

CHAPTER 185

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 03-1312

BY REPRESENTATIVE(S) Larson, Decker, Groff, Jahn, Judd, Lee, Marshall, Romano ff, Rose, Smith, Stengel, White, Witwer, Boyd, Coleman, Stafford, and Tochtrop;
also SENATOR(S) Anderson and Lamborn.

AN ACT

CONCERNING THE AUTHORITY TO DIRECT THE DISPOSITION OF A PERSON'S LAST REMAINS.

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

SECTION 1. Title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 19
Disposition of Last Remains

15-19-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "DISPOSITION OF LAST REMAINS ACT".

15-19-102. Legislative declaration - construction. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) A COMPETENT ADULT INDIVIDUAL HAS THE RIGHT AND POWER TO DIRECT THE DISPOSITION OF HIS OR HER REMAINS AFTER DEATH AND SHOULD BE PROTECTED FROM INTERESTED PERSONS WHO MAY TRY TO IMPOSE THEIR WISHES REGARDING SUCH DISPOSITION CONTRARY TO THE DECEASED'S DESIRES.

(b) A STATUTE THAT DETERMINES PRIORITY OF INDIVIDUALS TO DIRECT THE DISPOSITION OF A DECEDENT'S REMAINS IS NECESSARY IF THE DECEDENT FAILS TO DIRECT SUCH DISPOSITION OR IF A DISPUTE ARISES BETWEEN INTERESTED PERSONS REGARDING SUCH DISPOSITION.

(c) THE RIGHT TO DIRECT THE DISPOSITION OF ONE'S REMAINS NEEDS TO BE STATED IN WRITING TO BETTER PROTECT A THIRD PARTY WHO RELIES IN GOOD FAITH ON SUCH

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

DECISIONS.

(2) THIS ARTICLE SHALL BE INTERPRETED LIBERALLY TO CARRY OUT A DECEDENT'S INTENT WHEN NOT CONFLICTING WITH THIS ARTICLE.

(3) THIS ARTICLE SHALL NOT BE CONSTRUED TO:

(a) SUBJECT TO SECTION 15-19-104 (3), INVALIDATE A DECLARATION INSTRUMENT OR WILL, CODICIL, TRUST, POWER OF APPOINTMENT OR POWER OF ATTORNEY;

(b) INVALIDATE ANY ACT OF AN AGENT, GUARDIAN, OR CONSERVATOR;

(c) AFFECT ANY CLAIM, RIGHT, OR REMEDY THAT ACCRUED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE;

(d) AUTHORIZE OR ENCOURAGE ACTS THAT VIOLATE THE CONSTITUTION, STATUTES, RULES, CASE LAW, OR PUBLIC POLICY OF COLORADO OR THE UNITED STATES;

(e) ABRIDGE CONTRACTS;

(f) MODIFY THE STANDARDS, ETHICS, OR PROTOCOLS OF THE PRACTICE OF MEDICINE;

(g) COMPEL OR AUTHORIZE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY, AS DEFINED IN SECTION 15-14-505, TO ADMINISTER MEDICAL TREATMENT THAT IS MEDICALLY INAPPROPRIATE OR CONTRARY TO FEDERAL OR OTHER COLORADO LAW; OR

(h) PERMIT OR AUTHORIZE EUTHANASIA OR AN AFFIRMATIVE OR DELIBERATE ACT TO END A PERSON'S LIFE.

15-19-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADULT" MEANS A NATURAL PERSON EIGHTEEN YEARS OF AGE OR OLDER.

(2) "DECLARANT" MEANS A COMPETENT ADULT WHO SIGNS A DECLARATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(3) "DECLARATION INSTRUMENT" MEANS A WRITTEN INSTRUMENT, SIGNED BY A DECLARANT, GOVERNING THE DISPOSITION OF THE DECLARANT'S LAST REMAINS AND THE CEREMONIES PLANNED AFTER A DECLARANT'S DEATH, INCLUDING A DOCUMENT GOVERNING THE DISPOSITION OF LAST REMAINS UNDER PART 7 OF ARTICLE 11 OF THIS TITLE. SUCH A DECLARATION MAY BE MADE WITHIN A PREPAID FUNERAL, BURIAL, OR CREMATION CONTRACT WITH A MORTUARY OR CREMATORIUM.

