TO THE TERMS OF THE DOCUMENTS CONTROLLING THE ENTITY CONCERNED, TO RETAIN OR ACQUIRE INTERESTS IN ANY ENTITY IN WHICH THE FIDUCIARY DOES NOT HAVE GENERAL LIABILITY, REGARDLESS OF FORM, INCLUDING BUT NOT LIMITED TO ANY PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, AND JOINT VENTURE, AND TO BECOME A SHAREHOLDER, PARTNER, MEMBER, OR JOINT VENTURER.

SECTION 4. 15-10-401, Colorado Revised Statutes, is amended to read:

15-10-401. Notice - method and time of giving. (1) If notice of a hearing on any petition is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing ~~of~~ ON any petition to be given to any interested person or ~~his~~ TO THE INTERESTED PERSON'S attorney ~~if he has appeared by attorney or requested that notice be sent to his attorney~~ OF RECORD OR THE INTERESTED PERSON'S DESIGNEE. Notice shall be given:

(a) By mailing a copy thereof at least ten days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post-office address given in ~~his~~ ANY demand for notice, ~~if any~~; or at ~~his~~ THE PERSON'S office or place of residence, if known; or

(b) By delivering a copy thereof to the person being notified personally at least ten days before the time set for the hearing; or

(c) If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation published in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing. In case there is no newspaper of general circulation published in the county of appointment, said publication shall be made in such a newspaper in an adjoining county. A MOTION FOR COURT PERMISSION TO PUBLISH THE NOTICE OF ANY HEARING SHALL NOT BE REQUIRED UNLESS OTHERWISE DIRECTED BY THE COURT.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding. IF NOTICE IS GIVEN BY PUBLICATION, AT THE TIME THE PARTY WHO ISSUED THE NOTICE BY PUBLICATION FILES PROOF OF PUBLICATION, THAT PARTY SHALL ALSO FILE AN AFFIDAVIT VERIFIED BY THE OATH OF SUCH PARTY OR BY SOMEONE ON HIS OR HER BEHALF STATING THE FACTS THAT WARRANTED THE USE OF PUBLICATION FOR SERVICE OF THE NOTICE OF THE HEARING AND STATING THE EFFORTS, IF ANY, THAT HAVE BEEN MADE TO OBTAIN PERSONAL SERVICE OR SERVICE BY MAIL. THE AFFIDAVIT SHALL ALSO STATE THE ADDRESS, OR LAST KNOWN ADDRESS, OF EACH PERSON SERVED BY PUBLICATION OR SHALL STATE THAT THE PERSON'S ADDRESS OR IDENTITY IS UNKNOWN AND CANNOT BE ASCERTAINED WITH REASONABLE DILIGENCE.

(4) "Publication once a week for three consecutive weeks" means publication once during each week of three consecutive calendar weeks with at least twelve days elapsing between the first and last publications.

SECTION 5. 15-11-403, Colorado Revised Statutes, is amended to read:

15-11-403. Exempt property. The decedent's surviving spouse is entitled to exempt property from the estate in the form of cash in the amount of or other property of the estate in the value of ~~fifteen~~ TWENTY-SIX thousand dollars in excess of any security interests therein. If there is no surviving spouse, the decedent's dependent children are entitled jointly to the same exempt property. Rights to exempt property have priority over all claims against the estate, except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805. The right to exempt property shall abate as necessary to permit payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or dependent children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective-share.

SECTION 6. 15-11-405 (1), Colorado Revised Statutes, is amended to read:

15-11-405. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised or disposed of by memorandum under section 15-11-513 to any person other than a person entitled to exempt property may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property. The personal representative may make these selections if the surviving spouse, the dependent children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. The personal representative may determine the family allowance in a lump sum not exceeding ~~twelve~~ TWENTY-FOUR thousand dollars or periodic installments not exceeding ~~one~~ TWO thousand dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may provide a family allowance other than that which the personal representative determined or could have determined.

SECTION 7. 15-12-1201 (1) (a), Colorado Revised Statutes, is amended to read:

15-12-1201. Collection of personal property by affidavit. (1) At any time ten or more days after the date of death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) The fair market value of property owned by the decedent and subject to disposition by will or intestate succession at the time of his OR HER death, wherever that property is located, less liens and encumbrances, does not exceed ~~twenty-seven~~ FIFTY thousand dollars;

SECTION 8. 15-11-805, Colorado Revised Statutes, is amended to read:

15-11-805. Ownership of personal property between spouses. (1) For purposes of this article, tangible personal property in the joint possession or control of the decedent and his or her surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not otherwise evidenced by a certificate of title, bill of sale, or other writing. This presumption shall not apply to:

- (a) Property acquired by either spouse before the marriage;
- (b) Property acquired by either spouse by gift or inheritance during the marriage;
- (c) Property used by the decedent spouse in a trade or business in which the surviving spouse has no interest; OR
- (d) Property held for another. ~~or~~
- (e) ~~Property devised in a memorandum for the disposition of tangible personal property.~~

(2) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.

SECTION 9. 15-12-805 (1), Colorado Revised Statutes, is amended to read:

15-12-805. Classification of claims. (1) ~~If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order~~ THE ALLOWED CLAIMS AGAINST THE ESTATE OF A DECEDENT SHALL BE PAID BY THE PERSONAL REPRESENTATIVE IN THE FOLLOWING ORDER:

- (a) Property held by or in the possession of the deceased person as fiduciary or trustee OF A TRUST, WHICH SHALL INCLUDE A RESULTING TRUST, AS LONG AS THE REASONABLE EXPENSES OF ADMINISTERING SUCH PROPERTY AND OF INVESTIGATING AND DETERMINING SUCH CLAIM, AS PROVIDED BY SECTION 15-12-720, SHALL BE PAID FROM SUCH PROPERTY AS DETERMINED BY THE COURT;
- (b) OTHER costs and expenses of administration;
- (c) Reasonable funeral and burial, interment, or cremation expenses;
- (d) Debts and taxes with preference under federal law;
- (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him OR HER;

(f) Debts and taxes with preference under other laws of this state;

(f.5) The claim of the department of health care policy and financing for the net amount of medical assistance, as defined in section 26-4-403.3 (5), C.R.S., paid to or for the decedent;

(g) All other claims.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 2002, and sections 5 through 9 of this act shall apply to estates for decedents dying on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2002