

CHAPTER 178

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 94-043

BY SENATORS Mares and Meiklejohn;
also REPRESENTATIVE Kaufman.

AN ACT

CONCERNING THE "COLORADO PROBATE CODE", AND, IN CONNECTION THEREWITH, AMENDING ARTICLE 10 OF TITLE 15, COLORADO REVISED STATUTES, AND ENACTING A REVISED ARTICLE 11 OF THE "COLORADO PROBATE CODE" RELATING TO INTESTACY, WILLS, AND DONATIVE TRANSFERS.

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

SECTION 1. 15-10-107, Colorado Revised Statutes, 1987 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-10-107. Evidence of death or status. (1) IN ADDITION TO THE RULES OF EVIDENCE IN COURTS OF GENERAL JURISDICTION, THE FOLLOWING RULES RELATING TO A DETERMINATION OF DEATH AND STATUS APPLY:

(a) DEATH OCCURS WHEN AN INDIVIDUAL IS DETERMINED DEAD UNDER SECTION 12-36-136, C.R.S.

(b) AN AUTHENTICATED COPY OF A DEATH CERTIFICATE PURPORTING TO BE ISSUED BY AN OFFICIAL OR AGENCY OF THE PLACE WHERE THE DEATH PURPORTEDLY OCCURRED IS PRIMA FACIE EVIDENCE OF THE FACT, PLACE, DATE, AND TIME OF DEATH AND THE IDENTITY OF THE DECEDENT.

(c) AN AUTHENTICATED COPY OF ANY RECORD OR REPORT OF A GOVERNMENTAL AGENCY, DOMESTIC OR FOREIGN, THAT AN INDIVIDUAL IS MISSING, DETAINED, DEAD, OR ALIVE IS PRIMA FACIE EVIDENCE OF THE STATUS AND OF THE DATES, CIRCUMSTANCES, AND PLACES DISCLOSED BY THE RECORD OR REPORT.

(d) IN THE ABSENCE OF PRIMA FACIE EVIDENCE OF DEATH UNDER PARAGRAPH

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

(b) OR (c) OF THIS SUBSECTION (1), THE FACT OF DEATH SHALL BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, INCLUDING CIRCUMSTANTIAL EVIDENCE.

(e) AN INDIVIDUAL WHOSE DEATH IS NOT ESTABLISHED UNDER PARAGRAPHS (a) TO (d) OF THIS SUBSECTION (1) WHO IS ABSENT FOR A CONTINUOUS PERIOD OF FIVE YEARS, DURING WHICH HE OR SHE HAS NOT BEEN HEARD FROM, AND WHOSE ABSENCE IS NOT SATISFACTORILY EXPLAINED AFTER DILIGENT SEARCH OR INQUIRY, IS PRESUMED TO BE DEAD. HIS OR HER DEATH IS PRESUMED TO HAVE OCCURRED AT THE END OF THE PERIOD UNLESS THERE IS SUFFICIENT EVIDENCE FOR DETERMINING THAT DEATH OCCURRED EARLIER.

(f) IN THE ABSENCE OF EVIDENCE DISPUTING THE TIME OF DEATH STATED ON A DOCUMENT DESCRIBED IN PARAGRAPH (b) OR (c) OF THIS SUBSECTION (1), A DOCUMENT DESCRIBED IN PARAGRAPH (b) OR (c) OF THIS SUBSECTION (1) THAT STATES A TIME OF DEATH ONE HUNDRED TWENTY HOURS OR MORE AFTER THE TIME OF DEATH OF ANOTHER INDIVIDUAL, HOWEVER THE TIME OF DEATH OF THE OTHER INDIVIDUAL IS DETERMINED, ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE INDIVIDUAL SURVIVED THE OTHER INDIVIDUAL BY ONE HUNDRED TWENTY HOURS.

(2) IN THE EVENT THAT THE FACT OF DEATH OF AN ABSENTEE IS ENTERED IN ANY ACTION BROUGHT BEFORE A FINDING OF DEATH IS ENTERED IN A FORMAL TESTACY PROCEEDING UNDER THIS CODE, THE FINDING RELATING TO DEATH OF THE ABSENTEE IN SUCH ACTION SHALL NOT BE DETERMINATIVE OF ANY FINDING TO BE MADE IN ANY PROCEEDING UNDER THIS CODE.

SECTION 2. 15-10-201, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-10-201. General definitions. SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN THE SUBSEQUENT ARTICLES THAT ARE APPLICABLE TO SPECIFIC ARTICLES, PARTS, OR SECTIONS, AND UNLESS THE CONTEXT OTHERWISE REQUIRES, IN THIS CODE:

(1) "AGENT" MEANS AN ATTORNEY IN FACT UNDER A DURABLE OR NONDURABLE POWER OF ATTORNEY, AN INDIVIDUAL AUTHORIZED TO MAKE DECISIONS CONCERNING ANOTHER'S HEALTH CARE, AND AN INDIVIDUAL AUTHORIZED TO MAKE DECISIONS FOR ANOTHER UNDER THE "COLORADO PATIENT AUTONOMY ACT".

(2) "APPLICATION" MEANS A WRITTEN REQUEST TO THE REGISTRAR FOR AN ORDER OF INFORMAL PROBATE OR APPOINTMENT UNDER PART 3 OF ARTICLE 12 OF THIS TITLE.

(3) "AUGMENTED ESTATE" MEANS THE ESTATE DESCRIBED IN SECTION 15-11-202.

(4) "AUTHENTICATED" MEANS CERTIFIED, WHEN USED IN REFERENCE TO COPIES OF OFFICIAL DOCUMENTS, AND ONLY CERTIFICATION BY THE OFFICIAL HAVING CUSTODY IS REQUIRED.

(5) "BENEFICIARY", AS IT RELATES TO A TRUST BENEFICIARY, INCLUDES A PERSON WHO HAS ANY PRESENT OR FUTURE INTEREST, VESTED OR CONTINGENT, AND ALSO INCLUDES THE OWNER OF AN INTEREST BY ASSIGNMENT OR OTHER TRANSFER; AS IT RELATES TO A CHARITABLE TRUST, INCLUDES ANY PERSON ENTITLED TO ENFORCE THE TRUST; AS IT RELATES TO A "BENEFICIARY OF A BENEFICIARY DESIGNATION", INCLUDES A BENEFICIARY OF AN INSURANCE OR ANNUITY POLICY, OF AN ACCOUNT WITH PAYMENT ON DEATH (POD) DESIGNATION, OF A SECURITY REGISTERED IN BENEFICIARY FORM (TOD), OR OF A PENSION, PROFIT SHARING, RETIREMENT, OR SIMILAR BENEFIT PLAN, OR OTHER NONPROBATE TRANSFER AT DEATH; AND, AS IT RELATES TO A "BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT", INCLUDES A GRANTEE OF A DEED, A DEVISEE, A TRUST BENEFICIARY, A BENEFICIARY OF A BENEFICIARY DESIGNATION, A DONEE, APPOINTEE, OR TAKER IN DEFAULT OF A POWER OF APPOINTMENT, AND A PERSON IN WHOSE FAVOR A POWER OF ATTORNEY OR A POWER HELD IN ANY INDIVIDUAL, FIDUCIARY, OR REPRESENTATIVE CAPACITY IS EXERCISED.

(6) "BENEFICIARY DESIGNATION" MEANS A GOVERNING INSTRUMENT NAMING A BENEFICIARY OF AN INSURANCE OR ANNUITY POLICY, OF AN ACCOUNT WITH POD DESIGNATION, OF A SECURITY REGISTERED IN THE BENEFICIARY FORM (TOD), OR OF A PENSION, PROFIT SHARING, RETIREMENT, OR SIMILAR BENEFIT PLAN, OR OTHER NONPROBATE TRANSFER AT DEATH.

(7) "CHILD" INCLUDES AN INDIVIDUAL ENTITLED TO TAKE AS A CHILD UNDER THIS CODE BY INTTESTATE SUCCESSION FROM THE PARENT WHOSE RELATIONSHIP IS INVOLVED AND EXCLUDES A PERSON WHO IS ONLY A STEPCHILD, A FOSTER CHILD, A GRANDCHILD, OR ANY MORE REMOTE DESCENDANT.

(8) "CLAIMS", IN RESPECT TO THE ESTATES OF DECEDENTS AND PROTECTED PERSONS, INCLUDES LIABILITIES OF THE DECEDENT OR PROTECTED PERSON WHETHER ARISING IN CONTRACT, IN TORT, OR OTHERWISE, AND LIABILITIES OF THE ESTATE WHICH ARISE AT OR AFTER THE DEATH OF THE DECEDENT OR AFTER THE APPOINTMENT OF A CONSERVATOR, INCLUDING FUNERAL EXPENSES AND EXPENSES OF ADMINISTRATION. THE TERM DOES NOT INCLUDE ESTATE OR INHERITANCE TAXES, OR TAXES DUE THE STATE OF COLORADO, OR DEMANDS OR DISPUTES REGARDING TITLE OF A DECEDENT OR PROTECTED PERSON TO SPECIFIC ASSETS ALLEGED TO BE INCLUDED IN THE ESTATE.

(9) "CONSERVATOR" MEANS A PERSON WHO IS APPOINTED BY A COURT TO MANAGE THE ESTATE OF A PROTECTED PERSON.

(10) "COURT" MEANS THE COURT OR DIVISION THEREOF HAVING JURISDICTION IN MATTERS RELATING TO THE AFFAIRS OF DECEDENTS AND PROTECTED PERSONS. THIS COURT IS THE DISTRICT COURT, EXCEPT IN THE CITY AND COUNTY OF DENVER WHERE IT IS THE PROBATE COURT.

(11) "DESCENDANT" MEANS ALL OF THE INDIVIDUAL'S DESCENDANTS OF ALL GENERATIONS, WITH THE RELATIONSHIP OF PARENT AND CHILD AT EACH GENERATION BEING DETERMINED BY THE DEFINITIONS OF CHILD AND PARENT CONTAINED IN THIS CODE.

(12) "DEVISE", WHEN USED AS A NOUN, MEANS A TESTAMENTARY DISPOSITION

OF REAL OR PERSONAL PROPERTY AND, WHEN USED AS A VERB, MEANS TO DISPOSE OF REAL OR PERSONAL PROPERTY BY WILL.

(13) "DEWISEE" MEANS A PERSON DESIGNATED IN A WILL TO RECEIVE A DEVISE. FOR THE PURPOSES OF ARTICLE 12 OF THIS TITLE, IN THE CASE OF A DEVISE TO AN EXISTING TRUST OR TRUSTEE, OR TO A TRUSTEE IN TRUST DESCRIBED BY WILL, THE TRUST OR TRUSTEE IS THE DEVISEE AND THE BENEFICIARIES ARE NOT DEVISEES.

(14) "DISABILITY" MEANS CAUSE FOR A PROTECTIVE ORDER AS DESCRIBED IN SECTION 15-14-401.

(15) "DISTRIBUTE" MEANS ANY PERSON WHO HAS RECEIVED PROPERTY OF A DECEDENT FROM HIS OR HER PERSONAL REPRESENTATIVE OTHER THAN AS A CREDITOR OR PURCHASER. A TESTAMENTARY TRUSTEE IS A DISTRIBUTE ONLY TO THE EXTENT OF DISTRIBUTED ASSETS OR INCREMENT THERETO REMAINING IN HIS OR HER HANDS. A BENEFICIARY OF A TESTAMENTARY TRUST TO WHOM THE TRUSTEE HAS DISTRIBUTED PROPERTY RECEIVED FROM A PERSONAL REPRESENTATIVE IS A DISTRIBUTE OF THE PERSONAL REPRESENTATIVE. FOR THE PURPOSES OF THIS PROVISION, "TESTAMENTARY TRUSTEE" INCLUDES A TRUSTEE TO WHOM ASSETS ARE TRANSFERRED BY WILL, TO THE EXTENT OF THE DEVISED ASSETS.

(16) "DIVORCE" INCLUDES A DISSOLUTION OF MARRIAGE, AND "ANNULMENT" INCLUDES A DECLARATION OF INVALIDITY, AS SUCH TERMS ARE USED IN THE "UNIFORM DISSOLUTION OF MARRIAGE ACT", ARTICLE 10 OF TITLE 14, C.R.S.

(17) "ESTATE" MEANS THE PROPERTY OF THE DECEDENT, TRUST, OR OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS CODE AS ORIGINALLY CONSTITUTED AND AS IT EXISTS FROM TIME TO TIME DURING ADMINISTRATION.

(18) "EXEMPT PROPERTY" MEANS THAT PROPERTY OF A DECEDENT'S ESTATE WHICH IS DESCRIBED IN SECTION 15-11-403.

(19) "FIDUCIARY" INCLUDES A PERSONAL REPRESENTATIVE, GUARDIAN, CONSERVATOR, AND TRUSTEE.

(20) "FOREIGN PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE APPOINTED BY ANOTHER JURISDICTION.

(21) "FORMAL PROCEEDINGS" MEANS PROCEEDINGS CONDUCTED BEFORE A JUDGE WITH NOTICE TO INTERESTED PERSONS.

(22) "GOVERNING INSTRUMENT" MEANS A DEED, WILL, TRUST, INSURANCE OR ANNUITY POLICY, MULTIPLE-PARTY ACCOUNT, SECURITY REGISTERED IN BENEFICIARY FORM (TOD), PENSION, PROFIT SHARING, RETIREMENT OR SIMILAR BENEFIT PLAN, INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT OR POWER OF ATTORNEY, OR A DONATIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF ANY OTHER TYPE.

(23) "GUARDIAN" MEANS A PERSON WHO HAS QUALIFIED AS A GUARDIAN OF A MINOR OR INCAPACITATED PERSON PURSUANT TO TESTAMENTARY OR COURT

APPOINTMENT, BUT EXCLUDES ONE WHO IS MERELY A GUARDIAN AD LITEM.

(24) "HEIRS", EXCEPT AS CONTROLLED BY SECTION 15-11-711, MEANS PERSONS, INCLUDING THE SURVIVING SPOUSE, WHO ARE ENTITLED UNDER THE STATUTES OF INTESTATE SUCCESSION TO THE PROPERTY OF A DECEDENT.

(25) "INCAPACITATED PERSON" MEANS AN INDIVIDUAL DESCRIBED IN SECTION 15-14-101 (1).

(26) "INFORMAL PROCEEDINGS" MEANS THOSE CONDUCTED WITHOUT NOTICE TO INTERESTED PERSONS BY AN OFFICER OF THE COURT ACTING AS A REGISTRAR FOR PROBATE OF A WILL, APPOINTMENT OF A PERSONAL REPRESENTATIVE, OR DETERMINATION OF A GUARDIAN UNDER SECTIONS 15-14-202 (2) AND 15-14-301.

(27) "INTERESTED PERSON" INCLUDES HEIRS, DEVISEES, CHILDREN, SPOUSES, CREDITORS, BENEFICIARIES, AND ANY OTHERS HAVING A PROPERTY RIGHT IN OR CLAIM AGAINST A TRUST ESTATE OR THE ESTATE OF A DECEDENT, WARD, OR PROTECTED PERSON, WHICH MAY BE AFFECTED BY THE PROCEEDING. IT ALSO INCLUDES PERSONS HAVING PRIORITY FOR AN APPOINTMENT AS A PERSONAL REPRESENTATIVE AND OTHER FIDUCIARIES REPRESENTING THE INTERESTED PERSON. THE MEANING AS IT RELATES TO PARTICULAR PERSONS MAY VARY FROM TIME TO TIME AND SHALL BE DETERMINED ACCORDING TO THE PARTICULAR PURPOSES OF, AND MATTER INVOLVED IN, ANY PROCEEDING.

(28) "ISSUE" OF A PERSON MEANS DESCENDANT AS DEFINED IN SUBSECTION (11) OF THIS SECTION.

(29) "JOINT TENANTS WITH RIGHT OF SURVIVORSHIP" AND "COMMUNITY PROPERTY WITH THE RIGHT OF SURVIVORSHIP" FOR THE PURPOSES OF THIS CODE ONLY INCLUDES CO-OWNERS OF PROPERTY HELD UNDER CIRCUMSTANCES THAT ENTITLE ONE OR MORE TO THE WHOLE OF THE PROPERTY ON THE DEATH OF THE OTHER OR OTHERS, BUT EXCLUDES FORMS OF CO-OWNERSHIP REGISTRATION IN WHICH THE UNDERLYING OWNERSHIP OF EACH PARTY IS IN PROPORTION TO THAT PARTY'S CONTRIBUTION.

(30) "LEASE" INCLUDES AN OIL, GAS, OR OTHER MINERAL LEASE.

(31) "LETTERS" INCLUDES LETTERS TESTAMENTARY, LETTERS OF GUARDIANSHIP, LETTERS OF ADMINISTRATION, AND LETTERS OF CONSERVATORSHIP.

(32) "MINOR" MEANS A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE.

(33) "MORTGAGE" MEANS ANY CONVEYANCE, AGREEMENT, OR ARRANGEMENT IN WHICH THE PROPERTY IS USED AS SECURITY.

(34) "NONRESIDENT DECEDENT" MEANS A DECEDENT WHO WAS DOMICILED IN ANOTHER JURISDICTION AT THE TIME OF HIS OR HER DEATH.

(35) "ORGANIZATION" MEANS A CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, JOINT VENTURE, LIMITED LIABILITY COMPANY, ASSOCIATION,

GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(36) "PARENT" INCLUDES ANY PERSON ENTITLED TO TAKE, OR WHO WOULD BE ENTITLED TO TAKE IF THE CHILD DIED WITHOUT A WILL, AS A PARENT UNDER THIS CODE BY INTESTATE SUCCESSION FROM THE CHILD WHOSE RELATIONSHIP IS IN QUESTION AND EXCLUDES ANY PERSON WHO IS ONLY A STEPPARENT, FOSTER PARENT, OR GRANDPARENT.

(37) "PAYOR" MEANS A TRUSTEE, INSURER, BUSINESS ENTITY, EMPLOYER, GOVERNMENT, GOVERNMENTAL AGENCY OR SUBDIVISION, OR ANY OTHER PERSON AUTHORIZED OR OBLIGATED BY LAW OR A GOVERNING INSTRUMENT TO MAKE PAYMENTS.

(38) "PERSON" MEANS AN INDIVIDUAL OR AN ORGANIZATION.

(39) "PERSONAL REPRESENTATIVE" INCLUDES EXECUTOR, ADMINISTRATOR, SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR, AND PERSONS WHO PERFORM SUBSTANTIALLY THE SAME FUNCTION UNDER THE LAW GOVERNING THEIR STATUS. "GENERAL PERSONAL REPRESENTATIVE" EXCLUDES SPECIAL ADMINISTRATOR.

(40) "PETITION" MEANS A WRITTEN REQUEST TO THE COURT FOR AN ORDER AFTER NOTICE.

(41) "PROCEEDING" INCLUDES ACTION AT LAW AND SUIT IN EQUITY.

(42) "PROPERTY" MEANS BOTH REAL AND PERSONAL PROPERTY OR ANY INTEREST THEREIN AND ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP.

(43) "PROTECTED PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION 15-14-101 (2).

(44) "PROTECTIVE PROCEEDING" HAS THE SAME MEANING AS SET FORTH IN SECTION 15-14-101 (3).

(45) "REGISTRAR" REFERS TO THE OFFICIAL OF THE COURT DESIGNATED TO PERFORM THE FUNCTIONS OF REGISTRAR AS PROVIDED IN SECTION 15-10-307.

(46) "SECURITY" INCLUDES ANY NOTE; STOCK; TREASURY STOCK; BOND; DEBENTURE; EVIDENCE OF INDEBTEDNESS; CERTIFICATE OF INTEREST OR PARTICIPATION IN AN OIL, GAS, OR MINING TITLE OR LEASE OR IN PAYMENTS OUT OF PRODUCTION UNDER SUCH A TITLE OR LEASE; COLLATERAL TRUST CERTIFICATE; TRANSFERABLE SHARE; VOTING TRUST CERTIFICATE; OR, IN GENERAL, ANY INTEREST OR INSTRUMENT COMMONLY KNOWN AS SECURITY; ANY CERTIFICATE OF INTEREST OR PARTICIPATION; ANY TEMPORARY OR INTERIM CERTIFICATE, RECEIPT, OR CERTIFICATE OF DEPOSIT FOR, OR ANY WARRANT OR RIGHT TO SUBSCRIBE TO OR PURCHASE, ANY OF THE ITEMS ENUMERATED IN THIS SUBSECTION (46).

(47) "SETTLEMENT", IN REFERENCE TO A DECEDENT'S ESTATE, MEANS THE FULL PROCESS OF ADMINISTRATION, DISTRIBUTION, AND CLOSING.

(48) "SPECIAL ADMINISTRATOR" MEANS A PERSONAL REPRESENTATIVE AS DESCRIBED BY SECTIONS 15-12-614 TO 15-12-618.

(49) "STATE" MEANS ANY STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, AND ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(50) "SUCCESSOR PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE, OTHER THAN A SPECIAL ADMINISTRATOR, WHO IS APPOINTED TO SUCCEED A PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE.

(51) "SUCCESSORS" MEANS PERSONS OTHER THAN CREDITORS, WHO ARE ENTITLED TO PROPERTY OF A DECEDENT UNDER HIS OR HER WILL OR THIS CODE.

(52) "SUPERVISED ADMINISTRATION" MEANS THE PROCEEDINGS DESCRIBED IN PART 5 OF ARTICLE 12 OF THIS TITLE.

(53) "SURVIVE" MEANS THAT AN INDIVIDUAL HAS NEITHER PREDECEASED AN EVENT, INCLUDING THE DEATH OF ANOTHER INDIVIDUAL, NOR IS DEEMED TO HAVE PREDECEASED AN EVENT UNDER SECTION 15-11-104, 15-11-702, OR 15-11-712. THE TERM INCLUDES ITS DERIVATIVES, SUCH AS "SURVIVES", "SURVIVED", "SURVIVOR", AND "SURVIVING".

(54) "TESTACY PROCEEDING" MEANS A PROCEEDING TO ESTABLISH A WILL OR DETERMINE INTESTACY.

(55) "TESTATOR" INCLUDES AN INDIVIDUAL OF EITHER SEX.

(56) "TRUST" INCLUDES AN EXPRESS TRUST, PRIVATE OR CHARITABLE, WITH ADDITIONS THERETO, WHEREVER AND HOWEVER CREATED AND ANY AMENDMENTS TO SUCH TRUSTS. "TRUST" ALSO INCLUDES A TRUST CREATED OR DETERMINED BY JUDGMENT OR DECREE UNDER WHICH THE TRUST IS TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST. "TRUST" EXCLUDES OTHER CONSTRUCTIVE TRUSTS AND EXCLUDES RESULTING TRUSTS; CONSERVATORSHIPS; PERSONAL REPRESENTATIVES; ACCOUNTS AS DEFINED IN SECTION 15-15-201 (1); CUSTODIAL ARRANGEMENTS PURSUANT TO THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.; BUSINESS TRUSTS PROVIDING FOR CERTIFICATES TO BE ISSUED TO BENEFICIARIES; COMMON TRUST FUNDS; VOTING TRUSTS; SECURITY ARRANGEMENTS; LIQUIDATION TRUSTS; TRUSTS FOR THE PRIMARY PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST, SALARIES, WAGES, PROFITS, PENSIONS, OR EMPLOYEE BENEFITS OF ANY KIND; AND ANY ARRANGEMENT UNDER WHICH A PERSON IS NOMINEE OR ESCROWEE FOR ANOTHER.

(57) "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL, OR SUCCESSOR TRUSTEE, WHETHER OR NOT APPOINTED OR CONFIRMED BY COURT.

(58) "WARD" MEANS AN INDIVIDUAL DESCRIBED IN SECTION 15-14-101 (4).

(59) "WILL" INCLUDES ANY CODICIL AND ANY TESTAMENTARY INSTRUMENT THAT MERELY APPOINTS AN EXECUTOR, REVOKES OR REVISES ANOTHER WILL, NOMINATES A GUARDIAN, OR EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN

INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF THE DECEDENT PASSING BY
INTESTATE SUCCESSION.

SECTION 3. Parts 1, 2, 3, 4, 5, 6, 7, 8, and 9 of article 11 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., as amended, are REPEALED AND REENACTED, WITH AMENDMENTS, to read:

PART 1
INTESTATE SUCCESSION

15-11-101. Intestate estate. (1) ANY PART OF A DECEDENT'S ESTATE NOT EFFECTIVELY DISPOSED OF BY WILL OR OTHERWISE PASSES BY INTESTATE SUCCESSION TO THE DECEDENT'S HEIRS AS PRESCRIBED IN THIS CODE, EXCEPT AS MODIFIED BY THE DECEDENT'S WILL.

(2) A DECEDENT BY WILL MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF AN INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF THE DECEDENT PASSING BY INTESTATE SUCCESSION. IF THAT INDIVIDUAL OR A MEMBER OF THAT CLASS SURVIVES THE DECEDENT, THE SHARE OF THE DECEDENT'S INTESTATE ESTATE TO WHICH THAT INDIVIDUAL OR CLASS WOULD HAVE SUCCEEDED PASSES AS IF THAT INDIVIDUAL OR EACH MEMBER OF THAT CLASS HAD DISCLAIMED HIS OR HER INTESTATE SHARE.

15-11-102. Share of spouse. THE VARIOUS POSSIBLE CIRCUMSTANCES DESCRIBING THE DECEDENT, HIS OR HER SURVIVING SPOUSE, AND THEIR SURVIVING DESCENDANTS, IF ANY, ARE SET FORTH IN THIS SECTION TO BE UTILIZED IN DETERMINING THE INTESTATE SHARE OF THE DECEDENT'S SURVIVING SPOUSE. IF MORE THAN ONE CIRCUMSTANCE IS APPLICABLE, THE CIRCUMSTANCE THAT PRODUCES THE SMALLEST SHARE FOR THE SURVIVING SPOUSE SHALL BE APPLIED.

(1) IF:

(a) NO DESCENDANT OR PARENT OF THE DECEDENT SURVIVES THE DECEDENT, THEN THE SURVIVING SPOUSE RECEIVES THE ENTIRE INTESTATE ESTATE; OR

(b) ALL OF THE DECEDENT'S SURVIVING DESCENDANTS ARE ALSO DESCENDANTS OF THE SURVIVING SPOUSE AND THERE ARE NO OTHER DESCENDANTS OF THE SURVIVING SPOUSE WHO SURVIVE THE DECEDENT, THEN THE SURVIVING SPOUSE RECEIVES THE ENTIRE INTESTATE ESTATE;

(2) IF NO DESCENDANT OF THE DECEDENT SURVIVES THE DECEDENT, BUT A PARENT OF THE DECEDENT SURVIVES THE DECEDENT, THEN THE SURVIVING SPOUSE RECEIVES THE FIRST TWO HUNDRED THOUSAND DOLLARS, PLUS THREE-FOURTHS OF ANY BALANCE OF THE INTESTATE ESTATE;

(3) IF ALL OF THE DECEDENT'S SURVIVING DESCENDANTS ARE ALSO DESCENDANTS OF THE SURVIVING SPOUSE, AND THE SURVIVING SPOUSE HAS ONE OR MORE SURVIVING DESCENDANTS WHO ARE NOT DESCENDANTS OF THE DECEDENT, THEN THE SURVIVING SPOUSE RECEIVES THE FIRST ONE HUNDRED FIFTY THOUSAND DOLLARS, PLUS ONE-HALF OF ANY BALANCE OF THE INTESTATE ESTATE;

(4) IF ONE OR MORE OF THE DECEDENT'S SURVIVING DESCENDANTS ARE NOT DESCENDANTS OF THE DECEDENT'S SURVIVING SPOUSE, AND ALL OF SUCH SURVIVING DESCENDANTS ARE ADULTS, THEN THE SURVIVING SPOUSE RECEIVES THE FIRST ONE HUNDRED THOUSAND DOLLARS, PLUS ONE-HALF OF ANY BALANCE OF THE INTESTATE ESTATE;

(5) IF ONE OR MORE OF THE DECEDENT'S SURVIVING DESCENDANTS ARE NOT DESCENDANTS OF THE DECEDENT'S SURVIVING SPOUSE, AND IF ONE OR MORE OF SUCH DESCENDANTS ARE MINORS, THEN THE SURVIVING SPOUSE RECEIVES ONE-HALF OF THE INTESTATE ESTATE.

15-11-103. Share of heirs other than surviving spouse. ANY PART OF THE INTESTATE ESTATE NOT PASSING TO THE DECEDENT'S SURVIVING SPOUSE UNDER SECTION 15-11-102, OR THE ENTIRE INTESTATE ESTATE IF THERE IS NO SURVIVING SPOUSE, PASSES IN THE FOLLOWING ORDER TO THE INDIVIDUALS DESIGNATED WHO SURVIVE THE DECEDENT:

(1) TO THE DECEDENT'S DESCENDANTS BY REPRESENTATION;

(2) IF THERE IS NO SURVIVING DESCENDANT, TO THE DECEDENT'S PARENTS EQUALLY IF BOTH SURVIVE, OR TO THE DECEDENT'S SURVIVING PARENT;

(3) IF THERE IS NO SURVIVING DESCENDANT OR SURVIVING PARENT, TO THE SURVIVING DESCENDANTS OF THE DECEDENT'S PARENTS OR EITHER OF THEM BY REPRESENTATION;

(4) IF THERE IS NO SURVIVING DESCENDANT, SURVIVING PARENT, OR SURVIVING DESCENDANT OF A PARENT, TO THE DECEDENT'S SURVIVING GRANDPARENTS, OR ANY OF THEM, IN EQUAL SHARES;

(5) IF THERE IS NO SURVIVING DESCENDANT, SURVIVING PARENT, SURVIVING DESCENDANT OF A PARENT, OR SURVIVING GRANDPARENT, TO THE SURVIVING DESCENDANTS OF THE DECEDENT'S GRANDPARENTS BY REPRESENTATION.

