

CHAPTER 139

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 96-1342

BY REPRESENTATIVES Kaufman, DeGette, June, and Mace;
also SENATOR Thiebaut.

AN ACT

**CONCERNING TRANSFER OF PROPERTY, AND, IN CONNECTION THEREWITH,
REVISING PROVISIONS RELATING TO PROPERTY IN PROBATE,
ESTATES, AND TRUSTS AND PROPERTY IN JOINT TENANCY.**

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

SECTION 1. 15-11-207, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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 UPON DEATH" (or equivalent language) in the property or estate of a present or prospective spouse is:

(a) 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;

(b) A WAIVER OF THE STATUTORY PRIORITY OF THE WAIVING PARTY TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, OR ADMINISTRATOR OF THE ESTATE OF THE OTHER; and

(c) A renunciation AND DISCLAIMER by the waiving party of all benefits ~~which~~ THAT 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. PROVISIONS OF A

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

WILL EXECUTED BEFORE THE WRITING ARE GIVEN EFFECT AS IF THE WAIVING PARTY:

(I) DISCLAIMED ALL INTERESTS PASSING TO HIM OR HER UNDER THE WILL; AND

(II) BECAME DISQUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, ADMINISTRATOR, OR TRUSTEE.

(2) A surviving spouse's waiver is not enforceable if such waiver would not be enforceable under section 14-2-307, C.R.S.

(3) IN ADDITION TO ALL OTHER AVAILABLE PROCEDURES, A PERSON MAY REVOKE ALL BENEFITS THAT WOULD OTHERWISE PASS UPON DEATH BY VIRTUE OF THE PROVISIONS OF ANY WILL EXECUTED BEFORE THE REVOCATION TO RELATIVES OF SUCH PERSON'S SPOUSE, WHOLLY OR PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITING SIGNED BY THE REVOKING PARTY. UNLESS THE WRITING PROVIDES TO THE CONTRARY, A REVOCATION OF "ALL BENEFITS PASSING UPON DEATH TO THE RELATIVES OF MY SPOUSE" (OR EQUIVALENT LANGUAGE) IS A REVOCATION OF ALL BENEFITS THAT WOULD OTHERWISE PASS UPON DEATH TO THE RELATIVES OF THE SPOUSE FROM THE REVOKING PARTY BY VIRTUE OF THE PROVISIONS OF ANY WILL EXECUTED BEFORE THE WRITING. PROVISIONS OF A WILL EXECUTED BEFORE THE WRITING ARE GIVEN EFFECT AS IF THE RELATIVES:

(a) DISCLAIMED ALL INTERESTS PASSING TO THEM UNDER THE WILL; AND

(b) BECAME DISQUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, ADMINISTRATOR, OR TRUSTEE.

(4) FOR PURPOSES OF THIS SECTION, "RELATIVE" OF AN INDIVIDUAL'S SPOUSE MEANS A PERSON WHO IS RELATED TO THE SPOUSE BY BLOOD, ADOPTION, OR AFFINITY AND WHO, IF THE INDIVIDUAL AND THE INDIVIDUAL'S SPOUSE WERE DIVORCED, WOULD NOT BE RELATED TO THE INDIVIDUAL BY BLOOD, ADOPTION, OR AFFINITY.

(5) THE AMENDMENTS TO THIS SECTION, AS CONTAINED IN HOUSE BILL 96-1342, SHALL TAKE EFFECT JULY 1, 1996, AND SHALL APPLY ONLY TO WAIVERS AND REVOCATIONS WHICH ARE EXECUTED ON OR AFTER SAID DATE.

SECTION 2. 14-2-304 (2), Colorado Revised Statutes, 1987 Repl. Vol., is amended, and the said 14-2-304 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

14-2-304. Content. (2) Unless the marital agreement provides to the contrary, a waiver of "all rights upon death" (or equivalent language) in the property or estate of a present or prospective spouse is:

(a) A waiver of all rights to the elective share, exempt property, ~~allowance~~, family allowance, and homestead exemption of ~~such spouse~~ THE WAIVING PARTY in the property of the other;

(b) A WAIVER OF THE STATUTORY PRIORITY OF THE WAIVING PARTY TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, OR ADMINISTRATOR OF THE ESTATE OF THE OTHER; and

(c) A renunciation AND DISCLAIMER by ~~such spouse~~ THE WAIVING PARTY of all benefits ~~which~~ THAT 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 marital agreement. PROVISIONS OF A WILL EXECUTED BEFORE THE MARITAL AGREEMENT ARE GIVEN EFFECT AS IF THE WAIVING PARTY:

(I) DISCLAIMED ALL INTERESTS PASSING TO HIM OR HER UNDER THE WILL; AND

(II) BECAME DISQUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, ADMINISTRATOR, OR TRUSTEE.

