

CHAPTER 149

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 93-64

BY SENATORS Blickensderfer and Feeley;
also REPRESENTATIVES Kaufman and George.**AN ACT**

CONCERNING THE COLORADO PROBATE CODE, AND, IN CONNECTION THEREWITH, PERMITTING THE CONSOLIDATION OF SEPARATE TRUSTS, THE DIVISION OF A SINGLE TRUST INTO SEPARATE TRUSTS, THE APPOINTMENT OF A PERSONAL REPRESENTATIVE IN AN INFORMAL HEARING, AND THE APPOINTMENT OF A GUARDIAN NOMINATED BY AN INCAPACITATED PERSON IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Article 16 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 4
CONSOLIDATION AND DIVISION OF TRUSTS

15-16-401. Authority to consolidate and divide trusts. (1) UPON PETITION BY A TRUSTEE, BENEFICIARY, OR ANY OTHER INTERESTED PERSON, THE COURT MAY, FOR GOOD CAUSE SHOWN, AFTER A HEARING AND UPON NOTICE PURSUANT TO SECTION 15-10-401 TO THOSE INTERESTED PERSONS AS THE COURT MAY DIRECT, DIVIDE A TRUST INTO TWO OR MORE SEPARATE TRUSTS, OR MAY CONSOLIDATE TWO OR MORE SEPARATE TRUSTS INTO A SINGLE TRUST, UPON SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, IF THE COURT FINDS THAT SUCH CONSOLIDATION OR DIVISION:

(a) IS NOT INCONSISTENT WITH THE INTENT OF THE SETTLOR OR TESTATOR WITH REGARD TO ANY TRUST TO BE CONSOLIDATED OR DIVIDED;

(b) WOULD FACILITATE ADMINISTRATION OF EACH TRUST; AND

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) WOULD BE IN THE BEST INTEREST OF ALL THE BENEFICIARIES OF EACH TRUST AND NOT MATERIALLY IMPAIR THEIR RESPECTIVE INTERESTS.

(2) SUBSECTION (1) OF THIS SECTION SHALL APPLY TO ALL TRUSTS, WHENEVER CREATED, WHETHER INTER VIVOS OR TESTAMENTARY, WHETHER CREATED BY THE SAME OR DIFFERENT INSTRUMENTS OR BY THE SAME OR DIFFERENT PERSONS, AND REGARDLESS OF WHERE CREATED OR ADMINISTERED.

(3) SUBSECTION (1) OF THIS SECTION SHALL NOT LIMIT THE RIGHT OF A TRUSTEE ACTING IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE GOVERNING INSTRUMENTS TO DIVIDE OR CONSOLIDATE TRUSTS.

SECTION 2. 15-12-203 (2) (b) and (5), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

15-12-203. Priority among persons seeking appointment as personal representative. (2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (1) of this section apply, except that:

(b) In case of objection to appointment of a ~~person~~ PERSON, other than one whose priority is determined by ~~will~~ WILL, by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

(5) ~~Appointment of one who does not have priority, pursuant to this section, may be made only in formal proceedings.~~ A PERSON WITH PRIORITY, A PERSON WHO IS NOMINATED PURSUANT TO SUBSECTION (3) OF THIS SECTION, OR A PERSON WHOSE ENTITLEMENT TO APPOINTMENT RESULTS FROM RENUNCIATION BY ANOTHER PERSON WITH PRIORITY MAY BE MADE IN AN INFORMAL PROCEEDING. Before ~~appointing~~ FORMAL APPOINTMENT OF one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

SECTION 3. 15-14-311 (2) (a) and (2) (b), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

15-14-311. Who may be guardian - priorities. (2) Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:

(a) ~~The spouse of the incapacitated person;~~ A PERSON NOMINATED BY THE INCAPACITATED PERSON IN WRITING PRIOR TO SUCH PERSON'S INCAPACITY;

(b) ~~A person nominated by the incapacitated person in writing prior to his incapacity;~~ THE SPOUSE OF THE INCAPACITATED PERSON;

SECTION 4. Effective date. This act shall take effect July 1, 1993.

SECTION 5. 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 26, 1993