(6) IF THERE IS NO SURVIVING HEIR UNDER SUBSECTIONS (1) TO (5) OF THIS SECTION, AND IF A BIRTH CHILD OR BIRTH CHILDREN FILE A CLAIM FOR INHERITANCE WITH THE COURT HAVING PROBATE JURISDICTION FOR THE DECEDENT'S ESTATE WITHIN NINETY DAYS OF DECEDENT'S DEATH, TO THE DECEDENT'S SURVIVING BIRTH CHILD OR CHILDREN BY REPRESENTATION;

(7) IF THERE IS NO SURVIVING HEIR UNDER SUBSECTIONS (1) TO (6) OF THIS SECTION, AND IF A BIRTH PARENT OR BIRTH PARENTS FILE A CLAIM FOR INHERITANCE WITH THE COURT HAVING PROBATE JURISDICTION FOR THE DECEDENT'S ESTATE WITHIN NINETY DAYS OF DECEDENT'S DEATH, TO THE DECEDENT'S BIRTH PARENTS EQUALLY IF BOTH SURVIVE, OR TO THE SURVIVING BIRTH PARENT.

15-11-104. Requirement that heir survive decedent for one hundred twenty hours. AN INDIVIDUAL WHO FAILS TO SURVIVE THE DECEDENT BY ONE HUNDRED TWENTY HOURS IS DEEMED TO HAVE PREDECEASED THE DECEDENT FOR THE PURPOSES OF EXEMPT PROPERTY, AND INTESTATE SUCCESSION, AND THE

DECEDENT'S HEIRS ARE DETERMINED ACCORDINGLY. IF THE TIME OF DEATH OF A DECEDENT OR OF AN INDIVIDUAL WHO WOULD OTHERWISE BE AN HEIR, OR THE TIMES OF DEATH OF BOTH, CANNOT BE DETERMINED, AND IT IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE INDIVIDUAL WHO WOULD OTHERWISE BE AN HEIR SURVIVED THE DECEDENT BY ONE HUNDRED TWENTY HOURS, IT IS DEEMED THAT THE INDIVIDUAL FAILED TO SURVIVE FOR THE REQUIRED PERIOD. THIS SECTION IS NOT TO BE APPLIED IF ITS APPLICATION WOULD RESULT IN A TAKING OF INTESTATE ESTATE BY THE STATE UNDER SECTION 15-11-105 OR WHEN THE PROVISIONS OF SECTION 15-11-712 RELATING TO SIMULTANEOUS DEATH ARE APPLICABLE.

15-11-105. No taker. IF THERE IS NO TAKER UNDER THE PROVISIONS OF THIS ARTICLE, THE INTESTATE ESTATE PASSES TO THE STATE OF COLORADO, SUBJECT TO THE PROVISIONS OF SECTION 15-12-914.

15-11-106. By representation. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECEASED DESCENDANT", "DECEASED PARENT", OR "DECEASED GRANDPARENT" MEANS A DESCENDANT, PARENT, OR GRANDPARENT WHO EITHER PREDECEASED THE DECEDENT OR IS DEEMED TO HAVE PREDECEASED THE DECEDENT UNDER SECTION 15-11-104.

(b) "SURVIVING DESCENDANT" MEANS A DESCENDANT WHO NEITHER PREDECEASED THE DECEDENT NOR IS DEEMED TO HAVE PREDECEASED THE DECEDENT UNDER SECTION 15-11-104.

(2) **Decedent's descendants.** IF, UNDER SECTION 15-11-103 (1), A DECEDENT'S INTESTATE ESTATE OR A PART THEREOF PASSES "BY REPRESENTATION" TO THE DECEDENT'S DESCENDANTS, THE ESTATE OR PART THEREOF IS DIVIDED INTO AS MANY EQUAL SHARES AS THERE ARE (i) SURVIVING DESCENDANTS IN THE GENERATION NEAREST TO THE DECEDENT WHICH CONTAINS ONE OR MORE SURVIVING DESCENDANTS AND (ii) DECEASED DESCENDANTS IN THE SAME GENERATION WHO LEFT SURVIVING DESCENDANTS, IF ANY. EACH SURVIVING DESCENDANT IN THE NEAREST GENERATION IS ALLOCATED ONE SHARE. THE REMAINING SHARES, IF ANY, ARE COMBINED AND THEN DIVIDED IN THE SAME MANNER AMONG THE SURVIVING DESCENDANTS OF THE DECEASED DESCENDANTS AS IF THE SURVIVING DESCENDANTS WHO ARE ALLOCATED A SHARE AND THEIR SURVIVING DESCENDANTS HAD PREDECEASED THE DECEDENT.

(3) **Descendants of parents or grandparents.** IF, UNDER SECTION 15-11-103 (3) OR (5), A DECEDENT'S INTESTATE ESTATE OR A PART THEREOF PASSES "BY REPRESENTATION" TO THE DESCENDANTS OF THE DECEDENT'S DECEASED PARENTS OR EITHER OF THEM, OR TO THE DESCENDANTS OF THE DECEDENT'S DECEASED GRANDPARENTS OR ANY OF THEM, THE ESTATE OR PART THEREOF IS DIVIDED INTO AS MANY EQUAL SHARES AS THERE ARE (i) SURVIVING DESCENDANTS IN THE GENERATION NEAREST TO THE DECEASED PARENTS OR EITHER OF THEM, OR THE DECEASED GRANDPARENTS OR ANY OF THEM, THAT CONTAINS ONE OR MORE SURVIVING DESCENDANTS AND (ii) DECEASED DESCENDANTS IN THE SAME GENERATION WHO LEFT SURVIVING DESCENDANTS, IF ANY. EACH SURVIVING DESCENDANT IN THE NEAREST GENERATION IS ALLOCATED ONE SHARE. THE

REMAINING SHARES, IF ANY, ARE COMBINED AND THEN DIVIDED IN THE SAME MANNER AMONG THE SURVIVING DESCENDANTS OF THE DECEASED DESCENDANTS AS IF THE SURVIVING DESCENDANTS WHO WERE ALLOCATED A SHARE AND THEIR SURVIVING DESCENDANTS HAD PREDECEASED THE DECEDENT.

15-11-107. Kindred of half blood. RELATIVES OF HALF BLOOD INHERIT THE SAME SHARE THEY WOULD INHERIT IF THEY WERE OF WHOLE BLOOD.

15-11-108. After-born heirs. RELATIVES OF THE DECEDENT CONCEIVED BEFORE THE DECEDENT'S DEATH BUT BORN THEREAFTER INHERIT AS IF THEY HAD BEEN BORN IN THE LIFETIME OF THE DECEDENT IF THE RELATIVE LIVES ONE HUNDRED TWENTY HOURS OR MORE AFTER BIRTH.

15-11-109. Advancements. (1) IF AN INDIVIDUAL DIES INTESTATE AS TO ALL OR A PORTION OF HIS OR HER ESTATE, PROPERTY THE DECEDENT GAVE DURING THE DECEDENT'S LIFETIME TO AN INDIVIDUAL WHO, AT THE DECEDENT'S DEATH, IS AN HEIR IS TREATED AS AN ADVANCEMENT AGAINST THE HEIR'S INTESTATE SHARE ONLY IF (i) THE DECEDENT DECLARED IN A CONTEMPORANEOUS WRITING OR THE HEIR ACKNOWLEDGED IN WRITING THAT THE GIFT IS AN ADVANCEMENT, OR (ii) THE DECEDENT'S CONTEMPORANEOUS WRITING OR THE HEIR'S WRITTEN ACKNOWLEDGEMENT OTHERWISE INDICATES THAT THE GIFT IS TO BE TAKEN INTO ACCOUNT IN COMPUTING THE DIVISION AND DISTRIBUTION OF THE DECEDENT'S INTESTATE ESTATE.

(2) FOR THE PURPOSES OF SUBSECTION (1) OF THIS SECTION, PROPERTY ADVANCED IS VALUED AS OF THE TIME THE HEIR CAME INTO POSSESSION OR ENJOYMENT OF THE PROPERTY OR AS OF THE TIME OF THE DECEDENT'S DEATH, WHICHEVER FIRST OCCURS.

(3) IF THE RECIPIENT OF THE PROPERTY FAILS TO SURVIVE THE DECEDENT, THE PROPERTY IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE DIVISION AND DISTRIBUTION OF THE DECEDENT'S INTESTATE ESTATE, UNLESS THE DECEDENT'S CONTEMPORANEOUS WRITING PROVIDES OTHERWISE.

(4) AN HEIR WHO HAS RECEIVED FROM THE INTESTATE ESTATE MORE THAN HIS OR HER SHARE SHALL IN NO CASE BE REQUIRED TO REFUND, EXCEPT AS OTHERWISE PROVIDED BY SECTION 15-11-203.

15-11-110. Debts to decedent. A DEBT OWED TO A DECEDENT IS NOT CHARGED AGAINST THE INTESTATE SHARE OF ANY INDIVIDUAL EXCEPT THE DEBTOR. IF THE DEBTOR FAILS TO SURVIVE THE DECEDENT, THE DEBT IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE INTESTATE SHARE OF THE DEBTOR'S DESCENDANTS.

15-11-111. Alienage. NO INDIVIDUAL IS DISQUALIFIED TO TAKE AS AN HEIR, DEVISEE, GRANTEE, LESSEE, MORTGAGEE, ASSIGNEE, OR OTHER TRANSFEREE BECAUSE THE INDIVIDUAL OR AN INDIVIDUAL THROUGH WHOM HE OR SHE CLAIMS IS OR HAS BEEN AN ALIEN.

15-11-112. Dower and courtesy abolished. THE ESTATES OF DOWER AND COURTESY ARE ABOLISHED.

15-11-113. Individuals related to decedent through two blood lines. AN INDIVIDUAL WHO IS RELATED TO THE DECEDENT THROUGH TWO BLOOD LINES OF RELATIONSHIP IS ENTITLED TO ONLY A SINGLE SHARE BASED UPON THE RELATIONSHIP WHICH WOULD ENTITLED THE INDIVIDUAL TO THE LARGER SHARE.

15-11-114. Parent and child relationship. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3) OF THIS SECTION FOR THE PURPOSES OF INTESTATE SUCCESSION BY, THROUGH, OR FROM A PERSON, AN INDIVIDUAL IS THE CHILD OF HIS OR HER BIRTH PARENTS REGARDLESS OF THEIR MARITAL STATUS. THE PARENT AND CHILD RELATIONSHIP MAY BE ESTABLISHED UNDER THE "UNIFORM PARENTAGE ACT", ARTICLE 4 OF TITLE 19, C.R.S.

(2) FOR PURPOSES OF INTESTATE SUCCESSION BY, THROUGH, OR FROM A PERSON, AN ADOPTED INDIVIDUAL IS THE CHILD OF HIS OR HER ADOPTING PARENT OR PARENTS AND NOT OF HIS OR HER BIRTH PARENTS, EXCEPT FOR INHERITANCE RIGHTS AS SPECIFIED IN SECTION 15-11-103 (6) AND (7), BUT THE ADOPTION OF A CHILD BY THE SPOUSE OF EITHER BIRTH PARENT HAS NO EFFECT ON THE RELATIONSHIP BETWEEN THE CHILD AND THE BIRTH PARENT WHOSE SPOUSE HAS ADOPTED THE CHILD.

(3) IF THE CHILD HAS NOT BEEN ADOPTED, INHERITANCE FROM OR THROUGH A CHILD BY EITHER BIRTH PARENT OR HIS OR HER PARENT'S KINDRED IS PRECLUDED UNLESS THAT BIRTH PARENT HAS ACKNOWLEDGED THE CHILD AS HIS OR HERS, AND HAS NOT REFUSED TO SUPPORT THE CHILD.

**PART 2
ELECTIVE-SHARE OF SURVIVING SPOUSE**

15-11-201. Right to elective-share. (1) **Elective-share amount.** THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED IN THIS STATE HAS A RIGHT OF ELECTION, UNDER THE LIMITATIONS AND CONDITIONS STATED IN THIS PART 2, TO TAKE AN ELECTIVE-SHARE AMOUNT NOT GREATER THAN ONE-HALF OF THE VALUE OF THE AUGMENTED ESTATE, DETERMINED BY THE LENGTH OF TIME THE SPOUSE AND THE DECEDENT WERE MARRIED TO EACH OTHER, IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

IF THE DECEDENT AND THE SPOUSE WERE MARRIED TO EACH OTHER:	THE ELECTIVE-SHARE PERCENTAGE IS:
LESS THAN 1 YEAR	SUPPLEMENTAL AMOUNT ONLY.
1 YEAR BUT LESS THAN 2 YEARS	5% OF THE AUGMENTED ESTATE.
2 YEARS BUT LESS THAN 3 YEARS	10% OF THE AUGMENTED ESTATE.
3 YEARS BUT LESS THAN 4 YEARS	15% OF THE AUGMENTED ESTATE.
4 YEARS BUT LESS THAN 5 YEARS	20% OF THE AUGMENTED ESTATE.
5 YEARS BUT LESS THAN 6 YEARS	25% OF THE AUGMENTED ESTATE.
6 YEARS BUT LESS THAN 7 YEARS	30% OF THE AUGMENTED ESTATE.
7 YEARS BUT LESS THAN 8 YEARS	35% OF THE AUGMENTED ESTATE.
8 YEARS BUT LESS THAN 9 YEARS	40% OF THE AUGMENTED ESTATE.
9 YEARS BUT LESS THAN 10 YEARS	45% OF THE AUGMENTED ESTATE.
10 YEARS OR MORE	50% OF THE AUGMENTED ESTATE.

(2) **Supplemental elective-share amount.** IF THE SUM OF THE AMOUNTS DESCRIBED IN SECTIONS 15-11-202 (2) (d), 15-11-203 (1) (a), AND THAT PART OF THE ELECTIVE-SHARE AMOUNT PAYABLE FROM THE DECEDENT'S PROBATE ESTATE AND NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-203 (2) AND (3) IS LESS THAN FIFTY THOUSAND DOLLARS, THE SURVIVING SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY THOUSAND DOLLARS, MINUS THE SUM OF THE AMOUNTS DESCRIBED IN THOSE SECTIONS. THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS PAYABLE FROM THE DECEDENT'S PROBATE ESTATE AND FROM RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN THE ORDER OF PRIORITY SET FORTH IN SECTION 15-11-203 (2) AND (3).

(3) **Effect of election on statutory benefits.** IF THE RIGHT OF ELECTION IS EXERCISED BY OR ON BEHALF OF THE SURVIVING SPOUSE, THE SURVIVING SPOUSE'S EXEMPT PROPERTY AND FAMILY ALLOWANCE, IF ANY, ARE NOT CHARGED AGAINST BUT ARE IN ADDITION TO THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS.

(4) **Nondomiciliary.** THE RIGHT, IF ANY, OF THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED OUTSIDE THIS STATE TO TAKE AN ELECTIVE-SHARE IN PROPERTY IN THIS STATE IS GOVERNED BY THE LAW OF THE DECEDENT'S DOMICILE AT DEATH.

15-11-202. Augmented estate. (1) **Definitions.** (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "BONA FIDE PURCHASER" MEANS A PURCHASER FOR VALUE IN GOOD FAITH AND WITHOUT NOTICE OF AN ADVERSE CLAIM. THE NOTATION OF A STATE DOCUMENTARY FEE ON A RECORDED INSTRUMENT PURSUANT TO SECTION 39-13-103, C.R.S., IS PRIMA FACIE EVIDENCE THAT THE TRANSFER DESCRIBED THEREIN WAS MADE TO A BONA FIDE PURCHASER.

(II) "DECEDENT'S NONPROBATE TRANSFERS TO OTHERS" MEANS THE DECEDENT'S NONPROBATE TRANSFERS TO PERSONS, OTHER THAN THE DECEDENT'S SPOUSE, SURVIVING SPOUSE, THE DECEDENT, OR THE DECEDENT'S CREDITORS, ESTATE, OR ESTATE CREDITORS, THAT ARE INCLUDED IN THE AUGMENTED ESTATE UNDER PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

(III) "FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP", WHETHER THE FRACTIONAL INTEREST IS UNILATERALLY SEVERABLE OR NOT, MEANS THE FRACTION, THE NUMERATOR OF WHICH IS ONE AND THE DENOMINATOR OF WHICH, IF THE DECEDENT WAS A JOINT TENANT, IS ONE PLUS THE NUMBER OF JOINT TENANTS WHO SURVIVE THE DECEDENT AND WHICH, IF THE DECEDENT WAS NOT A JOINT TENANT, IS THE NUMBER OF JOINT TENANTS.

(IV) "MARRIAGE", AS IT RELATES TO A TRANSFER BY THE DECEDENT DURING MARRIAGE, MEANS ANY MARRIAGE OF THE DECEDENT TO THE DECEDENT'S SURVIVING SPOUSE.

(V) "NONADVERSE PARTY" MEANS A PERSON WHO DOES NOT HAVE A SUBSTANTIAL BENEFICIAL INTEREST IN THE TRUST OR OTHER PROPERTY

ARRANGEMENT THAT WOULD BE ADVERSELY AFFECTED BY THE EXERCISE OR NONEXERCISE OF THE POWER THAT HE OR SHE POSSESSES RESPECTING THE TRUST OR OTHER PROPERTY ARRANGEMENT. A PERSON HAVING A GENERAL POWER OF APPOINTMENT OVER PROPERTY IS DEEMED TO HAVE A BENEFICIAL INTEREST IN THE PROPERTY.

(VI) "POWER" OR "POWER OF APPOINTMENT" INCLUDES A POWER TO DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION, INCLUDING BENEFICIARY DESIGNATIONS UNDER INDIVIDUAL RETIREMENT ACCOUNTS AND ANNUITIES DESCRIBED IN SECTION 408 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AS WELL AS OTHER PENSION PLANS OR ARRANGEMENTS NOT SUBJECT TO PART 2 (SECTION 201 ET SEQ.) OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED (29 U.S.C. SEC. 1051 ET SEQ.).

(VII) "PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT UNDER WHICH, AT THE TIME IN QUESTION, THE DECEDENT, WHETHER OR NOT HE OR SHE THEN HAD THE CAPACITY TO EXERCISE THE POWER, HELD A POWER TO CREATE A PRESENT OR FUTURE INTEREST IN HIMSELF OR HERSELF, HIS OR HER CREDITORS, HIS OR HER ESTATE, OR THE CREDITORS OF HIS OR HER ESTATE, AND INCLUDES A POWER TO REVOKE OR INVADE THE PRINCIPAL OF A TRUST OR OTHER PROPERTY ARRANGEMENT.

(VIII) "PROBATE ESTATE" MEANS PROPERTY, WHETHER REAL OR PERSONAL, MOVABLE OR IMMOVABLE, WHEREVER SITUATED, THAT WOULD PASS BY INTESTATE SUCCESSION IF THE DECEDENT DIED WITHOUT A VALID WILL.

(IX) (RESERVED)

(X) (RESERVED)

(XI) "TRANSFER", AS IT RELATES TO A TRANSFER BY, OR ON BEHALF OF, THE DECEDENT, INCLUDES:

(A) AN EXERCISE OR RELEASE OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT;

(B) A LAPSE AT DEATH OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT; AND

(C) AN EXERCISE, RELEASE, OR LAPSE OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT THAT THE DECEDENT CREATED IN HIMSELF OR HERSELF AND OF A POWER DESCRIBED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THAT THE DECEDENT CONFERRED ON A NONADVERSE PARTY.

(XII) "VALUE", UNLESS OTHERWISE INDICATED, MEANS FAIR MARKET VALUE AS OF THE DECEDENT'S DATE OF DEATH.

(b) IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, "TERMINATION", WITH RESPECT TO A RIGHT OR

INTEREST IN PROPERTY, MEANS THAT THE RIGHT OR INTEREST TERMINATED BY THE TERMS OF THE GOVERNING INSTRUMENT OR THAT THE DECEDENT TRANSFERRED OR RELINQUISHED THE RIGHT OR INTEREST; AND, WITH RESPECT TO A POWER OVER PROPERTY, MEANS THAT THE POWER TERMINATED BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE; EXCEPT THAT, WITH RESPECT TO A POWER DESCRIBED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, "TERMINATION" MEANS THAT THE POWER TERMINATED BY EXERCISE OR RELEASE, BUT NOT BY LAPSE NOR IN DEFAULT OR OTHERWISE.

(2) Property included in augmented estate. THE AUGMENTED ESTATE CONSISTS OF THE SUM OF:

(a) THE VALUE OF THE DECEDENT'S PROBATE ESTATE, REDUCED BY FUNERAL AND ADMINISTRATIVE EXPENSES, FAMILY ALLOWANCE, EXEMPT PROPERTY, AND ENFORCEABLE CLAIMS;

(b) THE VALUE OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, WHICH ARE COMPOSED OF ALL PROPERTY, WHETHER REAL OR PERSONAL, MOVABLE OR IMMOVABLE, WHEREVER SITUATED, NOT INCLUDED IN THE DECEDENT'S PROBATE ESTATE, OF ANY OF THE FOLLOWING TYPES:

(I) PROPERTY OF ANY OF THE FOLLOWING TYPES THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH:

(A) PROPERTY OVER WHICH THE DECEDENT ALONE, IMMEDIATELY BEFORE DEATH, HELD OR RETAINED A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT; THE AMOUNT INCLUDED IS THE VALUE OF THE PROPERTY SUBJECT TO THE POWER, TO THE EXTENT THAT THE PROPERTY PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE TO, OR FOR THE BENEFIT OF, ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; EXCEPT THAT PROPERTY OVER WHICH THE DECEDENT HAD A TESTAMENTARY POWER OF APPOINTMENT IS NOT INCLUDED. PROPERTY OVER WHICH THE DECEDENT HAD A GENERAL INTERVIVOS POWER OF APPOINTMENT OR WITHDRAWAL CREATED IN THE DECEDENT BY A THIRD PARTY IS INCLUDABLE UNLESS THE GOVERNING INSTRUMENT CONTAINS A PROVISION FOR ITS TERMINATION OR LAPSE, IN FULL OR IN PART, DURING THE LIFE OF THE DECEDENT.

(B) THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP; THE AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S FRACTIONAL INTEREST, TO THE EXTENT THAT THE FRACTIONAL INTEREST PASSED BY RIGHT OF SURVIVORSHIP AT THE DECEDENT'S DEATH TO A SURVIVING JOINT TENANT OTHER THAN THE DECEDENT'S SURVIVING SPOUSE;

(C) THE DECEDENT'S OWNERSHIP INTEREST IN MULTIPLE-PARTY ACCOUNTS (WITHIN THE MEANING OF SECTION 15-15-201 (5)) AND PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP; THE AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S OWNERSHIP INTEREST, TO THE EXTENT THAT THE DECEDENT'S OWNERSHIP INTEREST PASSED AT THE DECEDENT'S DEATH TO, OR FOR THE BENEFIT OF, ANY

PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

(D) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION, PROCEEDS OF INSURANCE, INCLUDING ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE DECEDENT, IF THE DECEDENT OWNED THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH OR IF AND TO THE EXTENT THAT THE DECEDENT ALONE AND IMMEDIATELY BEFORE DEATH HELD A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OVER THE POLICY OR ITS PROCEEDS; THE AMOUNT INCLUDED IS THE VALUE OF THE PROCEEDS, TO THE EXTENT THAT THEY WERE PAYABLE AT THE DECEDENT'S DEATH TO, OR FOR THE BENEFIT OF, THE DECEDENT'S ESTATE OR SURVIVING SPOUSE;

(II) PROPERTY TRANSFERRED IN ANY OF THE FOLLOWING FORMS BY THE DECEDENT DURING MARRIAGE:

(A) ANY IRREVOCABLE TRANSFER IN WHICH THE DECEDENT RETAINED THE RIGHT TO THE POSSESSION OR ENJOYMENT OF, OR TO THE INCOME FROM, THE PROPERTY IF AND TO THE EXTENT THAT THE DECEDENT'S RIGHT TERMINATED AT OR CONTINUED BEYOND THE DECEDENT'S DEATH; THE AMOUNT INCLUDED IS THE VALUE OF THE FRACTION OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT RELATED, TO THE EXTENT THAT THE FRACTION OF THE PROPERTY PASSED OUTSIDE PROBATE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

(B) ANY TRANSFER IN WHICH THE DECEDENT CREATED A POWER OVER THE INCOME OR PRINCIPAL OF THE TRANSFERRED PROPERTY, EXERCISABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY OTHER PERSON, OR EXERCISABLE BY A NONADVERSE PARTY, FOR THE BENEFIT OF THE DECEDENT, THE DECEDENT'S CREDITORS, THE DECEDENT'S ESTATE, OR THE CREDITORS OF THE DECEDENT'S ESTATE; THE AMOUNT INCLUDED IS THE VALUE OF THE PROPERTY SUBJECT TO THE POWER, TO THE EXTENT THAT THE POWER WAS EXERCISABLE AT THE DECEDENT'S DEATH TO, OR FOR THE BENEFIT OF, ANY PERSON OTHER THAN THE DECEDENT'S SURVIVING SPOUSE OR TO THE EXTENT THAT THE PROPERTY SUBJECT TO THE POWER PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE TO, OR FOR THE BENEFIT OF, ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; AND

(III) PROPERTY TRANSFERRED DURING MARRIAGE AND DURING THE TWO-YEAR PERIOD NEXT PRECEDING THE DECEDENT'S DEATH AS A RESULT OF A TRANSFER BY THE DECEDENT IF THE TRANSFER WAS OF ANY OF THE FOLLOWING TYPES:

(A) ANY PROPERTY THAT PASSED AS A RESULT OF THE TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), OR UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED UNTIL THE DECEDENT'S DEATH; THE AMOUNT INCLUDED IS THE VALUE OF THE PROPERTY THAT WOULD HAVE BEEN INCLUDED UNDER SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (I) OR SUBPARAGRAPH (II) OF THIS PARAGRAPH (b); EXCEPT THAT THE PROPERTY IS VALUED AT THE TIME THAT THE RIGHT, INTEREST, OR POWER TERMINATED, AND IS INCLUDED ONLY TO THE EXTENT THAT THE

PROPERTY PASSED UPON TERMINATION TO, OR FOR THE BENEFIT OF, ANY PERSON OTHER THAN THE DECEDENT OR THE DECEDENT'S ESTATE, SPOUSE, OR SURVIVING SPOUSE;

(B) ANY TRANSFER OF, OR RELATING TO, AN INSURANCE POLICY ON THE LIFE OF THE DECEDENT IF THE PROCEEDS WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) HAD THE TRANSFER NOT OCCURRED; THE AMOUNT INCLUDED IS THE VALUE OF THE INSURANCE PROCEEDS TO THE EXTENT THAT THE PROCEEDS WERE PAYABLE AT THE DECEDENT'S DEATH TO, OR FOR THE BENEFIT OF, THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

(C) ANY TRANSFER OF PROPERTY, TO THE EXTENT NOT OTHERWISE INCLUDED IN THE AUGMENTED ESTATE, MADE TO, OR FOR THE BENEFIT OF, A PERSON OTHER THAN THE DECEDENT'S SURVIVING SPOUSE; THE AMOUNT INCLUDED IS THE VALUE OF THE TRANSFERRED PROPERTY TO THE EXTENT THAT THE AGGREGATE TRANSFERS TO ANY ONE DONEE IN EITHER OF THE TWO YEARS EXCEEDED TEN THOUSAND DOLLARS;

(c) THE VALUE OF THE DECEDENT'S NONPROBATE TRANSFERS TO THE DECEDENT'S SURVIVING SPOUSE, WHICH ARE COMPOSED OF ALL PROPERTY THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH FROM THE DECEDENT TO THE SURVIVING SPOUSE BY REASON OF THE DECEDENT'S DEATH, INCLUDING (i) THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY HELD AS A JOINT TENANT WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THAT THE DECEDENT'S FRACTIONAL INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING JOINT TENANT, (ii) THE DECEDENT'S OWNERSHIP INTEREST IN MULTIPLE-PARTY ACCOUNTS (WITHIN THE MEANING OF SECTION 15-15-201 (5)) AND PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THE DECEDENT'S OWNERSHIP INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING CO-OWNER, AND (iii) ALL OTHER PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (b) OF THIS SUBSECTION (2) HAD IT PASSED TO, OR FOR THE BENEFIT OF, A PERSON OTHER THAN THE DECEDENT'S SPOUSE, SURVIVING SPOUSE, THE DECEDENT, OR THE DECEDENT'S CREDITORS, ESTATE, OR ESTATE CREDITORS, BUT EXCLUDING PROPERTY PASSING TO THE SURVIVING SPOUSE UNDER THE FEDERAL SOCIAL SECURITY SYSTEM; AND

(d) TO THE EXTENT NOT INCLUDED IN OR EXPRESSLY EXCLUDED FROM THE AUGMENTED ESTATE UNDER PARAGRAPH (a) OR (c) OF THIS SUBSECTION (2), THE VALUE OF:

(I) PROPERTY THAT WAS OWNED BY THE DECEDENT'S SURVIVING SPOUSE AT THE DECEDENT'S DEATH, INCLUDING:

(A) THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP;

(B) THE SURVIVING SPOUSE'S OWNERSHIP INTEREST IN MULTIPLE-PARTY ACCOUNTS (WITHIN THE MEANING OF SECTION 15-15-201 (5)) AND PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT

OF SURVIVORSHIP; AND

(C) PROPERTY THAT PASSED TO THE SURVIVING SPOUSE BY REASON OF THE DECEDENT'S DEATH; AND

(II) PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE SURVIVING SPOUSE'S NONPROBATE TRANSFERS TO OTHERS, OTHER THAN THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS INCLUDED UNDER SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), HAD THE SPOUSE BEEN THE DECEDENT. PROPERTY INCLUDED UNDER THIS PARAGRAPH (d) IS VALUED AT THE DECEDENT'S DEATH, TAKING THE FACT THAT THE DECEDENT PREDECEASED THE SPOUSE INTO ACCOUNT; EXCEPT THAT, FOR PURPOSES OF SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), THE VALUES OF THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS ARE DETERMINED IMMEDIATELY BEFORE THE DECEDENT'S DEATH IF THE DECEDENT WAS THEN A JOINT TENANT OR A CO-OWNER OF THE PROPERTY OR ACCOUNTS. FOR PURPOSES OF THIS SUBPARAGRAPH (II), PROCEEDS OF INSURANCE THAT WOULD HAVE BEEN INCLUDED IN THE SPOUSE'S NONPROBATE TRANSFERS TO OTHERS UNDER SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (2) ARE NOT VALUED AS IF HE OR SHE WERE DECEASED. THE VALUE OF PROPERTY INCLUDED UNDER THIS PARAGRAPH (d) IS REDUCED IN EACH CATEGORY BY ENFORCEABLE CLAIMS AGAINST THE INCLUDED PROPERTY AND IS REDUCED BY ENFORCEABLE CLAIMS AGAINST THE SURVIVING SPOUSE.

