

CHAPTER 334

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 03-310

BY SENATOR(S) Evans;
also REPRESENTATIVE(S) Smith and Schultheis.

AN ACT**CONCERNING ESTATE PLANNING.**

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

SECTION 1. 15-1-402, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

15-1-402. Definitions. As used in this part 4, unless the context otherwise requires:

(10.5) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

(a) IS A DISTRIBUTE OR A PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL;

(b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE INTEREST OF THE DISTRIBUTEES DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (10.5) TERMINATED ON THAT DATE; OR

(c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON SAID DATE.

(12.5) "TOTAL RETURN TRUST" MEANS A TRUST THAT IS CONVERTED TO A TOTAL RETURN TRUST PURSUANT TO SECTION 15-1-404.5 OR A TRUST THE TERMS OF WHICH MANIFEST THE SETTLOR'S INTENT THAT THE TRUSTEE WILL ADMINISTER THE TRUST IN ACCORDANCE WITH SECTION 15-1-404.5 (4) AND (4.5).

SECTION 2. 15-1-404 (3) (g) and (3) (h), Colorado Revised Statutes, are

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

amended, and the said 15-1-404 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

15-1-404. Trustee's power to adjust. (3) A trustee may not make an adjustment:

(g) If the trustee is a beneficiary of the trust; ~~or~~

(h) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly; OR

(i) IF THE TRUST IS A TOTAL RETURN TRUST.

SECTION 3. Part 4 of article 1 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

15-1-404.5. Conversion - total return trusts - administration. (1) **Conversion by trustee.** UNLESS EXPRESSLY PROHIBITED BY THE GOVERNING INSTRUMENT, A TRUSTEE MAY RELEASE THE POWER TO ADJUST DESCRIBED IN SECTION 15-1-404 AND CONVERT A TRUST TO A TOTAL RETURN TRUST AS DESCRIBED IN THIS SECTION IF ALL OF THE FOLLOWING APPLY:

(a) THE TRUST DESCRIBES THE AMOUNT THAT MAY OR MUST BE DISTRIBUTED TO A BENEFICIARY BY REFERRING TO THE TRUST'S INCOME AND THE TRUSTEE DETERMINES THAT CONVERSION TO A TOTAL RETURN TRUST WILL ENABLE THE TRUSTEE TO BETTER CARRY OUT THE PURPOSES OF THE TRUST;

(b) THE TRUSTEE SENDS A WRITTEN NOTICE OF THE TRUSTEE'S DECISION TO CONVERT THE TRUST TO A TOTAL RETURN TRUST SPECIFYING A PROSPECTIVE EFFECTIVE DATE FOR THE CONVERSION WHICH MAY NOT BE SOONER THAN SIXTY DAYS AFTER THE NOTICE IS SENT, AND INCLUDING A COPY OF THIS SECTION, TO THE QUALIFIED BENEFICIARIES, DETERMINED AS OF THE DATE THE NOTICE IS SENT AND ASSUMING NONEXERCISE OF ALL POWERS OF APPOINTMENT;

(c) THERE ARE ONE OR MORE LEGALLY COMPETENT BENEFICIARIES DESCRIBED IN SECTION 15-1-402 (10.5) (a), AND ONE OR MORE LEGALLY COMPETENT REMAINDER BENEFICIARIES DESCRIBED IN EITHER SECTION 15-1-402 (10.5) (b) OR 15-1-402 (10.5) (c), DETERMINED AS OF THE DATE THE NOTICE IS SENT; AND

(d) NO BENEFICIARY HAS OBJECTED IN WRITING TO THE CONVERSION TO A TOTAL RETURN TRUST AND DELIVERED SUCH OBJECTION TO THE TRUSTEE WITHIN SIXTY DAYS AFTER THE NOTICE WAS SENT.

