

CHAPTER 135

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 93-222

BY SENATOR Ament;
also REPRESENTATIVES Foster, Dyer, Fleming, Kaufman, Reeser, Sullivan, and Tucker.**AN ACT****CONCERNING THE CONSTRUCTION OF WILLS CONTAINING FORMULA MARITAL CLAUSES.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. Part 6 of article 11 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

15-11-614. Construction of wills containing formula marital clauses. (1) IF A DECEDENT DIES LEAVING A WILL THAT WAS EXECUTED OR A TRUST THAT WAS CREATED BEFORE SEPTEMBER 12, 1981, WHICH WILL OR TRUST CONTAINS A FORMULA EXPRESSLY PROVIDING THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE THE MAXIMUM AMOUNT OF PROPERTY QUALIFYING FOR THE MARITAL DEDUCTION ALLOWABLE BY FEDERAL LAW, SUCH FORMULA PROVISION SHALL BE CONSTRUED AS REFERRING TO THE AMOUNT OF PROPERTY WHICH, AFTER UTILIZATION OF THE CREDITS AVAILABLE TO THE DECEDENT'S ESTATE PRODUCES THE LEAST POSSIBLE FEDERAL ESTATE TAX, IS ELIGIBLE FOR THE MARITAL DEDUCTION AS ALLOWED UNDER THE INTERNAL REVENUE CODE AS AMENDED BY SECTION 403 (a) OF THE FEDERAL "ECONOMIC RECOVERY TAX ACT OF 1981", P. L. No. 97-34, IN EFFECT AT THE TIME OF THE DECEDENT'S DEATH; EXCEPT THAT SUCH CONSTRUCTION SHALL NOT BE MADE IF ITS EFFECT IS TO REDUCE THE AMOUNT OF PROPERTY PASSING TO THE SURVIVING SPOUSE OR A QUALIFYING TRUST. SUCH CONSTRUCTION SHALL ONLY BE MADE IF THE FOLLOWING REQUIREMENTS ARE MET:

(a) THE DECEDENT DIED AFTER DECEMBER 31, 1988;

(b) THE FORMULA REFERRED TO IN THIS SUBSECTION (1) WAS NOT AMENDED TO REFER SPECIFICALLY TO AN UNLIMITED MARITAL DEDUCTION UNDER FEDERAL LAW AT ANY TIME AFTER SEPTEMBER 12, 1981, AND BEFORE THE DEATH OF THE DECEDENT;

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

(c) THE WILL OR TRUST CONTAINS A DEVISE TO, OR IS IN TRUST FOR THE BENEFIT OF, THE DECEDENT'S SPOUSE WHICH QUALIFIES FOR A MARITAL DEDUCTION PURSUANT TO SECTION 2056 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2056, AS AMENDED;

(d) THERE IS NO FINDING BY THE COURT HAVING JURISDICTION OVER THE DECEDENT'S ESTATE THAT THE DECEDENT INTENDED TO REFER TO THE MAXIMUM MARITAL DEDUCTION OF THE INTERNAL REVENUE CODE IN EFFECT AT THE TIME THAT THE WILL OR TRUST WAS DRAFTED; AND

(e) ALL DISTRIBUTIONS IN SATISFACTION OF THE SURVIVING SPOUSE'S SHARE OF THE ESTATE OR THE QUALIFYING TRUST FOR THE SURVIVING SPOUSE HAVE NOT BEEN COMPLETED.

(2) FOR THE PURPOSES OF THIS SECTION, "QUALIFYING TRUST" MEANS A TRUST FOR THE BENEFIT OF THE DECEDENT'S SPOUSE WHICH QUALIFIES FOR THE MARITAL DEDUCTION ALLOWED UNDER SECTION 2056 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2056, AS AMENDED.

SECTION 2. 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: April 21, 1993