(3) **Exclusions.** NOTWITHSTANDING ANYTHING STATED IN SUBSECTION (2) OF THIS SECTION, THE FOLLOWING EXCLUSIONS SHALL CONTROL:

(a) THE VALUE OF ANY PROPERTY IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS (i) TO THE EXTENT THE DECEDENT RECEIVED ADEQUATE AND FULL CONSIDERATION IN MONEY OR MONEY'S WORTH FOR A TRANSFER OF THE PROPERTY OR (ii) IF THE PROPERTY WAS TRANSFERRED WITH THE WRITTEN JOINDER OF, OR IF THE TRANSFER WAS CONSENTED TO IN WRITING BY, THE SURVIVING SPOUSE.

(b) ANY LIFE INSURANCE MAINTAINED PURSUANT TO A MARRIAGE DISSOLUTION SETTLEMENT AGREEMENT OR COURT ORDER OR ANY DISTRIBUTION FROM A PLAN QUALIFIED UNDER SECTION 401(a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS TO THE EXTENT SUCH ITEMS ARE PAYABLE TO A PERSON OTHER THAN THE SURVIVING SPOUSE.

(c) LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT SHARING, RETIREMENT, AND OTHER BENEFIT PLANS PAYABLE TO PERSONS OTHER THAN THE DECEDENT'S SURVIVING SPOUSE OR THE DECEDENT'S ESTATE ARE EXCLUDED FROM THE AUGMENTED ESTATE.

(d) ANY COMPLETED TRANSFERS MADE BY THE DECEDENT PRIOR TO JULY 1, 1974, ARE EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

(e) EXCEPT WITH RESPECT TO JOINT TENANCIES AND OTHER INTERESTS IN REAL ESTATE BETWEEN THE DECEDENT AND THE SURVIVING SPOUSE, JOINT TENANCY

AND OTHER INTERESTS IN REAL ESTATE CREATED BY THE DECEDENT PRIOR TO MARRIAGE TO THE SURVIVING SPOUSE ARE EXCLUDED AS DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

(f) THE DECEDENT'S FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS CREATED BY A TRANSFER BY SOMEONE OTHER THAN THE DECEDENT OR BY SOMEONE OTHER THAN THE SURVIVING SPOUSE, IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

(g) THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS CREATED BY A TRANSFER BY SOMEONE OTHER THAN THE DECEDENT OR BY SOMEONE OTHER THAN THE SURVIVING SPOUSE, IS EXCLUDED FROM THE AUGMENTED ESTATE.

(h) EXCEPT WITH RESPECT TO JOINT TENANCIES AND OTHER INTERESTS IN REAL ESTATE BETWEEN THE DECEDENT AND THE SURVIVING SPOUSE, JOINT TENANCIES AND OTHER INTERESTS IN REAL ESTATE CREATED BY THE SURVIVING SPOUSE PRIOR TO MARRIAGE TO THE DECEDENT ARE EXCLUDED FROM THE AUGMENTED ESTATE.

(4) **Valuation.** THE VALUE OF PROPERTY INCLUDES THE COMMUTED VALUE OF ANY PRESENT OR FUTURE INTEREST AND THE COMMUTED VALUE OF AMOUNTS PAYABLE UNDER ANY TRUST, LIFE INSURANCE SETTLEMENT OPTION, ANNUITY CONTRACT, PUBLIC OR PRIVATE PENSION, DISABILITY COMPENSATION, DEATH BENEFIT OR RETIREMENT PLAN, OR ANY SIMILAR ARRANGEMENT, EXCLUSIVE OF THE FEDERAL SOCIAL SECURITY SYSTEM.

(5) **Overlapping application; no double inclusion.** IN CASE OF OVERLAPPING APPLICATION TO THE SAME PROPERTY REFERRED TO IN SUB-SUBPARAGRAPHS (A), (B), OR (C) OF SUBPARAGRAPH (I) OR SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THE PROPERTY IS INCLUDED IN THE AUGMENTED ESTATE UNDER THE PROVISION YIELDING THE HIGHEST VALUE, BUT UNDER ANY ONE, BUT ONLY ONE, OF THE OVERLAPPING PROVISIONS IF THEY ALL YIELD THE SAME VALUE.

15-11-203. Sources from which elective-share payable. (1) Elective-share amount only. IN A PROCEEDING FOR AN ELECTIVE-SHARE, THE FOLLOWING ARE APPLIED FIRST TO SATISFY THE ELECTIVE-SHARE AMOUNT AND TO REDUCE OR ELIMINATE ANY CONTRIBUTIONS DUE FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS:

(a) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-202 (2) (a) WHICH PASS OR HAVE PASSED TO THE SURVIVING SPOUSE BY TESTATE OR INTESTATE SUCCESSION AND AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-202 (2) (c). FOR THE PURPOSES OF THIS SUBSECTION (1), IF THE SURVIVING SPOUSE DISCLAIMS ANY PROPERTY, INCLUDING INTERESTS IN TRUST CREATED BY THE DECEDENT, SUCH PROPERTY SHALL NOT BE APPLIED UNDER THIS SUBSECTION (1) TO THE EXTENT THAT SUCH PROPERTY PASSES TO A PERSON OTHER THAN THE SURVIVING SPOUSE;

(b) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-202 (2) (d) UP TO THE APPLICABLE PERCENTAGE THEREOF. FOR THE PURPOSES OF THIS SUBSECTION (1), THE "APPLICABLE PERCENTAGE" IS TWICE THE ELECTIVE-SHARE PERCENTAGE SET FORTH IN THE SCHEDULE IN SECTION 15-11-201 (1) APPROPRIATE TO THE LENGTH OF TIME THE SPOUSE AND THE DECEDENT WERE MARRIED TO EACH OTHER.

(2) Unsatisfied balance of elective-share amount; supplemental elective-share amount. IF, AFTER THE APPLICATION OF SUBSECTION (1) OF THIS SECTION, THE ELECTIVE-SHARE AMOUNT IS NOT FULLY SATISFIED OR THE SURVIVING SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE-SHARE AMOUNT, AMOUNTS INCLUDED IN THE DECEDENT'S PROBATE ESTATE AND IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, OTHER THAN AMOUNTS INCLUDED UNDER SECTION 15-11-202 (2) (b) (III) (A) OR (2) (b) (III) (C), ARE APPLIED FIRST TO SATISFY THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE AMOUNT OR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT. THE DECEDENT'S PROBATE ESTATE AND THAT PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE SO APPLIED THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE AMOUNT OR FOR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS EQUITABLY APPORTIONED AMONG THE RECIPIENTS OF THE DECEDENT'S PROBATE ESTATE AND OF THAT PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.

(3) Unsatisfied balance of elective-share and supplemental elective-share amounts. IF, AFTER THE APPLICATION OF SUBSECTIONS (1) AND (2) OF THIS SECTION, THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS NOT FULLY SATISFIED, THE REMAINING PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IS SO APPLIED THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS EQUITABLY APPORTIONED AMONG THE RECIPIENTS OF THAT REMAINING PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.

15-11-204. Personal liability of recipients. (1) ONLY ORIGINAL RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, AND THE DONEES OF THE RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, TO THE EXTENT THE DONEES HAVE THE PROPERTY OR ITS PROCEEDS, ARE LIABLE TO MAKE A PROPORTIONAL CONTRIBUTION TOWARD SATISFACTION OF THE SURVIVING SPOUSE'S ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT. A PERSON LIABLE TO MAKE CONTRIBUTION MAY CHOOSE TO GIVE UP THE PROPORTIONAL PART OF THE DECEDENT'S NONPROBATE TRANSFERS TO HIM OR HER OR TO PAY THE VALUE OF THE AMOUNT FOR WHICH HE OR SHE IS LIABLE.

(2) IF ANY SECTION OR ANY PART OF ANY SECTION OF THIS PART 2 IS PREEMPTED BY ANY FEDERAL LAW (OTHER THAN THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED) WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT INCLUDED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, A PERSON, OTHER THAN A BONA FIDE PURCHASER, WHO RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT IS OBLIGATED TO RETURN THAT PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THAT PAYMENT OR THE

VALUE OF THAT ITEM OF PROPERTY OR BENEFIT, AS PROVIDED IN SECTION 15-11-203, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THAT SECTION OR PART OF THAT SECTION NOT PREEMPTED.

(3) A BONA FIDE PURCHASER WHO PURCHASES PROPERTY FROM A RECIPIENT OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS PART 2 TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR IS LIABLE UNDER THIS PART 2 FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT.

15-11-205. Proceeding for elective-share; time limit. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE ELECTION SHALL BE MADE BY FILING IN THE COURT AND MAILING OR DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A PETITION FOR THE ELECTIVE-SHARE WITHIN NINE MONTHS AFTER THE DATE OF THE DECEDENT'S DEATH, OR WITHIN SIX MONTHS AFTER THE DECEDENT'S WILL IS ADMITTED TO PROBATE, WHICHEVER LIMITATION EXPIRES LATER. THE SURVIVING SPOUSE SHALL SERVE A COPY OF THE PETITION FOR THE ELECTIVE SHARE ON, AND SHALL GIVE WRITTEN NOTICE OF THE TIME AND PLACE SET FOR HEARING TO, PERSONS INTERESTED IN THE ESTATE AND TO THE DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE WHOSE INTERESTS MAY BE ADVERSELY AFFECTED BY THE TAKING OF THE ELECTIVE-SHARE.

(2) WITHIN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE SURVIVING SPOUSE MAY PETITION THE COURT FOR AN EXTENSION OF TIME FOR MAKING AN ELECTION. IF, WITHIN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE SPOUSE GIVES NOTICE OF THE PETITION TO ALL PERSONS INTERESTED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, THE COURT, FOR CAUSE SHOWN BY THE SURVIVING SPOUSE, MAY EXTEND THE TIME FOR ELECTION.

(3) THE SURVIVING SPOUSE MAY WITHDRAW HIS OR HER DEMAND FOR AN ELECTIVE-SHARE AT ANY TIME BEFORE ENTRY OF A FINAL DETERMINATION BY THE COURT. WRITTEN NOTICE OF SUCH WITHDRAWAL SHALL BE GIVEN TO PERSONS INTERESTED IN THE ESTATE AND THE DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE WHOSE INTERESTS MAY BE ADVERSELY AFFECTED BY THE TAKING OF THE ELECTIVE-SHARE.

(4) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS, AND SHALL ORDER ITS PAYMENT FROM THE ASSETS OF THE AUGMENTED ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER SECTIONS 15-11-203 AND 15-11-204. IF IT APPEARS THAT A FUND OR PROPERTY INCLUDED IN THE AUGMENTED ESTATE HAS NOT COME INTO THE POSSESSION OF THE PERSONAL REPRESENTATIVE, OR HAS BEEN DISTRIBUTED BY THE PERSONAL REPRESENTATIVE, THE COURT NEVERTHELESS SHALL FIX THE LIABILITY OF ANY PERSON WHO HAS ANY INTEREST IN THE FUND OR PROPERTY OR WHO HAS POSSESSION THEREOF, WHETHER AS TRUSTEE OR OTHERWISE. THE PROCEEDING MAY BE MAINTAINED AGAINST FEWER THAN ALL PERSONS AGAINST WHOM RELIEF COULD BE SOUGHT, BUT NO PERSON IS SUBJECT TO CONTRIBUTION IN ANY GREATER AMOUNT THAN HE OR SHE WOULD HAVE BEEN UNDER SECTIONS 15-11-203 AND 15-11-204 HAD

RELIEF BEEN SECURED AGAINST ALL PERSONS SUBJECT TO CONTRIBUTION.

(5) AN ORDER OR JUDGMENT OF THE COURT MAY BE ENFORCED AS NECESSARY IN SUIT FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS OF THIS STATE OR OTHER JURISDICTIONS.

15-11-206. Right of election personal to surviving spouse; incapacitated surviving spouse. (1) Surviving spouse must be living at time of election. THE RIGHT OF ELECTION MAY BE EXERCISED ONLY BY A SURVIVING SPOUSE WHO IS LIVING WHEN THE PETITION FOR THE ELECTIVE-SHARE IS FILED IN THE COURT UNDER SECTION 15-11-205 (1). IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING SPOUSE PERSONALLY, IT MAY BE EXERCISED ON THE SURVIVING SPOUSE'S BEHALF BY HIS OR HER CONSERVATOR, GUARDIAN, OR AGENT UNDER THE AUTHORITY OF A POWER OF ATTORNEY.

(2) Incapacitated surviving spouse. IF THE ELECTION IS EXERCISED ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON, THE COURT SHALL SET ASIDE THAT PORTION OF THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS DUE FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-203 (2) AND (3) AND SHALL APPOINT A TRUSTEE TO ADMINISTER THAT PROPERTY FOR THE SUPPORT OF THE SURVIVING SPOUSE. FOR THE PURPOSES OF THIS SUBSECTION (2), AN ELECTION ON BEHALF OF A SURVIVING SPOUSE BY AN AGENT UNDER A DURABLE POWER OF ATTORNEY IS PRESUMED TO BE ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON. THE TRUSTEE SHALL ADMINISTER THE TRUST IN ACCORDANCE WITH THE FOLLOWING TERMS AND SUCH ADDITIONAL TERMS AS THE COURT DETERMINES APPROPRIATE:

(a) EXPENDITURES OF INCOME AND PRINCIPAL MAY BE MADE IN THE MANNER, WHEN, AND TO THE EXTENT THAT THE TRUSTEE DETERMINES SUITABLE AND PROPER FOR THE SURVIVING SPOUSE'S SUPPORT, WITHOUT COURT ORDER BUT WITH REGARD TO OTHER SUPPORT, INCOME, AND PROPERTY OF THE SURVIVING SPOUSE AND BENEFITS OF MEDICAL OR OTHER FORMS OF ASSISTANCE FROM ANY STATE OR FEDERAL GOVERNMENT OR GOVERNMENTAL AGENCY FOR WHICH THE SURVIVING SPOUSE MUST QUALIFY ON THE BASIS OF NEED.

(b) DURING THE SURVIVING SPOUSE'S INCAPACITY, NEITHER THE SURVIVING SPOUSE NOR ANYONE ACTING ON BEHALF OF THE SURVIVING SPOUSE HAS A POWER TO TERMINATE THE TRUST; BUT IF THE SURVIVING SPOUSE REGAINS CAPACITY, THE SURVIVING SPOUSE THEN ACQUIRES THE POWER TO TERMINATE THE TRUST AND ACQUIRE FULL OWNERSHIP OF THE TRUST PROPERTY FREE OF TRUST, BY DELIVERING TO THE TRUSTEE A WRITING SIGNED BY THE SURVIVING SPOUSE DECLARING THE TERMINATION.

(c) UPON THE SURVIVING SPOUSE'S DEATH, THE TRUSTEE SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER: (i) UNDER THE RESIDUARY CLAUSE, IF ANY, OF THE WILL OF THE PREDECEASED SPOUSE AGAINST WHOM THE ELECTIVE-SHARE WAS TAKEN, AS IF THAT PREDECEASED SPOUSE DIED IMMEDIATELY AFTER THE SURVIVING SPOUSE; OR (ii) TO THAT PREDECEASED SPOUSE'S HEIRS UNDER SECTION 15-11-711.

15-11-207. Waiver of right to elect and of other rights. (1) THE RIGHTS OF ELECTION OF A SURVIVING SPOUSE AND THE RIGHTS OF THE SURVIVING SPOUSE TO EXEMPT PROPERTY, FAMILY ALLOWANCE, AND THE DECEDENT'S HOMESTEAD EXEMPTION MAY BE WAIVED, WHOLLY OR PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITING SIGNED BY THE WAIVING PARTY AFTER FAIR DISCLOSURE. UNLESS THE WRITING PROVIDES TO THE CONTRARY, A WAIVER OF "ALL RIGHTS" (OR EQUIVALENT LANGUAGE) IN THE PROPERTY OR ESTATE OF A PRESENT OR PROSPECTIVE SPOUSE IS A WAIVER OF ALL RIGHTS TO ELECTIVE-SHARE, EXEMPT PROPERTY, FAMILY ALLOWANCE, AND THE DECEDENT'S HOMESTEAD EXEMPTION BY THE WAIVING PARTY IN THE PROPERTY OF THE OTHER AND A RENUNCIATION BY THE WAIVING PARTY OF ALL BENEFITS WHICH WOULD OTHERWISE PASS TO HIM OR HER FROM THE OTHER BY INTESTATE SUCCESSION OR BY VIRTUE OF THE PROVISIONS OF ANY WILL EXECUTED BEFORE THE WRITING.

(2) A SURVIVING SPOUSE'S WAIVER IS NOT ENFORCEABLE IF SUCH WAIVER WOULD NOT BE ENFORCEABLE UNDER SECTION 14-2-307, C.R.S.

15-11-208. Protection of payors and other third parties. (1) ALTHOUGH UNDER THIS PART 2, A PAYMENT, ITEM OF PROPERTY, OR OTHER BENEFIT IS INCLUDED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, OR FOR HAVING TAKEN ANY OTHER ACTION IN RELIANCE ON THE BENEFICIARY'S APPARENT ENTITLEMENT UNDER THE TERMS OF THE GOVERNING INSTRUMENT, UPON REQUEST AND SATISFACTORY PROOF OF THE DECEDENT'S DEATH, BEFORE THE PAYOR OR OTHER THIRD PARTY HAS RECEIVED WRITTEN NOTICE AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION. A PAYOR OR OTHER THIRD PARTY IS ONLY LIABLE FOR ACTIONS TAKEN TWO OR MORE BUSINESS DAYS AFTER THE PAYOR OR OTHER THIRD PARTY HAS ACTUAL RECEIPT OF SUCH WRITTEN NOTICE. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) OF THIS SECTION SHALL NOT BE SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(2) THE WRITTEN NOTICE SHALL INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE SURVIVING SPOUSE, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT THE SURVIVING SPOUSE INTENDS TO FILE A PETITION FOR THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS BEEN FILED. THE WRITTEN NOTICE SHALL BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION. NOTICE TO A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY SHALL NOT CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY.

(3) UPON RECEIPT OF THE WRITTEN NOTICE DESCRIBED IN SUBSECTION (2) OF THIS SECTION, A PAYOR OR OTHER THIRD PARTY MAY PAY TO THE COURT ANY AMOUNT OWED, OR TRANSFER TO OR DEPOSIT WITH THE COURT ANY ITEM OF PROPERTY HELD BY IT. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION SHALL NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE

COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE, OR IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(4) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER SECTION 15-11-205 (4), SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. IF NO PETITION IS FILED IN THE COURT WITHIN THE SPECIFIED TIME UNDER SECTION 15-11-205 (1), OR, IF FILED, THE DEMAND FOR AN ELECTIVE SHARE IS WITHDRAWN UNDER SECTION 15-11-205 (3), THE COURT SHALL ORDER DISBURSEMENT TO THE DESIGNATED BENEFICIARY IN THE GOVERNING INSTRUMENT. A FILING FEE, IF ANY, SHALL BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT.

(5) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

PART 3 SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

15-11-301. Entitlement of spouse; premarital will. (1) IF A TESTATOR'S SURVIVING SPOUSE MARRIED THE TESTATOR AFTER THE TESTATOR EXECUTED HIS OR HER WILL, THE SURVIVING SPOUSE IS ENTITLED TO RECEIVE, AS AN INTESTATE SHARE, NO LESS THAN THE VALUE OF THE SHARE OF THE ESTATE HE OR SHE WOULD HAVE RECEIVED IF THE TESTATOR HAD DIED INTESTATE AS TO THAT PORTION OF THE TESTATOR'S ESTATE, IF ANY, THAT NEITHER IS DEvised OUTRIGHT TO NOR IN TRUST FOR THE BENEFIT OF A CHILD OF THE TESTATOR WHO WAS BORN BEFORE THE TESTATOR MARRIED THE SURVIVING SPOUSE AND WHO IS NOT A CHILD OF THE SURVIVING SPOUSE NOR IS SO DEvised TO A DESCENDANT OF SUCH A CHILD, OR PASSES UNDER SECTION 15-11-603 OR 15-11-604 TO SUCH A CHILD OR TO A DESCENDANT OF SUCH A CHILD, UNLESS:

(a) IT APPEARS FROM THE WILL OR OTHER EVIDENCE THAT THE WILL WAS MADE IN CONTEMPLATION OF THE TESTATOR'S MARRIAGE TO THE SURVIVING SPOUSE;

(b) THE WILL EXPRESSES THE INTENTION THAT IT IS TO BE EFFECTIVE NOTWITHSTANDING ANY SUBSEQUENT MARRIAGE; OR

(c) THE TESTATOR PROVIDED FOR THE SPOUSE BY TRANSFER OUTSIDE THE WILL AND THE INTENT THAT THE TRANSFER BE IN LIEU OF A TESTAMENTARY PROVISION IS SHOWN BY THE TESTATOR'S STATEMENTS OR IS REASONABLY INFERRED FROM THE AMOUNT OF THE TRANSFER OR OTHER EVIDENCE.

(2) IN SATISFYING THE SHARE PROVIDED BY THIS SECTION, DEVISES MADE BY THE WILL TO THE TESTATOR'S SURVIVING SPOUSE, IF ANY, ARE APPLIED FIRST, AND OTHER DEVISES, OTHER THAN A DEVISE OUTRIGHT TO OR IN TRUST FOR THE BENEFIT OF A CHILD OF THE TESTATOR WHO WAS BORN BEFORE THE TESTATOR MARRIED THE SURVIVING SPOUSE AND WHO IS NOT A CHILD OF THE SURVIVING SPOUSE OR A DEVISE OR SUBSTITUTE GIFT UNDER SECTION 15-11-603 OR 15-11-604 TO A DESCENDANT OF SUCH A CHILD, ABATE AS PROVIDED IN SECTION 15-12-902.

15-11-302. Omitted children. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF A TESTATOR FAILS TO PROVIDE IN HIS OR HER WILL FOR ANY OF HIS OR HER CHILDREN BORN OR ADOPTED AFTER THE EXECUTION OF THE WILL, THE OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD RECEIVES A SHARE IN THE ESTATE AS FOLLOWS:

(a) IF THE TESTATOR HAD NO CHILD LIVING WHEN HE OR SHE EXECUTED THE WILL, AN OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD RECEIVES A SHARE IN THE ESTATE EQUAL IN VALUE TO THAT WHICH THE CHILD WOULD HAVE RECEIVED HAD THE TESTATOR DIED INTESTATE, UNLESS THE WILL DEVISED ALL OR SUBSTANTIALLY ALL THE ESTATE TO THE OTHER PARENT OF THE OMITTED CHILD AND THAT OTHER PARENT SURVIVES THE TESTATOR AND IS ENTITLED TO TAKE UNDER THE WILL.

(b) IF THE TESTATOR HAS ONE OR MORE CHILDREN LIVING WHEN HE OR SHE EXECUTED THE WILL, AND THE WILL DEVISED PROPERTY OR AN INTEREST IN PROPERTY TO ONE OR MORE OF THE THEN LIVING CHILDREN, AN OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD IS ENTITLED TO SHARE IN THE TESTATOR'S ESTATE AS FOLLOWS:

(I) THE PORTION OF THE TESTATOR'S ESTATE IN WHICH THE OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD IS ENTITLED TO SHARE IS LIMITED TO DEVISES MADE TO THE TESTATOR'S THEN LIVING CHILDREN UNDER THE WILL.

(II) THE OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD IS ENTITLED TO RECEIVE THE SHARE OF THE TESTATOR'S ESTATE, AS LIMITED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THAT THE CHILD WOULD HAVE RECEIVED HAD THE TESTATOR INCLUDED ALL OMITTED AFTER-BORN AND AFTER-ADOPTED CHILDREN WITH THE CHILDREN TO WHOM DEVISES WERE MADE UNDER THE WILL AND HAD GIVEN AN EQUAL SHARE OF THE ESTATE TO EACH CHILD.

(III) TO THE EXTENT FEASIBLE, THE INTEREST GRANTED AN OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD UNDER THIS SECTION SHALL BE OF THE SAME CHARACTER, WHETHER EQUITABLE OR LEGAL, PRESENT OR FUTURE, AS THAT DEVISED TO THE TESTATOR'S THEN LIVING CHILDREN UNDER THE WILL.

(IV) IN SATISFYING A SHARE PROVIDED BY THIS PARAGRAPH (b), DEVISES TO THE TESTATOR'S CHILDREN WHO WERE LIVING WHEN THE WILL WAS EXECUTED ABATE RATABLY. IN ABATING THE DEVISES OF THE THEN LIVING CHILDREN, THE COURT SHALL PRESERVE TO THE MAXIMUM EXTENT POSSIBLE THE CHARACTER OF THE TESTAMENTARY PLAN ADOPTED BY THE TESTATOR.

(2) NEITHER PARAGRAPH (a) NOR (b) OF SUBSECTION (1) OF THIS SECTION APPLIES IF:

(a) IT APPEARS FROM THE WILL THAT THE OMISSION WAS INTENTIONAL; OR

(b) THE TESTATOR PROVIDED FOR THE OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD BY TRANSFER OUTSIDE THE WILL AND THE INTENT THAT THE TRANSFER BE IN LIEU OF A TESTAMENTARY PROVISION IS SHOWN BY THE TESTATOR'S STATEMENTS OR IS REASONABLY INFERRED FROM THE AMOUNT OF THE TRANSFER OR OTHER EVIDENCE.

(3) IF AT THE TIME OF EXECUTION OF THE WILL THE TESTATOR FAILS TO PROVIDE IN HIS OR HER WILL FOR A LIVING CHILD SOLELY BECAUSE HE OR SHE BELIEVES THE CHILD TO BE DEAD, THE CHILD IS ENTITLED TO SHARE IN THE ESTATE AS IF THE CHILD WERE AN OMITTED AFTER-BORN OR AFTER-ADOPTED CHILD.

(4) IN SATISFYING A SHARE PROVIDED BY PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, DEVISES MADE BY THE WILL ABATE UNDER SECTION 15-12-902.

PART 4 EXEMPT PROPERTY AND ALLOWANCES

15-11-401. Applicable law. THIS PART 4 APPLIES TO THE ESTATE OF A DECEDENT WHO DIES DOMICILED IN THIS STATE. RIGHTS TO AN EXEMPT PROPERTY AND FAMILY ALLOWANCE FOR A DECEDENT WHO DIES NOT DOMICILED IN THIS STATE ARE GOVERNED BY THE LAW OF THE DECEDENT'S DOMICILE AT DEATH.

15-11-402. Homestead. THE PROVISIONS OF SECTIONS 38-41-201 AND 38-41-204, C.R.S., PROVIDE FOR A HOMESTEAD EXEMPTION BUT SHALL NOT CREATE AN ALLOWANCE FOR THE SURVIVING SPOUSE OR MINOR CHILDREN. A PERSONAL REPRESENTATIVE'S OBLIGATION TO DISTRIBUTE PROPERTY AS AN EXEMPT PROPERTY ALLOWANCE UNDER SECTION 15-11-403, TO PAY MONEY AS A FAMILY ALLOWANCE UNDER SECTION 15-11-404, OR TO DISTRIBUTE PROPERTY TO DEVISEES, HEIRS, OR BENEFICIARIES SHALL NOT BE CONSIDERED A DEBT, CONTRACT, OR CIVIL OBLIGATION, AS REFERRED TO UNDER SECTIONS 38-41-201 AND 38-41-202, C.R.S.