(2) **Conversion, reconversion, and adjustment of the distribution percentage by agreement.** CONVERSION TO A TOTAL RETURN TRUST OR RECONVERSION TO AN INCOME TRUST MAY BE MADE BY AGREEMENT BETWEEN THE TRUSTEE AND ALL QUALIFIED BENEFICIARIES OF THE TRUST. THE TRUSTEE AND ALL QUALIFIED BENEFICIARIES MAY ALSO AGREE TO MODIFY THE DISTRIBUTION PERCENTAGE, EXCEPT THAT THE TRUSTEE AND THE QUALIFIED BENEFICIARIES MAY NOT AGREE TO A DISTRIBUTION PERCENTAGE LESS THAN THREE PERCENT OR GREATER THAN FIVE PERCENT. THE AGREEMENT MAY INCLUDE ANY OTHER ACTIONS A COURT COULD

PROPERLY ORDER PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(3) Conversion or reconversion by court. (a) THE TRUSTEE MAY, FOR ANY REASON, ELECT TO PETITION THE COURT TO ORDER CONVERSION TO A TOTAL RETURN TRUST, INCLUDING WITHOUT LIMITATION THE REASON THAT CONVERSION UNDER SUBSECTION (1) OF THIS SECTION IS UNAVAILABLE BECAUSE:

(I) A BENEFICIARY TIMELY OBJECTS TO THE CONVERSION TO A TOTAL RETURN TRUST;

(II) THERE ARE NO LEGALLY COMPETENT BENEFICIARIES DESCRIBED IN SECTION 15-1-402 (10.5) (a); OR

(III) THERE ARE NO LEGALLY COMPETENT BENEFICIARIES DESCRIBED IN SECTION 15-1-402 (10.5) (b) OR (10.5) (c).

(b) A BENEFICIARY MAY REQUEST THE TRUSTEE TO CONVERT TO A TOTAL RETURN TRUST OR ADJUST THE DISTRIBUTION PERCENTAGE PURSUANT TO THIS SUBSECTION (3). IF THE TRUSTEE DECLINES OR FAILS TO ACT WITHIN SIX MONTHS AFTER RECEIVING A WRITTEN REQUEST FROM A BENEFICIARY TO DO SO, THE BENEFICIARY MAY PETITION THE COURT TO ORDER THE CONVERSION OR ADJUSTMENT.

(c) THE TRUSTEE MAY PETITION THE COURT PROSPECTIVELY TO RECONVERT FROM A TOTAL RETURN TRUST OR TO ADJUST THE DISTRIBUTION PERCENTAGE IF THE TRUSTEE DETERMINES THAT THE RECONVERSION OR ADJUSTMENT WILL ENABLE THE TRUSTEE TO BETTER CARRY OUT THE PURPOSES OF THE TRUST. A BENEFICIARY MAY REQUEST THE TRUSTEE TO PETITION THE COURT PROSPECTIVELY TO RECONVERT FROM A TOTAL RETURN TRUST OR ADJUST THE DISTRIBUTION PERCENTAGE. IF THE TRUSTEE DECLINES OR FAILS TO ACT WITHIN SIX MONTHS AFTER RECEIVING A WRITTEN REQUEST FROM A BENEFICIARY TO DO SO, THE BENEFICIARY MAY PETITION THE COURT TO ORDER THE RECONVERSION OR ADJUSTMENT.

(d) (I) IN A JUDICIAL PROCEEDING INSTITUTED UNDER THIS SUBSECTION (3), THE TRUSTEE MAY PRESENT OPINIONS AND REASONS CONCERNING:

(A) THE TRUSTEE'S SUPPORT FOR, OR OPPOSITION TO, A CONVERSION TO A TOTAL RETURN TRUST, A RECONVERSION FROM A TOTAL RETURN TRUST, OR AN ADJUSTMENT OF THE DISTRIBUTION PERCENTAGE OF A TOTAL RETURN TRUST, INCLUDING WHETHER THE TRUSTEE BELIEVES CONVERSION, RECONVERSION, OR ADJUSTMENT OF THE DISTRIBUTION PERCENTAGE WOULD ENABLE THE TRUSTEE TO BETTER CARRY OUT THE PURPOSES OF THE TRUST; AND

(B) ANY OTHER MATTER RELEVANT TO THE PROPOSED CONVERSION, RECONVERSION, OR ADJUSTMENT OF THE DISTRIBUTION PERCENTAGE.

(II) A TRUSTEE'S ACTIONS UNDERTAKEN IN ACCORDANCE WITH THIS SUBSECTION (3) SHALL NOT BE DEEMED IMPROPER OR INCONSISTENT WITH THE TRUSTEE'S DUTY OF IMPARTIALITY UNLESS THE COURT FINDS FROM ALL THE EVIDENCE THAT THE TRUSTEE ACTED IN BAD FAITH.

