

## CHAPTER 152

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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**HOUSE BILL 99-1175**

BY REPRESENTATIVES Kaufman, Coleman, and Mace;  
also SENATOR Perlmutter.

**AN ACT**

CONCERNING THE COLORADO PROBATE CODE, AND, IN CONNECTION THEREWITH, AUTHORIZING GUARDIANS AND CONSERVATORS TO PETITION THE COURT FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ON BEHALF OF AN INCAPACITATED PERSON OR A PROTECTED PERSON, ESTABLISHING A PRESUMPTION OF JOINT TENANCY FOR DISPOSITION OF TANGIBLE PERSONAL PROPERTY, AND CLARIFYING THE REQUIREMENTS FOR PRIVATE ARRANGEMENTS AMONG SUCCESSORS.

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

**SECTION 1.** 15-14-312, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**15-14-312. General powers and duties of guardian.** (3) (a) A GUARDIAN MAY PETITION THE COURT FOR AUTHORITY TO COMMENCE AND MAINTAIN AN ACTION FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ON BEHALF OF THE WARD. THE COURT MAY GRANT SUCH AUTHORITY ONLY IF SATISFIED, AFTER NOTICE AND HEARING, THAT:

(I) IT IS IN THE BEST INTERESTS OF THE WARD BASED ON EVIDENCE OF ABANDONMENT, ABUSE, EXPLOITATION, OR OTHER COMPELLING CIRCUMSTANCES, AND THE WARD IS INCAPABLE OF CONSENTING; OR

(II) THE WARD HAS CONSENTED TO THE PROPOSED DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION.

(b) NOTHING IN THIS SUBSECTION (3) SHALL BE CONSTRUED AS MODIFYING THE STATUTORY GROUNDS FOR DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION AS SET FORTH IN SECTION 14-10-106, C.R.S.

**SECTION 2.** Part 4 of article 14 of title 15, Colorado Revised Statutes, is

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

amended BY THE ADDITION OF A NEW SECTION to read:

**15-14-425.5. Authority to petition for dissolution of marriage or legal separation.** (1) THE CONSERVATOR MAY PETITION THE COURT FOR AUTHORITY TO COMMENCE AND MAINTAIN AN ACTION FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ON BEHALF OF THE PROTECTED PERSON. THE COURT MAY GRANT SUCH AUTHORITY ONLY IF SATISFIED, AFTER NOTICE AND HEARING, THAT:

(a) IT IS IN THE BEST INTERESTS OF THE PROTECTED PERSON BASED ON EVIDENCE OF ABANDONMENT, ABUSE, EXPLOITATION, OR OTHER COMPELLING CIRCUMSTANCES, AND THE PROTECTED PERSON EITHER IS INCAPABLE OF CONSENTING; OR

(b) THE PROTECTED PERSON HAS CONSENTED TO THE PROPOSED DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS MODIFYING THE STATUTORY GROUNDS FOR DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION AS SET FORTH IN SECTION 14-10-106, C.R.S.

**SECTION 3.** 14-10-107 (3), (4) (a), and the introductory portion to 14-10-107 (4) (b) (I), Colorado Revised Statutes, are amended to read:

**14-10-107. Commencement - pleadings - abolition of existing defenses - automatic, temporary injunction - enforcement.** (3) Either or both parties to the marriage may initiate the proceeding. IN ADDITION, A LEGAL GUARDIAN, WITH COURT APPROVAL PURSUANT TO SECTION 15-14-312 (3), C.R.S., OR A CONSERVATOR, WITH COURT APPROVAL PURSUANT TO SECTION 15-14-425.5, C.R.S., MAY INITIATE THE PROCEEDING. IF A LEGAL GUARDIAN OR CONSERVATOR INITIATES THE PROCEEDING, THE LEGAL GUARDIAN OR CONSERVATOR SHALL RECEIVE NOTICE IN THE SAME MANNER AS THE PARTIES TO THE PROCEEDING.