15-11-403. Exempt property. THE DECEDENT'S SURVIVING SPOUSE IS ENTITLED FROM THE ESTATE TO A VALUE OF FIFTEEN THOUSAND DOLLARS IN EXCESS OF ANY SECURITY INTERESTS THEREIN, IN HOUSEHOLD FURNITURE, AUTOMOBILES, FURNISHINGS, APPLIANCES, AND PERSONAL EFFECTS. IF THERE IS NO SURVIVING SPOUSE, THE DECEDENT'S DEPENDENT CHILDREN ARE ENTITLED JOINTLY TO THE SAME VALUE. IF ENCUMBERED PERSONAL PROPERTY IS SELECTED AND THE VALUE IN EXCESS OF SECURITY INTERESTS, PLUS THAT OF OTHER EXEMPT PROPERTY, IS LESS THAN FIFTEEN THOUSAND DOLLARS, OR IF THERE IS NOT FIFTEEN THOUSAND DOLLARS WORTH OF EXEMPT PROPERTY IN THE ESTATE, THE SPOUSE OR DEPENDENT CHILDREN ARE ENTITLED TO OTHER ASSETS OF THE ESTATE, IF ANY, TO THE EXTENT NECESSARY

TO MAKE UP THE FIFTEEN THOUSAND DOLLAR VALUE. RIGHTS TO EXEMPT PROPERTY AND ASSETS NEEDED TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY HAVE PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE, EXCEPT CLAIMS FOR THE COSTS AND EXPENSES OF ADMINISTRATION, AND REASONABLE FUNERAL AND BURIAL, INTERMENT, OR CREMATION EXPENSES, WHICH SHALL BE PAID IN THE PRIORITY AND MANNER SET FORTH IN SECTION 15-12-805. THE RIGHT TO ANY ASSETS TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY SHALL ABATE AS NECESSARY TO PERMIT PAYMENT OF THE FAMILY ALLOWANCE. THESE RIGHTS ARE IN ADDITION TO ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR DEPENDENT CHILDREN BY THE DECEDENT'S WILL, UNLESS OTHERWISE PROVIDED, BY INTESTATE SUCCESSION, OR BY WAY OF ELECTIVE-SHARE.

15-11-404. Family allowance. (1) IN ADDITION TO THE RIGHT TO EXEMPT PROPERTY, THE DECEDENT'S SURVIVING SPOUSE AND MINOR CHILDREN WHO THE DECEDENT WAS OBLIGATED TO SUPPORT AND CHILDREN WHO WERE IN FACT BEING SUPPORTED BY THE DECEDENT ARE ENTITLED TO A REASONABLE ALLOWANCE IN MONEY OUT OF THE ESTATE FOR THEIR MAINTENANCE DURING THE PERIOD OF ADMINISTRATION, WHICH ALLOWANCE MAY NOT CONTINUE FOR LONGER THAN ONE YEAR IF THE ESTATE IS INADEQUATE TO DISCHARGE ALLOWED CLAIMS. THE ALLOWANCE MAY BE PAID AS A LUMP SUM OR IN PERIODIC INSTALLMENTS. IT IS PAYABLE TO THE SURVIVING SPOUSE, IF LIVING, FOR THE USE OF THE SURVIVING SPOUSE AND MINOR AND DEPENDENT CHILDREN; OTHERWISE TO THE CHILDREN, OR PERSONS HAVING THEIR CARE AND CUSTODY. IF A MINOR CHILD OR DEPENDENT CHILD IS NOT LIVING WITH THE SURVIVING SPOUSE, THE ALLOWANCE MAY BE MADE PARTIALLY TO THE CHILD OR HIS OR HER GUARDIAN OR OTHER PERSON HAVING THE CHILD'S CARE AND CUSTODY, AND PARTIALLY TO THE SPOUSE, AS THEIR NEEDS MAY APPEAR. THE FAMILY ALLOWANCE IS EXEMPT FROM AND HAS PRIORITY OVER ALL CLAIMS EXCEPT CLAIMS FOR THE COSTS AND EXPENSES OF ADMINISTRATION, AND REASONABLE FUNERAL AND BURIAL, INTERMENT, OR CREMATION EXPENSES, WHICH SHALL BE PAID IN THE PRIORITY AND MANNER SET FORTH IN SECTION 15-12-805.

(2) THE FAMILY ALLOWANCE IS NOT CHARGEABLE AGAINST ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN BY THE WILL OF THE DECEDENT, UNLESS OTHERWISE PROVIDED, BY INTESTATE SUCCESSION, OR BY WAY OF ELECTIVE-SHARE. THE DEATH OF ANY PERSON ENTITLED TO A FAMILY ALLOWANCE TERMINATES THE RIGHT TO RECEIVE AN ALLOWANCE FOR ANY PERIOD ARISING AFTER HIS OR HER DEATH, BUT DOES NOT AFFECT THE RIGHT OF HIS OR HER ESTATE TO RECOVER THE UNPAID ALLOWANCE FOR PERIODS PRIOR TO HIS OR HER DEATH.

15-11-405. Source, determination, and documentation. (1) IF THE ESTATE IS OTHERWISE SUFFICIENT, PROPERTY SPECIFICALLY DEVISED MAY NOT BE USED TO SATISFY RIGHTS TO EXEMPT PROPERTY. SUBJECT TO THIS RESTRICTION, THE SURVIVING SPOUSE, THE GUARDIANS OF MINOR CHILDREN, OR DEPENDENT CHILDREN WHO ARE ADULTS MAY SELECT PROPERTY OF THE ESTATE AS EXEMPT PROPERTY. THE PERSONAL REPRESENTATIVE MAY MAKE THESE SELECTIONS IF THE SURVIVING SPOUSE, THE DEPENDENT CHILDREN, OR THE GUARDIANS OF THE MINOR CHILDREN ARE UNABLE OR FAIL TO DO SO WITHIN A REASONABLE TIME OR THERE IS NO GUARDIAN OF A MINOR CHILD. THE PERSONAL REPRESENTATIVE MAY EXECUTE AN INSTRUMENT OR DEED OF DISTRIBUTION TO ESTABLISH THE OWNERSHIP OF PROPERTY TAKEN AS EXEMPT PROPERTY ALLOWANCE. THE PERSONAL REPRESENTATIVE MAY DETERMINE THE FAMILY ALLOWANCE IN A LUMP SUM NOT EXCEEDING TWELVE THOUSAND DOLLARS

OR PERIODIC INSTALLMENTS NOT EXCEEDING ONE THOUSAND DOLLARS PER MONTH FOR ONE YEAR, AND MAY DISBURSE FUNDS OF THE ESTATE IN PAYMENT OF THE FAMILY ALLOWANCE. THE PERSONAL REPRESENTATIVE OR AN INTERESTED PERSON AGGRIEVED BY ANY SELECTION, DETERMINATION, PAYMENT, PROPOSED PAYMENT, OR FAILURE TO ACT UNDER THIS SECTION MAY PETITION THE COURT FOR APPROPRIATE RELIEF, WHICH MAY PROVIDE A FAMILY ALLOWANCE OTHER THAN THAT WHICH THE PERSONAL REPRESENTATIVE DETERMINED OR COULD HAVE DETERMINED.

(2) IF THE RIGHT TO AN ELECTIVE-SHARE IS EXERCISED ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON, THE PERSONAL REPRESENTATIVE MAY ADD ANY UNEXPENDED PORTIONS PAYABLE UNDER THE EXEMPT PROPERTY AND FAMILY ALLOWANCE TO THE TRUST ESTABLISHED UNDER SECTION 15-11-206 (2).

(3) NO EXEMPT PROPERTY OR FAMILY ALLOWANCE SHALL BE PAYABLE UNLESS THE PERSON ENTITLED TO PAYMENT THEREOF REQUESTS SUCH PAYMENT WITHIN SIX MONTHS AFTER THE FIRST PUBLICATION OF NOTICE TO CREDITORS FOR FILING CLAIMS WHICH AROSE BEFORE THE DEATH OF THE DECEDENT, OR WITHIN ONE YEAR AFTER THE DATE OF DEATH, WHICHEVER TIME LIMITATION FIRST EXPIRES. THE COURT MAY EXTEND THE TIME FOR PRESENTING SUCH REQUEST AS IT SEES FIT FOR CAUSE SHOWN BY THE PERSON ENTITLED TO PAYMENT BEFORE THE TIME LIMITATION HAS EXPIRED; EXCEPT THAT THE TIME FOR PRESENTING THE REQUEST SHALL NOT BE EXTENDED BEYOND TWO YEARS AFTER THE DATE OF DEATH. THE REQUEST SHALL BE MADE TO THE PERSONAL REPRESENTATIVE, OR, IF NONE IS APPOINTED, TO ANY OTHER PERSON HAVING POSSESSION OF THE DECEDENT'S ASSETS. A REQUEST ON BEHALF OF A MINOR OR DEPENDENT CHILD MAY BE MADE BY THE CHILD'S GUARDIAN OR OTHER PERSON HAVING HIS OR HER CARE AND CUSTODY.

PART 5
WILLS AND WILL CONTRACTS
AND CUSTODY AND DEPOSIT OF WILLS

15-11-501. Who may make a will. AN INDIVIDUAL EIGHTEEN OR MORE YEARS OF AGE WHO IS OF SOUND MIND MAY MAKE A WILL.

15-11-502. Execution; witnessed wills; holographic wills. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION AND IN SECTIONS 15-11-503, 15-11-506, AND 15-11-513, A WILL SHALL BE:

(a) IN WRITING;

(b) SIGNED BY THE TESTATOR, OR IN THE TESTATOR'S NAME BY SOME OTHER INDIVIDUAL IN THE TESTATOR'S CONSCIOUS PRESENCE AND BY THE TESTATOR'S DIRECTION; AND

(c) SIGNED BY AT LEAST TWO INDIVIDUALS EITHER PRIOR TO OR AFTER THE TESTATOR'S DEATH, EACH OF WHOM SIGNED WITHIN A REASONABLE TIME AFTER HE OR SHE WITNESSED, IN THE CONSCIOUS PRESENCE OF THE TESTATOR, EITHER THE SIGNING OF THE WILL AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1) OR THE TESTATOR'S ACKNOWLEDGMENT OF THAT SIGNATURE OR ACKNOWLEDGMENT OF THE WILL.

(2) A WILL THAT DOES NOT COMPLY WITH SUBSECTION (1) OF THIS SECTION IS VALID AS A HOLOGRAPHIC WILL, WHETHER OR NOT WITNESSED, IF THE SIGNATURE AND MATERIAL PORTIONS OF THE DOCUMENT ARE IN THE TESTATOR'S HANDWRITING.

(3) INTENT THAT THE DOCUMENT CONSTITUTE THE TESTATOR'S WILL CAN BE ESTABLISHED BY EXTRINSIC EVIDENCE, INCLUDING, FOR HOLOGRAPHIC WILLS, PORTIONS OF THE DOCUMENT THAT ARE NOT IN THE TESTATOR'S HANDWRITING.

(4) FOR PURPOSES OF THIS SECTION, "CONSCIOUS PRESENCE" REQUIRES PHYSICAL PROXIMITY TO THE TESTATOR BUT NOT NECESSARILY WITHIN TESTATOR'S LINE OF SIGHT.

15-11-503. Writings intended as wills, etc. ALTHOUGH A WILL WAS NOT EXECUTED IN COMPLIANCE WITH SECTION 15-11-502, THE WILL IS TREATED AS IF IT HAD BEEN EXECUTED IN COMPLIANCE WITH THAT SECTION IF THE PROPONENT OF THE WILL ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE DECEDENT INTENDED THE WILL TO CONSTITUTE THE DECEDENT'S WILL.

15-11-504. Self-proved will. (1) A WILL MAY BE SIMULTANEOUSLY EXECUTED, ATTESTED, AND MADE SELF-PROVED BY ACKNOWLEDGMENT THEREOF BY THE TESTATOR AND AFFIDAVITS OF THE WITNESSES, EACH MADE BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS UNDER THE LAWS OF THE STATE IN WHICH EXECUTION OCCURS AND EVIDENCED BY THE OFFICER'S CERTIFICATE, UNDER OFFICIAL SEAL, IN SUBSTANTIALLY THE FOLLOWING FORM:

I, _____, THE TESTATOR, SIGN MY NAME TO THIS INSTRUMENT THIS ___ DAY OF ___, AND BEING FIRST DULY SWORN, DO HEREBY DECLARE TO THE UNDERSIGNED AUTHORITY THAT I SIGN AND EXECUTE THIS INSTRUMENT AS MY WILL AND THAT I SIGN IT WILLINGLY (OR WILLINGLY DIRECT ANOTHER TO SIGN FOR ME), THAT I EXECUTE IT AS MY FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT I AM EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

TESTATOR

WE, _____, _____, THE WITNESSES, SIGN OUR NAMES TO THIS INSTRUMENT, BEING FIRST DULY SWORN, AND DO HEREBY DECLARE TO THE UNDERSIGNED AUTHORITY THAT THE TESTATOR SIGNS AND EXECUTES THIS INSTRUMENT AS [HIS] [HER] WILL AND THAT [HE] [SHE] SIGNS IT WILLINGLY (OR WILLINGLY DIRECTS ANOTHER TO SIGN FOR [HIM] [HER]), AND THAT [HE] [SHE] EXECUTES IT AS [HIS] [HER] FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT EACH OF US, IN THE CONSCIOUS PRESENCE OF THE TESTATOR, HEREBY SIGNS THIS WILL AS WITNESS TO THE TESTATOR'S SIGNING, AND THAT TO THE BEST OF OUR KNOWLEDGE THE TESTATOR IS EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

WITNESS

WITNESS

THE STATE OF _____
COUNTY OF _____

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY _____, THE
TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND
_____, WITNESSES, THIS _____ DAY OF _____, ____.

(SEAL) (SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)

(2) AN ATTESTED WILL MAY BE MADE SELF-PROVED AT ANY TIME AFTER ITS
EXECUTION BY THE ACKNOWLEDGMENT THEREOF BY THE TESTATOR AND THE
AFFIDAVITS OF THE WITNESSES, EACH MADE BEFORE AN OFFICER AUTHORIZED TO
ADMINISTER OATHS UNDER THE LAWS OF THE STATE IN WHICH THE
ACKNOWLEDGMENT OCCURS AND EVIDENCED BY THE OFFICER'S CERTIFICATE, UNDER
THE OFFICIAL SEAL, ATTACHED OR ANNEXED TO THE WILL IN SUBSTANTIALLY THE
FOLLOWING FORM:

THE STATE OF _____
COUNTY OF _____

WE, _____, _____, AND _____, THE TESTATOR AND THE
WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE ATTACHED OR
FOREGOING INSTRUMENT, BEING FIRST DULY SWORN, DO HEREBY DECLARE TO THE
UNDERSIGNED AUTHORITY THAT THE TESTATOR SIGNED AND EXECUTED THE
INSTRUMENT AS THE TESTATOR'S WILL AND THAT [HE] [SHE] HAD SIGNED WILLINGLY
(OR WILLINGLY DIRECTED ANOTHER TO SIGN FOR [HIM] [HER]), AND THAT [HE] [SHE]
EXECUTED IT AS [HIS] [HER] FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN
EXPRESSED, AND THAT EACH OF THE WITNESSES, IN THE CONSCIOUS PRESENCE OF THE
TESTATOR, SIGNS THE WILL AS WITNESS AND THAT TO THE BEST OF [HIS] [HER]
KNOWLEDGE THE TESTATOR WAS AT THAT TIME EIGHTEEN YEARS OF AGE OR OLDER,
OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

TESTATOR

WITNESS

WITNESS

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY _____, THE
TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND
_____, WITNESSES, THIS _____ DAY OF _____, ____.

(SEAL) (SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)

(3) A SIGNATURE AFFIXED TO A SELF-PROVING AFFIDAVIT ATTACHED TO A WILL IS CONSIDERED A SIGNATURE AFFIXED TO THE WILL IF NECESSARY TO PROVE THE WILL'S DUE EXECUTION.

15-11-505. Who may witness. (1) AN INDIVIDUAL GENERALLY COMPETENT TO BE A WITNESS MAY ACT AS A WITNESS TO A WILL.

(2) THE SIGNING OF A WILL BY AN INTERESTED WITNESS DOES NOT INVALIDATE THE WILL OR ANY PROVISION OF IT.

15-11-506. Choice of law as to execution. A WRITTEN WILL IS VALID IF EXECUTED IN COMPLIANCE WITH SECTION 15-11-502 OR 15-11-503 OR IF ITS EXECUTION COMPLIES WITH THE LAW AT THE TIME OF EXECUTION OF THE PLACE WHERE THE WILL IS EXECUTED, OR OF THE LAW OF THE PLACE WHERE, AT THE TIME OF EXECUTION OR AT THE TIME OF DEATH, THE TESTATOR IS DOMICILED, HAS A PLACE OF ABODE, OR IS A NATIONAL.

15-11-507. Revocation by writing or by act. (1) A WILL OR ANY PART THEREOF IS REVOKED:

(a) BY EXECUTING A SUBSEQUENT WILL THAT REVOKES THE PREVIOUS WILL OR PART EXPRESSLY OR BY INCONSISTENCY; OR

(b) BY PERFORMING A REVOCATORY ACT ON THE WILL, IF THE TESTATOR PERFORMED THE ACT WITH THE INTENT AND FOR THE PURPOSE OF REVOKING THE WILL OR PART OF IT OR IF ANOTHER INDIVIDUAL PERFORMED THE ACT IN THE TESTATOR'S CONSCIOUS PRESENCE AND BY THE TESTATOR'S DIRECTION. FOR PURPOSES OF THIS PARAGRAPH (b), "REVOCATORY ACT ON THE WILL" INCLUDES BURNING, TEARING, CANCELING, OBLITERATING, OR DESTROYING THE WILL OR ANY PART OF IT. A BURNING, TEARING, OR CANCELING IS A "REVOCATORY ACT ON THE WILL", WHETHER OR NOT THE BURN, TEAR, OR CANCELLATION TOUCHED ANY OF THE WORDS ON THE WILL.

(2) IF A SUBSEQUENT WILL DOES NOT EXPRESSLY REVOKE A PREVIOUS WILL, THE EXECUTION OF THE SUBSEQUENT WILL WHOLLY REVOKES THE PREVIOUS WILL BY INCONSISTENCY IF THE TESTATOR INTENDED THE SUBSEQUENT WILL TO REPLACE RATHER THAN SUPPLEMENT THE PREVIOUS WILL.

(3) THE TESTATOR IS PRESUMED TO HAVE INTENDED A SUBSEQUENT WILL TO REPLACE RATHER THAN SUPPLEMENT A PREVIOUS WILL IF THE SUBSEQUENT WILL MAKES A COMPLETE DISPOSITION OF THE TESTATOR'S ESTATE. IF THIS PRESUMPTION ARISES AND IS NOT REBUTTED BY CLEAR AND CONVINCING EVIDENCE, THE PREVIOUS WILL IS REVOKED; ONLY THE SUBSEQUENT WILL IS OPERATIVE ON THE TESTATOR'S DEATH.

(4) THE TESTATOR IS PRESUMED TO HAVE INTENDED A SUBSEQUENT WILL TO SUPPLEMENT RATHER THAN REPLACE A PREVIOUS WILL IF THE SUBSEQUENT WILL DOES NOT MAKE A COMPLETE DISPOSITION OF THE TESTATOR'S ESTATE. IF THIS

PRESUMPTION ARISES AND IS NOT REBUTTED BY CLEAR AND CONVINCING EVIDENCE, THE SUBSEQUENT WILL REVOKES THE PREVIOUS WILL ONLY TO THE EXTENT THE SUBSEQUENT WILL IS INCONSISTENT WITH THE PREVIOUS WILL; EACH WILL IS FULLY OPERATIVE ON THE TESTATOR'S DEATH TO THE EXTENT THEY ARE NOT INCONSISTENT.

15-11-508. Revocation by change of circumstances. EXCEPT AS PROVIDED IN SECTIONS 15-11-803 AND 15-11-804, A CHANGE OF CIRCUMSTANCES DOES NOT REVOKE A WILL OR ANY PART OF IT.

15-11-509. Revival of revoked will. (1) IF A SUBSEQUENT WILL THAT WHOLLY REVOKED A PREVIOUS WILL IS THEREAFTER REVOKED BY A REVOCATORY ACT UNDER SECTION 15-11-507 (1) (b), THE PREVIOUS WILL REMAINS REVOKED UNLESS IT IS REVIVED. THE PREVIOUS WILL IS REVIVED IF IT IS EVIDENT FROM THE CIRCUMSTANCES OF THE REVOCATION OF THE SUBSEQUENT WILL OR FROM THE TESTATOR'S CONTEMPORARY OR SUBSEQUENT DECLARATIONS THAT THE TESTATOR INTENDED THE PREVIOUS WILL TO TAKE EFFECT AS EXECUTED.

(2) IF A SUBSEQUENT WILL THAT PARTLY REVOKED A PREVIOUS WILL IS THEREAFTER REVOKED BY A REVOCATORY ACT UNDER SECTION 15-11-507 (1) (b), A REVOKED PART OF THE PREVIOUS WILL IS REVIVED UNLESS IT IS EVIDENT FROM THE CIRCUMSTANCES OF THE REVOCATION OF THE SUBSEQUENT WILL OR FROM THE TESTATOR'S CONTEMPORARY OR SUBSEQUENT DECLARATIONS THAT THE TESTATOR DID NOT INTEND THE REVOKED PART TO TAKE EFFECT AS EXECUTED.

(3) IF A SUBSEQUENT WILL THAT REVOKED A PREVIOUS WILL IN WHOLE OR IN PART IS THEREAFTER REVOKED BY ANOTHER, LATER WILL, THE PREVIOUS WILL REMAINS REVOKED IN WHOLE OR IN PART, UNLESS IT OR ITS REVOKED PART IS REVIVED. THE PREVIOUS WILL OR ITS REVOKED PART IS REVIVED TO THE EXTENT IT APPEARS FROM THE TERMS OF THE LATER WILL THAT THE TESTATOR INTENDED THE PREVIOUS WILL TO TAKE EFFECT.

15-11-510. Incorporation by reference. A WRITING IN EXISTENCE WHEN A WILL IS EXECUTED MAY BE INCORPORATED BY REFERENCE IF THE LANGUAGE OF THE WILL MANIFESTS THIS INTENT AND DESCRIBES THE WRITING SUFFICIENTLY TO PERMIT ITS IDENTIFICATION.

15-11-511. Testamentary additions to trusts. (1) A WILL MAY VALIDLY DEVISE PROPERTY TO THE TRUSTEE OF A TRUST ESTABLISHED OR TO BE ESTABLISHED (i) DURING THE TESTATOR'S LIFETIME BY THE TESTATOR, BY THE TESTATOR AND SOME OTHER PERSON, OR BY SOME OTHER PERSON, INCLUDING A FUNDED OR UNFUNDED LIFE INSURANCE TRUST, ALTHOUGH THE SETTLOR HAS RESERVED ANY OR ALL RIGHTS OF OWNERSHIP OF THE INSURANCE CONTRACTS, OR (ii) AT THE TESTATOR'S DEATH BY THE TESTATOR'S DEVISE TO THE TRUSTEE, IF THE TRUST IS IDENTIFIED IN THE TESTATOR'S WILL AND ITS TERMS ARE SET FORTH IN A WRITTEN INSTRUMENT, OTHER THAN A WILL, EXECUTED BEFORE, CONCURRENTLY WITH, OR AFTER THE EXECUTION OF THE TESTATOR'S WILL OR IN ANOTHER INDIVIDUAL'S WILL IF THAT OTHER INDIVIDUAL HAS PREDECEASED THE TESTATOR, REGARDLESS OF THE EXISTENCE, SIZE, OR CHARACTER OF THE CORPUS OF THE TRUST. THE DEVISE IS NOT INVALID BECAUSE THE TRUST IS AMENDABLE OR REVOCABLE, OR BECAUSE THE TRUST WAS AMENDED AFTER THE EXECUTION OF THE WILL OR THE TESTATOR'S DEATH.

(2) UNLESS THE TESTATOR'S WILL PROVIDES OTHERWISE, PROPERTY DEVISED TO A TRUST DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT HELD UNDER A TESTAMENTARY TRUST OF THE TESTATOR, BUT IT BECOMES A PART OF THE TRUST TO WHICH IT IS DEVISED, AND IS ADMINISTERED AND DISPOSED OF IN ACCORDANCE WITH THE PROVISIONS OF THE GOVERNING INSTRUMENT SETTING FORTH THE TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS THERETO MADE BEFORE OR AFTER THE TESTATOR'S DEATH.

(3) A REVOCATION OR TERMINATION OF THE TRUST BEFORE THE DEATH OF THE TESTATOR CAUSES THE DEVISE TO LAPSE, BUT EXHAUSTION OF TRUST CORPUS BETWEEN THE TIME OF EXECUTION OF THE TESTATOR'S WILL AND THE TESTATOR'S DEATH SHALL NOT CONSTITUTE A LAPSE; A REVOCATION OR TERMINATION OF THE TRUST BEFORE THE DEATH OF THE TESTATOR SHALL NOT CAUSE THE DEVISE TO LAPSE, IF THE TESTATOR PROVIDES THAT, IN SUCH EVENT, THE DEVISE SHALL CONSTITUTE A DEVISE TO THE TRUSTEE OF THE TRUST IDENTIFIED IN THE TESTATOR'S WILL, AND ON THE TERMS THEREOF, AS THEY EXISTED AT THE TIME OF THE EXECUTION OF TESTATOR'S WILL, OR AS THEY EXISTED AT THE TIME OF THE REVOCATION OR TERMINATION OF THE TRUST, AS THE TESTATOR'S WILL PROVIDES.

15-11-512. Events of independent significance. A WILL MAY DISPOSE OF PROPERTY BY REFERENCE TO ACTS AND EVENTS THAT HAVE SIGNIFICANCE APART FROM THEIR EFFECT UPON THE DISPOSITIONS MADE BY THE WILL, WHETHER THEY OCCUR BEFORE OR AFTER THE EXECUTION OF THE WILL OR BEFORE OR AFTER THE TESTATOR'S DEATH. THE EXECUTION OR REVOCATION OF ANOTHER INDIVIDUAL'S WILL IS SUCH AN EVENT.

15-11-513. Separate writing or memorandum identifying devise of certain types of tangible personal property. WHETHER OR NOT THE PROVISIONS RELATING TO HOLOGRAPHIC WILLS APPLY, A WILL MAY REFER TO A WRITTEN STATEMENT OR LIST TO DISPOSE OF ITEMS OF TANGIBLE PERSONAL PROPERTY NOT OTHERWISE SPECIFICALLY DISPOSED OF BY THE WILL, OTHER THAN MONEY. TO BE ADMISSIBLE UNDER THIS SECTION AS EVIDENCE OF THE INTENDED DISPOSITION, THE WRITING SHALL BE SIGNED BY THE TESTATOR AND SHALL DESCRIBE THE ITEMS AND THE DEVISEES WITH REASONABLE CERTAINTY. THE WRITING MAY BE REFERRED TO AS ONE TO BE IN EXISTENCE AT THE TIME OF THE TESTATOR'S DEATH; IT MAY BE PREPARED BEFORE OR AFTER THE EXECUTION OF THE WILL; IT MAY BE ALTERED BY THE TESTATOR AFTER ITS PREPARATION; AND IT MAY BE A WRITING THAT HAS NO SIGNIFICANCE APART FROM ITS EFFECT ON THE DISPOSITIONS MADE BY THE WILL.

15-11-514. Contracts concerning succession. A CONTRACT TO MAKE A WILL OR DEVISE, OR NOT TO REVOKE A WILL OR DEVISE, OR TO DIE INTESATE, IF EXECUTED AFTER THE EFFECTIVE DATE OF THIS ARTICLE, MAY BE ESTABLISHED ONLY BY (i) PROVISIONS OF A WILL STATING MATERIAL PROVISIONS OF THE CONTRACT, (ii) AN EXPRESS REFERENCE IN A WILL TO A CONTRACT AND EXTRINSIC EVIDENCE PROVING THE TERMS OF THE CONTRACT, OR (iii) A WRITING SIGNED BY THE DECEDENT EVIDENCING THE CONTRACT. THE EXECUTION OF A JOINT WILL OR MUTUAL WILLS DOES NOT CREATE A PRESUMPTION OF A CONTRACT NOT TO REVOKE THE WILL OR WILLS.

15-11-515. Deposit of will with court in testator's lifetime. A WILL MAY BE DEPOSITED BY THE TESTATOR OR THE TESTATOR'S AGENT WITH ANY COURT FOR

SAFEKEEPING, UNDER RULES OF THE COURT. THE WILL SHALL BE SEALED AND KEPT CONFIDENTIAL. DURING THE TESTATOR'S LIFETIME, A DEPOSITED WILL SHALL BE DELIVERED ONLY TO THE TESTATOR OR TO A PERSON AUTHORIZED IN WRITING SIGNED BY THE TESTATOR TO RECEIVE THE WILL. A CONSERVATOR MAY BE ALLOWED TO EXAMINE A DEPOSITED WILL OF A PROTECTED TESTATOR UNDER PROCEDURES DESIGNED TO MAINTAIN THE CONFIDENTIAL CHARACTER OF THE DOCUMENT TO THE EXTENT POSSIBLE, AND TO ENSURE THAT IT WILL BE RESEALED AND KEPT ON DEPOSIT AFTER THE EXAMINATION. UPON BEING INFORMED OF THE TESTATOR'S DEATH, THE COURT SHALL NOTIFY ANY PERSON DESIGNATED TO RECEIVE THE WILL AND DELIVER IT TO THAT PERSON ON REQUEST; OR THE COURT MAY DELIVER THE WILL TO THE APPROPRIATE COURT.

