

CHAPTER 217

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 04-1048

BY REPRESENTATIVE(S) King, Marshall, Rippy, and Schultheis;
also SENATOR(S) McElhany, Jones, and Veiga.

AN ACT**CONCERNING BENEFICIARY DEEDS.**

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

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

PART 4**TRANSFER OF REAL PROPERTY EFFECTIVE ON DEATH**

15-15-401. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BENEFICIARY DEED" MEANS A DEED, SUBJECT TO REVOCATION BY THE OWNER, WHICH CONVEYS AN INTEREST IN REAL PROPERTY AND WHICH CONTAINS LANGUAGE THAT THE CONVEYANCE IS TO BE EFFECTIVE UPON THE DEATH OF THE OWNER AND WHICH MAY BE IN SUBSTANTIALLY THE FORM DESCRIBED IN SECTION 15-15-404.

(2) "DEED" MEANS ANY INSTRUMENT OF CONVEYANCE OF REAL PROPERTY.

(3) "GRANTEE-BENEFICIARY" MEANS ONE OR MORE PERSONS OR ENTITIES CAPABLE OF HOLDING TITLE TO REAL PROPERTY DESIGNATED IN A BENEFICIARY DEED TO RECEIVE AN INTEREST IN REAL PROPERTY UPON THE DEATH OF THE OWNER. "GRANTEE- BENEFICIARY" INCLUDES, BUT IS NOT LIMITED TO, A SUCCESSOR GRANTEE-BENEFICIARY.

(4) "OWNER" MEANS THE GRANTOR OF A BENEFICIARY DEED.

(5) "SUCCESSOR GRANTEE-BENEFICIARY" MEANS THE PERSON OR ENTITY

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

DESIGNATED IN A BENEFICIARY DEED TO RECEIVE AN INTEREST IN THE PROPERTY IF THE PRIMARY GRANTEE-BENEFICIARY DOES NOT SURVIVE THE OWNER.

(6) (a) "TRANSFER", WHEN USED AS A VERB, MEANS TO CONVEY.

(b) "TRANSFER", WHEN USED AS A NOUN, MEANS A CONVEYANCE.

15-15-402. Real property - beneficiary deed. (1) IN ADDITION TO ANY METHOD ALLOWED BY LAW TO EFFECT A TRANSFER AT DEATH, TITLE TO AN INTEREST IN REAL PROPERTY MAY BE TRANSFERRED ON THE DEATH OF THE OWNER BY RECORDING, PRIOR TO THE OWNER'S DEATH, A BENEFICIARY DEED SIGNED BY THE OWNER OF SUCH INTEREST, AS GRANTOR, DESIGNATING A GRANTEE-BENEFICIARY OF THE INTEREST. THE TRANSFER BY A BENEFICIARY DEED SHALL BE EFFECTIVE ONLY UPON THE DEATH OF THE OWNER. A BENEFICIARY DEED NEED NOT BE SUPPORTED BY CONSIDERATION.

(2) THE JOINDER, SIGNATURE, CONSENT, OR AGREEMENT OF, OR NOTICE TO, A GRANTEE-BENEFICIARY OF A BENEFICIARY DEED PRIOR TO THE DEATH OF THE GRANTOR SHALL NOT BE REQUIRED. SUBJECT TO THE RIGHT OF THE GRANTEE-BENEFICIARY TO DISCLAIM OR REFUSE TO ACCEPT THE PROPERTY, THE CONVEYANCE SHALL BE EFFECTIVE UPON THE DEATH OF THE OWNER.

(3) DURING THE LIFETIME OF THE OWNER, THE GRANTEE-BENEFICIARY SHALL HAVE NO RIGHT, TITLE, OR INTEREST IN OR TO THE PROPERTY, AND THE OWNER SHALL RETAIN THE FULL POWER AND AUTHORITY WITH RESPECT TO THE PROPERTY WITHOUT THE JOINDER, SIGNATURE, CONSENT, OR AGREEMENT OF, OR NOTICE TO, THE GRANTEE-BENEFICIARY FOR ANY PURPOSE.