(2.3) UNLESS THE MARITAL AGREEMENT PROVIDES TO THE CONTRARY, A REVOCATION OF "ALL BENEFITS PASSING UPON DEATH TO THE RELATIVES OF MY SPOUSE" (OR EQUIVALENT LANGUAGE) IS A REVOCATION OF ALL BENEFITS THAT WOULD OTHERWISE PASS UPON DEATH TO THE RELATIVES OF THE SPOUSE FROM THE REVOKING PARTY BY VIRTUE OF THE PROVISIONS OF ANY WILL EXECUTED BEFORE THE WRITING. PROVISIONS OF A WILL EXECUTED BEFORE THE WRITING ARE GIVEN EFFECT AS IF THE RELATIVES:

(a) DISCLAIMED ALL INTERESTS PASSING TO THEM UNDER THE WILL; AND

(b) BECAME DISQUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE, EXECUTOR, ADMINISTRATOR, OR TRUSTEE.

(2.5) FOR PURPOSES OF THIS SECTION, "RELATIVE" OF AN INDIVIDUAL'S SPOUSE MEANS A PERSON WHO IS RELATED TO THE SPOUSE BY BLOOD, ADOPTION, OR AFFINITY AND WHO, IF THE INDIVIDUAL AND THE INDIVIDUAL'S SPOUSE WERE DIVORCED, WOULD NOT BE RELATED TO THE INDIVIDUAL BY BLOOD, ADOPTION, OR AFFINITY.

SECTION 3. 14-2-310, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

14-2-310. Effective date - applicability. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, this part 3 shall take effect July 1, 1986, and shall apply only to marital agreements ~~which~~ THAT become effective on or after said date. All such marital agreements entered into prior to July 1, 1986, shall be governed by the laws then in effect.

(2) THE PROVISIONS OF THE AMENDMENTS TO SECTION 14-2-304 (2), AS CONTAINED IN HOUSE BILL 96-1342, SHALL TAKE EFFECT JULY 1, 1996, AND SHALL APPLY ONLY TO MARITAL AGREEMENTS WHICH BECOME EFFECTIVE ON OR AFTER JULY 1, 1996.

SECTION 4. Article 1 of title 15, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 14

RESTRICTIONS ON EXERCISE OF CERTAIN FIDUCIARY POWERS

15-1-1401. Restrictions on exercise of certain fiduciary powers. (1) (a) DUE TO THE INHERENT CONFLICT OF INTEREST THAT EXISTS BETWEEN A TRUSTEE WHO IS A BENEFICIARY OF A TRUST AND OTHER BENEFICIARIES OF THE TRUST, ANY OF THE FOLLOWING POWERS CONFERRED UPON A TRUSTEE SHALL NOT BE EXERCISED BY SUCH

TRUSTEE:

(I) TO MAKE OR CAUSE TO BE MADE DISCRETIONARY DISTRIBUTIONS OF EITHER PRINCIPAL OR INCOME TO OR FOR THE DIRECT OR INDIRECT BENEFIT OF SUCH TRUSTEE; EXCEPT THAT SUCH A POWER MAY BE EXERCISED BY SUCH TRUSTEE TO THE EXTENT THAT IT MAY BE EXERCISED TO PROVIDE FOR THAT TRUSTEE'S HEALTH, EDUCATION, MAINTENANCE, OR SUPPORT AS DESCRIBED UNDER SECTIONS 2041 AND 2514 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(II) TO MAKE DISCRETIONARY DISTRIBUTIONS OF EITHER PRINCIPAL OR INCOME TO SATISFY ANY LEGAL OBLIGATIONS OF SUCH TRUSTEE; OR