(e) THE COURT SHALL ORDER CONVERSION TO A TOTAL RETURN TRUST,

RECONVERSION PROSPECTIVELY FROM A TOTAL RETURN TRUST, OR ADJUSTMENT OF THE DISTRIBUTION PERCENTAGE OF A TOTAL RETURN TRUST IF THE COURT DETERMINES THAT THE CONVERSION, RECONVERSION, OR ADJUSTMENT OF THE DISTRIBUTION PERCENTAGE WILL ENABLE THE TRUSTEE TO BETTER CARRY OUT THE PURPOSES OF THE TRUST.

(f) IF A CONVERSION TO A TOTAL RETURN TRUST IS MADE PURSUANT TO A COURT ORDER, THE TRUSTEE MAY RECONVERT THE TRUST TO AN INCOME TRUST ONLY:

(I) PURSUANT TO A SUBSEQUENT COURT ORDER; OR

(II) BY FILING WITH THE COURT AN AGREEMENT MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION TO RECONVERT TO AN INCOME TRUST.

(g) UPON A RECONVERSION, THE POWER TO ADJUST, AS DESCRIBED IN SECTION 15-1-404 AND AS IT EXISTED BEFORE THE CONVERSION, SHALL BE REVIVED.

(h) AN ACTION MAY BE TAKEN UNDER THIS SUBSECTION (3) NO MORE FREQUENTLY THAN EVERY TWO YEARS, UNLESS THE COURT FOR GOOD CAUSE ORDERS OTHERWISE.

(4) **Administration of a total return trust.** DURING THE TIME THAT A TRUST IS A TOTAL RETURN TRUST, THE TRUSTEE SHALL ADMINISTER THE TRUST IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION (4) AS FOLLOWS, UNLESS OTHERWISE EXPRESSLY PROVIDED BY THE TERMS OF THE TRUST:

(a) THE TRUSTEE SHALL INVEST THE TRUST ASSETS SEEKING A TOTAL RETURN WITHOUT REGARD TO WHETHER THE RETURN IS FROM INCOME OR APPRECIATION OF PRINCIPAL;

(b) THE TRUSTEE SHALL MAKE INCOME DISTRIBUTIONS IN ACCORDANCE WITH THE GOVERNING INSTRUMENT SUBJECT TO THE PROVISIONS OF THIS SECTION;

(c) THE DISTRIBUTION PERCENTAGE FOR ANY TRUST CONVERTED TO A TOTAL RETURN TRUST BY A TRUSTEE IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION SHALL BE FOUR PERCENT, UNLESS A DIFFERENT PERCENTAGE HAS BEEN DETERMINED IN AN AGREEMENT MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION OR ORDERED BY THE COURT PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(d) (I) THE TRUSTEE SHALL PAY TO A BENEFICIARY IN THE CASE OF AN UNDERPAYMENT WITHIN A REASONABLE TIME, AND SHALL RECOVER FROM A BENEFICIARY IN THE CASE OF AN OVERPAYMENT, EITHER BY REPAYMENT BY THE BENEFICIARY OR BY WITHHOLDING FROM FUTURE DISTRIBUTIONS TO THE BENEFICIARY:

(A) AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT PROPERLY PAYABLE AND THE AMOUNT ACTUALLY PAID; AND

(B) INTEREST COMPOUNDED ANNUALLY AT A RATE PER ANNUM EQUAL TO THE DISTRIBUTION PERCENTAGE IN THE YEAR OR YEARS DURING WHICH THE UNDERPAYMENT OR OVERPAYMENT OCCURS.

(II) FOR PURPOSES OF THIS PARAGRAPH (d), ACCRUAL OF INTEREST MAY NOT COMMENCE UNTIL THE BEGINNING OF THE TRUST YEAR FOLLOWING THE YEAR IN WHICH THE UNDERPAYMENT OR OVERPAYMENT OCCURS.

(4.5) FOR PURPOSES OF SUBSECTION (4) OF THIS SECTION:

(a) "INCOME", AS THAT TERM APPEARS IN THE GOVERNING INSTRUMENT, SHALL BE DEEMED TO MEAN THE DISTRIBUTION AMOUNT.

(b) (I) THE "DISTRIBUTION AMOUNT" SHALL BE AN ANNUAL AMOUNT EQUAL TO THE DISTRIBUTION PERCENTAGE MULTIPLIED BY THE AVERAGE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS.

(II) FOR PURPOSES OF THIS PARAGRAPH (b), THE AVERAGE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS SHALL BE THE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS AVERAGED OVER THE LESSER OF:

(A) THE THREE PRECEDING YEARS; OR

(B) THE PERIOD DURING WHICH THE TRUST HAS BEEN IN EXISTENCE.

