

CHAPTER 249

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 01-1377

BY REPRESENTATIVE(S) Williams T., and Stengel;
also SENATOR(S) Tate.**AN ACT**

CONCERNING PROBATE MATTERS.

*Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 15-11-502 (1) (c), Colorado Revised Statutes, is amended to read:**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:

(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 TESTATOR'S 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.

SECTION 2. 15-11-503, Colorado Revised Statutes, is amended to read:**15-11-503. Writings intended as wills.** (1) Although a ~~will~~ DOCUMENT, OR WRITING ADDED UPON A DOCUMENT, was not executed in compliance with section 15-11-502, the ~~will~~ DOCUMENT OR WRITING is treated as if it had been executed in compliance with that section if the proponent of the ~~will~~ DOCUMENT OR WRITING establishes by clear and convincing evidence that the decedent intended the ~~will~~ DOCUMENT OR WRITING to constitute:

- (a) The decedent's will;
- (b) A PARTIAL OR COMPLETE REVOCATION OF THE WILL;

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

(c) AN ADDITION TO OR AN ALTERATION OF THE WILL; OR

(d) A PARTIAL OR COMPLETE REVIVAL OF THE DECEDENT'S FORMERLY REVOKED WILL OR A FORMERLY REVOKED PORTION OF THE WILL.

(2) SUBSECTION (1) OF THIS SECTION SHALL APPLY ONLY IF THE DOCUMENT IS SIGNED OR ACKNOWLEDGED BY THE DECEDENT AS HIS OR HER WILL OR IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE DECEDENT ERRONEOUSLY SIGNED A DOCUMENT INTENDED TO BE THE WILL OF THE DECEDENT'S SPOUSE.

(3) WHETHER A DOCUMENT OR WRITING IS TREATED UNDER THIS SECTION AS IF IT HAD BEEN EXECUTED IN COMPLIANCE WITH SECTION 15-11-502 IS A QUESTION OF LAW TO BE DECIDED BY THE COURT, IN FORMAL PROCEEDINGS, AND IS NOT A QUESTION OF FACT FOR A JURY TO DECIDE.

SECTION 3. 15-11-504 (2), Colorado Revised Statutes, is amended to read:

15-11-504. Self-proved will. (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~~ SIGNED 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)

SECTION 4. 15-11-1102 (1), Colorado Revised Statutes, is amended to read:

15-11-1102. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or

(b) The interest either vests or terminates within ninety years after its creation; OR

(c) THE INTEREST IS IN A TRUST AND ALL OR PART OF THE INCOME OR PRINCIPAL OF THE TRUST MAY BE DISTRIBUTED, IN THE DISCRETION OF THE TRUSTEE, TO A PERSON WHO IS LIVING WHEN THE TRUST IS CREATED.

SECTION 5. 15-12-719, Colorado Revised Statutes, is amended to read:

15-12-719. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his OR HER services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, ~~he~~ THE PERSONAL REPRESENTATIVE may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce ~~his~~ THE right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(2) IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, ANY LAWYER FOR THE PERSONAL REPRESENTATIVE, ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE ESTATE, AND ANY PERSON APPOINTED BY THE COURT, IS ENTITLED TO REIMBURSEMENT FOR COSTS AND REASONABLE COMPENSATION FROM THE ESTATE.

SECTION 6. 15-12-720, Colorado Revised Statutes, is amended to read:

15-12-720. Expenses in estate litigation. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, if any personal representative, ~~or person nominated~~ WITH PRIORITY FOR APPOINTMENT as personal representative, OR COURT-APPOINTED FIDUCIARY defends or prosecutes any proceeding in good faith, whether successful or not, he OR SHE is entitled to receive from the estate his OR HER necessary expenses and disbursements including reasonable ~~attorneys'~~ ATTORNEY fees incurred.

(2) ANY PERSONAL REPRESENTATIVE, PERSON WITH PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, OR COURT-APPOINTED FIDUCIARY, WHO IS UNSUCCESSFUL IN DEFENDING THE PROPRIETY OF HIS OR HER ACTIONS IN A BREACH OF FIDUCIARY DUTY ACTION, SHALL NOT BE ENTITLED TO RECOVER HIS OR HER EXPENSES UNDER THIS SECTION TO THE EXTENT OF ANY MATTER IN WHICH BREACHES OF FIDUCIARY DUTY ARE FOUND.