15-11-516. Duty of custodian of will; liability. WITHIN TEN DAYS AFTER THE DEATH OF A TESTATOR OR AS SOON THEREAFTER AS THE DEATH OF THE TESTATOR BECOMES KNOWN TO HIM OR HER, ANY PERSON HAVING CUSTODY OF AN INSTRUMENT PURPORTING TO BE THE TESTATOR'S WILL SHALL DELIVER THE WILL TO THE COURT HAVING PROBATE JURISDICTION WHERE THE TESTATOR HAD HIS OR HER DOMICILE OR RESIDENCE AT THE TIME OF HIS OR HER DEATH. IF THE DOMICILE AND RESIDENCE OF THE TESTATOR ARE UNKNOWN TO THE CUSTODIAN, THE WILL SHALL BE DELIVERED BY THE CUSTODIAN TO THE COURT HAVING PROBATE JURISDICTION IN THE COUNTY IN COLORADO IN WHICH THE WILL WAS LOCATED. ANY PERSON WHO WILLFULLY FAILS TO DELIVER AN INSTRUMENT PURPORTING TO BE A WILL IS LIABLE TO ANY PERSON AGGRIEVED FOR THE DAMAGES WHICH MAY BE SUSTAINED BY THE FAILURE. ANY PERSON WHO WILLFULLY REFUSES OR FAILS TO DELIVER AN INSTRUMENT PURPORTING TO BE A WILL AFTER BEING ORDERED BY THE COURT IN A PROCEEDING BROUGHT FOR THE PURPOSE OF COMPELLING DELIVERY IS SUBJECT TO PENALTY FOR CONTEMPT OF COURT.

15-11-517. Penalty clause for contest. A PROVISION IN A WILL PURPORTING TO PENALIZE AN INTERESTED PERSON FOR CONTESTING THE WILL OR INSTITUTING OTHER PROCEEDINGS RELATING TO THE ESTATE IS UNENFORCEABLE IF PROBABLE CAUSE EXISTS FOR INSTITUTING PROCEEDINGS.

PART 6

RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

15-11-601. Scope. IN THE ABSENCE OF A FINDING OF A CONTRARY INTENTION, THE RULES OF CONSTRUCTION IN THIS PART 6 CONTROL THE CONSTRUCTION OF A WILL. IN THE ABSENCE OF A FINDING OF A CONTRARY INTENTION, THE PROVISIONS OF SECTIONS 15-11-603 AND 15-11-604 SHALL APPLY TO WILLS AND CODICILS EXECUTED OR REPUBLISHED OR REAFFIRMED ON OR AFTER JULY 1, 1995, AND PRIOR LAW (SECTIONS 15-11-605 AND 15-11-606) SHALL APPLY TO WILLS AND CODICILS EXECUTED PRIOR TO JULY 1, 1995, AND NOT REPUBLISHED OR REAFFIRMED ON OR AFTER THAT DATE.

15-11-602. Will may pass all property and after-acquired property. A WILL MAY PROVIDE FOR THE PASSAGE OF ALL PROPERTY THE TESTATOR OWNS AT DEATH AND ALL PROPERTY ACQUIRED BY THE ESTATE AFTER THE TESTATOR'S DEATH.

15-11-603. Antilapse; deceased devisee; class gifts. (1) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ALTERNATIVE DEVISE" MEANS A DEVISE THAT IS EXPRESSLY CREATED BY THE WILL AND, UNDER THE TERMS OF THE WILL, CAN TAKE EFFECT INSTEAD OF ANOTHER DEVISE ON THE HAPPENING OF ONE OR MORE EVENTS, INCLUDING SURVIVAL OF THE TESTATOR OR FAILURE TO SURVIVE THE TESTATOR, WHETHER AN EVENT IS EXPRESSED IN CONDITION-PRECEDENT, CONDITION-SUBSEQUENT, OR ANY OTHER FORM. A RESIDUARY CLAUSE CONSTITUTES AN ALTERNATIVE DEVISE WITH RESPECT TO A NONRESIDUARY DEVISE ONLY IF THE WILL SPECIFICALLY PROVIDES THAT, UPON LAPSE OR FAILURE, THE NONRESIDUARY DEVISE, OR NONRESIDUARY DEVISES IN GENERAL, PASS UNDER THE RESIDUARY CLAUSE.

(b) "CLASS MEMBER" INCLUDES AN INDIVIDUAL WHO FAILS TO SURVIVE THE TESTATOR BUT WHO WOULD HAVE TAKEN UNDER A DEVISE IN THE FORM OF A CLASS GIFT HAD HE OR SHE SURVIVED THE TESTATOR.

(c) "DEVISE" INCLUDES AN ALTERNATIVE DEVISE, A DEVISE IN THE FORM OF A CLASS GIFT, AND AN EXERCISE OF A POWER OF APPOINTMENT.

(d) "DEVISEE" INCLUDES (i) A CLASS MEMBER IF THE DEVISE IS IN THE FORM OF A CLASS GIFT, (ii) THE BENEFICIARY OF A TRUST BUT NOT THE TRUSTEE, (iii) AN INDIVIDUAL OR CLASS MEMBER WHO WAS DECEASED AT THE TIME THE TESTATOR EXECUTED HIS OR HER WILL AS WELL AS AN INDIVIDUAL OR CLASS MEMBER WHO WAS THEN LIVING BUT WHO FAILED TO SURVIVE THE TESTATOR, AND (iv) AN APPOINTEE UNDER A POWER OF APPOINTMENT EXERCISED BY THE TESTATOR'S WILL.

(e) (RESERVED)

(f) "SURVIVING DEVISEE" OR "SURVIVING DESCENDANT" MEANS A DEVISEE OR A DESCENDANT WHO NEITHER PREDECEASED THE TESTATOR NOR IS DEEMED TO HAVE PREDECEASED THE TESTATOR UNDER SECTION 15-11-702.

(g) "TESTATOR" INCLUDES THE DONEE OF A POWER OF APPOINTMENT IF THE POWER IS EXERCISED IN THE TESTATOR'S WILL.

(2) **Substitute gift.** IF A DEVISEE FAILS TO SURVIVE THE TESTATOR AND IS A GRANDPARENT OR A DESCENDANT OF A GRANDPARENT OF EITHER THE TESTATOR OR THE DONOR OF A POWER OF APPOINTMENT EXERCISED BY THE TESTATOR'S WILL, THE FOLLOWING APPLY:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE DEVISEE IS NOT IN THE FORM OF A CLASS GIFT AND THE DECEASED DEVISEE LEAVES SURVIVING DESCENDANTS, A SUBSTITUTE GIFT IS CREATED IN THE DEVISEE'S SURVIVING DESCENDANTS. THEY TAKE BY REPRESENTATION THE PROPERTY TO WHICH THE DEVISEE WOULD HAVE BEEN ENTITLED HAD THE DEVISEE SURVIVED THE TESTATOR.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE DEVISEE IS IN THE FORM OF A CLASS GIFT, OTHER THAN A DEVISE TO "ISSUE", "DESCENDANTS", "HEIRS OF THE BODY", "HEIRS", "NEXT OF KIN", "RELATIVES", OR "FAMILY", OR A CLASS DESCRIBED BY LANGUAGE OF SIMILAR IMPORT, A SUBSTITUTE GIFT IS CREATED IN THE DECEASED DEVISEE OR DEVISEE'S SURVIVING DESCENDANTS. THE PROPERTY TO WHICH THE DEVISEES WOULD HAVE BEEN ENTITLED HAD ALL OF THEM SURVIVED THE TESTATOR PASSES TO THE SURVIVING DEVISEES AND THE

SURVIVING DESCENDANTS OF THE DECEASED DEVISEES. EACH SURVIVING DEVISEE TAKES THE SHARE TO WHICH HE OR SHE WOULD HAVE BEEN ENTITLED HAD THE DECEASED DEVISEES SURVIVED THE TESTATOR. EACH DECEASED DEVISEE'S SURVIVING DESCENDANTS WHO ARE SUBSTITUTED FOR THE DECEASED DEVISEE TAKES BY REPRESENTATION THE SHARE TO WHICH THE DECEASED DEVISEE WOULD HAVE BEEN ENTITLED HAD THE DECEASED DEVISEE SURVIVED THE TESTATOR. FOR THE PURPOSES OF THIS PARAGRAPH (b), "DECEASED DEVISEE" MEANS A CLASS MEMBER WHO FAILED TO SURVIVE THE TESTATOR AND LEFT ONE OR MORE SURVIVING DESCENDANTS.

(c) FOR PURPOSES OF THIS PART 6, WORDS OF SURVIVORSHIP, SUCH AS IN A DEVISE TO AN INDIVIDUAL "IF HE SURVIVES ME" OR IN A DEVISE TO "MY SURVIVING CHILDREN", ARE NOT, IN THE ABSENCE OF ADDITIONAL EVIDENCE, A SUFFICIENT INDICATION OF AN INTENT CONTRARY TO THE APPLICATION OF THIS SECTION. THE USE OF LANGUAGE SUCH AS "AND IF HE DOES NOT SURVIVE ME THE GIFT SHALL LAPSE" OR "TO A AND NOT TO A'S DESCENDANTS" SHALL BE SUFFICIENT INDICATION OF AN INTENT CONTRARY TO THE APPLICATION OF THIS SECTION.

(d) IF THE WILL CREATES AN ALTERNATIVE DEVISE WITH RESPECT TO A DEVISE FOR WHICH A SUBSTITUTE GIFT IS CREATED BY PARAGRAPH (a) OR (b) OF THIS SUBSECTION (2), THE SUBSTITUTE GIFT IS SUPERSEDED BY THE ALTERNATIVE DEVISE ONLY IF AN EXPRESSLY DESIGNATED DEVISEE OF THE ALTERNATIVE DEVISE IS ENTITLED TO TAKE UNDER THE WILL.

(e) UNLESS THE LANGUAGE CREATING A POWER OF APPOINTMENT EXPRESSLY EXCLUDES THE SUBSTITUTION OF THE DESCENDANTS OF AN APPOINTEE FOR THE APPOINTEE, A SURVIVING DESCENDANT OF A DECEASED APPOINTEE OF A POWER OF APPOINTMENT CAN BE SUBSTITUTED FOR THE APPOINTEE UNDER THIS SECTION, WHETHER OR NOT THE DESCENDANT IS AN OBJECT OF THE POWER.

(3) **Dispositions under separate writing.** THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO DISPOSITIONS OF TANGIBLE PERSONAL PROPERTY MADE UNDER SECTION 15-11-513.

(4) **More than one substitute gift; which one takes.** IF, UNDER SUBSECTION (2) OF THIS SECTION, SUBSTITUTE GIFTS ARE CREATED AND NOT SUPERSEDED WITH RESPECT TO MORE THAN ONE DEVISE AND THE DEVISES ARE ALTERNATIVE DEVISES, ONE TO THE OTHER, THE DETERMINATION OF WHICH OF THE SUBSTITUTE GIFTS TAKES EFFECT IS RESOLVED AS FOLLOWS:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), THE DEVISED PROPERTY PASSES UNDER THE PRIMARY SUBSTITUTE GIFT.

(b) IF THERE IS A YOUNGER-GENERATION DEVISE, THE DEVISED PROPERTY PASSES UNDER THE YOUNGER-GENERATION SUBSTITUTE GIFT AND NOT UNDER THE PRIMARY SUBSTITUTE GIFT.

(c) IN THIS SUBSECTION (4):

(I) "PRIMARY DEVISE" MEANS THE DEVISE THAT WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED DEVISEES OF THE ALTERNATIVE DEVISES WHO LEFT SURVIVING

DESCENDANTS SURVIVED THE TESTATOR.

(II) "PRIMARY SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE PRIMARY DEVISEE.

(III) "YOUNGER-GENERATION DEVISEE" MEANS A DEVISEE THAT:

(A) IS TO A DESCENDANT OF A DEVISEE OF THE PRIMARY DEVISEE;

(B) IS AN ALTERNATIVE DEVISEE WITH RESPECT TO THE PRIMARY DEVISEE;

(C) IS A DEVISEE FOR WHICH A SUBSTITUTE GIFT IS CREATED; AND

(D) WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED DEVISEES WHO LEFT SURVIVING DESCENDANTS SURVIVED THE TESTATOR EXCEPT THE DECEASED DEVISEE OR DEVISEES OF THE PRIMARY DEVISEE.

(IV) "YOUNGER-GENERATION SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE YOUNGER-GENERATION DEVISEE.

15-11-604. Failure of testamentary provision. (1) EXCEPT AS PROVIDED IN SECTION 15-11-603, A DEVISEE, OTHER THAN A RESIDUARY DEVISEE, THAT FAILS FOR ANY REASON BECOMES A PART OF THE RESIDUE.

(2) EXCEPT AS PROVIDED IN SECTION 15-11-603, IF THE RESIDUE IS DEVISED TO TWO OR MORE PERSONS, THE SHARE OF A RESIDUARY DEVISEE THAT FAILS FOR ANY REASON PASSES TO THE OTHER RESIDUARY DEVISEE, OR TO OTHER RESIDUARY DEVISEES IN PROPORTION TO THE INTEREST OF EACH IN THE REMAINING PART OF THE RESIDUE.

15-11-605. Interest in securities; accessions. (1) IF A TESTATOR EXECUTES A WILL THAT DEVISES SECURITIES AND THE TESTATOR THEN OWNED SECURITIES THAT MEET THE DESCRIPTION IN THE WILL, THE DEVISE INCLUDES ADDITIONAL SECURITIES OWNED BY THE TESTATOR AT DEATH TO THE EXTENT THE ADDITIONAL SECURITIES WERE ACQUIRED BY THE TESTATOR AFTER THE WILL WAS EXECUTED AS A RESULT OF THE TESTATOR'S OWNERSHIP OF THE DESCRIBED SECURITIES AND ARE SECURITIES OF ANY OF THE FOLLOWING TYPES:

(a) SECURITIES OF THE SAME ORGANIZATION ACQUIRED BY REASON OF ACTION INITIATED BY THE ORGANIZATION OR ANY SUCCESSOR, RELATED, OR ACQUIRING ORGANIZATION, EXCLUDING ANY ACQUIRED BY EXERCISE OF PURCHASE OPTIONS;

(b) SECURITIES OF ANOTHER ORGANIZATION ACQUIRED AS A RESULT OF A MERGER, CONSOLIDATION, REORGANIZATION, OR OTHER DISTRIBUTION BY THE ORGANIZATION OR ANY SUCCESSOR, RELATED, OR ACQUIRING ORGANIZATION; OR

(c) SECURITIES OF THE SAME ORGANIZATION ACQUIRED AS A RESULT OF A PLAN OF REINVESTMENT.

(2) DISTRIBUTIONS IN CASH BEFORE DEATH WITH RESPECT TO A DESCRIBED SECURITY ARE NOT PART OF THE DEVISEE.

15-11-606. Nonademption of specified devises; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or agent. (1) A SPECIFIC DEVISEE HAS A RIGHT TO THE SPECIFICALLY DEVISED PROPERTY IN THE TESTATOR'S ESTATE AT DEATH AND:

(a) ANY BALANCE OF THE PURCHASE PRICE, TOGETHER WITH ANY SECURITY AGREEMENT, OWING FROM A PURCHASER TO THE TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY;

(b) ANY AMOUNT OF A CONDEMNATION AWARD FOR THE TAKING OF THE PROPERTY UNPAID AT DEATH;

(c) ANY PROCEEDS UNPAID AT DEATH ON FIRE OR CASUALTY INSURANCE ON OR OTHER RECOVERY FOR INJURY TO THE PROPERTY;

(d) PROPERTY OWNED BY THE TESTATOR AT DEATH AND ACQUIRED AS A RESULT OF FORECLOSURE, OR OBTAINED IN LIEU OF FORECLOSURE, OF THE SECURITY INTEREST FOR A SPECIFICALLY DEVISED OBLIGATION;

(e) REAL OR TANGIBLE PERSONAL PROPERTY OWNED BY THE TESTATOR AT DEATH WHICH THE TESTATOR ACQUIRED AS A REPLACEMENT FOR SPECIFICALLY DEVISED REAL OR TANGIBLE PERSONAL PROPERTY; AND

(f) UNLESS THE FACTS AND CIRCUMSTANCES INDICATE THAT ADEMPMENT OF THE DEVISE WAS INTENDED BY THE TESTATOR OR ADEMPMENT OF THE DEVISE IS CONSISTENT WITH THE TESTATOR'S MANIFESTED PLAN OF DISTRIBUTION, THE VALUE OF THE SPECIFICALLY DEVISED PROPERTY TO THE EXTENT THE SPECIFICALLY DEVISED PROPERTY IS NOT IN THE TESTATOR'S ESTATE AT DEATH AND ITS VALUE OR ITS REPLACEMENT IS NOT COVERED BY PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (1).

(2) IF SPECIFICALLY DEVISED PROPERTY IS SOLD OR MORTGAGED BY A CONSERVATOR OR BY AN AGENT ACTING WITHIN THE AUTHORITY OF A DURABLE POWER OF ATTORNEY FOR AN INCAPACITATED PRINCIPAL, OR IF A CONDEMNATION AWARD, INSURANCE PROCEEDS, OR RECOVERY FOR INJURY TO THE PROPERTY IS PAID TO A CONSERVATOR OR TO AN AGENT ACTING WITHIN THE AUTHORITY OF A DURABLE POWER OF ATTORNEY FOR AN INCAPACITATED PRINCIPAL, THE SPECIFIC DEVISEE HAS THE RIGHT TO A GENERAL PECUNIARY DEVISE EQUAL TO THE NET SALE PRICE, THE AMOUNT OF THE UNPAID LOAN, THE CONDEMNATION AWARD, THE INSURANCE PROCEEDS, OR THE RECOVERY.

(3) THE RIGHT OF A SPECIFIC DEVISEE UNDER SUBSECTION (2) OF THIS SECTION IS REDUCED BY ANY RIGHT THE DEVISEE HAS UNDER SUBSECTION (1) OF THIS SECTION.

(4) FOR THE PURPOSES OF THE REFERENCES IN SUBSECTION (2) OF THIS SECTION TO A CONSERVATOR, SUBSECTION (2) OF THIS SECTION DOES NOT APPLY IF AFTER THE SALE, MORTGAGE, CONDEMNATION, CASUALTY, OR RECOVERY IT WAS ADJUDICATED THAT THE TESTATOR'S INCAPACITY CEASED AND THE TESTATOR SURVIVED THE ADJUDICATION BY ONE YEAR.

(5) FOR THE PURPOSES OF THE REFERENCES IN SUBSECTION (2) OF THIS SECTION TO AN AGENT ACTING WITHIN THE AUTHORITY OF A DURABLE POWER OF ATTORNEY FOR

AN INCAPACITATED PRINCIPAL, (i) "INCAPACITATED PRINCIPAL" MEANS A PRINCIPAL WHO IS AN INCAPACITATED PERSON, (ii) NO ADJUDICATION OF INCAPACITY BEFORE DEATH IS NECESSARY, AND (iii) THE ACTS OF AN AGENT WITHIN THE AUTHORITY OF A DURABLE POWER OF ATTORNEY ARE PRESUMED TO BE FOR AN INCAPACITATED PRINCIPAL.

15-11-607. Nonexoneration. A SPECIFIC DEVISE PASSES SUBJECT TO ANY MORTGAGE INTEREST EXISTING AT THE DATE OF DEATH, WITHOUT RIGHT OF EXONERATION, REGARDLESS OF A GENERAL DIRECTIVE IN THE WILL TO PAY DEBTS.

15-11-608. Exercise of power of appointment. IN THE ABSENCE OF A REQUIREMENT THAT A POWER OF APPOINTMENT BE EXERCISED BY A REFERENCE, OR BY AN EXPRESS OR SPECIFIC REFERENCE, TO THE POWER, A GENERAL RESIDUARY CLAUSE IN A WILL OR A WILL MAKING GENERAL DISPOSITION OF ALL OF THE TESTATOR'S PROPERTY, EXPRESSES AN INTENTION TO EXERCISE A POWER OF APPOINTMENT HELD BY THE TESTATOR ONLY IF (i) THE POWER IS A GENERAL POWER AND THE CREATING INSTRUMENT DOES NOT CONTAIN A GIFT IF THE POWER IS NOT EXERCISED OR (ii) THE TESTATOR'S WILL MANIFESTS AN INTENTION TO INCLUDE THE PROPERTY SUBJECT TO THE POWER. FOR RULES OF CONSTRUCTION REGARDING POWERS OF APPOINTMENT CREATED IN A GOVERNING INSTRUMENT UNDER PART 7 OF THIS ARTICLE, SEE SECTIONS 15-11-701 AND 15-11-704.

15-11-609. Ademption by satisfaction. (1) PROPERTY A TESTATOR GAVE IN HIS OR HER LIFETIME TO A PERSON IS TREATED AS A SATISFACTION OF A DEVISE IN WHOLE OR IN PART, ONLY IF (i) THE WILL PROVIDES FOR DEDUCTION OF THE GIFT, (ii) THE TESTATOR DECLARED IN A CONTEMPORANEOUS WRITING THAT THE GIFT IS IN SATISFACTION OF THE DEVISE OR THAT ITS VALUE IS TO BE DEDUCTED FROM THE VALUE OF THE DEVISE, OR (iii) THE DEVISEE ACKNOWLEDGED IN WRITING THAT THE GIFT IS IN SATISFACTION OF THE DEVISE OR THAT ITS VALUE IS TO BE DEDUCTED FROM THE VALUE OF THE DEVISE.

(2) FOR PURPOSES OF PARTIAL SATISFACTION, PROPERTY GIVEN DURING LIFETIME IS VALUED AS OF THE TIME THE DEVISEE CAME INTO POSSESSION OR ENJOYMENT OF THE PROPERTY OR AT THE TESTATOR'S DEATH, WHICHEVER OCCURS FIRST.

(3) IF THE DEVISEE FAILS TO SURVIVE THE TESTATOR, THE GIFT IS TREATED AS A FULL OR PARTIAL SATISFACTION OF THE DEVISE, AS APPROPRIATE, IN APPLYING SECTIONS 15-11-603 AND 15-11-604, UNLESS THE TESTATOR'S CONTEMPORANEOUS WRITING PROVIDES OTHERWISE.

PART 7
RULES OF CONSTRUCTION APPLICABLE TO WILLS
AND OTHER GOVERNING INSTRUMENTS

15-11-701. Scope. FOR THE PURPOSES OF THIS PART 7, THE TERM "GOVERNING INSTRUMENT" SHALL BE AS DEFINED IN SECTION 15-10-201 (22); EXCEPT:

(1) "GOVERNING INSTRUMENT" SHALL NOT INCLUDE A DEED WHICH TRANSFERS ANY INTEREST IN REAL PROPERTY; HOWEVER, SECTION 15-11-712 SHALL APPLY TO SUCH DEEDS; AND

(2) AS THE APPLICATION OF A PARTICULAR SECTION IS LIMITED BY ITS TERMS TO A SPECIFIC TYPE OF PROVISION OR GOVERNING INSTRUMENT. IN THE ABSENCE OF A FINDING OF A CONTRARY INTENTION, THE RULES OF CONSTRUCTION IN THIS PART 7 CONTROL THE CONSTRUCTION OF A GOVERNING INSTRUMENT EXECUTED OR REPUBLISHED OR REAFFIRMED ON OR AFTER JULY 1, 1995, AND THE RULES OF CONSTRUCTION UNDER PRIOR LAW CONTROL THE CONSTRUCTION OF A GOVERNING INSTRUMENT EXECUTED PRIOR TO JULY 1, 1995, AND NOT A GOVERNING INSTRUMENT REPUBLISHED OR REAFFIRMED AFTER THAT DATE.

15-11-702. Requirement of survival by one hundred twenty hours.

(1) **Requirement of survival by one hundred twenty hours under probate code.** FOR THE PURPOSES OF THIS CODE, EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN INDIVIDUAL WHO IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO HAVE SURVIVED AN EVENT, INCLUDING THE DEATH OF ANOTHER INDIVIDUAL, BY ONE HUNDRED TWENTY HOURS IS DEEMED TO HAVE PREDECEASED THE EVENT.

(2) **Requirement of survival by one hundred twenty hours under other governing instrument.** EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, FOR PURPOSES OF A PROVISION OF A GOVERNING INSTRUMENT THAT RELATES TO AN INDIVIDUAL SURVIVING AN EVENT, INCLUDING THE DEATH OF ANOTHER INDIVIDUAL, AN INDIVIDUAL WHO IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO HAVE SURVIVED THE EVENT BY ONE HUNDRED TWENTY HOURS IS DEEMED TO HAVE PREDECEASED THE EVENT.

(3) **Co-owners with right of survivorship; requirement of survival by one hundred twenty hours.** EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, IF (i) IT IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT ONE OF TWO CO-OWNERS WITH RIGHT OF SURVIVORSHIP SURVIVED THE OTHER CO-OWNER BY ONE HUNDRED TWENTY HOURS, ONE-HALF OF THE PROPERTY PASSES AS IF ONE HAD SURVIVED BY ONE HUNDRED TWENTY HOURS AND ONE-HALF AS IF THE OTHER HAD SURVIVED BY ONE HUNDRED TWENTY HOURS, AND (ii) THERE ARE MORE THAN TWO CO-OWNERS AND IT IS NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT AT LEAST ONE OF THEM SURVIVED THE OTHERS BY ONE HUNDRED TWENTY HOURS, THE PROPERTY PASSES IN THE PROPORTION THAT ONE BEARS TO THE WHOLE NUMBER OF CO-OWNERS. FOR THE PURPOSES OF THIS SUBSECTION (3), "CO-OWNERS WITH RIGHT OF SURVIVORSHIP" INCLUDES JOINT TENANTS, TENANTS BY THE ENTIRETIES, AND OTHER CO-OWNERS OF PROPERTY OR ACCOUNTS HELD UNDER CIRCUMSTANCES THAT ENTITLES ONE OR MORE TO THE WHOLE OF THE PROPERTY OR ACCOUNT ON THE DEATH OF ONE OR MORE OF THE OTHERS.

(4) **Exceptions.** SURVIVAL BY ONE HUNDRED TWENTY HOURS IS NOT REQUIRED IF:

(a) THE GOVERNING INSTRUMENT CONTAINS LANGUAGE DEALING EXPLICITLY WITH SIMULTANEOUS DEATHS OR DEATHS IN A COMMON DISASTER AND IF THAT LANGUAGE IS OPERABLE UNDER THE FACTS OF THE CASE;

(b) THE GOVERNING INSTRUMENT EXPRESSLY INDICATES THAT AN INDIVIDUAL IS NOT REQUIRED TO SURVIVE AN EVENT, INCLUDING THE DEATH OF ANOTHER INDIVIDUAL, BY ANY SPECIFIED PERIOD OR EXPRESSLY REQUIRES THE INDIVIDUAL TO SURVIVE THE EVENT BY A SPECIFIED PERIOD; BUT SURVIVAL OF THE EVENT OR THE

SPECIFIED PERIOD SHALL BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE;

(c) THE IMPOSITION OF A ONE-HUNDRED-TWENTY-HOUR REQUIREMENT OF SURVIVAL WOULD CAUSE A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT TO FAIL TO QUALIFY FOR VALIDITY UNDER SECTION 15-11-1102 (1) (a), (2) (a), OR (3) (a) OR TO BECOME INVALID UNDER SECTION 15-11-1102 (1) (b), (2) (b), OR (3) (b); BUT SURVIVAL SHALL BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; OR

(d) THE APPLICATION OF A ONE-HUNDRED-TWENTY-HOUR REQUIREMENT OF SURVIVAL TO MULTIPLE GOVERNING INSTRUMENTS WOULD RESULT IN AN UNINTENDED FAILURE OR DUPLICATION OF A DISPOSITION; BUT SURVIVAL SHALL BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

(5) Protection of payors and other third parties. (a) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT WHO, UNDER THIS SECTION, IS NOT ENTITLED TO THE PAYMENT OR ITEM OF PROPERTY, OR FOR HAVING TAKEN ANY OTHER ACTION IN RELIANCE ON THE BENEFICIARY'S APPARENT ENTITLEMENT UNDER THE TERMS OF THE GOVERNING INSTRUMENT, BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (5). A PAYOR OR OTHER THIRD PARTY SHALL HAVE NO DUTY OR OBLIGATION TO INQUIRE AS TO THE APPLICATION OF THE ONE-HUNDRED-TWENTY-HOUR SURVIVAL OR TO SEEK ANY EVIDENCE WITH RESPECT TO ANY SUCH SURVIVAL. A PAYOR OR OTHER THIRD PARTY IS ONLY LIABLE FOR ACTIONS TAKEN TWO OR MORE BUSINESS DAYS AFTER THE PAYOR OR OTHER THIRD PARTY HAS ACTUAL RECEIPT OF SUCH WRITTEN NOTICE. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (5) SHALL NOT BE SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(b) THE WRITTEN NOTICE SHALL INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT THE BENEFICIARY DESIGNATED IN THE GOVERNING INSTRUMENT FAILED TO SURVIVE THE DECEDENT BY ONE HUNDRED TWENTY HOURS. THE WRITTEN NOTICE SHALL BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION. NOTICE TO A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY SHALL NOT CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY.

(c) UPON RECEIPT OF THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (5), A PAYOR OR OTHER THIRD PARTY MAY PAY TO THE COURT ANY AMOUNT OWED, OR TRANSFER TO OR DEPOSIT WITH THE COURT ANY ITEM OF PROPERTY HELD BY IT. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION SHALL NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE, OR IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES

LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY, EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(d) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER THIS SECTION, SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. A FILING FEE, IF ANY, SHALL BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT.