(5) **Determination of matters in administration of total return trust.** THE TRUSTEE MAY DETERMINE ANY OF THE FOLLOWING MATTERS IN ADMINISTERING A TOTAL RETURN TRUST AS THE TRUSTEE DEEMS NECESSARY OR HELPFUL FOR THE PROPER FUNCTIONING OF THE TRUST:

(a) THE EFFECTIVE DATE OF A CONVERSION TO A TOTAL RETURN TRUST PURSUANT TO SUBSECTION (1) OF THIS SECTION;

(b) THE MANNER OF PRORATING THE DISTRIBUTION AMOUNT FOR A SHORT YEAR IN WHICH A BENEFICIARY'S INTEREST COMMENCES OR CEASES, OR IF THE TRUST IS A TOTAL RETURN TRUST FOR ONLY PART OF THE YEAR, OR THE TRUSTEE MAY ELECT TO TREAT THE TRUST YEAR AS TWO SEPARATE YEARS, THE FIRST OF WHICH ENDS AT THE CLOSE OF THE DAY ON WHICH THE CONVERSION OR RECONVERSION OCCURS, AND THE SECOND OF WHICH ENDS AT THE CLOSE OF THE TRUST YEAR;

(c) WHETHER DISTRIBUTIONS ARE MADE IN CASH OR IN KIND;

(d) THE MANNER OF ADJUSTING VALUATIONS AND CALCULATIONS OF THE DISTRIBUTION AMOUNT TO ACCOUNT FOR OTHER PAYMENTS FROM, OR CONTRIBUTIONS TO, THE TRUST;

(e) WHETHER TO VALUE THE TRUST'S ASSETS ANNUALLY OR MORE FREQUENTLY;

(f) WHICH VALUATION DATES TO USE AND HOW MANY VALUATION DATES TO USE;

(g) VALUATION DECISIONS CONCERNING ANY ASSET FOR WHICH THERE IS NO READILY AVAILABLE MARKET VALUE, INCLUDING:

(I) HOW FREQUENTLY TO VALUE SUCH AN ASSET;

(II) WHETHER AND HOW OFTEN TO ENGAGE A PROFESSIONAL APPRAISER TO VALUE SUCH AN ASSET; AND

(III) WHETHER TO EXCLUDE THE VALUE OF SUCH AN ASSET FROM THE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS FOR PURPOSES OF DETERMINING THE DISTRIBUTION AMOUNT. FOR PURPOSES OF THIS SECTION, ANY SUCH ASSET SO EXCLUDED SHALL BE REFERRED TO AS AN "EXCLUDED ASSET", AND THE TRUSTEE SHALL DISTRIBUTE ANY NET INCOME RECEIVED FROM THE EXCLUDED ASSET AS PROVIDED FOR IN THE GOVERNING INSTRUMENT, SUBJECT TO THE FOLLOWING PRINCIPLES:

(A) THE TRUSTEE SHALL TREAT EACH ASSET FOR WHICH THERE IS NO READILY AVAILABLE MARKET VALUE AS AN EXCLUDED ASSET UNLESS THE TRUSTEE DETERMINES THAT THERE ARE COMPELLING REASONS NOT TO DO SO AND THE TRUSTEE CONSIDERS ALL RELEVANT FACTORS INCLUDING THE BEST INTERESTS OF THE BENEFICIARIES;

(B) IF TANGIBLE PERSONAL PROPERTY OR REAL PROPERTY IS POSSESSED OR OCCUPIED BY A BENEFICIARY, THE TRUSTEE MAY NOT LIMIT OR RESTRICT ANY RIGHT OF THE BENEFICIARY TO USE THE PROPERTY IN ACCORDANCE WITH THE GOVERNING INSTRUMENT REGARDLESS OF WHETHER THE TRUSTEE TREATS THE PROPERTY AS AN EXCLUDED ASSET; AND