15-15-403. Medicaid eligibility exclusion. NO PERSON WHO IS AN APPLICANT FOR OR RECIPIENT OF MEDICAL ASSISTANCE FOR WHICH IT WOULD BE PERMISSIBLE FOR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO ASSERT A CLAIM PURSUANT TO SECTION 26-4-403 OR 26-4-403.3, C.R.S., SHALL BE ENTITLED TO SUCH MEDICAL ASSISTANCE IF THE PERSON HAS IN EFFECT A BENEFICIARY DEED. NOTWITHSTANDING THE PROVISIONS OF SECTION 15-15-402 (1), THE EXECUTION OF A BENEFICIARY DEED BY AN APPLICANT FOR OR RECIPIENT OF MEDICAL ASSISTANCE AS DESCRIBED IN THIS SECTION SHALL CAUSE THE PROPERTY TO BE CONSIDERED A COUNTABLE RESOURCE IN ACCORDANCE WITH SECTION 26-4-403.3 (6), C.R.S., AND APPLICABLE RULES AND REGULATIONS.

15-15-404. Form of beneficiary deed - recording. (1) AN OWNER MAY TRANSFER AN INTEREST IN REAL PROPERTY EFFECTIVE ON THE DEATH OF THE OWNER BY EXECUTING A BENEFICIARY DEED THAT CONTAINS THE WORDS "CONVEYS ON DEATH" OR "TRANSFERS ON DEATH" OR OTHERWISE INDICATES THE TRANSFER IS TO BE EFFECTIVE ON THE DEATH OF THE OWNER AND RECORDING THE BENEFICIARY DEED PRIOR TO THE DEATH OF THE OWNER IN THE OFFICE OF THE CLERK AND RECORDER IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED. A BENEFICIARY DEED MAY BE IN SUBSTANTIALLY THE FOLLOWING FORM:

BENEFICIARY DEED

(§§ 15-15-401, ET SEQ., COLORADO REVISED STATUTES)

CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH

OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

_____, AS GRANTOR,

(NAME OF GRANTOR)

DESIGNATES _____ AS

(NAME OF GRANTEE-BENEFICIARY)

GRANTEE-BENEFICIARY WHOSE ADDRESS IS _____ (NOTE TO ASSESSOR AND TREASURER: THIS ADDRESS IS FOR IDENTIFICATION PURPOSES ONLY, ALL NOTICES AND TAX STATEMENTS SHOULD CONTINUE TO BE SENT TO GRANTOR.)

(OPTIONAL)[OR IF GRANTEE-BENEFICIARY FAILS TO SURVIVE GRANTOR, GRANTOR DESIGNATES _____, AS

(NAME OF SUCCESSOR GRANTEE-BENEFICIARY)

SUCCESSOR GRANTEE-BENEFICIARY WHOSE ADDRESS IS

_____]

AND GRANTOR TRANSFERS, SELLS, AND CONVEYS ON GRANTOR'S DEATH TO THE GRANTEE-BENEFICIARY, THE FOLLOWING DESCRIBED REAL PROPERTY LOCATED IN THE COUNTY OF _____, STATE OF COLORADO:

(INSERT LEGAL DESCRIPTION HERE)

KNOWN AND NUMBERED AS _____

THIS BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS REAL PROPERTY.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY DISQUALIFY THE GRANTOR FROM BEING DETERMINED ELIGIBLE FOR, OR FROM RECEIVING MEDICAID UNDER TITLE 26, COLORADO REVISED STATUTES.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY NOT AVOID PROBATE.

EXECUTED THIS _____.

(DATE)

(GRANTOR)

(2) UNLESS THE OWNER DESIGNATES OTHERWISE IN A BENEFICIARY DEED, A BENEFICIARY DEED SHALL NOT BE DEEMED TO CONTAIN ANY WARRANTIES OF TITLE AND SHALL HAVE THE SAME FORCE AND EFFECT AS A CONVEYANCE MADE USING A BARGAIN AND SALE DEED.