(4) "INTERESTED PERSON" MEANS THE DECEASED'S SPOUSE, PARENT, ADULT CHILD, SIBLING, GRANDCHILD, AND OTHER PERSON DESIGNATED IN A DECLARATION INSTRUMENT.

(5) "LAST REMAINS" MEANS THE DECEASED'S BODY OR CREMAINS AFTER DEATH.

(6) "REASONABLE UNDER THE CIRCUMSTANCES", APPLIED TO THE DECLARANT'S INSTRUCTIONS, MEANS APPROPRIATE IN RELATION TO THE DECLARANT'S FINANCES, CULTURAL OR FAMILY CUSTOMS, AND RELIGIOUS OR SPIRITUAL BELIEFS. "REASONABLE UNDER THE CIRCUMSTANCES" IMPLIES CONSIDERATION OF FACTORS THAT INCLUDE, BUT ARE NOT LIMITED TO, A PREPAID FUNERAL, BURIAL, OR CREMATION PLAN OF THE DECLARANT; THE SIZE OF THE DECLARANT'S ESTATE; THE DECLARANT'S CULTURAL OR FAMILY CUSTOMS; THE DECLARANT'S RELIGIOUS OR SPIRITUAL BELIEFS; AND THE KNOWN OR REASONABLY ASCERTAINABLE CREDITORS OF THE DECLARANT.

(7) (a) "THIRD PARTY" MEANS A PERSON:

(I) WHO IS REQUESTED BY A DECLARATION INSTRUMENT TO ACT IN GOOD FAITH IN RELIANCE UPON SUCH INSTRUMENT;

(II) WHO IS ASKED TO DISPOSE OF LAST REMAINS BY THE PERSON WITH PRIORITY TO DISPOSE OF THE DECEDENT'S LAST REMAINS UNDER SECTION 15-19-106; OR

(III) WHO IS DELEGATED DISCRETION OVER CEREMONIAL OR DISPOSITIONAL ARRANGEMENTS IN A DECLARATION INSTRUMENT.

(b) "THIRD PARTY" INCLUDES, BUT IS NOT LIMITED TO, A FUNERAL DIRECTOR, MORTICIAN, MORTUARY, CREMATORIUM, OR CEMETERY.

(8) "UNREASONABLE" MEANS AN ACT THAT IS CLEARLY UNREASONABLE PURSUANT TO THE DEFINITION OF "REASONABLE UNDER THE CIRCUMSTANCES" UNDER SUBSECTION (6) OF THIS SECTION.

15-19-104. Declaration of disposition of last remains. (1) THE DECLARANT MAY SPECIFY, IN A DECLARATION INSTRUMENT, ANY ONE OR MORE OF THE FOLLOWING:

(a) THE DISPOSITION TO BE MADE OF THE DECLARANT'S LAST REMAINS;

(b) WHO MAY DIRECT THE DISPOSITION OF THE DECLARANT'S LAST REMAINS;

(c) THE CEREMONIAL ARRANGEMENTS TO BE PERFORMED AFTER THE DECLARANT'S DEATH;

(d) WHO MAY DIRECT THE CEREMONIAL ARRANGEMENTS AFTER THE DECLARANT'S DEATH;

(e) THE RIGHTS, LIMITATIONS, IMMUNITIES, AND OTHER TERMS OF THIRD PARTIES DEALING WITH THE DECLARATION INSTRUMENT.

(2) A THIRD PARTY SEEKING TO FULFILL A DECLARANT'S INTENT REGARDING DISPOSITION OF LAST REMAINS OR CEREMONIAL ARRANGEMENTS MAY DISREGARD SUCH INTENT IF SUCH INTENT IS UNREASONABLE UNDER THE CIRCUMSTANCES.

(3) (a) THE PROVISIONS OF THE MOST RECENT DECLARATION INSTRUMENT SHALL CONTROL OVER ANY OTHER DOCUMENT REGARDING THE DISPOSITION OF THE LAST

REMAINS.

(b) THIS ARTICLE SHALL GOVERN ALL CURRENT AND PRIOR DECLARATION INSTRUMENTS.

(c) IF ARTICLE 54 OF TITLE 12, C.R.S., CONFLICTS WITH THIS ARTICLE, THIS ARTICLE SHALL GOVERN.

(4) THIS ARTICLE SHALL APPLY TO DECLARATION INSTRUMENTS EXECUTED OR EXERCISED IN COLORADO AND TO DECLARATION INSTRUMENTS SIGNED OR EXERCISED BY A PERSON WHO IS A RESIDENT OF COLORADO WHEN SUCH INSTRUMENT IS SIGNED OR EXERCISED.