(C) BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, ASSETS FOR WHICH THERE IS A READILY AVAILABLE MARKET VALUE INCLUDE CASH AND CASH EQUIVALENTS; STOCKS, BONDS, AND OTHER SECURITIES AND INSTRUMENTS FOR WHICH THERE IS AN ESTABLISHED MARKET ON A STOCK EXCHANGE, IN AN OVER-THE-COUNTER MARKET, OR OTHERWISE; AND ANY OTHER PROPERTY THAT CAN REASONABLY BE EXPECTED TO BE SOLD WITHIN ONE WEEK OF THE DECISION TO SELL WITHOUT EXTRAORDINARY EFFORTS BY THE SELLER. BY WAY OF EXAMPLE AND BY WAY OF LIMITATION, ASSETS FOR WHICH THERE IS NO READILY AVAILABLE MARKET VALUE INCLUDE STOCKS, BONDS, AND OTHER SECURITIES AND INSTRUMENTS FOR WHICH THERE IS NO ESTABLISHED MARKET ON A STOCK EXCHANGE, IN AN OVER-THE-COUNTER MARKET, OR OTHERWISE; REAL PROPERTY; TANGIBLE PERSONAL PROPERTY; AND ARTWORK AND OTHER COLLECTIBLES.

(h) ANY OTHER ADMINISTRATIVE MATTER THAT THE TRUSTEE DETERMINES IS NECESSARY OR HELPFUL FOR THE PROPER FUNCTIONING OF THE TOTAL RETURN TRUST.

(6) **Allocations.** (a) EXPENSES, TAXES, AND OTHER CHARGES THAT WOULD OTHERWISE BE DEDUCTED FROM INCOME IF THE TRUST WAS NOT A TOTAL RETURN TRUST MAY NOT BE DEDUCTED FROM THE DISTRIBUTION AMOUNT.

(b) UNLESS OTHERWISE PROVIDED BY THE GOVERNING INSTRUMENT, THE DISTRIBUTION AMOUNT EACH YEAR SHALL BE DEEMED TO BE PAID FROM THE FOLLOWING SOURCES FOR THAT YEAR IN THE FOLLOWING ORDER:

(I) NET INCOME DETERMINED AS IF THE TRUST WAS NOT A TOTAL RETURN TRUST;

(II) OTHER ORDINARY INCOME AS DETERMINED FOR FEDERAL INCOME TAX PURPOSES;

(III) NET REALIZED SHORT-TERM CAPITAL GAINS AS DETERMINED FOR FEDERAL INCOME TAX PURPOSES;

(IV) NET REALIZED LONG-TERM CAPITAL GAINS AS DETERMINED FOR FEDERAL INCOME TAX PURPOSES;

(V) TRUST PRINCIPAL COMPRISING ASSETS FOR WHICH THERE IS A READILY AVAILABLE MARKET VALUE; AND

(VI) OTHER TRUST PRINCIPAL.

(7) **Court orders.** (a) THE COURT MAY ORDER ANY OF THE FOLLOWING ACTIONS IN A PROCEEDING BROUGHT BY A TRUSTEE OR A BENEFICIARY PURSUANT TO PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION:

(I) SELECT A DISTRIBUTION PERCENTAGE OTHER THAN FOUR PERCENT, EXCEPT THAT THE COURT MAY NOT ORDER A DISTRIBUTION PERCENTAGE LESS THAN THREE PERCENT OR GREATER THAN FIVE PERCENT;

(II) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS OVER A PERIOD OTHER THAN THREE YEARS;

(III) RECONVERT PROSPECTIVELY FROM A TOTAL RETURN TRUST, OR ADJUST THE DISTRIBUTION PERCENTAGE OF A TOTAL RETURN TRUST;

(IV) DIRECT THE DISTRIBUTION OF NET INCOME, DETERMINED AS IF THE TRUST WERE NOT A TOTAL RETURN TRUST, IN EXCESS OF THE DISTRIBUTION AMOUNT AS TO ANY OR ALL TRUST ASSETS IF THE DISTRIBUTION IS NECESSARY TO PRESERVE A TAX BENEFIT; OR

(V) CHANGE OR DIRECT ANY ADMINISTRATIVE PROCEDURE AS THE COURT DETERMINES IS NECESSARY OR HELPFUL FOR THE PROPER FUNCTIONING OF THE TOTAL RETURN TRUST.

(b) NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO LIMIT THE EQUITABLE JURISDICTION OF THE COURT TO GRANT OTHER RELIEF AS THE COURT DEEMS PROPER.