(III) TO MAKE OR CAUSE TO BE MADE DISCRETIONARY DISTRIBUTIONS OF EITHER PRINCIPAL OR INCOME TO OR FOR THE DIRECT OR INDIRECT BENEFIT OF ANY PERSON WHO HAS THE RIGHT TO REMOVE OR REPLACE SUCH TRUSTEE; EXCEPT THAT SUCH A POWER MAY BE EXERCISED BY SUCH TRUSTEE TO THE EXTENT THAT IT MAY BE EXERCISED TO PROVIDE FOR SUCH PERSON'S HEALTH, EDUCATION, MAINTENANCE, OR SUPPORT AS DESCRIBED UNDER SECTIONS 2041 AND 2514 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(b) ANY OF THE POWERS PRESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) THAT ARE CONFERRED UPON TWO OR MORE TRUSTEES MAY BE EXERCISED BY THE TRUSTEES WHO ARE NOT SO DISQUALIFIED. IF THERE IS NO TRUSTEE QUALIFIED TO EXERCISE SUCH POWERS, ANY PARTY IN INTEREST, AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, MAY APPLY TO A COURT OF COMPETENT JURISDICTION TO APPOINT AN INDEPENDENT TRUSTEE, AND SUCH POWERS MAY BE EXERCISED BY THE INDEPENDENT TRUSTEE APPOINTED BY THE COURT. SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL NOT PROHIBIT A TRUSTEE FROM MAKING PAYMENTS, INCLUDING REIMBURSEMENT OF AND COMPENSATION OF SUCH TRUSTEE, FOR THE PROTECTION OF THE TRUST, OR THE ASSETS THEREOF, AND FOR ALL EXPENSES, LOSSES, AND LIABILITIES INCURRED IN OR BY THE COLLECTION, CARE, ADMINISTRATION, OR PROTECTION OF THE TRUST OR THE ASSETS THEREOF.

(2) THIS SECTION APPLIES TO EVERY TRUST UNLESS THE TERMS OF THE TRUST AS IT MAY BE AMENDED IN ACCORDANCE WITH ITS TERMS PROVIDE EXPRESSLY TO THE CONTRARY AND EITHER SPECIFICALLY REFER TO THIS SECTION OR OTHERWISE CLEARLY DEMONSTRATE THE INTENT THAT THIS RULE NOT APPLY OR UNLESS, IF THE TRUST IS IRREVOCABLE, ALL PARTIES IN INTEREST, AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, ELECT AFFIRMATIVELY, IN THE MANNER PRESCRIBED IN SUBSECTION (4) OF THIS SECTION, NOT TO BE SUBJECT TO THE APPLICATION OF THIS SECTION. SUCH ELECTION SHALL BE MADE ON OR BEFORE JULY 1, 1999, OR THREE YEARS AFTER THE DATE ON WHICH THE TRUST BECOMES IRREVOCABLE, WHICHEVER OCCURS LATER.

(3) FOR THE PURPOSE OF SUBSECTION (1) OR SUBSECTION (2) OF THIS SECTION:

(a) IF THE TRUST IS REVOCABLE OR AMENDABLE AND THE SETTLOR IS NOT INCAPACITATED, THE PARTY IN INTEREST IS THE SETTLOR.

(b) IF THE TRUST IS REVOCABLE OR AMENDABLE AND THE SETTLOR IS INCAPACITATED, THE PARTY IN INTEREST IS THE SETTLOR'S LEGAL REPRESENTATIVE UNDER APPLICABLE LAW OR THE SETTLOR'S AGENT UNDER A DURABLE POWER OF

ATTORNEY THAT IS SUFFICIENT TO GRANT SUCH AUTHORITY.

(c) IF THE TRUST IS NOT REVOCABLE OR AMENDABLE, THE PARTIES IN INTEREST ARE:

(I) EACH TRUSTEE THEN SERVING;

(II) EACH INCOME BENEFICIARY THEN IN EXISTENCE OR, IF ANY SUCH BENEFICIARY HAS NOT ATTAINED MAJORITY OR IS OTHERWISE INCAPACITATED, THE BENEFICIARY'S LEGAL REPRESENTATIVE UNDER APPLICABLE LAW OR THE BENEFICIARY'S AGENT UNDER A DURABLE POWER OF ATTORNEY THAT IS SUFFICIENT TO GRANT SUCH AUTHORITY; AND

(III) EACH REMAINDER BENEFICIARY THEN IN EXISTENCE OR, IF ANY SUCH REMAINDER BENEFICIARY HAS NOT ATTAINED MAJORITY OR IS OTHERWISE INCAPACITATED, THE BENEFICIARY'S LEGAL REPRESENTATIVE UNDER APPLICABLE LAW OR THE BENEFICIARY'S AGENT UNDER A DURABLE POWER OF ATTORNEY THAT IS SUFFICIENT TO GRANT SUCH AUTHORITY.