(4) (a) Upon the commencement of a proceeding by one of the parties, OR BY A LEGAL GUARDIAN OR CONSERVATOR OF ONE OF THE PARTIES, the other party shall be personally served in the manner provided by the Colorado rules of civil procedure, and he OR SHE may file a response in accordance with such rules; except that, upon motion verified by the oath of the party commencing the proceeding or of someone in his OR HER behalf for an order of publication stating the facts authorizing such service, and showing the efforts, if any, ~~which~~ THAT have been made to obtain personal service within this state, and giving the address or last-known address of each person to be served or stating that his OR HER address and last-known address are unknown, the court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service within this state or that efforts to obtain the same would have been to no avail, shall order one publication of a consolidated notice in a newspaper published or having general circulation in the county in which the proceeding is filed, notwithstanding the provisions of article 70 of title 24, C.R.S. A consolidated notice shall be published at least once during a calendar month and shall list the proceedings filed subsequent to those named in the previously published consolidated notice, stating as to each proceeding the names of the parties, the action number, the nature of the action, that a copy of the petition and summons may be obtained from the clerk of the court during regular business hours, and that default judgment may be entered against that party upon whom service is

made by such notice if he OR SHE fails to appear or file a response within thirty days after the date of publication. Costs of publication of a consolidated notice may be assessed pro rata to each of the proceedings named in the notice; except that, if a party is indigent or otherwise unable to pay such publication costs, the costs shall be paid by the court from funds appropriated for the purpose. Service shall be complete upon such publication, and a response or appearance by the party served by publication under this subsection (4) shall be made within thirty days thereafter, or default judgment may be entered. No later than the day of publication, the clerk of the court shall also post for thirty consecutive days a copy of the process on a bulletin board in his OR HER office, and shall mail a copy of the process to the other party at his OR HER last-known address, and shall place in the file of the proceeding his OR HER certificate of posting and mailing. Proof of publication of the consolidated notice shall be by placing in the file a copy of the affidavit of publication, certified by the clerk of the court to be a true and correct copy of the original affidavit on file in the clerk's office.

(b) (I) Upon the filing of a petition for dissolution of marriage or legal separation by the petitioner or copetitioner OR BY A LEGAL GUARDIAN OR CONSERVATOR ON BEHALF OF ONE OF THE PARTIES and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary injunction shall be in effect against both parties until the final decree is entered or the petition is dismissed or until further order of the court:

**SECTION 4.** Part 8 of article 11 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**15-11-805. Ownership of personal property between spouses.** (1) FOR PURPOSES OF THIS ARTICLE, TANGIBLE PERSONAL PROPERTY IN THE JOINT POSSESSION OR CONTROL OF THE DECEDENT AND HIS OR HER SURVIVING SPOUSE AT THE TIME OF THE DECEDENT'S DEATH IS PRESUMED TO BE OWNED BY THE DECEDENT AND THE DECEDENT'S SPOUSE IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP IF OWNERSHIP IS NOT OTHERWISE EVIDENCED BY A CERTIFICATE OF TITLE, BILL OF SALE, OR OTHER WRITING. THIS PRESUMPTION SHALL NOT APPLY TO:

- (a) PROPERTY ACQUIRED BY EITHER SPOUSE BEFORE THE MARRIAGE;
- (b) PROPERTY ACQUIRED BY EITHER SPOUSE BY GIFT OR INHERITANCE DURING THE MARRIAGE;
- (c) PROPERTY USED BY THE DECEDENT SPOUSE IN A TRADE OR BUSINESS IN WHICH THE SURVIVING SPOUSE HAS NO INTEREST;
- (d) PROPERTY HELD FOR ANOTHER; OR
- (e) PROPERTY DEVISED IN A MEMORANDUM FOR THE DISPOSITION OF TANGIBLE PERSONAL PROPERTY.

(2) THE PRESUMPTION CREATED IN THIS SECTION MAY BE OVERCOME BY A PREPONDERANCE OF THE EVIDENCE DEMONSTRATING THAT OWNERSHIP WAS HELD OTHER THAN IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.

**SECTION 5.** 15-12-912, Colorado Revised Statutes, is amended to read:

**15-12-912. Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written ~~contract~~ AGREEMENT, WHETHER OR NOT SUPPORTED BY A CONSIDERATION, executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his OR HER obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his OR HER office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

**SECTION 6. Effective date.** This act shall take effect July 1, 1999.

**SECTION 7. 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 30, 1999