15-15-405. Revocation - change - revocation by will prohibited. (1) AN OWNER MAY REVOKE A BENEFICIARY DEED BY EXECUTING AN INSTRUMENT THAT DESCRIBES THE REAL PROPERTY AFFECTED, THAT REVOKES THE DEED, AND THAT IS RECORDED PRIOR TO THE DEATH OF THE OWNER IN THE OFFICE OF THE CLERK AND RECORDER IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED. THE JOINDER, SIGNATURE, CONSENT, AGREEMENT OF, OR NOTICE TO, THE GRANTEE-BENEFICIARY IS NOT REQUIRED FOR THE REVOCATION TO BE EFFECTIVE. A REVOCATION MAY BE IN SUBSTANTIALLY THE FOLLOWING FORM:

REVOCATION OF BENEFICIARY DEED

(§§ 15-15-401, *ET SEQ.*, COLORADO REVISED STATUTES)

CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO

THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

_____, AS GRANTOR, HEREBY
(NAME OF GRANTOR)

REVOKES ALL BENEFICIARY DEEDS CONCERNING THE FOLLOWING
DESCRIBED REAL PROPERTY LOCATED IN THE COUNTY OF
_____, STATE OF COLORADO:

(INSERT LEGAL DESCRIPTION HERE)
KNOWN AND NUMBERED AS _____
EXECUTED THIS _____.

(DATE)

(GRANTOR)

(2) A SUBSEQUENT BENEFICIARY DEED REVOKES ALL PRIOR GRANTEE-BENEFICIARY DESIGNATIONS BY THE OWNER FOR THE DESCRIBED REAL PROPERTY IN THEIR ENTIRETY EVEN IF THE SUBSEQUENT BENEFICIARY DEED FAILS TO CONVEY ALL OF THE OWNER'S INTEREST IN THE DESCRIBED REAL PROPERTY. THE JOINDER, SIGNATURE, CONSENT, OR AGREEMENT OF, OR NOTICE TO, EITHER THE ORIGINAL OR NEW GRANTEE-BENEFICIARY IS NOT REQUIRED FOR THE CHANGE TO BE EFFECTIVE.

(3) THE MOST RECENTLY EXECUTED BENEFICIARY DEED OR REVOCATION OF ALL BENEFICIARY DEEDS OR REVOCATIONS THAT HAVE BEEN RECORDED PRIOR TO THE OWNER'S DEATH SHALL CONTROL REGARDLESS OF THE ORDER OF RECORDING.

(4) A BENEFICIARY DEED THAT COMPLIES WITH THE REQUIREMENTS OF THIS PART 4 MAY NOT BE REVOKED, ALTERED, OR AMENDED BY THE PROVISIONS OF THE WILL OF THE OWNER.

15-15-406. Acknowledgment. A BENEFICIARY DEED OR REVOCATION OF A BENEFICIARY DEED SHALL BE SUBJECT TO THE REQUIREMENTS OF SECTION 38-35-109 (2), C.R.S., AND MAY BE ACKNOWLEDGED IN ACCORDANCE WITH SECTION 38-35-101, C.R.S.

15-15-407. Vesting of ownership in grantee-beneficiary. (1) TITLE TO THE INTEREST IN REAL PROPERTY TRANSFERRED BY A BENEFICIARY DEED SHALL VEST IN THE DESIGNATED GRANTEE-BENEFICIARY ONLY ON THE DEATH OF THE OWNER.