(4) THE AFFIRMATIVE ELECTION REQUIRED UNDER SUBSECTION (2) OF THIS SECTION SHALL BE MADE:

(a) IF THE SETTLOR IS NOT INCAPACITATED AND THE TRUST IS REVOCABLE OR AMENDABLE, THROUGH A REVOCATION OF OR AN AMENDMENT TO THE TRUST;

(b) IF THE SETTLOR IS INCAPACITATED AND THE TRUST IS REVOCABLE OR AMENDABLE, THROUGH A WRITTEN DECLARATION EXECUTED IN THE MANNER PRESCRIBED FOR THE ACKNOWLEDGEMENT OF DEEDS IN THIS STATE AND DELIVERED TO THE TRUSTEE; OR

(c) IF THE TRUST IS NOT REVOCABLE OR AMENDABLE, THROUGH A WRITTEN DECLARATION EXECUTED IN THE MANNER PRESCRIBED FOR THE ACKNOWLEDGEMENT OF DEEDS IN THIS STATE AND DELIVERED TO THE TRUSTEE.

(5) A PERSON WHO HAS THE RIGHT TO REMOVE OR TO REPLACE A TRUSTEE DOES NOT POSSESS NOR MAY THAT PERSON BE DEEMED TO POSSESS, BY VIRTUE OF HAVING THAT RIGHT, THE POWERS PROSCRIBED IN SUBPARAGRAPHS (I), (II), AND (III) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION OF THE TRUSTEE THAT IS SUBJECT TO REMOVAL OR TO REPLACEMENT.

(6) (a) SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO A TRUSTEE WITH RESPECT TO TRUST PROPERTY AND THE INCOME FROM SUCH PROPERTY WHERE SUCH PROPERTY WOULD, UPON THE DEATH OF SUCH TRUSTEE, BE INCLUDED IN THE GROSS ESTATE OF SUCH TRUSTEE FOR FEDERAL ESTATE TAX PURPOSES FOR ANY REASON OTHER THAN THE POWERS PROSCRIBED BY SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

(b) SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO A TRUSTEE THAT MAY BE APPOINTED OR REMOVED BY A PERSON FOR WHOSE BENEFIT THE PROSCRIBED POWERS MAY BE EXERCISED TO DISTRIBUTE TRUST PROPERTY OR THE INCOME FROM SUCH PROPERTY WHERE SUCH PROPERTY

WOULD, UPON THE DEATH OF SUCH PERSON, BE INCLUDED IN THE GROSS ESTATE OF SUCH PERSON FOR FEDERAL ESTATE TAX PURPOSES FOR ANY REASON OTHER THAN SUCH POWERS TO APPOINT OR REMOVE SUCH TRUSTEE.

(7) THE PROVISIONS OF THIS SECTION NEITHER CREATE A NEW CAUSE OF ACTION NOR IMPAIR ANY EXISTING CAUSE OF ACTION THAT, IN EITHER CASE, RELATES TO ANY POWER PROSCRIBED BY SUBSECTION (1) OF THIS SECTION THAT WAS EXERCISED BEFORE JULY 1, 1996.

SECTION 5. 15-11-401, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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 A family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

SECTION 6. 15-11-403, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-403. Exempt property. The decedent's surviving spouse is entitled ~~from the estate to a~~ TO EXEMPT PROPERTY FROM THE ESTATE IN THE FORM OF CASH IN THE AMOUNT OF OR OTHER PROPERTY OF THE ESTATE IN THE 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~~ EXEMPT PROPERTY. 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.

SECTION 7. 15-11-405 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-405. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised OR DISPOSED OF BY MEMORANDUM UNDER SECTION 15-11-513 TO ANY PERSON OTHER THAN A PERSON ENTITLED TO EXEMPT PROPERTY 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 THEIR 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.