(e) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

(6) Protection of bona fide purchasers; personal liability of recipient. (a) A PERSON WHO PURCHASES PROPERTY FOR VALUE AND WITHOUT NOTICE OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS SECTION TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR IS LIABLE UNDER THIS SECTION FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT. HOWEVER, A PERSON WHO, NOT FOR VALUE, RECEIVES A PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO IS ENTITLED TO IT UNDER THIS SECTION.

(b) IF THIS SECTION OR ANY PART OF THIS SECTION IS PREEMPTED BY FEDERAL LAW (OTHER THAN THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED) WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT COVERED BY THIS SECTION, A PERSON WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THIS SECTION OR PART OF THIS SECTION NOT PREEMPTED.

15-11-703. Choice of law as to meaning and effect of governing instrument.

THE MEANING AND LEGAL EFFECT OF A GOVERNING INSTRUMENT IS DETERMINED BY THE LOCAL LAW OF THE STATE SELECTED BY THE TRANSFEROR IN THE GOVERNING INSTRUMENT, UNLESS THE APPLICATION OF THAT LAW IS CONTRARY TO THE PROVISIONS RELATING TO THE ELECTIVE-SHARE DESCRIBED IN PART 2 OF THIS ARTICLE, THE PROVISIONS RELATING TO EXEMPT PROPERTY AND ALLOWANCES DESCRIBED IN PART 4 OF THIS ARTICLE, OR ANY OTHER PUBLIC POLICY OF THIS STATE OTHERWISE APPLICABLE TO THE DISPOSITION.

15-11-704. Power of appointment; meaning of specific reference requirement. IF A GOVERNING INSTRUMENT CREATING A POWER OF APPOINTMENT EXPRESSLY REQUIRES THAT THE POWER BE EXERCISED BY A REFERENCE, AN EXPRESS REFERENCE, OR A SPECIFIC REFERENCE, TO THE POWER OR ITS SOURCE, IT IS PRESUMED THAT THE DONOR'S INTENTION, IN REQUIRING THAT THE DONEE EXERCISE THE POWER BY MAKING REFERENCE TO THE PARTICULAR POWER OR TO THE CREATING INSTRUMENT, WAS TO PREVENT AN INADVERTENT EXERCISE OF THE POWER.

15-11-705. Class gifts construed to accord with intestate succession. (1) ADOPTED INDIVIDUALS AND INDIVIDUALS BORN OUT OF WEDLOCK, AND THEIR RESPECTIVE DESCENDANTS IF APPROPRIATE TO THE CLASS, ARE INCLUDED IN CLASS GIFTS AND OTHER TERMS OF RELATIONSHIP IN ACCORDANCE WITH THE RULES FOR INTESTATE SUCCESSION. UNLESS THE CONTEXT OF THE REFERENCE OR SOME OTHER PROVISION OF THE GOVERNING INSTRUMENT INDICATES THE TESTATOR'S CONTRARY INTENT:

(a) TERMS OF RELATIONSHIP THAT DO NOT DIFFERENTIATE RELATIONSHIPS BY BLOOD FROM THOSE BY AFFINITY, SUCH AS "UNCLES", "AUNTS", "NIECES", OR "NEPHEWS", STANDING ALONE SHALL BE CONSTRUED TO EXCLUDE RELATIVES BY AFFINITY.

(b) TERMS OF RELATIONSHIP THAT DO NOT DIFFERENTIATE RELATIONSHIPS BY THE HALF BLOOD FROM THOSE BY THE WHOLE BLOOD, SUCH AS "BROTHERS", "SISTERS", "NIECES", OR "NEPHEWS", STANDING ALONE SHALL BE CONSTRUED TO INCLUDE BOTH TYPES OF RELATIONSHIPS.

(c) TERMS OF RELATIONSHIP SUCH AS "CHILDREN", "GRANDCHILDREN", "ISSUE", "DESCENDANTS", "BROTHERS", "SISTERS", "NIECES", "NEPHEWS", "UNCLES", OR "AUNTS" STANDING ALONE SHALL BE CONSTRUED TO INCLUDE INDIVIDUALS BORN OUT OF WEDLOCK.

(2) (RESERVED)

(3) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, IN CONSTRUING A DISPOSITIVE PROVISION OF A TRANSFEROR WHO IS NOT THE ADOPTING PARENT, AN ADOPTED INDIVIDUAL IS NOT CONSIDERED THE CHILD OF THE ADOPTING PARENT UNLESS THE ADOPTED INDIVIDUAL WAS ADOPTED WHILE A MINOR. THIS SUBSECTION (3) SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE APPLICATION OF SECTION 15-11-114, WHICH PERTAINS TO THE PARENT AND CHILD RELATIONSHIP.

15-11-706. Nonprobate transfers; deceased beneficiary. (1) Definitions. THIS SECTION SHALL NOT APPLY TO WILLS; INSURANCE OR ANNUITY POLICIES; OR PENSION, PROFIT SHARING, RETIREMENT, OR SIMILAR BENEFIT PLANS. AS USED IN THIS SECTION,

UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ALTERNATIVE BENEFICIARY DESIGNATION" MEANS A BENEFICIARY DESIGNATION THAT IS EXPRESSLY CREATED BY THE GOVERNING INSTRUMENT AND, UNDER THE TERMS OF THE GOVERNING INSTRUMENT, CAN TAKE EFFECT INSTEAD OF ANOTHER BENEFICIARY DESIGNATION ON THE HAPPENING OF ONE OR MORE EVENTS, INCLUDING SURVIVAL OF THE DECEDENT OR FAILURE TO SURVIVE THE DECEDENT, WHETHER AN EVENT IS EXPRESSED IN CONDITION-PRECEDENT, CONDITION-SUBSEQUENT, OR ANY OTHER FORM.

(b) "BENEFICIARY" MEANS THE BENEFICIARY OF A BENEFICIARY DESIGNATION UNDER WHICH THE BENEFICIARY MUST SURVIVE THE DECEDENT AND INCLUDES (i) A CLASS MEMBER IF THE BENEFICIARY DESIGNATION IS IN THE FORM OF A CLASS GIFT AND (ii) AN INDIVIDUAL OR CLASS MEMBER WHO WAS DECEASED AT THE TIME THE BENEFICIARY DESIGNATION WAS EXECUTED AS WELL AS AN INDIVIDUAL OR CLASS MEMBER WHO WAS THEN LIVING BUT WHO FAILED TO SURVIVE THE DECEDENT, BUT EXCLUDES A JOINT TENANT OF A JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP AND A PARTY TO A JOINT AND SURVIVORSHIP ACCOUNT.

(c) "BENEFICIARY DESIGNATION" INCLUDES AN ALTERNATIVE BENEFICIARY DESIGNATION AND A BENEFICIARY DESIGNATION IN THE FORM OF A CLASS GIFT.

(d) "CLASS MEMBER" INCLUDES AN INDIVIDUAL WHO FAILS TO SURVIVE THE DECEDENT BUT WHO WOULD HAVE TAKEN UNDER A BENEFICIARY DESIGNATION IN THE FORM OF A CLASS GIFT HAD HE OR SHE SURVIVED THE DECEDENT.

(e) (RESERVED)

(f) "SURVIVING BENEFICIARY" OR "SURVIVING DESCENDANT" MEANS A BENEFICIARY OR A DESCENDANT WHO NEITHER PREDECEASED THE DECEDENT NOR IS DEEMED TO HAVE PREDECEASED THE DECEDENT UNDER SECTION 15-11-702.

(2) **Substitute gift.** IF A BENEFICIARY FAILS TO SURVIVE THE DECEDENT AND IS A GRANDPARENT, OR A DESCENDANT OF A GRANDPARENT OF THE DECEDENT, THE FOLLOWING APPLY:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE BENEFICIARY DESIGNATION IS NOT IN THE FORM OF A CLASS GIFT AND THE DECEASED BENEFICIARY LEAVES SURVIVING DESCENDANTS, A SUBSTITUTE GIFT IS CREATED IN THE BENEFICIARY'S SURVIVING DESCENDANTS. THEY TAKE BY REPRESENTATION THE PROPERTY TO WHICH THE BENEFICIARY WOULD HAVE BEEN ENTITLED HAD THE BENEFICIARY SURVIVED THE DECEDENT.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE BENEFICIARY DESIGNATION IS IN THE FORM OF A CLASS GIFT, OTHER THAN A BENEFICIARY DESIGNATION TO "ISSUE", "DESCENDANTS", "HEIRS OF THE BODY", "HEIRS", "NEXT OF KIN", "RELATIVES", OR "FAMILY", OR A CLASS DESCRIBED BY LANGUAGE OF SIMILAR IMPORT, A SUBSTITUTE GIFT IS CREATED IN THE DECEASED BENEFICIARY'S OR BENEFICIARIES' SURVIVING DESCENDANTS. THE PROPERTY TO WHICH THE BENEFICIARIES WOULD HAVE BEEN ENTITLED HAD ALL OF THEM SURVIVED THE DECEDENT PASSES TO THE SURVIVING BENEFICIARIES AND THE SURVIVING

DESCENDANTS OF THE DECEASED BENEFICIARIES. EACH SURVIVING BENEFICIARY TAKES THE SHARE TO WHICH HE OR SHE WOULD HAVE BEEN ENTITLED HAD THE DECEASED BENEFICIARIES SURVIVED THE DECEDENT. EACH DECEASED BENEFICIARY'S SURVIVING DESCENDANTS WHO ARE SUBSTITUTED FOR THE DECEASED BENEFICIARY TAKE BY REPRESENTATION THE SHARE TO WHICH THE DECEASED BENEFICIARY WOULD HAVE BEEN ENTITLED HAD THE DECEASED BENEFICIARY SURVIVED THE DECEDENT. FOR THE PURPOSES OF THIS PARAGRAPH (b), "DECEASED BENEFICIARY" MEANS A CLASS MEMBER WHO FAILED TO SURVIVE THE DECEDENT AND LEFT ONE OR MORE SURVIVING DESCENDANTS.

(c) EXCEPT AS OTHERWISE PROVIDED IN A GOVERNING INSTRUMENT, FOR THE PURPOSES OF THIS PART 7, WORDS OF SURVIVORSHIP, SUCH AS IN A BENEFICIARY DESIGNATION TO AN INDIVIDUAL "IF HE SURVIVES ME", OR IN A BENEFICIARY DESIGNATION TO "MY SURVIVING CHILDREN", ARE NOT, IN THE ABSENCE OF ADDITIONAL EVIDENCE, A SUFFICIENT INDICATION OF AN INTENT CONTRARY TO THE APPLICATION OF THIS SECTION. THE USE OF LANGUAGE SUCH AS "AND IF HE DOES NOT SURVIVE THE GIFT SHALL LAPSE" OR "TO A AND NOT TO A'S DESCENDANTS" SHALL BE SUFFICIENT INDICATION OF AN INTENT CONTRARY TO THE APPLICATION OF THIS SECTION.

(d) IF A GOVERNING INSTRUMENT CREATES AN ALTERNATIVE BENEFICIARY DESIGNATION WITH RESPECT TO A BENEFICIARY DESIGNATION FOR WHICH A SUBSTITUTE GIFT IS CREATED BY PARAGRAPH (a) OR (b) OF THIS SUBSECTION (2), THE SUBSTITUTE GIFT IS SUPERSEDED BY THE ALTERNATIVE BENEFICIARY DESIGNATION ONLY IF AN EXPRESSLY DESIGNATED BENEFICIARY OF THE ALTERNATIVE BENEFICIARY DESIGNATION IS ENTITLED TO TAKE.

(3) More than one substitute gift; which one takes. IF, UNDER SUBSECTION (2) OF THIS SECTION, SUBSTITUTE GIFTS ARE CREATED AND NOT SUPERSEDED WITH RESPECT TO MORE THAN ONE BENEFICIARY DESIGNATION AND THE BENEFICIARY DESIGNATIONS ARE ALTERNATIVE BENEFICIARY DESIGNATIONS, ONE TO THE OTHER, THE DETERMINATION OF WHICH OF THE SUBSTITUTE GIFTS TAKES EFFECT IS RESOLVED AS FOLLOWS:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (3), THE PROPERTY PASSES UNDER THE PRIMARY SUBSTITUTE GIFT.

(b) IF THERE IS A YOUNGER-GENERATION BENEFICIARY DESIGNATION, THE PROPERTY PASSES UNDER THE YOUNGER-GENERATION SUBSTITUTE GIFT AND NOT UNDER THE PRIMARY SUBSTITUTE GIFT.

(c) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "PRIMARY BENEFICIARY DESIGNATION" MEANS THE BENEFICIARY DESIGNATION THAT WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED BENEFICIARIES OF THE ALTERNATIVE BENEFICIARY DESIGNATIONS WHO LEFT SURVIVING DESCENDANTS SURVIVED THE DECEDENT.

(II) "PRIMARY SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE PRIMARY BENEFICIARY DESIGNATION.

(III) "YOUNGER-GENERATION BENEFICIARY DESIGNATION" MEANS A BENEFICIARY DESIGNATION THAT:

(A) IS TO A DESCENDANT OF A BENEFICIARY OF THE PRIMARY BENEFICIARY DESIGNATION;

(B) IS AN ALTERNATIVE BENEFICIARY DESIGNATION WITH RESPECT TO THE PRIMARY BENEFICIARY DESIGNATION;

(C) IS A BENEFICIARY DESIGNATION FOR WHICH A SUBSTITUTE GIFT IS CREATED;
AND

(D) WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED BENEFICIARIES WHO LEFT SURVIVING DESCENDANTS SURVIVED THE DECEDENT EXCEPT THE DECEASED BENEFICIARY OR BENEFICIARIES OF THE PRIMARY BENEFICIARY DESIGNATION.

(IV) "YOUNGER-GENERATION SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE YOUNGER-GENERATION BENEFICIARY DESIGNATION.

(4) **Protection of payors.** (a) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT WHO, UNDER THIS SECTION, IS NOT ENTITLED TO THE PAYMENT OR ITEM OF PROPERTY, OR FOR HAVING TAKEN ANY OTHER ACTION IN RELIANCE ON THE BENEFICIARY'S APPARENT ENTITLEMENT UNDER THE TERMS OF THE GOVERNING INSTRUMENT, BEFORE THE PAYOR OR OTHER THIRD PARTY HAS RECEIVED WRITTEN NOTICE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4). A PAYOR OR OTHER THIRD PARTY SHALL HAVE NO DUTY OR OBLIGATION TO INQUIRE AS TO THE EXISTENCE OF A SUBSTITUTED GIFT UNDER THIS SECTION OR TO SEEK ANY EVIDENCE WITH RESPECT TO ANY SUCH SUBSTITUTED GIFT. A PAYOR OR OTHER THIRD PARTY IS ONLY LIABLE FOR ACTIONS TAKEN TWO OR MORE BUSINESS DAYS AFTER THE PAYOR OR OTHER THIRD PARTY HAS ACTUAL RECEIPT OF SUCH WRITTEN NOTICE. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL NOT BE SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(b) THE WRITTEN NOTICE SHALL INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT A CLAIM TO A SUBSTITUTE GIFT IS BEING MADE UNDER THIS SECTION. THE WRITTEN NOTICE SHALL BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION.

(c) UPON RECEIPT OF THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4), A PAYOR OR OTHER THIRD PARTY MAY PAY TO THE COURT ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT ANY ITEM OF PROPERTY HELD BY IT. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION SHALL NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S

ESTATE, OR IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY, EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(d) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER THIS SECTION, SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. A FILING FEE, IF ANY, SHALL BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT.

(e) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

(5) Protection of bona fide purchasers; personal liability of recipient. (a) A PERSON WHO PURCHASES PROPERTY FOR VALUE AND WITHOUT NOTICE, OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS SECTION TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR IS LIABLE UNDER THIS SECTION FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT. HOWEVER, A PERSON WHO, NOT FOR VALUE, RECEIVES A PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO IS ENTITLED TO IT UNDER THIS SECTION.

(b) IF THIS SECTION OR ANY PART OF THIS SECTION IS PREEMPTED BY FEDERAL LAW (OTHER THAN THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED) WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT COVERED BY THIS SECTION, A PERSON WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THIS SECTION OR PART OF THIS SECTION NOT PREEMPTED.

15-11-707. Survivorship with respect to future interests under terms of trust; substitute takers. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ALTERNATIVE FUTURE INTEREST" MEANS AN EXPRESSLY CREATED FUTURE INTEREST THAT CAN TAKE EFFECT IN POSSESSION OR ENJOYMENT INSTEAD OF ANOTHER FUTURE INTEREST ON THE HAPPENING OF ONE OR MORE EVENTS, INCLUDING SURVIVAL OF AN EVENT OR FAILURE TO SURVIVE AN EVENT, WHETHER AN EVENT IS EXPRESSED IN CONDITION-PRECEDENT, CONDITION-SUBSEQUENT, OR ANY OTHER FORM. A RESIDUARY CLAUSE IN A WILL DOES NOT CREATE AN ALTERNATIVE FUTURE INTEREST WITH RESPECT TO A FUTURE INTEREST CREATED IN A NONRESIDUARY DEVISE IN THE WILL, WHETHER OR NOT THE WILL SPECIFICALLY PROVIDES THAT LAPSED OR FAILED DEVISES ARE TO PASS UNDER THE RESIDUARY CLAUSE.

(b) "BENEFICIARY" MEANS THE BENEFICIARY OF A FUTURE INTEREST AND INCLUDES A CLASS MEMBER IF THE FUTURE INTEREST IS IN THE FORM OF A CLASS GIFT.

(c) "CLASS MEMBER" INCLUDES AN INDIVIDUAL WHO FAILS TO SURVIVE THE DISTRIBUTION DATE BUT WHO WOULD HAVE TAKEN UNDER A FUTURE INTEREST IN THE FORM OF A CLASS GIFT HAD HE OR SHE SURVIVED THE DISTRIBUTION DATE.

(d) "DISTRIBUTION DATE", WITH RESPECT TO A FUTURE INTEREST, MEANS THE TIME WHEN THE FUTURE INTEREST IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT. THE DISTRIBUTION DATE NEED NOT OCCUR AT THE BEGINNING OR END OF A CALENDAR DAY, BUT MAY OCCUR AT A TIME DURING THE COURSE OF A DAY.

(e) "FUTURE INTEREST" INCLUDES AN ALTERNATIVE FUTURE INTEREST AND A FUTURE INTEREST IN THE FORM OF A CLASS GIFT.

(f) "FUTURE INTEREST UNDER THE TERMS OF A TRUST" MEANS A FUTURE INTEREST THAT WAS CREATED BY A TRANSFER CREATING A TRUST OR TO AN EXISTING TRUST OR BY AN EXERCISE OF A POWER OF APPOINTMENT TO AN EXISTING TRUST, DIRECTING THE CONTINUANCE OF AN EXISTING TRUST, DESIGNATING A BENEFICIARY OF AN EXISTING TRUST, OR CREATING A TRUST.

(g) "SURVIVING BENEFICIARY" OR "SURVIVING DESCENDANT" MEANS A BENEFICIARY OR A DESCENDANT WHO NEITHER PREDECEASED THE DISTRIBUTION DATE NOR IS DEEMED TO HAVE PREDECEASED THE DISTRIBUTION DATE UNDER SECTION 15-11-702.

(2) **Survivorship required; substitute gift.** A FUTURE INTEREST UNDER THE TERMS OF A TRUST IS CONTINGENT ON THE BENEFICIARY'S SURVIVING THE DISTRIBUTION DATE. IF A BENEFICIARY OF A FUTURE INTEREST UNDER THE TERMS OF A TRUST FAILS TO SURVIVE THE DISTRIBUTION DATE, THE FOLLOWING APPLY:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE FUTURE INTEREST IS NOT IN THE FORM OF A CLASS GIFT AND THE DECEASED BENEFICIARY LEAVES SURVIVING DESCENDANTS, A SUBSTITUTE GIFT IS CREATED IN THE BENEFICIARY'S SURVIVING DESCENDANTS. THEY TAKE BY REPRESENTATION THE PROPERTY TO WHICH THE BENEFICIARY WOULD HAVE BEEN ENTITLED HAD THE BENEFICIARY SURVIVED THE DISTRIBUTION DATE.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (2), IF THE FUTURE INTEREST IS IN THE FORM OF A CLASS GIFT, OTHER THAN A FUTURE INTEREST TO "ISSUE", "DESCENDANTS", "HEIRS OF THE BODY", "HEIRS", "NEXT OF KIN", "RELATIVES", OR "FAMILY", OR A CLASS DESCRIBED BY LANGUAGE OF SIMILAR IMPORT, A SUBSTITUTE GIFT IS CREATED IN THE DECEASED BENEFICIARY'S OR BENEFICIARIES' SURVIVING DESCENDANTS. THE PROPERTY TO WHICH THE BENEFICIARIES WOULD HAVE BEEN ENTITLED HAD ALL OF THEM SURVIVED THE DISTRIBUTION DATE PASSES TO THE SURVIVING BENEFICIARIES AND THE SURVIVING DESCENDANTS OF THE DECEASED BENEFICIARIES. EACH SURVIVING BENEFICIARY TAKES THE SHARE TO WHICH HE OR SHE WOULD HAVE BEEN ENTITLED HAD THE DECEASED BENEFICIARIES SURVIVED THE DISTRIBUTION DATE. EACH DECEASED BENEFICIARY'S SURVIVING DESCENDANTS WHO ARE SUBSTITUTED FOR THE DECEASED BENEFICIARY TAKE BY REPRESENTATION THE SHARE TO WHICH THE DECEASED BENEFICIARY WOULD HAVE BEEN ENTITLED HAD THE DECEASED BENEFICIARY SURVIVED THE DISTRIBUTION DATE. FOR THE PURPOSES OF THIS PARAGRAPH (b), "DECEASED BENEFICIARY" MEANS A CLASS MEMBER WHO FAILED TO SURVIVE THE DISTRIBUTION DATE AND LEFT ONE OR MORE SURVIVING DESCENDANTS.

(c) FOR THE PURPOSES OF THIS PART 7, WORDS OF SURVIVORSHIP ATTACHED TO A FUTURE INTEREST ARE NOT, IN THE ABSENCE OF ADDITIONAL EVIDENCE, A SUFFICIENT INDICATION OF AN INTENT CONTRARY TO THE APPLICATION OF THIS SECTION. WORDS OF SURVIVORSHIP INCLUDE WORDS OF SURVIVORSHIP THAT RELATE TO THE DISTRIBUTION DATE OR TO AN EARLIER OR AN UNSPECIFIED TIME, WHETHER THOSE WORDS OF SURVIVORSHIP ARE EXPRESSED IN CONDITION-PRECEDENT, CONDITION-SUBSEQUENT, OR ANY OTHER FORM.

(d) IF A GOVERNING INSTRUMENT CREATES AN ALTERNATIVE FUTURE INTEREST WITH RESPECT TO A FUTURE INTEREST FOR WHICH A SUBSTITUTE GIFT IS CREATED BY PARAGRAPH (a) OR (b) OF THIS SUBSECTION (2), THE SUBSTITUTE GIFT IS SUPERSEDED BY THE ALTERNATIVE FUTURE INTEREST ONLY IF AN EXPRESSLY DESIGNATED BENEFICIARY OF THE ALTERNATIVE FUTURE INTEREST IS ENTITLED TO TAKE IN POSSESSION OR ENJOYMENT.

(3) **More than one substitute gift; which one takes.** IF, UNDER SUBSECTION (2) OF THIS SECTION, SUBSTITUTE GIFTS ARE CREATED AND NOT SUPERSEDED WITH RESPECT TO MORE THAN ONE FUTURE INTEREST AND THE FUTURE INTERESTS ARE ALTERNATIVE FUTURE INTERESTS, ONE TO THE OTHER, THE DETERMINATION OF WHICH OF THE SUBSTITUTE GIFTS TAKES EFFECT IS RESOLVED AS FOLLOWS:

(a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (3), THE PROPERTY PASSES UNDER THE PRIMARY SUBSTITUTE GIFT.

(b) IF THERE IS A YOUNGER-GENERATION FUTURE INTEREST, THE PROPERTY PASSES UNDER THE YOUNGER-GENERATION SUBSTITUTE GIFT AND NOT UNDER THE PRIMARY SUBSTITUTE GIFT.

(c) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "PRIMARY FUTURE INTEREST" MEANS THE FUTURE INTEREST THAT WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED BENEFICIARIES OF THE ALTERNATIVE FUTURE INTERESTS WHO LEFT SURVIVING DESCENDANTS SURVIVED THE DISTRIBUTION DATE.

(II) "PRIMARY SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE PRIMARY FUTURE INTEREST.

(III) "YOUNGER-GENERATION FUTURE INTEREST" MEANS A FUTURE INTEREST THAT:

(A) IS TO A DESCENDANT OF A BENEFICIARY OF THE PRIMARY FUTURE INTEREST;

(B) IS AN ALTERNATIVE FUTURE INTEREST WITH RESPECT TO THE PRIMARY FUTURE INTEREST;

(C) IS A FUTURE INTEREST FOR WHICH A SUBSTITUTE GIFT IS CREATED; AND

(D) WOULD HAVE TAKEN EFFECT HAD ALL THE DECEASED BENEFICIARIES WHO LEFT SURVIVING DESCENDANTS SURVIVED THE DISTRIBUTION DATE EXCEPT THE DECEASED BENEFICIARY OR BENEFICIARIES OF THE PRIMARY FUTURE INTEREST.

(IV) "YOUNGER-GENERATION SUBSTITUTE GIFT" MEANS THE SUBSTITUTE GIFT CREATED WITH RESPECT TO THE YOUNGER-GENERATION FUTURE INTEREST.

(4) **If no other takers, property passes under residuary clause or to transferor's heirs.** EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, IF, AFTER THE APPLICATION OF SUBSECTIONS (2) AND (3) OF THIS SECTION, THERE IS NO SURVIVING TAKER, THE PROPERTY PASSES IN THE FOLLOWING ORDER:

(a) IF THE TRUST WAS CREATED IN A NONRESIDUARY DEVISE IN THE TRANSFEROR'S WILL OR IN A CODICIL TO THE TRANSFEROR'S WILL, THE PROPERTY PASSES UNDER THE RESIDUARY CLAUSE IN THE TRANSFEROR'S WILL; FOR PURPOSES OF THIS SECTION, THE RESIDUARY CLAUSE IS TREATED AS CREATING A FUTURE INTEREST UNDER THE TERMS OF A TRUST.

(b) IF NO TAKER IS PRODUCED BY THE APPLICATION OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE PROPERTY PASSES TO THE TRANSFEROR'S HEIRS UNDER SECTION 15-11-711.

(5) **If no other takers and if future interest created by exercise of power of appointment.** IF, AFTER THE APPLICATION OF SUBSECTIONS (2) AND (3) OF THIS SECTION, THERE IS NO SURVIVING TAKER AND IF THE FUTURE INTEREST WAS CREATED BY THE EXERCISE OF A POWER OF APPOINTMENT:

(a) THE PROPERTY PASSES UNDER THE DONOR'S GIFT-IN-DEFAULT CLAUSE, IF ANY, WHICH CLAUSE IS TREATED AS CREATING A FUTURE INTEREST UNDER THE TERMS OF A TRUST; AND

(b) IF NO TAKER IS PRODUCED BY THE APPLICATION OF PARAGRAPH (a) OF THIS SUBSECTION (5), THE PROPERTY PASSES AS PROVIDED IN SUBSECTION (4) OF THIS SECTION. FOR PURPOSES OF SUBSECTION (4) OF THIS SECTION, "TRANSFEROR" MEANS THE DONOR IF THE POWER WAS A NONGENERAL POWER AND MEANS THE DONEE IF THE POWER WAS A GENERAL POWER.

15-11-708. Class gifts to "descendants", "issue", or "heirs of the body"; form of distribution if none specified. IF A CLASS GIFT IN FAVOR OF

"DESCENDANTS", "ISSUE", OR "HEIRS OF THE BODY" DOES NOT SPECIFY THE MANNER IN WHICH THE PROPERTY IS TO BE DISTRIBUTED AMONG THE CLASS MEMBERS, THE PROPERTY IS DISTRIBUTED AMONG THE CLASS MEMBERS WHO ARE LIVING WHEN THE INTEREST IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT, IN SUCH SHARES AS THEY WOULD RECEIVE, UNDER THE APPLICABLE LAW OF INTESTATE SUCCESSION, IF THE DESIGNATED ANCESTOR HAD THEN DIED INTESTATE OWNING THE SUBJECT MATTER OF THE CLASS GIFT.

15-11-709. Representation; per capita at each generation; per stirpes.

(1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECEASED CHILD" OR "DECEASED DESCENDANT" MEANS A CHILD OR A DESCENDANT WHO EITHER PREDECEASED THE DISTRIBUTION DATE OR IS DEEMED TO HAVE PREDECEASED THE DISTRIBUTION DATE UNDER SECTION 15-11-702.

(b) "DISTRIBUTION DATE", WITH RESPECT TO AN INTEREST, MEANS THE TIME WHEN THE INTEREST IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT. THE DISTRIBUTION DATE NEED NOT OCCUR AT THE BEGINNING OR END OF A CALENDAR DAY, BUT MAY OCCUR AT A TIME DURING THE COURSE OF A DAY.