(2) A GRANTEE-BENEFICIARY OF A BENEFICIARY DEED TAKES TITLE TO THE OWNER'S INTEREST IN THE REAL PROPERTY CONVEYED BY THE BENEFICIARY DEED AT THE DEATH OF THE OWNER SUBJECT TO ALL CONVEYANCES, ENCUMBRANCES, ASSIGNMENTS, CONTRACTS, MORTGAGES, LIENS, AND OTHER INTERESTS, AFFECTING TITLE TO THE PROPERTY, WHETHER CREATED BEFORE OR AFTER THE RECORDING OF THE BENEFICIARY DEED, OR TO WHICH THE OWNER WAS SUBJECT DURING THE OWNER'S LIFETIME INCLUDING, BUT NOT LIMITED TO, ANY EXECUTORY CONTRACT OF SALE, OPTION TO PURCHASE, LEASE, LICENSE, EASEMENT, MORTGAGE, DEED OF TRUST, OR OTHER LIEN. THE GRANTEE-BENEFICIARY ALSO TAKES TITLE SUBJECT TO ANY INTEREST IN THE PROPERTY OF WHICH THE GRANTEE-BENEFICIARY HAS EITHER ACTUAL OR CONSTRUCTIVE NOTICE.

(3) (a) A PERSON HAVING AN INTEREST DESCRIBED IN SUBSECTION (2) OF THIS

SECTION WHOSE INTEREST IS NOT RECORDED IN THE RECORDS OF THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED AT THE TIME OF THE DEATH OF THE OWNER, SHALL RECORD EVIDENCE OR A NOTICE OF THE INTEREST IN THE PROPERTY NOT LATER THAN FOUR MONTHS AFTER THE DEATH OF THE OWNER. THE NOTICE SHALL NAME THE PERSON ASSERTING THE INTEREST, DESCRIBE THE REAL PROPERTY, AND DESCRIBE THE NATURE OF THE INTEREST ASSERTED.

(b) FAILURE TO RECORD EVIDENCE OR NOTICE OF INTEREST IN THE PROPERTY DESCRIBED IN SUBSECTION (2) OF THIS SECTION WITHIN FOUR MONTHS AFTER THE DEATH OF THE OWNER SHALL FOREVER BAR THE PERSON FROM ASSERTING AN INTEREST IN THE PROPERTY AS AGAINST ALL PERSONS WHO DO NOT HAVE NOTICE OF THE INTEREST. A PERSON WHO, WITHOUT NOTICE, OBTAINS AN INTEREST IN THE PROPERTY ACQUIRED BY THE GRANTEE-BENEFICIARY SHALL TAKE THE INTEREST FREE FROM ALL PERSONS WHO HAVE NOT RECORDED THEIR NOTICE OF INTEREST IN THE PROPERTY OR EVIDENCE OF THEIR INTEREST PRIOR TO THE EXPIRATION OF THE FOUR-MONTH PERIOD.

(4) THE INTEREST OF THE GRANTEE-BENEFICIARY SHALL BE SUBJECT TO ANY CLAIM OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING FOR RECOVERY OF MEDICAL ASSISTANCE PAYMENTS PURSUANT TO SECTION 26-4-403 OR 26-4-403.3, C.R.S., WHICH SHALL BE ENFORCED IN ACCORDANCE WITH SECTION 15-15-409.

(5) THE PROVISIONS OF ANY ANTI-LAPSE STATUTE SHALL NOT APPLY TO BENEFICIARY DEEDS. IF ONE OF MULTIPLE GRANTEE-BENEFICIARIES FAILS TO SURVIVE THE OWNER, AND NO PROVISION FOR SUCH CONTINGENCY IS MADE IN THE BENEFICIARY DEED, THE SHARE OF THE DECEASED GRANTEE-BENEFICIARY SHALL BE PROPORTIONATELY ADDED TO, AND PASS AS A PART OF, THE SHARES OF THE SURVIVING GRANTEE-BENEFICIARIES.