(8) **Restrictions.** (a) THE DISTRIBUTION AMOUNT MAY NOT BE LESS THAN THE NET INCOME OF THE TRUST, DETERMINED WITHOUT REGARD TO THE PROVISIONS OF THIS SECTION, EITHER:

(I) FOR A TRUST FOR WHICH AN ESTATE TAX OR A GIFT TAX MARITAL DEDUCTION WAS CLAIMED OR MAY BE CLAIMED, IN WHOLE OR IN PART, BUT ONLY DURING THE LIFETIME OF THE SPOUSE FOR WHOM THE TRUST WAS CREATED; OR

(II) FOR A TRUST THAT WAS EXEMPT, IN WHOLE OR IN PART, FROM GENERATION-SKIPPING TRANSFER TAX ON THE EFFECTIVE DATE OF THIS SECTION BY REASON OF ANY EFFECTIVE DATE OR TRANSITION RULE.

(b) CONVERSION TO A TOTAL RETURN TRUST SHALL NOT AFFECT ANY PROVISION

IN THE GOVERNING INSTRUMENT:

(I) THAT DIRECTS OR AUTHORIZES THE TRUSTEE TO DISTRIBUTE PRINCIPAL;

(II) THAT DIRECTS OR AUTHORIZES THE TRUSTEE TO DISTRIBUTE A FIXED ANNUITY OR A FIXED FRACTION OF THE VALUE OF TRUST ASSETS;

(III) THAT AUTHORIZES A BENEFICIARY TO WITHDRAW A PORTION OR ALL OF THE PRINCIPAL; OR

(IV) THAT IN ANY MANNER DIMINISHES AN AMOUNT PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE GOVERNING INSTRUMENT UNLESS BOTH INCOME AND PRINCIPAL ARE SET ASIDE.

(9) **Tax limitations.** IF A PARTICULAR TRUSTEE IS ALSO A BENEFICIARY OF THE TRUST AND CONVERSION OR FAILURE TO CONVERT WOULD ENHANCE OR DIMINISH THE BENEFICIAL INTEREST OF THAT TRUSTEE, OR IF POSSESSION OR EXERCISE OF THE CONVERSION POWER BY A PARTICULAR TRUSTEE ALONE WOULD CAUSE ANY INDIVIDUAL TO BE TREATED AS OWNER OF A PART OF THE TRUST FOR FEDERAL INCOME TAX PURPOSES OR CAUSE A PART OF THE TRUST TO BE INCLUDED IN THE GROSS ESTATE OF ANY INDIVIDUAL FOR FEDERAL ESTATE TAX PURPOSES, THEN THAT PARTICULAR TRUSTEE MAY NOT PARTICIPATE AS A TRUSTEE IN THE EXERCISE OF THE CONVERSION POWER, EXCEPT THAT:

(a) THE TRUSTEE MAY PETITION THE COURT UNDER PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION TO ORDER CONVERSION IN ACCORDANCE WITH THIS SECTION; AND

(b) A CO-TRUSTEE OR CO-TRUSTEES TO WHOM THIS SUBSECTION (9) DOES NOT APPLY MAY CONVERT THE TRUST TO A TOTAL RETURN TRUST IN ACCORDANCE WITH SUBSECTION (1) OR (2) OF THIS SECTION.

(10) **Releases.** A TRUSTEE MAY IRREVOCABLY RELEASE THE POWER GRANTED BY THIS SECTION IF THE TRUSTEE REASONABLY BELIEVES THE RELEASE IS IN THE BEST INTERESTS OF THE TRUST AND ITS BENEFICIARIES. THE RELEASE MAY BE PERSONAL TO THE RELEASING TRUSTEE OR IT MAY APPLY GENERALLY TO SOME OR ALL SUBSEQUENT TRUSTEES. THE RELEASE MAY BE FOR ANY SPECIFIED PERIOD, INCLUDING A PERIOD MEASURED BY THE LIFE OF AN INDIVIDUAL.

(11) **Remedies.** (a) A TRUSTEE WHO REASONABLY AND IN GOOD FAITH TAKES ANY ACTION OR OMTS TO TAKE ANY ACTION UNDER THIS SECTION IS NOT LIABLE TO ANY PERSON INTERESTED IN THE TRUST. AN ACT OR OMISSION BY A TRUSTEE UNDER THIS SECTION SHALL BE PRESUMED TO BE REASONABLE AND UNDERTAKEN IN GOOD FAITH UNLESS THE ACT OR OMISSION IS DETERMINED BY THE COURT TO HAVE BEEN AN ABUSE OF DISCRETION.