SECTION 8. 15-11-515, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

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.~~

SECTION 9. 15-11-516, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-516. Duty of custodian of will; lodging of will after death; transfer of lodged will; liability. (1) Within ten days after ~~the death of a testator~~ TESTATOR'S DEATH or as soon thereafter as the death of the testator becomes known to ~~him or her, any person having custody~~ THE CUSTODIAN of an instrument purporting to be the testator's will, THE CUSTODIAN 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.~~ IN THE COLORADO COUNTY WHERE THE DECEDENT RESIDED OR WAS DOMICILED AT DEATH FOR LODGING IN THE RECORDS OF SUCH COURT. IF THE DECEDENT WAS NOT A COLORADO RESIDENT OR DOMICILIARY, THE CUSTODIAN SHALL DELIVER THE WILL TO THE COURT HAVING PROBATE JURISDICTION WHERE THE DECEDENT WAS A RESIDENT OR DOMICILIARY AT DEATH, IF KNOWN TO THE CUSTODIAN, BUT IF SUCH RESIDENCE OR DOMICILE IS NOT KNOWN, TO THE COURT HAVING PROBATE JURISDICTION IN ANY COLORADO COUNTY WHERE PROPERTY OF THE DECEDENT WAS LOCATED AT DEATH. If the domicile, ~~and~~ residence, ~~of the testator~~ AND LOCATION OF PROPERTY are unknown to the custodian, ~~the will shall be delivered by the custodian to~~ OR IF the court having probate jurisdiction OUTSIDE OF COLORADO REFUSES TO ACCEPT DELIVERY OF THE WILL, THE CUSTODIAN SHALL DELIVER THE WILL TO THE COURT HAVING PROBATE JURISDICTION in the COLORADO county ~~in Colorado in which~~ where the will was located. UPON BEING INFORMED OF THE TESTATOR'S DEATH, A COURT HOLDING A DEPOSITED WILL SHALL LODGE THE WILL IN

ITS RECORDS.

(2) UPON THE FILING OF A PETITION OR APPLICATION SHOWING APPROPRIATE VENUE TO BE IN ANOTHER STATE OR IN ANOTHER COLORADO COUNTY, THE COURT SHALL ORDER THE LODGED WILL TRANSFERRED TO THE COURT HAVING PROBATE JURISDICTION IN THAT STATE OR COUNTY. Any person who willfully fails to deliver an instrument purporting to be a will is liable to any person aggrieved for the damages ~~which~~ THAT may be sustained by the failure.

(3) 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.

SECTION 10. 15-12-201 (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-201. Venue for first and subsequent estate proceedings - location of property. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(b) If the decedent was not domiciled in NOR A RESIDENT OF this state, in any county where property of the decedent was located at the time of his death.

SECTION 11. 15-12-705, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-705. Duty of personal representative - information to heirs and devisees. (1) Not later than thirty days after his appointment, every personal representative, except any special administrator, shall give information of his OR HER appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall:

(a) Include the name and address of the personal representative;

(b) Indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(c) Indicate whether bond has been filed; ~~and~~

(d) Describe the court where papers relating to the estate are on file;

(e) INDICATE THAT THE SURVIVING SPOUSE, CHILDREN UNDER TWENTY-ONE YEARS OF AGE, AND DEPENDENT CHILDREN MAY BE ENTITLED TO EXEMPT PROPERTY AND A FAMILY ALLOWANCE IF A REQUEST FOR PAYMENT IS MADE IN THE MANNER AND WITHIN THE TIME LIMITS PRESCRIBED BY STATUTES; AND

(f) INDICATE THAT THE SURVIVING SPOUSE MAY HAVE A RIGHT OF ELECTION TO TAKE A PORTION OF THE AUGMENTED ESTATE IF A PETITION IS FILED WITHIN THE TIME LIMITS PRESCRIBED BY STATUTE.

(2) The personal representative's failure to give ~~this~~ THE information REQUIRED BY THIS SECTION is a breach of his OR HER duty to the persons concerned but does not affect the validity of ~~his~~ THE PERSONAL REPRESENTATIVE'S appointment, ~~his~~ powers, or ~~his~~ other duties. A personal representative may inform other persons of his OR HER appointment by delivery or ordinary ~~first-class~~ FIRST-CLASS mail.