(3) IF ANY PERSONAL REPRESENTATIVE, ANY PERSON WITH PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, ANY COURT-APPOINTED FIDUCIARY, ANY LAWYER FOR ANY OF SAID PERSONS, OR ANY LAWYER WHOSE SERVICES RESULTED IN AN ORDER BENEFICIAL TO THE ESTATE IS REQUIRED TO DEFEND HIS OR

HER FEES OR COSTS, THE COURT MAY REVIEW THE FEES AT THE END OF SUCH PROCEEDINGS AND SHALL CONSIDER AND MAY AWARD THE FEES AND EXPENSES INCURRED BY ANY OF SUCH PARTIES, INCLUDING BUT NOT LIMITED TO THEIR ATTORNEY FEES AND COSTS, AS THE COURT DEEMS EQUITABLE. AN AWARD OF FEES OR COSTS TO THE FIDUCIARY, LAWYER, OR PERSON MAY BE ORDERED PAID FROM, AND MAY BE ALLOCATED AMONG, THE ESTATE OR TRUST AND ANY PARTY THAT REQUIRED THE FIDUCIARY, LAWYER, OR PERSON TO DEFEND HIS OR HER FEES OR COSTS.

SECTION 7. 15-12-721, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-12-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate. (3) A FIDUCIARY WHO IS A MEMBER OF A LAW FIRM MAY USE THAT LAW FIRM AND CHARGE FOR THE LEGAL SERVICES OF THE MEMBERS AND STAFF OF THAT LAW FIRM TO ASSIST THE FIDUCIARY IN HIS OR HER DUTIES AS A FIDUCIARY.

SECTION 8. 15-14-404 (1), Colorado Revised Statutes, is amended to read:

15-14-404. Notice. (1) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, IF THE RESPONDENT HAS ATTAINED TWELVE YEARS OF AGE, but if the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

SECTION 9. 15-14-417 (1), Colorado Revised Statutes, is amended to read:

15-14-417. Compensation, fees, costs, and expenses of administration - expenses. (1) **Compensation.** If not otherwise compensated for services rendered, any visitor, guardian, conservator, special conservator, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to an incapacitated person or to a protected person's estate, any physician, guardian ad litem, or any other person appointed by the court is entitled to reasonable compensation from the estate even if no fiduciary is appointed. Except as limited by court order, compensation may be paid and expenses reimbursed without court order. In a ~~temporary~~ SPECIAL conservatorship, compensation may only be paid with court approval after notice and hearing. If the court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate.

SECTION 10. Article 17 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

15-17-103. Effective date - applicability of repealed and reenacted parts 1 to 4 of article 14 of this title. (1) PARTS 1 TO 4 OF ARTICLE 14 OF THIS TITLE, AS

REPEALED AND REENACTED EFFECTIVE JANUARY 1, 2001, SHALL APPLY TO ANY AND ALL ESTATES, TRUSTS, OR PROTECTIVE PROCEEDINGS WHETHER CREATED OR FILED PRIOR TO OR ON OR AFTER SAID DATE.

(2) IN CIRCUMSTANCES WHERE THE TERMS OF AN INSTRUMENT CREATING AN ESTATE OR TRUST CREATED PRIOR TO JANUARY 1, 2001, OR IN CASES WHERE COURT ORDERS HAVE BEEN ISSUED PRIOR TO JANUARY 1, 2001, WHICH ARE CONTRARY TO, OR INCONSISTENT WITH, THE LAW OR PROCEDURE SET FORTH IN PARTS 1 TO 4 OF ARTICLE 14 OF THIS TITLE, AS REPEALED AND REENACTED EFFECTIVE JANUARY 1, 2001, THE COURT ORDERS OR TERMS OF THE INSTRUMENT WILL CONTROL UNLESS AND UNTIL THE COURT ISSUES SUBSEQUENT ORDERS AS AUTHORIZED UNDER SAID PARTS 1 TO 4.

SECTION 11. Section 17 of chapter 368, Session Laws of Colorado 2000, is amended to read:

Section 17. **Effective date - applicability.** This act shall take effect January 1, 2001. ~~and shall apply to appointments of guardians or conservators made on or after said date.~~

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2001