(c) "SURVIVING ANCESTOR", "SURVIVING CHILD", OR "SURVIVING DESCENDANT" MEANS AN ANCESTOR, A CHILD, OR A DESCENDANT WHO NEITHER PREDECEASED THE DISTRIBUTION DATE NOR IS DEEMED TO HAVE PREDECEASED THE DISTRIBUTION DATE UNDER SECTION 15-11-702.

(2) **Representation; per capita at each generation.** IF AN APPLICABLE STATUTE OR A GOVERNING INSTRUMENT CALLS FOR PROPERTY TO BE DISTRIBUTED "BY REPRESENTATION" OR "PER CAPITA AT EACH GENERATION", THE PROPERTY IS DIVIDED INTO AS MANY EQUAL SHARES AS THERE ARE (i) SURVIVING DESCENDANTS IN THE GENERATION NEAREST TO THE DESIGNATED ANCESTOR WHICH CONTAINS ONE OR MORE SURVIVING DESCENDANTS AND (ii) DECEASED DESCENDANTS IN THE SAME GENERATION WHO LEFT SURVIVING DESCENDANTS, IF ANY. EACH SURVIVING DESCENDANT IN THE NEAREST GENERATION IS ALLOCATED ONE SHARE. THE REMAINING SHARES, IF ANY, ARE COMBINED AND THEN DIVIDED IN THE SAME MANNER AMONG THE SURVIVING DESCENDANTS OF THE DECEASED DESCENDANTS AS IF THE SURVIVING DESCENDANTS WHO WERE ALLOCATED A SHARE AND THEIR SURVIVING DESCENDANTS HAD PREDECEASED THE DISTRIBUTION DATE.

(3) **Per stirpes.** IF A GOVERNING INSTRUMENT CALLS FOR PROPERTY TO BE DISTRIBUTED "PER STIRPES", THE PROPERTY IS DIVIDED INTO AS MANY EQUAL SHARES AS THERE ARE (i) SURVIVING CHILDREN OF THE DESIGNATED ANCESTOR AND (ii) DECEASED CHILDREN WHO LEFT SURVIVING DESCENDANTS. EACH SURVIVING CHILD, IF ANY, IS ALLOCATED ONE SHARE. THE SHARE OF EACH DECEASED CHILD WITH SURVIVING DESCENDANTS IS DIVIDED IN THE SAME MANNER, WITH SUBDIVISION REPEATING AT EACH SUCCEEDING GENERATION UNTIL THE PROPERTY IS FULLY ALLOCATED AMONG SURVIVING DESCENDANTS.

(4) **Deceased descendant with no surviving descendant disregarded.** FOR THE PURPOSES OF SUBSECTIONS (2) AND (3) OF THIS SECTION, AN INDIVIDUAL WHO IS DECEASED AND LEFT NO SURVIVING DESCENDANT IS DISREGARDED, AND AN

INDIVIDUAL WHO LEAVES A SURVIVING ANCESTOR WHO IS A DESCENDANT OF THE DESIGNATED ANCESTOR IS NOT ENTITLED TO A SHARE.

(5) **By representation.** FOR ALL GOVERNING INSTRUMENTS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS PART 7, UNLESS THE GOVERNING INSTRUMENT PROVIDES OTHERWISE, THE FOLLOWING DEFINITION OF "BY REPRESENTATION" SHALL APPLY: IF "BY REPRESENTATION" IS CALLED FOR BY THIS CODE, THE ESTATE IS DIVIDED INTO AS MANY SHARES AS THERE ARE SURVIVING HEIRS IN THE NEAREST DEGREE OF KINSHIP AND DECEASED PERSONS IN THE SAME DEGREE WHO LEFT ISSUE WHO SURVIVE THE DECEDENT, EACH SURVIVING HEIR IN THE NEAREST DEGREE RECEIVING ONE SHARE AND THE SHARE OF EACH DECEASED PERSON IN THE SAME DEGREE BEING DIVIDED AMONG HIS OR HER DESCENDANTS IN THE SAME MANNER.

15-11-710. Worthier-title doctrine abolished. THE DOCTRINE OF WORTHIER-TITLE IS ABOLISHED AS A RULE OF LAW AND AS A RULE OF CONSTRUCTION. LANGUAGE IN A GOVERNING INSTRUMENT DESCRIBING THE BENEFICIARIES OF A DISPOSITION AS THE TRANSFEROR'S "HEIRS", "HEIRS AT LAW", "NEXT OF KIN", "DISTRIBUTEES", "RELATIVES", OR "FAMILY", OR LANGUAGE OF SIMILAR IMPORT, DOES NOT CREATE OR PRESUMPTIVELY CREATE A REVERSIONARY INTEREST IN THE TRANSFEROR.

15-11-711. Interests in "heirs" and like. IF AN APPLICABLE STATUTE OR A GOVERNING INSTRUMENT CALLS FOR A PRESENT OR FUTURE DISTRIBUTION TO, OR CREATES A PRESENT OR FUTURE INTEREST IN, A DESIGNATED INDIVIDUAL'S "HEIRS", "HEIRS AT LAW", "NEXT OF KIN", "RELATIVES", OR "FAMILY", OR LANGUAGE OF SIMILAR IMPORT, THE PROPERTY PASSES TO THOSE PERSONS IN SUCH SHARES AS WOULD SUCCEED TO THE DESIGNATED INDIVIDUAL'S INTESATE ESTATE UNDER THE INTESATE SUCCESSION LAW OF THE DESIGNATED INDIVIDUAL'S DOMICILE IF THE DESIGNATED INDIVIDUAL DIED WHEN THE DONATIVE DISPOSITION IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT. IF THE DESIGNATED INDIVIDUAL'S SURVIVING SPOUSE IS LIVING BUT IS REMARRIED AT THE TIME THE INTEREST IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT, THE SURVIVING SPOUSE IS NOT AN HEIR OF THE DESIGNATED INDIVIDUAL.

15-11-712. Simultaneous death; disposition of property. THE RULES OF CONSTRUCTION IN THIS SECTION SHALL CONTROL IN THOSE SITUATIONS NOT SUBJECT TO THE CONTROL OF SECTION 15-11-702.

(1) WHERE THE TITLE TO PROPERTY OR THE DEVOLUTION THEREOF DEPENDS UPON PRIORITY OF DEATH AND THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT THE PERSONS HAVE DIED OTHERWISE THAN SIMULTANEOUSLY, THE PROPERTY OF EACH PERSON SHALL BE DISPOSED OF AS IF HE OR SHE HAD SURVIVED, EXCEPT AS PROVIDED OTHERWISE IN THIS SECTION.

(2) (a) IF PROPERTY IS SO DISPOSED OF THAT THE RIGHT OF A BENEFICIARY TO SUCCEED TO ANY INTEREST THEREIN IS CONDITIONAL UPON HIS OR HER SURVIVING ANOTHER PERSON, AND BOTH PERSONS DIE, AND THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT THE TWO HAVE DIED OTHERWISE THAN SIMULTANEOUSLY, THE BENEFICIARY SHALL BE DEEMED NOT TO HAVE SURVIVED.

(b) IF THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT TWO OR MORE

BENEFICIARIES HAVE DIED OTHERWISE THAN SIMULTANEOUSLY AND PROPERTY HAS BEEN DISPOSED OF IN SUCH A WAY THAT AT THE TIME OF THEIR DEATHS EACH OF SUCH BENEFICIARIES WOULD HAVE BEEN ENTITLED TO THE PROPERTY IF HE OR SHE HAD SURVIVED THE OTHERS, THE PROPERTY SHALL BE DIVIDED INTO AS MANY EQUAL PORTIONS AS THERE WERE BENEFICIARIES AND THESE PORTIONS SHALL BE DISTRIBUTED RESPECTIVELY TO THOSE WHO WOULD HAVE TAKEN IN THE EVENT THAT EACH OF SUCH BENEFICIARIES HAD SURVIVED.

(3) WHERE THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT TWO JOINT TENANTS HAVE DIED OTHERWISE THAN SIMULTANEOUSLY, THE PROPERTY SO HELD SHALL BE DISTRIBUTED ONE-HALF AS IF ONE HAD SURVIVED AND ONE-HALF AS IF THE OTHER HAD SURVIVED. IF THERE ARE MORE THAN TWO JOINT TENANTS AND ALL OF THEM HAVE SO DIED, THE PROPERTY THUS DISTRIBUTED SHALL BE IN THE PROPORTION THAT ONE BEARS TO THE WHOLE NUMBER OF JOINT TENANTS. FOR THE PURPOSES OF THIS SECTION, THE TERM "JOINT TENANTS" INCLUDES OWNERS OF PROPERTY HELD UNDER CIRCUMSTANCES WHICH ENTITLED ONE OR MORE TO THE WHOLE OF THE PROPERTY ON THE DEATH OF THE OTHER OR OTHERS.

(4) WHERE A HUSBAND AND WIFE HAVE DIED LEAVING COMMUNITY PROPERTY AND THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT THEY HAVE DIED OTHERWISE THAN SIMULTANEOUSLY, ONE-HALF OF ALL THE COMMUNITY PROPERTY SHALL PASS AS IF THE HUSBAND HAD SURVIVED, AND AS IF SAID ONE-HALF WERE HIS SEPARATE PROPERTY, AND THE OTHER ONE-HALF THEREOF SHALL PASS AS IF THE WIFE HAD SURVIVED, AND AS IF SAID OTHER ONE-HALF WERE HER SEPARATE PROPERTY.

(5) WHERE THE INSURED AND THE BENEFICIARY IN A POLICY OF LIFE OR ACCIDENT INSURANCE HAVE DIED AND THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT THEY HAVE DIED OTHERWISE THAN SIMULTANEOUSLY, THE PROCEEDS OF THE POLICY SHALL BE DISTRIBUTED AS IF THE INSURED HAD SURVIVED THE BENEFICIARY; EXCEPT THAT, IF THE POLICY IS COMMUNITY PROPERTY OF THE INSURED AND HIS OR HER SPOUSE, AND THERE IS NO ALTERNATIVE BENEFICIARY, OR NO ALTERNATIVE BENEFICIARY EXCEPT THE ESTATE OR PERSONAL REPRESENTATIVE OF THE INSURED, THE PROCEEDS SHALL BE DISTRIBUTED AS COMMUNITY PROPERTY.

(6) THIS SECTION SHALL NOT APPLY IN THE CASE OF WILLS, LIVING TRUSTS, DEEDS, OR CONTRACTS OF INSURANCE OR ANY OTHER SITUATION WHERE PROVISION IS MADE FOR DISTRIBUTION OF PROPERTY DIFFERENT FROM THE PROVISIONS OF THIS SECTION OR WHERE PROVISION IS MADE FOR A PRESUMPTION AS TO SURVIVORSHIP WHICH RESULTS IN A DISTRIBUTION OF PROPERTY DIFFERENT FROM THAT HERE PROVIDED.

15-11-713. Construction of wills and trusts 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 FEDERAL "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;

(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.

PART 8 GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

15-11-801. Disclaimer of property interests. (1) **Right to disclaim interest in property.** A PERSON, OR THE REPRESENTATIVE OF A PERSON, TO WHOM AN INTEREST IN OR WITH RESPECT TO PROPERTY OR AN INTEREST THEREIN DEVOLVES BY WHATEVER MEANS MAY DISCLAIM IT IN WHOLE OR IN PART BY DELIVERING OR FILING A WRITTEN DISCLAIMER UNDER THIS SECTION. THE RIGHT TO DISCLAIM EXISTS NOTWITHSTANDING (i) ANY LIMITATION ON THE INTEREST OF THE DISCLAIMANT IN THE NATURE OF A SPENDTHRIFT PROVISION OR SIMILAR RESTRICTION OR (ii) ANY RESTRICTION OR LIMITATION ON THE RIGHT TO DISCLAIM CONTAINED IN THE GOVERNING INSTRUMENT. FOR PURPOSES OF THIS SUBSECTION (1), THE "REPRESENTATIVE OF A PERSON" INCLUDES A PERSONAL REPRESENTATIVE OF A DECEDENT, A CONSERVATOR OF A PROTECTED PERSON, AN AGENT ACTING ON BEHALF OF THAT PERSON WITHIN THE EXPRESS AUTHORITY OF A POWER OF ATTORNEY, AND ANY OTHER FIDUCIARY ACTING ON BEHALF OF THE PERSON.

(2) **Time of disclaimer.** THE FOLLOWING RULES GOVERN THE TIME WHEN A DISCLAIMER SHALL BE FILED OR DELIVERED:

(a) IF THE PROPERTY OR INTEREST HAS DEVOLVED TO THE DISCLAIMANT UNDER A TESTAMENTARY INSTRUMENT OR BY THE LAWS OF INTESTACY, THE DISCLAIMER SHALL BE FILED, IF OF A PRESENT INTEREST, NOT LATER THAN NINE MONTHS AFTER THE DEATH OF THE DECEASED OWNER OR DECEASED DONEE OF A POWER OF APPOINTMENT AND, IF OF A FUTURE INTEREST, NOT LATER THAN NINE MONTHS AFTER THE EVENT DETERMINING THAT THE TAKER OF THE PROPERTY OR INTEREST IS FINALLY ASCERTAINED AND HIS OR HER INTEREST IS INDEFEASIBLY VESTED. IF THE DISCLAIMANT DOES NOT HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF THE INTEREST, SUCH DISCLAIMER SHALL BE FILED NOT LATER THAN NINE MONTHS AFTER THE DISCLAIMANT HAS ACTUAL KNOWLEDGE OF THE EXISTENCE OF THE INTEREST. THE DISCLAIMER SHALL BE FILED IN THE COURT OF THE COUNTY IN WHICH PROCEEDINGS FOR THE ADMINISTRATION OF THE ESTATE OF THE DECEASED OWNER OR DECEASED DONEE OF THE POWER ARE PENDING OR WHERE THEY WOULD BE PENDING IF COMMENCED. A COPY OF THE DISCLAIMER SHALL BE DELIVERED OR MAILED TO ANY PERSONAL REPRESENTATIVE OR OTHER FIDUCIARY OF THE DECEDENT OR DONEE OF THE POWER.

(b) IF A PROPERTY OR INTEREST HAS DEVOLVED TO THE DISCLAIMANT UNDER A NONTESTAMENTARY INSTRUMENT OR CONTRACT, THE DISCLAIMER SHALL BE DELIVERED OR FILED, IF OF A PRESENT INTEREST, NOT LATER THAN NINE MONTHS AFTER THE EFFECTIVE DATE OF THE NONTESTAMENTARY INSTRUMENT OR CONTRACT AND, IF OF A FUTURE INTEREST, NOT LATER THAN NINE MONTHS AFTER THE EVENT DETERMINING THAT THE TAKER OF THE PROPERTY OR INTEREST IS FINALLY ASCERTAINED AND HIS OR HER INTEREST IS INDEFEASIBLY VESTED. IF THE PERSON ENTITLED TO DISCLAIM DOES NOT HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF THE INTEREST, THE DISCLAIMER SHALL BE DELIVERED OR FILED NOT LATER THAN NINE MONTHS AFTER THE PERSON LEARNS OF THE EXISTENCE OF THE INTEREST. THE EFFECTIVE DATE OF A REVOCABLE INSTRUMENT OR CONTRACT IS THE DATE ON WHICH THE MAKER NO LONGER HAS POWER TO REVOKE IT OR TO TRANSFER TO HIMSELF OR HERSELF OR ANOTHER THE ENTIRE LEGAL AND EQUITABLE OWNERSHIP OF THE INTEREST. THE DISCLAIMER OR A COPY THEREOF SHALL BE DELIVERED IN PERSON OR MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PERSON WHO HAS LEGAL TITLE TO OR POSSESSION OF THE INTEREST DISCLAIMED, OR IS ENTITLED THERETO IN THE EVENT OF THE DISCLAIMER.

(c) A SURVIVING JOINT TENANT MAY DISCLAIM THE ENTIRE INTEREST OR ANY PORTION THEREOF IN ANY PROPERTY OR INTEREST THEREIN THAT IS THE SUBJECT OF A JOINT TENANCY DEVOLVING TO HIM OR HER, BY RIGHT OF SURVIVORSHIP.

(d) IF REAL PROPERTY OR AN INTEREST THEREIN IS DISCLAIMED, A COPY OF THE DISCLAIMER SHALL BE RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY OR INTEREST DISCLAIMED IS LOCATED.

(3) **Form of disclaimer.** THE DISCLAIMER SHALL (i) DESCRIBE THE PROPERTY OR INTEREST DISCLAIMED, (ii) BE SIGNED BY THE DISCLAIMANT, AND (iii) BE ACKNOWLEDGED IF IT AFFECTS REAL PROPERTY OR AN INTEREST THEREIN.

(4) **Effect of disclaimer.** THE EFFECTS OF A DISCLAIMED ARE:

(a) IF PROPERTY OR AN INTEREST THEREIN DEVOLVES TO A DISCLAIMANT UNDER

A TESTAMENTARY INSTRUMENT, UNDER A POWER OF APPOINTMENT EXERCISED BY A TESTAMENTARY INSTRUMENT, OR UNDER THE LAWS OF INTESTACY, AND THE DECEDENT HAS NOT PROVIDED FOR ANOTHER DISPOSITION OF THAT INTEREST, SHOULD IT BE DISCLAIMED, OR OF DISCLAIMED OR FAILED INTERESTS IN GENERAL, THE DISCLAIMED INTEREST DEVOLVES AS IF THE DISCLAIMED HAD PREDECEASED THE DECEDENT, BUT IF BY LAW OR UNDER THE TESTAMENTARY INSTRUMENT THE DESCENDANTS OF THE DISCLAIMED WOULD SHARE IN THE DISCLAIMED INTEREST BY REPRESENTATION OR OTHERWISE WERE THE DISCLAIMED TO PREDECEASE THE DECEDENT, THEN THE DISCLAIMED INTEREST PASSES BY REPRESENTATION OR PASSES AS DIRECTED BY THE GOVERNING INSTRUMENT TO THE DESCENDANTS OF THE DISCLAIMED WHO SURVIVE THE DECEDENT. A FUTURE INTEREST THAT TAKES EFFECT IN POSSESSION OR ENJOYMENT AFTER THE TERMINATION OF THE ESTATE OR INTEREST DISCLAIMED TAKES EFFECT AS IF THE DISCLAIMED HAD PREDECEASED THE DECEDENT. A DISCLAIMER RELATES BACK FOR ALL PURPOSES TO THE DATE OF DEATH OF THE DECEDENT.

(b) IF PROPERTY OR AN INTEREST THEREIN DEVOLVES TO A DISCLAIMED UNDER A NONTESTAMENTARY INSTRUMENT OR CONTRACT AND THE INSTRUMENT OR CONTRACT DOES NOT PROVIDE FOR ANOTHER DISPOSITION OF THAT INTEREST, SHOULD IT BE DISCLAIMED, OR OF DISCLAIMED OR FAILED INTERESTS IN GENERAL, THE DISCLAIMED INTEREST DEVOLVES AS IF THE DISCLAIMED HAD PREDECEASED THE EFFECTIVE DATE OF THE INSTRUMENT OR CONTRACT, BUT IF BY LAW OR UNDER THE NONTESTAMENTARY INSTRUMENT OR CONTRACT THE DESCENDANTS OF THE DISCLAIMED WOULD SHARE IN THE DISCLAIMED INTEREST BY REPRESENTATION OR OTHERWISE WERE THE DISCLAIMED TO PREDECEASE THE EFFECTIVE DATE OF THE INSTRUMENT, THEN THE DISCLAIMED INTEREST PASSES BY REPRESENTATION, OR PASSES AS DIRECTED BY THE GOVERNING INSTRUMENT TO THE DESCENDANTS OF THE DISCLAIMED WHO SURVIVE THE EFFECTIVE DATE OF THE INSTRUMENT. A DISCLAIMER RELATES BACK FOR ALL PURPOSES TO THAT DATE. A FUTURE INTEREST THAT TAKES EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER THE TERMINATION OF THE DISCLAIMED INTEREST TAKES EFFECT AS IF THE DISCLAIMED HAD DIED BEFORE THE EFFECTIVE DATE OF THE INSTRUMENT OR CONTRACT THAT TRANSFERRED THE DISCLAIMED INTEREST.

(c) THE DISCLAIMER OR THE WRITTEN WAIVER OF THE RIGHT TO DISCLAIM IS BINDING UPON THE DISCLAIMED OR PERSON WAIVING AND ALL PERSONS CLAIMING THROUGH OR UNDER EITHER OF THEM.

(5) **Waiver and bar.** THE RIGHT TO DISCLAIM PROPERTY OR AN INTEREST THEREIN IS BARRED BY (i) AN ASSIGNMENT, CONVEYANCE, ENCUMBRANCE, PLEDGE, OR TRANSFER OF THE PROPERTY OR INTEREST, OR A CONTRACT THEREFOR, (ii) A WRITTEN WAIVER OF THE RIGHT TO DISCLAIM, (iii) AN ACCEPTANCE OF THE PROPERTY OR INTEREST OR A BENEFIT UNDER IT, OR (iv) A SALE OF THE PROPERTY OR INTEREST UNDER JUDICIAL SALE MADE BEFORE THE DISCLAIMER IS MADE.

(6) **Remedy not exclusive.** THIS SECTION DOES NOT ABRIDGE THE RIGHT OF A PERSON TO WAIVE, RELEASE, DISCLAIM, OR RENOUNCE PROPERTY OR AN INTEREST THEREIN UNDER ANY OTHER STATUTE.

(7) **Application.** AN INTEREST IN PROPERTY THAT EXISTS ON THE EFFECTIVE DATE OF THIS SECTION AS TO WHICH, IF A PRESENT INTEREST, THE TIME FOR FILING A

DISCLAIMER UNDER THIS SECTION HAS NOT EXPIRED OR, IF A FUTURE INTEREST, THE INTEREST HAS NOT BECOME INDEFEASIBLY VESTED OR THE TAKER FINALLY ASCERTAINED, MAY BE DISCLAIMED WITHIN NINE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION.

15-11-802. Effect of divorce, annulment, and decree of separation. (1) AN INDIVIDUAL WHO IS DIVORCED FROM THE DECEDENT OR WHOSE MARRIAGE TO THE DECEDENT HAS BEEN ANNULLED IS NOT A SURVIVING SPOUSE UNLESS, BY VIRTUE OF A SUBSEQUENT MARRIAGE, HE OR SHE IS MARRIED TO THE DECEDENT AT THE TIME OF DEATH. A DECREE OF SEPARATION THAT DOES NOT TERMINATE THE STATUS OF HUSBAND AND WIFE IS NOT A DIVORCE FOR PURPOSES OF THIS SECTION.

(2) FOR PURPOSES OF PARTS 1, 2, 3, AND 4 OF THIS ARTICLE, AND OF SECTION 15-12-203, A SURVIVING SPOUSE DOES NOT INCLUDE:

(a) AN INDIVIDUAL WHO OBTAINS OR CONSENTS TO A FINAL DECREE OR JUDGMENT OF DIVORCE FROM THE DECEDENT OR AN ANNULMENT OF THEIR MARRIAGE, WHICH DECREE OR JUDGMENT IS NOT RECOGNIZED AS VALID IN THIS STATE, UNLESS SUBSEQUENTLY THEY PARTICIPATE IN A MARRIAGE CEREMONY PURPORTING TO MARRY EACH TO THE OTHER OR ENTER INTO A COMMON-LAW MARRIAGE;

(b) AN INDIVIDUAL WHO, FOLLOWING AN INVALID DECREE OR JUDGMENT OF DIVORCE OR ANNULMENT OBTAINED BY THE DECEDENT, PARTICIPATES IN A MARRIAGE CEREMONY OR ENTERS INTO A COMMON-LAW MARRIAGE WITH A THIRD INDIVIDUAL; OR

(c) AN INDIVIDUAL WHO WAS A PARTY TO A VALID PROCEEDING CONCLUDED BY AN ORDER PURPORTING TO TERMINATE ALL MARITAL PROPERTY RIGHTS.

15-11-803. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DISPOSITION OR APPOINTMENT OF PROPERTY" INCLUDES A TRANSFER OF AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT.

(b) "FELONIOUS KILLING", EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS SECTION, IS THE KILLING OF THE DECEDENT BY AN INDIVIDUAL WHO, AS A RESULT THEREOF, IS CONVICTED OF, PLEADS GUILTY TO, OR ENTERS A PLEA OF NOLO CONTENDERE TO THE CRIME OF MURDER IN THE FIRST OR SECOND DEGREE OR MANSLAUGHTER, AS SAID CRIMES ARE DEFINED IN SECTIONS 18-3-102 TO 18-3-104, C.R.S.

(c) "GOVERNING INSTRUMENT" MEANS A GOVERNING INSTRUMENT EXECUTED BY THE DECEDENT.

(d) "KILLER" IS ANY INDIVIDUAL WHO HAS COMMITTED A FELONIOUS KILLING.

(e) "REVOCABLE", WITH RESPECT TO A DISPOSITION, APPOINTMENT, PROVISION, OR NOMINATION, MEANS ONE UNDER WHICH THE DECEDENT, AT THE TIME OF OR

IMMEDIATELY BEFORE DEATH, WAS ALONE EMPOWERED, BY LAW OR UNDER THE GOVERNING INSTRUMENT, TO CANCEL THE DESIGNATION IN FAVOR OF THE KILLER, WHETHER OR NOT THE DECEDENT WAS THEN EMPOWERED TO DESIGNATE HIMSELF OR HERSELF IN PLACE OF HIS OR HER KILLER AND OR THE DECEDENT THEN HAD CAPACITY TO EXERCISE THE POWER.

(2) **Forfeiture of statutory benefits.** AN INDIVIDUAL WHO FELONIOUSLY KILLS THE DECEDENT FORFEITS ALL BENEFITS WITH RESPECT TO THE DECEDENT'S ESTATE, INCLUDING AN INTESTATE SHARE, AN ELECTIVE-SHARE, AN OMITTED SPOUSE'S OR CHILD'S SHARE, THE DECEDENT'S HOMESTEAD EXEMPTION UNDER SECTION 38-41-204, C.R.S., EXEMPT PROPERTY, AND A FAMILY ALLOWANCE. IF THE DECEDENT DIED INTESTATE, THE DECEDENT'S INTESTATE ESTATE PASSES AS IF THE KILLER DISCLAIMED HIS OR HER INTESTATE SHARE.

(3) **Revocation of benefits under governing instruments.** THE FELONIOUS KILLING OF THE DECEDENT:

(a) REVOKES ANY REVOCABLE (i) DISPOSITION OR APPOINTMENT OF PROPERTY MADE BY THE DECEDENT TO THE KILLER IN A GOVERNING INSTRUMENT, (ii) PROVISION IN A GOVERNING INSTRUMENT CONFERRING A GENERAL OR NONGENERAL POWER OF APPOINTMENT ON THE KILLER, AND (iii) NOMINATION OF THE KILLER IN A GOVERNING INSTRUMENT, NOMINATING OR APPOINTING THE KILLER TO SERVE IN ANY FIDUCIARY OR REPRESENTATIVE CAPACITY, INCLUDING A PERSONAL REPRESENTATIVE, EXECUTOR, TRUSTEE, OR AGENT; AND

(b) SEVERS THE INTERESTS OF THE DECEDENT AND KILLER IN PROPERTY HELD BY THEM AT THE TIME OF THE KILLING AS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP OR AS COMMUNITY PROPERTY WITH THE RIGHT OF SURVIVORSHIP, TRANSFORMING THE INTERESTS OF THE DECEDENT AND KILLER INTO TENANCIES IN COMMON.

(4) **Effect of severance.** A SEVERANCE UNDER PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION DOES NOT AFFECT ANY THIRD-PARTY INTEREST IN PROPERTY ACQUIRED FOR VALUE AND IN GOOD FAITH RELIANCE ON AN APPARENT TITLE BY SURVIVORSHIP IN THE KILLER UNLESS A WRITING DECLARING THE SEVERANCE HAS BEEN NOTED, REGISTERED, FILED, OR RECORDED IN RECORDS APPROPRIATE TO THE KIND AND LOCATION OF THE PROPERTY WHICH ARE RELIED UPON, IN THE ORDINARY COURSE OF TRANSACTIONS INVOLVING SUCH PROPERTY, AS EVIDENCE OF OWNERSHIP.

(5) **Effect of revocation.** PROVISIONS OF A GOVERNING INSTRUMENT ARE GIVEN EFFECT AS IF THE KILLER DISCLAIMED ALL PROVISIONS REVOKED BY THIS SECTION OR, IN THE CASE OF A REVOKED NOMINATION IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, AS IF THE KILLER PREDECEASED THE DECEDENT.

(6) **Wrongful acquisition of property.** A WRONGFUL ACQUISITION OF PROPERTY OR INTEREST BY A KILLER NOT COVERED BY THIS SECTION SHALL BE TREATED IN ACCORDANCE WITH THE PRINCIPLE THAT A KILLER CANNOT PROFIT FROM HIS OR HER WRONG.

