

CHAPTER 235

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 93-1333

BY REPRESENTATIVES Kaufman and George;
also SENATOR Mares.

AN ACT

CONCERNING SPECIAL PROCEEDINGS UNDER THE "COLORADO PROBATE CODE" FOR DETERMINING INTERESTS RELATED TO PROPERTY.

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

SECTION 1. Part 13 of article 12 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**PART 13
DETERMINATION OF HEIRS, DEVISEES,
AND PROPERTY INTERESTS BY SPECIAL PROCEEDING**

15-12-1301. Definitions. AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "INTERESTED PERSON" MEANS AN ALLEGED HEIR OR DEVISEE OF A DECEDENT OR ANY PERSON CLAIMING AN INTEREST DERIVED FROM AN ALLEGED HEIR OR DEVISEE IN ANY PROPERTY THE DESCENT OR SUCCESSION OF WHICH IS TO BE DETERMINED PURSUANT TO THIS PART 13.

(2) "OWNER BY INHERITANCE" MEANS A PERSON IN WHOM ALL OR ANY PART OF THE DECEDENT'S INTEREST IN THE PROPERTY VESTS AS A RESULT OF INTESTATE OR TESTATE SUCCESSION.

(3) "PROPERTY" MEANS THE PROPERTY INTEREST OWNED BY THE DECEDENT AT THE TIME OF DEATH WITHOUT REGARD TO OTHER PROPERTY INTERESTS WHICH MAY BE OWNED BY OTHER PERSONS IN THE SAME PARCEL OF REAL PROPERTY OR ITEM OF PERSONAL PROPERTY.

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

15-12-1302. Petition to determine heirship - devisees - interests in property.

(1) WHEN ANY PERSON DIES LEAVING AN INTEREST IN REAL PROPERTY IN THIS STATE, OR DIES DOMICILED IN THIS STATE LEAVING AN INTEREST IN PERSONAL PROPERTY WHEREVER LOCATED, ANY INTERESTED PERSON MAY PETITION THE COURT HAVING JURISDICTION OVER PROBATE MATTERS IN AND FOR THE COUNTY IN WHICH THE DECEDENT WAS DOMICILED OR RESIDED AT THE TIME OF DEATH, OR THE COUNTY IN WHICH THE PROPERTY OR SOME PORTION THEREOF IS SITUATED, TO DETERMINE THE HEIRS OF THE DECEDENT AND THE DESCENT OF ALL OR ANY PORTION OF INTESTATE PROPERTY, OR TO DETERMINE THE DEVISEES OF THE DECEDENT UNDER A WILL PREVIOUSLY ADMITTED TO PROBATE IN THIS OR ANY OTHER STATE AND THE SUCCESSION OF TESTATE PROPERTY.

(2) THE PETITION SHALL BE IN WRITING, SIGNED, AND VERIFIED AND SHALL INCLUDE THE FOLLOWING:

(a) A STATEMENT THAT ONE YEAR HAS PASSED SINCE THE DATE OF DEATH OF THE DECEDENT;

(b) A STATEMENT THAT ADMINISTRATION OF THE DECEDENT'S ESTATE HAS NOT BEEN GRANTED IN THIS STATE, OR IF ADMINISTRATION HAS BEEN GRANTED IN THIS STATE THE ESTATE HAS BEEN SETTLED WITHOUT DETERMINATION OF THE DESCENT OR SUCCESSION OF ALL OR A PORTION OF THE DECEDENT'S PROPERTY;

(c) A STATEMENT CONTAINING THE NAME, AGE, AND DISABILITY OF ANY INTERESTED PERSON WHO IS KNOWN TO THE PETITIONER TO BE A MINOR OR UNDER LEGAL DISABILITY;

(d) A STATEMENT OF THE TIME AND PLACE OF DEATH OF THE DECEDENT;

(e) A STATEMENT OF THE LAST PLACE OF DOMICILE OR RESIDENCE OF THE DECEDENT;

(f) A STATEMENT OF WHETHER THE DECEDENT DIED INTESTATE OR TESTATE AND, IF TESTATE, THE NAME OF THE COURT WHICH ADMITTED THE DECEDENT'S WILL TO PROBATE AND A CERTIFIED COPY OF THE WILL AND THE ORDER ADMITTING THE WILL TO PROBATE;

(g) THE NAMES, ADDRESSES, AND RELATIONSHIP OF ALL INTERESTED PERSONS, OWNERS BY INHERITANCE, AND ALL THE HEIRS AND DEVISEES ENTITLED TO ANY PART OF THE PROPERTY;

(h) A DESCRIPTION OF THE DECEDENT'S INTEREST IN THE PROPERTY THE DESCENT OR SUCCESSION OF WHICH IS TO BE DETERMINED THROUGH THE PETITION; AND

(i) THE NAME AND ADDRESS OF THE PETITIONER AND A STATEMENT OF THE PETITIONER'S INTEREST IN THE PROPERTY.