(b) IF A TRUSTEE REASONABLY AND IN GOOD FAITH TAKES OR OMTS TO TAKE ANY ACTION UNDER THIS SECTION AND A PERSON INTERESTED IN THE TRUST OPPOSES THE ACT OR OMISSION, THE PERSON'S EXCLUSIVE REMEDY SHALL BE TO SEEK AN ORDER OF THE COURT DIRECTING THE TRUSTEE TO:

(I) CONVERT THE TRUST TO A TOTAL RETURN TRUST;

(II) RECONVERT FROM A TOTAL RETURN TRUST;

(III) CHANGE THE DISTRIBUTION PERCENTAGE; OR

(IV) ORDER ANY ADMINISTRATIVE PROCEDURES THE COURT DETERMINES ARE NECESSARY OR HELPFUL FOR THE PROPER FUNCTIONING OF THE TRUST.

(c) A CLAIM FOR RELIEF UNDER THIS SUBSECTION (11) THAT IS NOT BARRED BY ADJUDICATION, CONSENT, OR LIMITATION, IS NEVERTHELESS BARRED AS TO ANY BENEFICIARY WHO HAS RECEIVED A STATEMENT FULLY DISCLOSING THE MATTER UNLESS A PROCEEDING TO ASSERT THE CLAIM IS COMMENCED WITHIN SIX MONTHS AFTER RECEIPT OF THE STATEMENT. A BENEFICIARY IS DEEMED TO HAVE RECEIVED A STATEMENT IF IT IS RECEIVED BY THE BENEFICIARY OR THE BENEFICIARY'S REPRESENTATIVE IN A MANNER DESCRIBED IN SECTION 15-10-403 OR 15-1-405.

(12) **No duty.** A TRUSTEE HAS NO DUTY TO INFORM A BENEFICIARY ABOUT THE AVAILABILITY AND PROVISIONS OF THIS SECTION. A TRUSTEE HAS NO DUTY TO REVIEW THE TRUST TO DETERMINE WHETHER ANY ACTION SHOULD BE TAKEN UNDER THIS SECTION UNLESS THE TRUSTEE IS REQUESTED IN WRITING BY A QUALIFIED BENEFICIARY TO DO SO.

(13) **Application.** (a) THIS SECTION SHALL APPLY TO TRUSTS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION AND TO TRUSTS CREATED ON OR AFTER THAT DATE.

(b) THIS SECTION SHALL BE CONSTRUED TO APPLY TO THE ADMINISTRATION OF A TRUST THAT IS ADMINISTERED IN COLORADO UNDER COLORADO LAW OR THAT IS GOVERNED BY COLORADO LAW WITH RESPECT TO THE MEANING AND EFFECT OF ITS TERMS UNLESS:

(I) THE TRUST IS A TRUST DESCRIBED IN THE "INTERNAL REVENUE CODE OF 1986", SECTION 170 (f) (2) (B), 664 (d), 1361 (d), 2702 (a) (3), OR 2702 (b);

(II) THE GOVERNING INSTRUMENT EXPRESSLY PROHIBITS THE USE OF THIS SECTION BY SPECIFIC REFERENCE TO ONE OR MORE PROVISIONS OF THIS PART 4;

(III) THE TERMS OF A TRUST IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION INCORPORATE PROVISIONS THAT OPERATE AS A TOTAL RETURN TRUST. THE TRUSTEE OR A BENEFICIARY OF SUCH A TRUST MAY PROCEED UNDER SECTION 15-1-405 TO ADOPT PROVISIONS IN THIS SECTION THAT DO NOT CONTRADICT PROVISIONS IN THE GOVERNING INSTRUMENT.

SECTION 4. 15-14-204 (5), Colorado Revised Statutes, is amended to read:

15-14-204. Judicial appointment of guardian - conditions for appointment.

(5) If the court finds that following the procedures of this part 2 will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the emergency guardian's authority may not exceed ~~thirty~~ SIXTY days and the emergency guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a

hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained twelve years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the emergency guardian is appointed without notice, notice of the appointment must be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.

SECTION 5. 15-15-301 (2) and (3), Colorado Revised Statutes, are amended to read:

15-15-301. Definitions. In this part 3:

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account, INCLUDING BUT NOT LIMITED TO AN ACCOUNT HELD ON THE BOOKS OF THE REGISTERING ENTITY, showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker, BANK, OR TRUST COMPANY maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

SECTION 6. 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 22, 2003