(7) **Felonious killing; how determined.** AFTER ALL RIGHT TO APPEAL HAS BEEN EXHAUSTED, A JUDGMENT OF CONVICTION, A PLEA OF GUILTY, OR A PLEA OF NOLO

CONTENDERE, ESTABLISHING CRIMINAL ACCOUNTABILITY FOR THE FELONIOUS KILLING OF THE DECEDENT CONCLUSIVELY ESTABLISHES THE CONVICTED INDIVIDUAL AS THE DECEDENT'S KILLER FOR PURPOSES OF THIS SECTION. NOTWITHSTANDING THE STATUS OR DISPOSITION OF A CRIMINAL PROCEEDING, A COURT OF COMPETENT JURISDICTION, AT ANY TIME, UPON THE PETITION OF AN INTERESTED PERSON, SHALL DETERMINE WHETHER, BY A PREPONDERANCE OF EVIDENCE STANDARD, EACH OF THE ELEMENTS OF FELONIOUS KILLING OF THE DECEDENT HAS BEEN ESTABLISHED. IF SUCH ELEMENTS HAVE BEEN SO ESTABLISHED, SUCH DETERMINATION CONCLUSIVELY ESTABLISHES THAT INDIVIDUAL AS THE DECEDENT'S KILLER FOR PURPOSES OF THIS SECTION.

(8) Protection of payors and other third parties. (a) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT AFFECTED BY A FELONIOUS KILLING, OR FOR HAVING TAKEN ANY OTHER ACTION IN RELIANCE ON THE BENEFICIARY'S APPARENT ENTITLEMENT UNDER THE TERMS OF THE GOVERNING INSTRUMENT, BEFORE THE PAYOR OR OTHER THIRD PARTY HAS RECEIVED WRITTEN NOTICE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8). A PAYOR OR OTHER THIRD PARTY SHALL HAVE NO DUTY OR OBLIGATION TO MAKE ANY DETERMINATION AS TO WHETHER OR NOT THE DECEDENT WAS THE VICTIM OF A FELONIOUS KILLING OR TO SEEK ANY EVIDENCE WITH RESPECT TO ANY SUCH FELONIOUS KILLING EVEN IF THE CIRCUMSTANCES OF THE DECEDENT'S DEATH ARE SUSPICIOUS OR QUESTIONABLE AS TO THE BENEFICIARY'S PARTICIPATION IN ANY SUCH FELONIOUS KILLING. A PAYOR OR OTHER THIRD PARTY IS ONLY LIABLE FOR ACTIONS TAKEN TWO OR MORE BUSINESS DAYS AFTER THE PAYOR OR OTHER THIRD PARTY HAS ACTUAL RECEIPT OF SUCH WRITTEN NOTICE. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8) SHALL NOT BE SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(b) THE WRITTEN NOTICE SHALL INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT A CLAIM OF FORFEITURE OR REVOCATION IS BEING MADE UNDER THIS SECTION. THE WRITTEN NOTICE SHALL BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION.

(c) UPON RECEIPT OF THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8), A PAYOR OR OTHER THIRD PARTY MAY PAY TO THE COURT ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT ANY ITEM OF PROPERTY HELD BY IT. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION SHALL NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE, OR IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT

SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY, EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(d) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER THIS SECTION, SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. A FILING FEE, IF ANY, SHALL BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT.

(e) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

(9) Protection of bona fide purchasers; personal liability of recipient. (a) A PERSON WHO PURCHASES PROPERTY FOR VALUE AND WITHOUT NOTICE, OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS SECTION TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR IS LIABLE UNDER THIS SECTION FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT. HOWEVER, A PERSON WHO, NOT FOR VALUE, RECEIVES A PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO IS ENTITLED TO IT UNDER THIS SECTION.

(b) IF THIS SECTION OR ANY PART OF THIS SECTION IS PREEMPTED BY FEDERAL LAW WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT COVERED BY THIS SECTION, A PERSON WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THIS SECTION OR PART OF THIS SECTION NOT PREEMPTED.

15-11-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DISPOSITION OR APPOINTMENT OF PROPERTY" INCLUDES A TRANSFER OF AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT.

(b) "DIVORCE OR ANNULMENT" MEANS ANY DIVORCE OR ANNULMENT, OR ANY DISSOLUTION OR DECLARATION OF INVALIDITY OF A MARRIAGE, THAT WOULD EXCLUDE THE SPOUSE AS A SURVIVING SPOUSE WITHIN THE MEANING OF SECTION 15-11-802. A DECREE OF SEPARATION THAT DOES NOT TERMINATE THE STATUS OF HUSBAND AND WIFE IS NOT A DIVORCE FOR PURPOSES OF THIS SECTION.

(c) "DIVORCED INDIVIDUAL" INCLUDES AN INDIVIDUAL WHOSE MARRIAGE HAS BEEN ANNULLED.

(d) "GOVERNING INSTRUMENT" REFERS TO A GOVERNING INSTRUMENT EXECUTED BY THE DIVORCED INDIVIDUAL BEFORE THE DIVORCE OR ANNULMENT OF HIS OR HER MARRIAGE TO HIS OR HER FORMER SPOUSE.

(e) "RELATIVE OF THE DIVORCED INDIVIDUAL'S FORMER SPOUSE" MEANS AN INDIVIDUAL WHO IS RELATED TO THE DIVORCED INDIVIDUAL'S FORMER SPOUSE BY BLOOD, ADOPTION, OR AFFINITY AND WHO, AFTER THE DIVORCE OR ANNULMENT, IS NOT RELATED TO THE DIVORCED INDIVIDUAL BY BLOOD, ADOPTION, OR AFFINITY.

(f) "REVOCABLE" WITH RESPECT TO A DISPOSITION, APPOINTMENT, PROVISION, OR NOMINATION, MEANS ONE UNDER WHICH THE DIVORCED INDIVIDUAL, AT THE TIME OF THE DIVORCE OR ANNULMENT, WAS ALONE EMPOWERED, BY LAW OR UNDER THE GOVERNING INSTRUMENT, TO CANCEL THE DESIGNATION IN FAVOR OF HIS OR HER FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE, WHETHER OR NOT THE DIVORCED INDIVIDUAL WAS THEN EMPOWERED TO DESIGNATE HIMSELF OR HERSELF IN PLACE OF HIS OR HER FORMER SPOUSE OR IN PLACE OF HIS OR HER FORMER SPOUSE'S RELATIVE AND WHETHER OR NOT THE DIVORCED INDIVIDUAL THEN HAD THE CAPACITY TO EXERCISE THE POWER.

(2) **Revocation upon divorce.** EXCEPT AS PROVIDED BY THE EXPRESS TERMS OF A GOVERNING INSTRUMENT, A COURT ORDER, OR A CONTRACT RELATING TO THE DIVISION OF THE MARITAL ESTATE MADE BETWEEN THE DIVORCED INDIVIDUALS BEFORE OR AFTER THE MARRIAGE, DIVORCE, OR ANNULMENT, THE DIVORCE OR ANNULMENT OF A MARRIAGE:

(a) REVOKES ANY REVOCABLE (i) DISPOSITION OR APPOINTMENT OF PROPERTY MADE BY A DIVORCED INDIVIDUAL TO HIS OR HER FORMER SPOUSE IN A GOVERNING INSTRUMENT AND ANY DISPOSITION OR APPOINTMENT CREATED BY LAW OR IN A GOVERNING INSTRUMENT TO A RELATIVE OF THE DIVORCED INDIVIDUAL'S FORMER SPOUSE, (ii) PROVISION IN A GOVERNING INSTRUMENT CONFERRING A GENERAL OR NONGENERAL POWER OF APPOINTMENT ON THE DIVORCED INDIVIDUAL'S FORMER SPOUSE OR ON A RELATIVE OF THE DIVORCED INDIVIDUAL'S FORMER SPOUSE TO SERVE IN ANY FIDUCIARY OR REPRESENTATIVE CAPACITY, INCLUDING A PERSONAL REPRESENTATIVE, EXECUTOR, TRUSTEE, CONSERVATOR, AGENT, OR GUARDIAN; AND

(b) SEVERS THE INTERESTS OF THE FORMER SPOUSES IN PROPERTY HELD BY THEM AT THE TIME OF THE DIVORCE OR ANNULMENT AS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP OR AS COMMUNITY PROPERTY WITH THE RIGHT OF SURVIVORSHIP, TRANSFORMING THE INTERESTS OF THE FORMER SPOUSES INTO TENANCIES IN COMMON.

(3) **Effect of severance.** A SEVERANCE UNDER PARAGRAPH (b) OF SUBSECTION (2)

OF THIS SECTION DOES NOT AFFECT ANY THIRD-PARTY INTEREST IN PROPERTY ACQUIRED FOR VALUE AND IN GOOD FAITH RELIANCE ON AN APPARENT TITLE BY SURVIVORSHIP IN THE SURVIVOR OF THE FORMER SPOUSES UNLESS A WRITING DECLARING THE SEVERANCE HAS BEEN NOTED, REGISTERED, FILED, OR RECORDED IN RECORDS APPROPRIATE TO THE KIND AND LOCATION OF THE PROPERTY WHICH ARE RELIED UPON, IN THE ORDINARY COURSE OF TRANSACTIONS INVOLVING SUCH PROPERTY, AS EVIDENCE OF OWNERSHIP.

(4) **Effect of revocation.** PROVISIONS OF A GOVERNING INSTRUMENT ARE GIVEN EFFECT AS IF THE FORMER SPOUSE AND RELATIVES OF THE FORMER SPOUSE DISCLAIMED ALL PROVISIONS REVOKED BY THIS SECTION OR, IN THE CASE OF A REVOKED NOMINATION IN A FIDUCIARY OR REPRESENTATIVE CAPACITY AS IF THE FORMER SPOUSE AND RELATIVES OF THE FORMER SPOUSE DIED IMMEDIATELY BEFORE THE DIVORCE OR ANNULMENT.

(5) **Revival if divorce nullified.** PROVISIONS REVOKED SOLELY BY THIS SECTION ARE REVIVED BY THE DIVORCED INDIVIDUAL'S REMARRIAGE TO THE FORMER SPOUSE OR BY A NULLIFICATION OF THE DIVORCE OR ANNULMENT.

(6) **No revocation for other change of circumstances.** NO CHANGE OF CIRCUMSTANCES OTHER THAN AS DESCRIBED IN THIS SECTION AND IN SECTION 15-11-803 EFFECTS A REVOCATION.

(7) **Protection of payors and other third parties.** (a) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR ANY OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT AFFECTED BY A DIVORCE, ANNULMENT, OR REMARRIAGE, OR FOR HAVING TAKEN ANY OTHER ACTION IN RELIANCE ON THE BENEFICIARY'S APPARENT ENTITLEMENT UNDER THE TERMS OF THE GOVERNING INSTRUMENT, BEFORE THE PAYOR OR OTHER THIRD PARTY HAS RECEIVED WRITTEN NOTICE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (7). A PAYOR OR OTHER THIRD PARTY SHALL HAVE NO DUTY OR OBLIGATION TO INQUIRE AS TO THE CONTINUED MARITAL RELATIONSHIP BETWEEN THE DECEDENT AND SUCH BENEFICIARY OR TO SEEK ANY EVIDENCE WITH RESPECT TO ANY SUCH MARITAL RELATIONSHIP. A PAYOR OR OTHER THIRD PARTY IS ONLY LIABLE FOR ACTIONS TAKEN TWO OR MORE BUSINESS DAYS AFTER THE PAYOR OR OTHER THIRD PARTY HAS ACTUAL RECEIPT OF SUCH WRITTEN NOTICE. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (7) SHALL NOT BE SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(b) THE WRITTEN NOTICE SHALL INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT A DIVORCE, ANNULMENT, OR REMARRIAGE OF THE DECEDENT AND THE DESIGNATED BENEFICIARY OCCURRED. THE WRITTEN NOTICE SHALL BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION.

(c) UPON RECEIPT OF THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS

SUBSECTION (7), A PAYOR OR OTHER THIRD PARTY MAY PAY TO THE COURT ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT ANY ITEM OF PROPERTY HELD BY IT. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION SHALL NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE, OR IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY, EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(d) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER THIS SECTION, SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. A FILING FEE, IF ANY, SHALL BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT.

(e) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

(8) Protection of bona fide purchasers; personal liability of recipient. (a) A PERSON WHO PURCHASES PROPERTY FROM A FORMER SPOUSE, RELATIVE OF A FORMER SPOUSE, OR ANY OTHER PERSON FOR VALUE AND WITHOUT NOTICE, OR WHO RECEIVES FROM A FORMER SPOUSE, RELATIVE OF A FORMER SPOUSE, OR ANY OTHER PERSON A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS SECTION TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR IS LIABLE UNDER THIS SECTION FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT. HOWEVER, A FORMER SPOUSE, RELATIVE OF A FORMER SPOUSE, OR OTHER PERSON WHO, NOT FOR VALUE, RECEIVED A PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THAT PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO IS ENTITLED TO IT UNDER THIS SECTION.

(b) IF THIS SECTION OR ANY PART OF THIS SECTION IS PREEMPTED BY FEDERAL LAW WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT

COVERED BY THIS SECTION, A FORMER SPOUSE, RELATIVE OF THE FORMER SPOUSE, OR ANY OTHER PERSON WHO, NOT FOR VALUE, RECEIVED A PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT TO WHICH THAT PERSON IS NOT ENTITLED UNDER THIS SECTION IS OBLIGATED TO RETURN THAT PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THIS SECTION OR PART OF THIS SECTION NOT PREEMPTED.

PART 9
HONORARY TRUSTS; TRUSTS FOR PETS

15-11-901. Honorary trusts; trusts for pets. (1) **Honorary trust.** SUBJECT TO SUBSECTION (3) OF THIS SECTION, AND EXCEPT AS PROVIDED UNDER SECTIONS 38-30-110, 38-30-111, AND 38-30-112, C.R.S., IF (i) A TRUST IS FOR A SPECIFIC, LAWFUL, NONCHARITABLE PURPOSE OR FOR LAWFUL, NONCHARITABLE PURPOSES TO BE SELECTED BY THE TRUSTEE AND (ii) THERE IS NO DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY DESIGNATED, THE TRUST MAY BE PERFORMED BY THE TRUSTEE FOR TWENTY-ONE YEARS BUT NO LONGER, WHETHER OR NOT THE TERMS OF THE TRUST CONTEMPLATE A LONGER DURATION.

(2) **Trust for pets.** SUBJECT TO THIS SUBSECTION (2) AND SUBSECTION (3) OF THIS SECTION, A TRUST FOR THE CARE OF DESIGNATED DOMESTIC OR PET ANIMALS AND THE ANIMALS' OFFSPRING IN GESTATION IS VALID. UNLESS THE TRUST INSTRUMENT PROVIDES FOR AN EARLIER TERMINATION, THE TRUST TERMINATES WHEN NO LIVING ANIMAL IS COVERED BY THE TRUST. A GOVERNING INSTRUMENT SHALL BE LIBERALLY CONSTRUED TO BRING THE TRANSFER WITHIN THIS SUBSECTION (2), TO PRESUME AGAINST THE MERELY PRECATORY OR HONORARY NATURE OF THE DISPOSITION, AND TO CARRY OUT THE GENERAL INTENT OF THE TRANSFEROR. EXTRINSIC EVIDENCE IS ADMISSIBLE IN DETERMINING THE TRANSFEROR'S INTENT. ANY TRUST UNDER THIS SUBSECTION (2) SHALL BE AN EXCEPTION TO ANY STATUTORY OR COMMON LAW RULE AGAINST PERPETUITIES.

(3) **Additional provisions applicable to honorary trusts and trusts for pets.** IN ADDITION TO THE PROVISIONS OF SUBSECTION (1) OR (2) OF THIS SECTION, A TRUST COVERED BY EITHER OF THOSE SUBSECTIONS IS SUBJECT TO THE FOLLOWING PROVISIONS:

(a) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THE TRUST INSTRUMENT, NO PORTION OF THE PRINCIPAL OR INCOME MAY BE CONVERTED TO THE USE OF THE TRUSTEE, OTHER THAN REASONABLE TRUSTEE FEES AND EXPENSES OF ADMINISTRATION, OR TO ANY USE OTHER THAN FOR THE TRUST'S PURPOSES OR FOR THE BENEFIT OF A COVERED ANIMAL OR ANIMALS.

(b) UPON TERMINATION, THE TRUSTEE SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER:

(I) AS DIRECTED IN THE TRUST INSTRUMENT;

(II) IF THE TRUST WAS CREATED IN A NONRESIDUARY CLAUSE IN THE TRANSFEROR'S WILL OR IN A CODICIL TO THE TRANSFEROR'S WILL, UNDER THE RESIDUARY CLAUSE IN THE TRANSFEROR'S WILL; AND

(III) IF NO TAKER IS PRODUCED BY THE APPLICATION OF SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (b), TO THE TRANSFEROR'S HEIRS UNDER PART 5 OF THIS ARTICLE.

(c) (RESERVED)

(d) THE INTENDED USE OF THE PRINCIPAL OR INCOME CAN BE ENFORCED BY AN INDIVIDUAL DESIGNATED FOR THAT PURPOSE IN THE TRUST INSTRUMENT, BY THE PERSON HAVING CUSTODY OF AN ANIMAL FOR WHICH CARE IS PROVIDED BY THE TRUST INSTRUMENT, BY A REMAINDER BENEFICIARY, OR, IF NONE, BY AN INDIVIDUAL APPOINTED BY A COURT UPON APPLICATION TO IT BY AN INDIVIDUAL.

(e) ALL TRUSTS CREATED UNDER THIS SECTION SHALL BE REGISTERED AND ALL TRUSTEES SHALL BE SUBJECT TO THE LAWS OF THIS STATE APPLYING TO TRUSTS AND TRUSTEES.

(f) (RESERVED)

(g) IF NO TRUSTEE IS DESIGNATED OR NO DESIGNATED TRUSTEE IS WILLING OR ABLE TO SERVE, A COURT SHALL NAME A TRUSTEE. A COURT MAY ORDER THE TRANSFER OF THE PROPERTY TO ANOTHER TRUSTEE, IF REQUIRED TO ASSURE THAT THE INTENDED USE IS CARRIED OUT AND IF NO SUCCESSOR TRUSTEE IS DESIGNATED IN THE TRUST INSTRUMENT OR IF NO DESIGNATED SUCCESSOR TRUSTEE AGREES TO SERVE OR IS ABLE TO SERVE. A COURT MAY ALSO MAKE SUCH OTHER ORDERS AND DETERMINATIONS AS SHALL BE ADVISABLE TO CARRY OUT THE INTENT OF THE TRANSFEROR AND THE PURPOSE OF THIS SECTION.

SECTION 4. 15-2-202, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-2-202. Power may be released. A power of appointment, whether or not existing on July 1, 1967, may be released, wholly or partially, by the donee thereof, OR HIS OR HER ATTORNEY-IN-FACT OR AGENT ACTING UNDER A POWER OF ATTORNEY IN ACCORDANCE WITH SECTION 15-14-501, unless otherwise expressly provided in the instrument creating the power. As used in this part 2, the term "release" includes a disclaimer or a renunciation of a power of appointment.

SECTION 5. 15-2-203, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-2-203. How power released. A power releasable according to section 15-2-202 may be released, wholly or partially, by the donee of the power OR HIS OR HER ATTORNEY-IN-FACT OR AGENT ACTING UNDER A POWER OF ATTORNEY IN ACCORDANCE WITH SECTION 15-14-501, to any person who could be adversely affected by the exercise of the power or, in the case of a power created by will, by the filing of a written release in the district or probate court in which such will was proved or allowed; but, wherever property subject to the power is then held in trust, a written release must also be delivered to the trustee holding such property. The execution of a partial release of a power shall not prevent the execution and delivery of further partial releases from time to time nor prevent the later execution and delivery of an instrument wholly releasing such power.

SECTION 6. 15-2-301, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-2-301. Extent of exercise. Unless the instrument creating a power of appointment expressly limits the right, interest, or estate which can be appointed by exercise of that power, a donee of a power, OR HIS OR HER ATTORNEY-IN-FACT OR AGENT ACTING UNDER A POWER OF ATTORNEY IN ACCORDANCE WITH SECTION 15-14-501, may exercise such power to pass to the appointee a fee or any lesser estate, interest, or a power of appointment or to pass the property subject to the power to a trustee for the benefit of one or more of the objects of the power of appointment.

SECTION 7. 15-2-303, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-2-303. Not exercised by residuary clause. ~~No power shall be considered to be exercised by the provisions of the residuary clause of the will of the donee of a power unless said clause expressly exercises such power.~~ THE PROVISIONS OF THE RESIDUARY CLAUSE OF THE WILL OF THE DONEE OF A POWER MAY OR MAY NOT EXERCISE A POWER IN ACCORDANCE WITH SECTION 15-11-608.

SECTION 8. 15-11-1011 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-1011. Filing of international will - certificate and deposit of will. (2) Nothing in this section shall be construed to limit the ability of the testator or ~~his~~ THE TESTATOR'S agent to deposit an international will with any court for safekeeping as authorized in section ~~15-11-901~~ 15-11-515.

SECTION 9. 15-12-303 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-303. Informal probate - proof and findings required. (1) In an informal proceeding for original probate of a will, the registrar shall determine that:

(c) The applicant appears from the application to be an interested person as defined in section ~~15-10-201(23)~~ 15-10-201 (27);

SECTION 10. 15-12-308 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-308. Informal appointment proceedings - proof and findings required. (1) In informal appointment proceedings, the registrar must determine that:

(c) The applicant appears from the application to be an interested person as defined in section ~~15-10-201(23)~~ 15-10-201 (27);

SECTION 11. 15-12-709, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-709. Duty of personal representative - possession of estate. Except as otherwise provided by a decedent's will, every personal representative has a right to,

and shall take possession or control of, the decedent's property; except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by ~~him~~ SUCH PERSON will be necessary for the purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for the purposes of administration. The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in ~~his~~ SUCH REPRESENTATIVE'S possession. ~~He~~ THE PERSONAL REPRESENTATIVE may maintain an action to recover possession of the property or to determine the title thereto. If the personal representative incurs expenses necessary for the protection or disposition of property not subject to ~~his~~ SUCH REPRESENTATIVE'S administration, such as those incurred to fix the amount of death taxes thereon, or to compel the contribution contemplated in section ~~15-11-207 (4)~~ 15-11-204 or 15-12-916 (4), the court may fix such liability for the same as it determines to be equitable against any person entitled to or wrongfully withholding the property.

SECTION 12. 15-12-916 (2), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-916. Apportionment of estate taxes. (2) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate, subject to the exceptions specified in this section. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for tax apportionment purposes. In all instances not involving ~~an omitted spouse~~ A SPOUSE UNPROVIDED FOR IN A WILL as provided in section 15-11-301 or an election by a surviving spouse as provided in section 15-11-201, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the method described in the will or other dispositive instrument controls. In instances involving such ~~an omitted spouse~~ A SPOUSE UNPROVIDED FOR IN A WILL or election, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the apportionment of tax to the ~~omitted~~ spouse UNPROVIDED FOR IN THE WILL or to the surviving spouse shall be in accordance with the method described in this code, and the apportionment of tax to the remaining persons interested in the estate shall be in accordance with the method described in the will or other dispositive instrument.

SECTION 13. 15-12-1009 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-1009. Estates not closed after three years or more. (1) When records of the court indicate no action has been taken in an estate for a period of three years or more, the court may, on its own motion, and after notice to the attorney of record, if available, or if there is no attorney of record, then to the personal representative, enter an order closing the estate without further accounting. Such closure may likewise be ordered upon the motion of any interested person, as defined in section

~~15-10-201(23)~~ 15-10-201 (27), or upon motion of the attorney of record. Any order in such case shall provide for the closing of the estate without further accounting, and such order shall not discharge the personal representative or any other person from any liability to the estate, the court, or any other person; except that sureties upon any bond posted in such proceedings shall be released as to any claim arising after closure of the estate under such circumstances.

SECTION 14. Part 1 of article 17 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

15-17-102. Effective date - applicability for reenactment of article 11.

(1) EXCEPT AS PROVIDED ELSEWHERE IN THIS CODE AND EXCEPT AS PROVIDED OTHERWISE IN THIS SECTION, PARTS 1 TO 9 OF ARTICLE 11, AS REENACTED EFFECTIVE JULY 1, 1995, SHALL APPLY TO THE ESTATES, WILLS, OR GOVERNING INSTRUMENTS OF DECEDENTS DYING ON OR AFTER JULY 1, 1995.

(2) SECTION 15-11-601 CONTAINS SPECIAL PROVISIONS FOR THE APPLICABILITY OF SECTIONS 15-11-603 AND 15-11-604.

(3) SECTION 15-11-701 CONTAINS SPECIAL PROVISIONS FOR THE APPLICABILITY OF PART 7 OF ARTICLE 11.

SECTION 15. 2-5-102, Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

2-5-102. Inclusions - nonstatutory. (8) THERE MAY BE INCLUDED IN THE PUBLICATION OF THE AMENDMENTS TO ARTICLE 10 OF TITLE 15, COLORADO REVISED STATUTES, AND TO THE REVISED PARTS 1 THROUGH 9 OF ARTICLE 11 OF TITLE 15, COLORADO REVISED STATUTES, AS NONSTATUTORY MATTER, FOLLOWING EACH SECTION OF ARTICLES 10 AND 11 OF TITLE 15, THE FULL TEXT OF THE OFFICIAL COMMENTS TO THAT SECTION CONTAINED IN THE OFFICIAL VOLUME CONTAINING THE OFFICIAL TEXT OF THE "UNIFORM PROBATE CODE - ARTICLE II" ISSUED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, WITH ANY CHANGES IN THE OFFICIAL COMMENTS OR COLORADO COMMENTS TO CORRESPOND TO COLORADO CHANGES IN THE UNIFORM ACT. THE COMMENTS SHALL BE PREPARED BY THE REVISOR OF STATUTES AND APPROVED FOR PUBLICATION BY THE COMMITTEE ON LEGAL SERVICES.

SECTION 16. 11-50-119 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-50-119. Renunciation, resignation, death, or removal of custodian - designation of successor custodian. (1) A person nominated under section 11-50-104 or designated under section 11-50-110 as custodian may decline to serve by delivering a valid disclaimer in the form provided in ~~part 9 of article 1 of title 15, C.R.S.,~~ or section 15-11-801, C.R.S., to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 11-50-104, the person who made the nomination may nominate a substitute custodian under section 11-50-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian

at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 11-50-110 (1). The custodian so designated has the rights of a successor custodian.

SECTION 17. 13-32-102 (1) (h), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-32-102. Fees in probate proceedings. (1) For services rendered by judges and clerks of district or probate courts in all counties of the state of Colorado in proceedings had pursuant to articles 10 to 20 of title 15, C.R.S., the following fees, shall be charged:

(h) A fee to be paid by the testator at the time of depositing a will with the court during the testator's lifetime pursuant to section ~~15-11-901~~ 15-11-515, C.R.S. \$10.00

SECTION 18. 13-54.5-106 (2) (j) (VII), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-54.5-106. Notice to judgment debtor in other garnishment. (2) The notice of exemption and pending levy in such garnishment proceeding against the personal property of a judgment debtor who is a natural person shall contain the following:

(j) A statement of the judgment debtor's right to claim any property levied upon as exempt, including, but not limited to:

(VII) Family allowances under section ~~15-11-403~~ 15-11-404, C.R.S.;

SECTION 19. The introductory portion to 13-90-102 (1) and 13-90-102 (1) (g), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-90-102. Party in interest may not testify, when. (1) No party to any civil action, suit, or proceeding or person directly interested in the event thereof shall be allowed to testify therein of ~~his~~ SUCH PERSON'S own motion or in ~~his~~ SUCH PERSON'S own behalf by virtue of section 13-90-101 when any adverse party sues or defends as the trustee or conservator of a mentally incompetent person, or as the executor or administrator, heir, legatee, or devisee of any deceased person, or as guardian or trustee of any such heir, legatee, or devisee, unless when called as a witness by such adverse party so suing or defending, and except in the following cases:

(g) When the defendant in any such suit has previously been required to testify under the provisions of section ~~15-11-902~~ or 15-10-106 OR 15-11-516, C.R.S., the testimony so given if reduced to writing, or the stenographic minutes thereof, so far as the same relates to the estate concerning which or for the benefit of which such suit is brought and is relevant to the issue in such suit and competent under the general rules of evidence, may be read in behalf of such defendant.

SECTION 20. 38-41-204, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

38-41-204. Surviving spouse and minor children entitled. When any person dies seized of a homestead leaving a ~~widow, or husband~~ SURVIVING SPOUSE or minor

children, such ~~widow, or husband~~ SURVIVING SPOUSE or minor children are entitled to the homestead EXEMPTION. In ~~case~~ CASES WHERE there is neither ~~widow, husband~~ SURVIVING SPOUSE nor minor children, the homestead shall be liable for the debts of the deceased.

SECTION 21. 42-6-112, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

42-6-112. Transfers by bequest, descent, law. Upon the transfer of ownership of a motor vehicle by a bequest contained in the will or a written statement or a list as ~~defined~~ DESCRIBED in section 15-11-513, C.R.S., of the person in whose name the certificate of title is registered, or upon the descent and distribution upon the death intestate of the owner of such vehicle, or upon the transfer by operation of law, as in proceedings in bankruptcy, insolvency, replevin, attachment, execution, or other judicial sale, or whenever such vehicle is sold to satisfy storage or repair charges or repossession is had upon default in the performance of the terms of any mortgage, the director or an authorized agent, upon the surrender of the certificate of title, if the same is available, or upon presentation of such proof of ownership of such vehicle as the director may reasonably require and upon presentation of an application for a certificate of title, as required in section 42-6-114, a new certificate of title may thereupon issue to the person shown by such evidence to be entitled thereto, and disposition shall be made as in other cases.

SECTION 22. Repeal. Part 9 of article 1 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., is repealed.

SECTION 23. Effective date - applicability. Except as otherwise provided within the act, this act shall take effect July 1, 1995, and shall apply to decedents dying on or after said date.

SECTION 24. 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 28, 1994