15-15-408. Joint tenancy. (1) A JOINT TENANT OF AN INTEREST IN REAL PROPERTY MAY USE THE PROCEDURES DESCRIBED IN THIS PART 4 TO TRANSFER HIS OR HER INTEREST EFFECTIVE UPON THE DEATH OF SUCH JOINT TENANT. HOWEVER, TITLE TO THE INTEREST SHALL VEST IN THE DESIGNATED GRANTEE-BENEFICIARY ONLY IF THE JOINT TENANT-GRANTOR IS THE LAST TO DIE OF ALL OF THE JOINT TENANTS OF SUCH INTEREST. IF A JOINT TENANT-GRANTOR IS NOT THE LAST JOINT TENANT TO DIE, THE BENEFICIARY DEED SHALL NOT BE EFFECTIVE, AND THE BENEFICIARY DEED SHALL NOT MAKE THE GRANTEE-BENEFICIARY AN OWNER IN JOINT TENANCY WITH THE SURVIVING JOINT TENANT OR TENANTS. A BENEFICIARY DEED SHALL NOT SEVER A JOINT TENANCY.

(2) AS USED IN THIS SECTION, "JOINT TENANT" MEANS A PERSON WHO OWNS AN INTEREST IN REAL PROPERTY AS A JOINT TENANT WITH RIGHT OF SURVIVORSHIP.

15-15-409. Rights of creditors and others. (1) IF OTHER ASSETS OF THE ESTATE OF THE DECEASED OWNER ARE INSUFFICIENT TO PAY ALL CLAIMS AGAINST THE DECEASED OWNER'S ESTATE AND STATUTORY ALLOWANCES TO THE DECEASED OWNER'S SURVIVING SPOUSE AND CHILDREN, A TRANSFER RESULTING FROM A BENEFICIARY DESIGNATION UNDER THIS PART 4 IS NOT EFFECTIVE AGAINST THE ESTATE OF A DECEASED OWNER TO THE EXTENT NEEDED TO PAY ALL CLAIMS AGAINST THE DECEASED OWNER'S ESTATE AND STATUTORY ALLOWANCES TO THE DECEASED OWNER'S SURVIVING SPOUSE AND CHILDREN.

(2) (a) A GRANTEE-BENEFICIARY WHO RECEIVES PROPERTY THROUGH A BENEFICIARY DEED UPON DEATH OF THE OWNER IS LIABLE TO ACCOUNT TO THE PERSONAL REPRESENTATIVE OF THE DECEASED OWNER'S ESTATE FOR A PROPORTIONATE SHARE OF THE FAIR MARKET VALUE OF THE EQUITY IN THE INTEREST RECEIVED TO THE EXTENT NECESSARY TO DISCHARGE THE CLAIMS AND ALLOWANCES DESCRIBED IN SUBSECTION (1) OF THIS SECTION REMAINING UNPAID AFTER APPLICATION OF THE DECEASED OWNER'S ESTATE. FOR THE PURPOSES OF THIS PARAGRAPH (a), THE FAIR MARKET VALUE SHALL BE DETERMINED AS OF THE DATE OF DEATH OF THE OWNER. FOR THE PURPOSES OF THIS PARAGRAPH (a), THE GRANTEE-BENEFICIARY'S "PROPORTIONATE SHARE" SHALL MEAN THE PROPORTIONATE SHARE OF ALL NONPROBATE TRANSFERS RECOVERED BY THE PERSONAL REPRESENTATIVE FOR THE PAYMENT OF THE CLAIMS AND ALLOWANCES UNDER ALL THE PROVISIONS OF THIS ARTICLE.

(b) A PROCEEDING TO ASSERT THE LIABILITY MAY NOT BE COMMENCED UNLESS THE SURVIVING SPOUSE, A CREDITOR, OR A CHILD OR A PERSON ACTING FOR A CHILD OF THE DECEASED OWNER HAS SENT A WRITTEN DEMAND TO THE PERSONAL REPRESENTATIVE AT THE LAST KNOWN ADDRESS OF THE PERSONAL REPRESENTATIVE OR HAS FILED IT WITH THE CLERK OF THE COURT IN WHICH THE PROBATE IS PENDING. A CREDITOR OR CLAIMANT AGAINST THE DECEASED OWNER'S ESTATE MAY FILE A PETITION TO OPEN AN ESTATE FOR THE DECEASED OWNER AND MAY BE APPOINTED AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THE DECEASED OWNER PURSUANT TO SECTION 15-12-203 FOR THE PURPOSE OF PROVIDING THE WRITTEN DEMAND REQUIRED BY THIS SUBSECTION (2). THE PROCEEDING SHALL BE COMMENCED WITHIN ONE YEAR AFTER THE DEATH OF THE DECEASED OWNER.