(3) THE PETITION MAY INCLUDE MORE THAN ONE DECEDENT IF RELATED BY SUCCESSIVE INTERESTS IN THE PROPERTY.

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

15-12-1303. Hearing - notice - service. (1) THE PETITIONER SHALL PREPARE A NOTICE OF THE FILING OF THE PETITION WHICH NOTICE SHALL INCLUDE THE NAME OF THE DECEDENT, A DESCRIPTION OF THE PROPERTY SET FORTH IN THE PETITION, THE NAME OF EACH INTERESTED PERSON, AND THE NAME OF EACH OWNER BY INHERITANCE. THE NOTICE MAY BE SERVED BY PERSONAL SERVICE OR BY MAILING A COPY THEREOF, POSTAGE PREPAID, ADDRESSED TO THE PERSON AT THE ADDRESS GIVEN AND SHALL BE DIRECTED TO THE INTERESTED PERSONS AND OWNERS BY INHERITANCE SET FORTH IN THE PETITION. THE NOTICE SHALL DIRECT ALL INTERESTED PERSONS AND OWNERS BY INHERITANCE TO APPEAR AND ANSWER THE PETITION WITHIN TWENTY DAYS AFTER SERVICE OF THE NOTICE IF PERSONAL SERVICE OCCURS WITHIN THE STATE OF COLORADO OR THIRTY DAYS AFTER SERVICE IF PERSONAL SERVICE OCCURS OUTSIDE THE STATE OF COLORADO OR SERVICE IS HAD BY MAIL OR BY PUBLICATION. THE NOTICE SHALL FURTHER PROVIDE THAT ALL OBJECTIONS TO THE PETITION MUST BE FILED IN WRITING WITH THE COURT AND THE FILING FEE PAID WITHIN THE TIME REQUIRED FOR ANSWERING THE PETITION AND THAT THE HEARING SHALL BE LIMITED TO THE OBJECTIONS TIMELY FILED AND THE PARTIES ANSWERING THE PETITION IN A TIMELY MANNER. THE NOTICE SHALL SET FORTH THE TIME AND PLACE OF THE HEARING ON THE PETITION.

(2) THE NOTICE SHALL BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS, AS DEFINED IN SECTION 15-10-401 (4), IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE PROCEEDING IS FILED, OR IF THERE IS NO SUCH NEWSPAPER IN SUCH COUNTY, THEN IN SOME NEWSPAPER OF GENERAL CIRCULATION IN AN ADJOINING COLORADO COUNTY. SERVICE BY PUBLICATION SHALL BE COMPLETE ON THE LAST DAY OF PUBLICATION. PRIOR TO THE HEARING THE PETITIONER SHALL FILE WITH THE COURT THE PUBLISHER'S AFFIDAVIT OF PUBLICATION STATING THE DATES OF PUBLICATION. THE PETITION ITSELF NEED NOT BE PUBLISHED.

(3) THE NOTICE, IN ADDITION TO PUBLICATION, SHALL BE SERVED ON EACH PERSON NAMED IN THE PETITION WHOSE ADDRESS IS SHOWN ON THE PETITION AND WHO DOES NOT JOIN IN THE PETITION, OR DOES NOT CONSENT TO THE GRANTING OF THE PETITION OR ENTER A PERSONAL APPEARANCE, OR DOES NOT ADMIT, ACCEPT, OR WAIVE SERVICE. IF SERVICE IS BY PERSONAL SERVICE WITHIN THE STATE, SERVICE MUST BE COMPLETED AT LEAST TWENTY DAYS PRIOR TO THE HEARING. IF SERVICE IS BY PERSONAL SERVICE OUTSIDE THE STATE OR BY MAIL WITHIN OR OUTSIDE THE STATE OR BY PUBLICATION, SERVICE MUST BE COMPLETED AT LEAST THIRTY DAYS PRIOR TO THE HEARING. THE PETITIONER SHALL FILE A RETURN OF SERVICE OR SHALL MAKE AND FILE A CERTIFICATE OF MAILING, STATING THE NAME OF THE PERSON TO WHOM THE COPY WAS MAILED AND THE ADDRESS TO WHICH MAILED, THAT IT WAS MAILED, POSTAGE PREPAID, AND THE DATE OF MAILING. A COPY OF THE PETITION SHALL BE SERVED WITH THE NOTICE.