SECTION 12. 15-12-804, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

15-12-804. Manner of presentation of claims. (1) A claimant against a decedent's estate may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) A claimant having a claim described in section 15-12-803 (1) may ~~commence~~ PRESENT A CLAIM BY COMMENCING a proceeding against the personal representative in the court where the personal representative was appointed to obtain payment of his OR HER claim. A claimant having a claim described in section 15-12-803 (2) may ~~commence~~ PRESENT A CLAIM BY COMMENCING a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction under the rules of civil procedure or statutes of this state to obtain payment of his OR HER claim against the estate. IN ORDER TO CONSTITUTE A TIMELY PRESENTATION OF A CLAIM, the commencement of any proceeding ~~on any claim;~~ ~~however,~~ UNDER THIS SUBSECTION (2) must occur within the time limited for presenting the claim. TIME LIMITS ON PROCEEDINGS TO ENFORCE TIMELY PRESENTED CLAIMS ARE DETERMINED BY SECTION 15-12-806 (1) AND NOT BY THIS SUBSECTION (2). The personal representative shall inform any interested person, upon request, as to the existence, amounts, and nature of all claims against the estate ~~which~~ THAT are known to him OR HER, but he OR SHE shall not be required to express any opinion as to the probable outcome thereof.

(3) If a claim is presented under subsection (1) of this section, no proceeding thereon may be commenced more than sixty days after the personal representative has mailed a notice of disallowance; but, in the case of a claim ~~which~~ THAT is not presently due or ~~which~~ THAT is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or, to avoid injustice, the court, on petition, may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

SECTION 13. 15-16-101 (5), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-16-101. Duty to register trusts. (5) The provisions of this part 1 shall not apply to any trust created ~~by section~~ UNDER SECTIONS 15-14-409.5 AND 15-14-409.6.

SECTION 14. 38-11-101, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

38-11-101. Personal property in joint tenancy - how created - vesting upon death. (1) An estate in joint tenancy in personal property is created if, in the instrument evidencing ownership of such property, it is declared that the property is conveyed, transferred, bequeathed, or held in joint tenancy or as joint tenants, whether or not additional words OR PHRASES are used relating to tenancy in common or survivorship. THE ABBREVIATION "JTWROS" AND THE PHRASE "AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP" OR "IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP" SHALL HAVE THE SAME MEANING. Upon the death of any such joint tenants, the title to and ownership of such personal property passes immediately to and vests in the surviving joint tenant or tenants. Any grantor or transferor in any such instrument of conveyance or transfer may also be one of the grantees or transferees therein.

(2) Nothing in this section shall be deemed to exempt any transfer from the operation of articles 23 and 25 of title 39, C.R.S. ~~1973~~.

(3) ANY SUCH INSTRUMENT EVIDENCING OWNERSHIP EXECUTED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, IN COMPLIANCE WITH SUBSECTION (1) OF THIS SECTION SHALL BE DEEMED TO HAVE CREATED AN ESTATE IN JOINT TENANCY.

SECTION 15. 38-31-101, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

38-31-101. Joint tenancy expressed in instrument - when. (1) No estate in joint tenancy in real property, except when conveyed or devised to executors, trustees, or fiduciaries, shall be created or established unless, in the instrument conveying the property or in the will devising the same, it is declared that the property is conveyed or devised in joint tenancy OR AS JOINT TENANTS. THE ABBREVIATION "JTWROS" AND THE PHRASE "AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP" OR "IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP" SHALL HAVE THE SAME MEANING. Any grantor in any such instrument of conveyance may also be one of the grantees therein. Nothing in this section shall be deemed to exempt any transfer from the operation of articles 23 and 25 of title 39, C.R.S. ~~1973~~.

(2) Any such instrument of conveyance or will executed prior to ~~April 9, 1955~~, JULY 1, 1996, conveying or devising property in compliance with subsection (1) of this section shall be deemed to have created an estate in joint tenancy.

SECTION 16. Effective date - applicability. This act shall take effect July 1, 1996, and:

(a) Section 1 shall apply to waivers and revocations executed on or after July 1, 1996;

(b) Sections 2 and 3 shall apply to marital agreements that are executed and become effective on or after July 1, 1996; and

(c) Section 11 shall apply to decedents dying on or after October 1, 1996.

SECTION 17. 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: May 2, 1996