(5) A DECLARATION INSTRUMENT MAY BE ACKNOWLEDGED, BUT LACK OF ACKNOWLEDGMENT SHALL NOT RENDER THE DECLARATION INEFFECTIVE.

15-19-105. Reliance - declaration instruments. (1) (a) A THIRD PARTY WHO ACTS IN GOOD-FAITH RELIANCE ON A DECLARATION INSTRUMENT THAT IS LEGALLY EXECUTED SHALL NOT BE SUBJECT TO CIVIL LIABILITY TO ANY GREATER EXTENT THAN IF THE THIRD PARTY WERE DEALING DIRECTLY WITH THE DECLARANT AS A FULLY COMPETENT AND LIVING PERSON. SUCH THIRD PARTY SHALL NOT BE SUBJECT TO CRIMINAL LIABILITY OR REGULATORY SANCTION FOR SUCH RELIANCE.

(b) (I) A THIRD PARTY WHO DEALS WITH A DECLARATION INSTRUMENT MAY PRESUME, IN THE ABSENCE OF ACTUAL KNOWLEDGE TO THE CONTRARY:

(A) THAT THE DECLARATION INSTRUMENT WAS VALIDLY EXECUTED; AND

(B) THAT THE DECLARANT WAS COMPETENT AT THE TIME THE INSTRUMENT WAS EXECUTED.

(II) A THIRD PARTY WHO REASONABLY RELIES ON A DECLARATION INSTRUMENT SHALL NOT BE CIVILLY OR CRIMINALLY LIABLE FOR THE PROPER APPLICATION OF PROPERTY DELIVERED OR SURRENDERED TO COMPLY WITH THE DECLARANT'S INSTRUCTIONS IN THE DECLARATION INSTRUMENT.

(2) THE DIRECTIONS OF A DECLARANT EXPRESSED IN A DECLARATION INSTRUMENT SHALL BE BINDING ON ALL PERSONS AS IF THE DECLARANT WERE ALIVE AND COMPETENT.

(3) A THIRD PARTY WHO HAS REASONABLE CAUSE TO QUESTION THE AUTHENTICITY OR VALIDITY OF A DECLARATION INSTRUMENT MAY PROMPTLY AND REASONABLY SEEK ADDITIONAL INFORMATION FROM THE PERSON PROFFERING SUCH DECLARATION OR FROM OTHER INVOLVED PERSONS. A THIRD PARTY MAY REQUIRE EXHIBITION OF THE ORIGINAL DECLARATION INSTRUMENT OR A NOTARIZED COPY.

15-19-106. Right to dispose of remains. (1) THE RIGHT TO CONTROL DISPOSITION OF THE LAST REMAINS OR CEREMONIAL ARRANGEMENTS OF A DECEDENT VESTS IN AND DEVOLVES UPON THE FOLLOWING PERSONS, AT THE TIME OF THE DECEDENT'S DEATH, IN THE FOLLOWING ORDER:

(a) THE DECEDENT IF ACTING THROUGH A DECLARATION INSTRUMENT;

(b) (I) EITHER THE APPOINTED PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR OF THE DECEDENT'S ESTATE IF SUCH PERSON HAS BEEN APPOINTED; OR

(II) THE NOMINEE FOR APPOINTMENT AS PERSONAL REPRESENTATIVE UNDER THE DECEDENT'S WILL IF A PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR HAS NOT BEEN APPOINTED;

(c) THE SURVIVING SPOUSE OF THE DECEDENT, IF NOT LEGALLY SEPARATED FROM THE DECEDENT;

(d) A MAJORITY OF THE SURVIVING ADULT CHILDREN OF THE DECEDENT WHOSE WHEREABOUTS ARE REASONABLY ASCERTAINABLE;

(e) THE SURVIVING PARENTS OR LEGAL GUARDIANS OF THE DECEDENT WHOSE WHEREABOUTS ARE REASONABLY ASCERTAINABLE;

(f) A MAJORITY OF THE SURVIVING ADULT SIBLINGS OF THE DECEDENT WHOSE WHEREABOUTS ARE REASONABLY ASCERTAINABLE;

(g) THE PUBLIC ADMINISTRATOR RESPONSIBLE FOR THE DECEDENT'S ESTATE.