(3) A GRANTEE-BENEFICIARY AGAINST WHOM A PROCEEDING TO ACCOUNT IS BROUGHT MAY JOIN AS A PARTY TO THE PROCEEDING A SURVIVING PARTY OR BENEFICIARY OF ANY OTHER BENEFICIARY DESIGNATION OR OTHER ACCOUNT OF THE OWNER PURSUANT TO OTHER PROVISIONS OF THIS ARTICLE.

(4) ASSETS RECOVERED BY THE PERSONAL REPRESENTATIVE SHALL BE ADMINISTERED AS PART OF THE DECEDENT'S ESTATE. THIS SECTION DOES NOT AFFECT THE PROTECTION PROVIDED BY SECTION 15-15-410 TO A PURCHASER FROM, OR LENDER TO, A GRANTEE-BENEFICIARY AGAINST CLAIMS OF THE PERSONAL REPRESENTATIVE OR ESTATE OF A DECEASED OWNER.

(5) NOTHING IN THIS PART 4 SHALL BE CONSTRUED TO LIMIT THE RIGHTS OF CREDITORS UNDER OTHER LAWS OF THIS STATE.

15-15-410. Purchaser from grantee-beneficiary protected. (1) SUBJECT TO THE RIGHTS OF CLAIMANTS UNDER SECTION 15-15-407 (2), IF THE PROPERTY ACQUIRED BY A GRANTEE-BENEFICIARY OR A SECURITY INTEREST THEREIN IS ACQUIRED FOR VALUE AND WITHOUT NOTICE BY A PURCHASER FROM, OR LENDER TO, A GRANTEE-BENEFICIARY, THE PURCHASER OR LENDER SHALL TAKE TITLE FREE OF RIGHTS OF AN INTERESTED PERSON IN THE DECEASED OWNER'S ESTATE AND SHALL NOT INCUR PERSONAL LIABILITY TO THE ESTATE OR TO ANY INTERESTED PERSON.

(2) FOR PURPOSES OF THIS SECTION, ANY RECORDED INSTRUMENT EVIDENCING A TRANSFER TO A PURCHASER FROM, OR LENDER TO, A GRANTEE-BENEFICIARY ON WHICH A STATE DOCUMENTARY FEE IS NOTED PURSUANT TO SECTION 39-13-103,

C.R.S., SHALL BE PRIMA FACIE EVIDENCE THAT THE TRANSFER WAS MADE FOR VALUE. ANY SUCH SALE OR LOAN BY THE GRANTEE-BENEFICIARY SHALL NOT RELIEVE THE GRANTEE-BENEFICIARY OF THE OBLIGATION TO THE PERSONAL REPRESENTATIVE OF THE DECEASED OWNER'S ESTATE UNDER SECTION 15-15-409.

15-15-411. Limitations on actions and proceedings against grantee-beneficiaries. (1) UNLESS PREVIOUSLY ADJUDICATED OR OTHERWISE BARRED, THE CLAIM OF A CLAIMANT TO RECOVER FROM A GRANTEE-BENEFICIARY WHO IS LIABLE TO PAY THE CLAIM, AND THE RIGHT OF AN HEIR OR DEVISEE OR OF A PERSONAL REPRESENTATIVE ACTING ON BEHALF OF AN HEIR OR DEVISEE, TO RECOVER PROPERTY FROM A GRANTEE-BENEFICIARY OR THE VALUE THEREOF FROM A GRANTEE-BENEFICIARY IS FOREVER BARRED AS FOLLOWS:

(a) A CLAIM BY A CREDITOR OF THE OWNER IS FOREVER BARRED AT ONE YEAR AFTER THE OWNER'S DEATH.