15-12-1304. Appearance. ANY INTERESTED PERSON OR OWNER BY INHERITANCE MAY APPEAR AND ANSWER SUCH PETITION AND ESTABLISH ANY PROPER DEFENSE TO THE PETITION OR ANY PART THEREOF, OR ASSERT OR PROTECT ANY INTEREST THE PERSON MAY CLAIM, AT ANY TIME WITHIN THE TIME FOR FILING AN ANSWER AS SET FORTH IN THE NOTICE. AFTER THE EXPIRATION OF THE TIME PERIODS ALLOWED FOR APPEARANCE AND ANSWER, THE COURT SHALL PROCEED WITH THE HEARING ON THE PETITION. ANY PERSON WHO OBJECTS TO THE RELIEF PRAYED FOR IN THE PETITION

MUST PRESENT ALL SUCH OBJECTIONS IN WRITING WITHIN THE TIME PERIOD FOR FILING AN ANSWER; EXCEPT THAT THE COURT, FOR GOOD CAUSE, MAY ALLOW AN ENTRY OF APPEARANCE BY ANY INTERESTED PERSON AT ANY TIME PRIOR TO THE ENTRY OF THE COURT'S JUDGMENT AND DECREE.

15-12-1305. Judgment. THE COURT SHALL DETERMINE THE STANDING OF THE PETITIONER TO BRING THE ACTION, THE HEIRS AND DEVISEES OF THE DECEDENT, THE OWNERS BY INHERITANCE OF THE PROPERTY, A DESCRIPTION OF THE PROPERTY, AND ANY OTHER PERTINENT FACTS, AND SHALL ENTER JUDGMENT ON THE PETITION. IF AFTER PROPER SERVICE PURSUANT TO SECTION 15-12-1303 THERE ARE NO OBJECTIONS OR ANSWERS FILED TO THE PETITION, THEN THE COURT MAY ENTER A DECREE PURSUANT TO THIS PART 13 WITHOUT A HEARING.

15-12-1306. Decree - conclusive and when - reopening. A DECREE ENTERED PURSUANT TO THIS PART 13 SHALL BE CONCLUSIVE AS TO THE RIGHTS OF HEIRS OR DEVISEES IN THE PROPERTY DESCRIBED IN THE ORDER FROM THE DATE OF ITS ENTRY. ANY PERSON CLAIMING TO BE AN HEIR OR DEVISEE, OR THE GRANTEE OR SUCCESSOR IN INTEREST OF AN HEIR OR DEVISEE, NOT SERVED WITH NOTICE BY PERSONAL SERVICE OR BY MAIL, AND WHO DID NOT ADMIT, ACCEPT, OR WAIVE SERVICE, OR CONSENT TO THE GRANTING OF THE PETITION OR ENTER A PERSONAL APPEARANCE, MAY PETITION TO REOPEN THE PROCEEDING AND MODIFY THE DECREE WITHIN ONE YEAR AFTER THE ENTRY THEREOF, BUT NOT THEREAFTER; EXCEPT THAT NO SUCH MODIFICATION OF THE DECREE SHALL SERVE TO IMPAIR THE RIGHTS OF ANY PERSON WHO, IN RELIANCE UPON SUCH DECREE, IN GOOD FAITH, FOR VALUE, AND WITHOUT NOTICE, PURCHASED PROPERTY OR ACQUIRED A LIEN UPON PROPERTY.

15-12-1307. Title of proceedings. ALL SUCH PROCEEDINGS SHALL BE TITLED SUBSTANTIALLY IN THE FOLLOWING FORM:

"IN THE MATTER OF THE DETERMINATION OF HEIRS OR DEVISEES OR BOTH, AND OF INTERESTS IN PROPERTY, OF (NAMES OF DECEDENTS) __, DECEASED."

15-12-1308. Proceedings under the rules of civil procedure. NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT DETERMINATION OF THE DESCENT OR THE SUCCESSION OF PROPERTY PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE OR ANY OTHER PROVISION OF THE "COLORADO PROBATE CODE".

15-12-1309. Effective date - applicability. THIS PART 13 SHALL TAKE EFFECT JULY 1, 1993, AND SHALL APPLY TO ALL PROCEEDINGS COMMENCED ON OR AFTER SAID DATE.

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: June 6, 1993