(2) TO EXERCISE THE RIGHT TO CONTROL FINAL DISPOSITION PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION, THE MAJORITY OF PARENTS AND GUARDIANS SHALL ACT IN WRITING.

(3) IF THE ASSENT OF MULTIPLE PERSONS UNDER PARAGRAPHS (d), (e), OR (f) OF SUBSECTION (1) OF THIS SECTION CANNOT BE OBTAINED, A FINAL JUDGMENT OF THE PROBATE COURT OF THE COUNTY OF THE DECEDENT'S RESIDENCE SHALL BE REQUIRED TO EXERCISE THE RIGHT TO CONTROL FINAL DISPOSITION. SUCH FINAL JUDGEMENT SHALL BE CONSISTENT WITH THE DECEDENT'S LAST WISHES TO THE EXTENT THEY ARE REASONABLE UNDER THE CIRCUMSTANCES.

15-19-107. Declaration of disposition of last remains. (1) Form. THE FOLLOWING STATUTORY DECLARATION OF DISPOSITION OF LAST REMAINS IS LEGALLY SUFFICIENT:

DECLARATION OF DISPOSITION OF LAST REMAINS

I, _____ (NAME OF DECLARANT), BEING OF SOUND MIND AND LAWFUL AGE, HEREBY REVOKE ALL PRIOR DECLARATIONS, WILLS, CODICILS, TRUSTS, POWERS OF APPOINTMENT, AND POWERS OF ATTORNEY REGARDING THE DISPOSITION OF MY LAST REMAINS, AND I DECLARE AND DIRECT THAT AFTER MY DEATH THE FOLLOWING PROVISIONS BE TAKEN:

1. IF PERMITTED BY LAW, MY BODY SHALL BE (INITIAL ONE CHOICE):

_____ BURIED. I DIRECT THAT MY BODY BE BURIED AT _____.

_____ CREMATED. I DIRECT THAT MY CREMATED REMAINS BE DISPOSED OF AS FOLLOWS:

_____.

_____ ENTOMBED. I DIRECT THAT MY BODY BE ENTOMBED AT

_____.

_____ OTHER. I DIRECT THAT MY BODY BE DISPOSED OF AS FOLLOWS:

_____.

_____ DISPOSED OF AS _____ (NAME OF DESIGNEE) SHALL DECIDE IN WRITING. IF _____ IS UNWILLING OR UNABLE TO ACT, I NOMINATE _____ AS MY ALTERNATE DESIGNEE.

2. I REQUEST THAT THE FOLLOWING CEREMONIAL ARRANGEMENTS BE MADE (INITIAL DESIRED CHOICE OR CHOICES):

_____ I REQUEST _____ (NAME OF DESIGNEE) MAKE ALL ARRANGEMENTS FOR ANY CEREMONIES, CONSISTENT WITH MY DIRECTIONS SET FORTH IN THIS DECLARATION. IF _____ IS UNWILLING OR UNABLE TO ACT, I NOMINATE _____ AS MY ALTERNATE DESIGNEE.

_____ FUNERAL. I REQUEST THE FOLLOWING ARRANGEMENTS FOR MY FUNERAL: _____.

_____ MEMORIAL SERVICE. I REQUEST THE FOLLOWING ARRANGEMENTS FOR MY MEMORIAL SERVICE:

_____.

3. SPECIAL INSTRUCTIONS. IN ADDITION TO THE INSTRUCTIONS ABOVE, I REQUEST (ON THE FOLLOWING LINES YOU MAY MAKE SPECIAL REQUESTS REGARDING CEREMONIES OR LACK OF CEREMONIES):

_____.

NOTE: THOSE PERSONS OR ENTITIES ASKED TO CARRY OUT A DECLARANT'S INTENT REGARDING DISPOSITION OF LAST REMAINS AND CEREMONIAL ARRANGEMENTS NEED DO SO ONLY IF THE DECLARANT'S INTENT IS REASONABLE UNDER THE CIRCUMSTANCES. "REASONABLE UNDER THE CIRCUMSTANCES" MAY TAKE INTO CONSIDERATION FACTORS SUCH AS A KNOWN PREPAID FUNERAL, BURIAL, OR CREMATION PLAN OF THE DECLARANT, THE SIZE OF THE DECLARANT'S ESTATE, CULTURAL OR FAMILY CUSTOMS, THE DECLARANT'S RELIGIOUS OR SPIRITUAL BELIEFS, THE KNOWN OR REASONABLY

IS IN WRITING, DATED, AND SIGNED BY THE DECLARANT. SUCH A DECLARATION MAY BE ACKNOWLEDGED.

