

CHAPTER 151

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 94-1216

BY REPRESENTATIVES Kaufman, Chlouber, George, and Taylor;
also SENATOR Mutzebaugh.

AN ACT

CONCERNING THE COLORADO PROBATE CODE, AND, IN CONNECTION THEREWITH, AMENDING PROVISIONS CONCERNING THE CLOSING OF DECEDENTS' ESTATES AND CONSTRUCTION OF MARITAL DEDUCTION FORMULA CLAUSES IN WILLS AND TRUSTS.

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

SECTION 1. 15-11-614 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended, and the said 15-11-614 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

15-11-614. Construction of wills and trusts containing formula marital clauses. (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.~~

(a) "AMOUNT" INCLUDES A FRACTIONAL, PECUNIARY, OR RESIDUAL AMOUNT.

(b) "OPTIMUM MARITAL DEDUCTION FORMULA" MEANS ANY FORMULA IN A WILL OR TRUST THAT PROVIDES THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE THE MAXIMUM AMOUNT OF PROPERTY THAT QUALIFIES FOR THE ESTATE TAX MARITAL DEDUCTION ALLOWABLE BY FEDERAL LAW THAT PRODUCES THE LEAST POSSIBLE OR NO FEDERAL ESTATE TAX. A FORMULA SUBJECT TO CONSTRUCTION UNDER SUBSECTION (1) OF THIS SECTION IS, AS CONSTRUED BY SUBSECTION (1) OF THIS SECTION, AN OPTIMUM MARITAL DEDUCTION FORMULA.

(c) "QUALIFYING TRUST" MEANS ANY 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

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.

(3) IN THE CASE OF AN OPTIMUM MARITAL DEDUCTION FORMULA THAT CONTAINS A GENERAL REFERENCE TO FEDERAL ESTATE TAX CREDITS OR OTHERWISE REQUIRES THE STATE DEATH TAX CREDIT TO BE TAKEN INTO ACCOUNT WITHOUT A SPECIFIC REFERENCE TO SUCH TAX CREDIT, THE DECEDENT IS PRESUMED TO HAVE INTENDED THAT SUCH TAX CREDIT BE TAKEN INTO ACCOUNT TO REDUCE THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE, ONLY TO THE EXTENT THAT THE OVERALL ESTATE TAX BURDEN ON THE DECEDENT'S ESTATE IS NOT THEREBY INCREASED. HOWEVER, IF A PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE DECEDENT INTENDED TO INCREASE THE OVERALL ESTATE TAX BURDEN ON THE ESTATE, THE STATE DEATH TAX CREDIT SHALL BE TAKEN INTO ACCOUNT FULLY FOR THE PURPOSES OF REDUCING THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE. ANY FORMULA SUBJECT TO CONSTRUCTION UNDER SUBSECTION (1) OF THIS SECTION IS SUBJECT TO THE PRESUMPTION SET FORTH IN THIS SUBSECTION (3).

(4) IN THE CASE OF AN OPTIMUM MARITAL DEDUCTION FORMULA THAT SPECIFICALLY REQUIRES THE STATE DEATH TAX CREDIT TO BE TAKEN INTO ACCOUNT AND DOES NOT CONTAIN ANY WORDS LIMITING THE EXTENT TO WHICH SUCH CREDIT SHALL BE TAKEN INTO ACCOUNT, THE DECEDENT IS PRESUMED TO HAVE INTENDED THAT SUCH CREDIT BE TAKEN INTO ACCOUNT FULLY FOR THE PURPOSE OF REDUCING THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE, NOTWITHSTANDING ANY RESULTING INCREASE IN THE OVERALL ESTATE TAX BURDEN ON THE ESTATE.

(5) SUBSECTIONS (3) AND (4) OF THIS SECTION APPLY WITH RESPECT TO ANY DECEDENT WHO DIES AFTER DECEMBER 31, 1988, UNLESS ALL DISTRIBUTIONS IN SATISFACTION OF THE SURVIVING SPOUSE'S SHARE OF THE ESTATE OR THE QUALIFYING TRUST FOR THE SURVIVING SPOUSE ARE COMPLETED BY JULY 1, 1994.