(3) A DECLARATION MAY BE REVOKED BY THE DECLARANT IN WRITING OR BY BURNING, TEARING, CANCELING, OBLITERATING, OR DESTROYING THE DECLARATION INSTRUMENT WITH THE INTENT TO REVOKE SUCH INSTRUMENT.

(4) (a) UNLESS OTHERWISE EXPRESSLY PROVIDED IN A DECLARATION INSTRUMENT, A SUBSEQUENT DIVORCE, DISSOLUTION OF MARRIAGE, ANNULMENT OF MARRIAGE, OR LEGAL SEPARATION BETWEEN THE DECLARANT AND SPOUSE AUTOMATICALLY REVOKES A DELEGATION TO THE DECLARANT'S SPOUSE TO DIRECT THE DISPOSITION OF THE DECLARANT'S LAST REMAINS OR CEREMONIES AFTER THE DECLARANT'S DEATH. THIS PARAGRAPH (a) SHALL NOT BE CONSTRUED TO REVOKE THE REMAINING PROVISIONS OF THE DECLARATION INSTRUMENT.

(b) UNLESS OTHERWISE SPECIFIED IN THE DECLARATION INSTRUMENT, IF A DECLARANT REVOKES A DELEGATION TO A PERSON TO DIRECT THE DISPOSITION OF THE DECLARANT'S LAST REMAINS OR CEREMONIES AFTER THE DECLARANT'S DEATH, OR IF SUCH PERSON IS UNABLE OR UNWILLING TO SERVE, THE NOMINATION OF SUCH PERSON SHALL BE INEFFECTIVE AS TO SUCH PERSON. IF AN ALTERNATE DESIGNEE IS NOT NOMINATED BY THE DECLARANT, SECTION 15-19-106 SHALL GOVERN. THIS PARAGRAPH (b) SHALL NOT BE CONSTRUED TO REVOKE THE REMAINING PROVISIONS OF THE DECLARATION INSTRUMENT.

15-19-108. Interstate effect of declaration. (1) UNLESS OTHERWISE STATED IN A DECLARATION INSTRUMENT, IT SHALL BE PRESUMED THAT THE DECLARANT INTENDS TO HAVE HIS OR HER DECLARATION INSTRUMENT EXECUTED PURSUANT TO THIS ARTICLE AND RECOGNIZED TO THE FULLEST EXTENT POSSIBLE BY OTHER STATES.

(2) UNLESS OTHERWISE PROVIDED IN THE DECLARATION INSTRUMENT, A DECLARATION INSTRUMENT OR SIMILAR INSTRUMENT EXECUTED IN ANOTHER STATE THAT COMPLIES WITH THE REQUIREMENTS OF THIS ARTICLE MAY, IN GOOD FAITH, BE RELIED UPON BY A THIRD PARTY IN THIS STATE IF AN ACTION REQUESTED BY SUCH DECLARANT DOES NOT VIOLATE ANY LAW OF THE FEDERAL GOVERNMENT, COLORADO, OR A POLITICAL SUBDIVISION.

SECTION 2. 15-10-301 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15-10-301. Territorial application. (1) Except as otherwise provided in this code, this code applies to:

(f) DECLARATION INSTRUMENTS CREATED PURSUANT TO ARTICLE 19 OF THIS TITLE.

SECTION 3. 15-12-701, Colorado Revised Statutes, is amended to read:

15-12-701. Time of accrual of duties and powers. The duties and powers of a personal representative commence upon his OR HER appointment. The powers of a personal representative relate back in time to give acts by the person appointed ~~which~~ THAT are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person ~~named executor~~

NOMINATED TO SERVE AS PERSONAL REPRESENTATIVE in a will may carry out written instructions of the decedent OR OF THE PERSONS DESIGNATED TO CONTROL DISPOSITION OF THE DECEDENT'S LAST REMAINS UNDER SECTION 15-19-106, relating to his OR HER body, ANATOMICAL GIFTS, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to declaration instruments, wills, codicils, trusts, powers of appointment, powers of attorney created; acts of an agent, a guardian, or a conservator committed; or claims, rights, or remedies accrued on or after the applicable effective date of this act.

Approved: April 22, 2003