SECTION 2. 15-11-713 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended by Senate Bill 94-43, enacted at the Second Regular Session of the Fifty-ninth General Assembly, is amended, and the said 15-11-713 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

15-11-713. Construction of wills and trusts containing formula marital clauses. (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.~~

(a) "AMOUNT" INCLUDES A FRACTIONAL, PECUNIARY, OR RESIDUAL AMOUNT.

(b) "OPTIMUM MARITAL DEDUCTION FORMULA" MEANS ANY FORMULA IN A WILL OR TRUST THAT PROVIDES THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE THE MAXIMUM AMOUNT OF PROPERTY THAT QUALIFIES FOR THE ESTATE TAX MARITAL DEDUCTION ALLOWABLE BY FEDERAL LAW THAT PRODUCES THE LEAST POSSIBLE OR NO FEDERAL ESTATE TAX. A FORMULA SUBJECT TO CONSTRUCTION UNDER SUBSECTION (1) OF THIS SECTION IS, AS CONSTRUED BY SUBSECTION (1) OF

THIS SECTION, AN OPTIMUM MARITAL DEDUCTION FORMULA.

(c) "QUALIFYING TRUST" MEANS ANY 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.

(3) IN THE CASE OF AN OPTIMUM MARITAL DEDUCTION FORMULA THAT CONTAINS A GENERAL REFERENCE TO FEDERAL ESTATE TAX CREDITS OR OTHERWISE REQUIRES THE STATE DEATH TAX CREDIT TO BE TAKEN INTO ACCOUNT WITHOUT A SPECIFIC REFERENCE TO SUCH TAX CREDIT, THE DECEDENT IS PRESUMED TO HAVE INTENDED THAT SUCH TAX CREDIT BE TAKEN INTO ACCOUNT TO REDUCE THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE, ONLY TO THE EXTENT THAT THE OVERALL ESTATE TAX BURDEN ON THE DECEDENT'S ESTATE IS NOT THEREBY INCREASED. HOWEVER, IF A PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE DECEDENT INTENDED TO INCREASE THE OVERALL ESTATE TAX BURDEN ON THE ESTATE, THE STATE DEATH TAX CREDIT SHALL BE TAKEN INTO ACCOUNT FULLY FOR THE PURPOSES OF REDUCING THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE. ANY FORMULA SUBJECT TO CONSTRUCTION UNDER SUBSECTION (1) OF THIS SECTION IS SUBJECT TO THE PRESUMPTION SET FORTH IN THIS SUBSECTION (3).

(4) IN THE CASE OF AN OPTIMUM MARITAL DEDUCTION FORMULA THAT SPECIFICALLY REQUIRES THE STATE DEATH TAX CREDIT TO BE TAKEN INTO ACCOUNT AND DOES NOT CONTAIN ANY WORDS LIMITING THE EXTENT TO WHICH SUCH CREDIT SHALL BE TAKEN INTO ACCOUNT, THE DECEDENT IS PRESUMED TO HAVE INTENDED THAT SUCH CREDIT BE TAKEN INTO ACCOUNT FULLY FOR THE PURPOSE OF REDUCING THE AMOUNT THAT THE DECEDENT'S SPOUSE OR A QUALIFYING TRUST IS TO RECEIVE, NOTWITHSTANDING ANY RESULTING INCREASE IN THE OVERALL ESTATE TAX BURDEN ON THE ESTATE.

(5) SUBSECTIONS (3) AND (4) OF THIS SECTION APPLY WITH RESPECT TO ANY DECEDENT WHO DIES AFTER DECEMBER 31, 1988, UNLESS ALL DISTRIBUTIONS IN SATISFACTION OF THE SURVIVING SPOUSE'S SHARE OF THE ESTATE OR THE QUALIFYING TRUST FOR THE SURVIVING SPOUSE ARE COMPLETED BY JULY 1, 1994.

SECTION 3. The introductory portion to 15-12-1003 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-12-1003. Closing estates - by sworn statement of personal representative.

(1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than six months after the date of original appointment of a general personal representative for the estate OR ONE YEAR AFTER THE DATE OF DEATH, WHICHEVER OCCURS FIRST, a verified statement stating that he OR SHE, or a prior personal representative whom he OR SHE has succeeded, has or have:

SECTION 4. Effective date. Section 2 of this act shall take effect July 1, 1995, but only if Senate Bill 94-43 becomes law.

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 20, 1994