(b) ANY OTHER CLAIMANT OR AN HEIR OR DEVISEE IS FOREVER BARRED AT THE EARLIER OF THE FOLLOWING:

(I) THREE YEARS AFTER THE OWNER'S DEATH; OR

(II) ONE YEAR AFTER THE TIME OF RECORDING THE PROOF OF DEATH OF THE OWNER IN THE OFFICE OF THE CLERK AND RECORDER IN THE COUNTY IN WHICH THE LEGAL PROPERTY IS LOCATED.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO BAR AN ACTION TO RECOVER PROPERTY OR VALUE RECEIVED AS THE RESULT OF FRAUD.

15-15-412. Nontestamentary disposition. A BENEFICIARY DEED SHALL NOT BE CONSTRUED TO BE A TESTAMENTARY DISPOSITION AND SHALL NOT BE INVALIDATED DUE TO NONCONFORMITY WITH THE PROVISIONS OF THE "COLORADO PROBATE CODE" GOVERNING WILLS.

15-15-413. Proof of death. PROOF OF THE DEATH OF THE OWNER OR A GRANTEE-BENEFICIARY SHALL BE ESTABLISHED IN THE SAME MANNER AS FOR PROVING THE DEATH OF A JOINT TENANT.

15-15-414. Disclaimer. A GRANTEE-BENEFICIARY MAY REFUSE TO ACCEPT ALL OR ANY PART OF THE REAL PROPERTY INTEREST DESCRIBED IN A BENEFICIARY DEED. A GRANTEE-BENEFICIARY MAY DISCLAIM ALL OR ANY PART OF THE REAL PROPERTY INTEREST DESCRIBED IN A BENEFICIARY DEED BY ANY METHOD PROVIDED BY LAW. IF A GRANTEE-BENEFICIARY REFUSES TO ACCEPT OR DISCLAIMS ANY REAL PROPERTY INTEREST, THE GRANTEE-BENEFICIARY SHALL HAVE NO LIABILITY BY REASON OF BEING DESIGNATED AS A GRANTEE-BENEFICIARY UNDER THIS PART 4.

15-15-415. Applicability. THE PROVISIONS OF THIS PART 4 SHALL APPLY TO BENEFICIARY DEEDS EXECUTED BY OWNERS WHO DIE ON OR AFTER THE EFFECTIVE DATE OF HOUSE BILL 04-1048, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY.

SECTION 2. The introductory portion to 15-11-706 (1), Colorado Revised

Statutes, is amended to read:

15-11-706. Nonprobate transfers; deceased beneficiary. (1) Definitions. This section shall not apply to wills; BENEFICIARY DEEDS; insurance or annuity policies; or pension, profit sharing, retirement, or similar benefit plans. As used in this section, unless the context otherwise requires:

SECTION 3. 15-15-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A SUBSECTION to read:

15-15-101. Nonprobate transfers on death. (1.5) A CONVEYANCE OR DEED OF GIFT DESCRIBED IN SUBSECTION (1) OF THIS SECTION THAT RELATES TO AN INTEREST IN REAL PROPERTY MAY BE CREATED PURSUANT TO PART 4 OF THIS ARTICLE AND, IF SO CREATED, SHALL BE SUBJECT TO THE RIGHTS OF THIRD PARTIES DESCRIBED IN PART 4 OF THIS ARTICLE.

SECTION 4. Part 1 of article 30 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-30-113.5. Beneficiary deeds. DEEDS INTENDED TO TAKE EFFECT AT THE DEATH OF THE GRANTOR MAY BE EXECUTED AND RECORDED PURSUANT TO THE PROVISIONS OF PART 4 OF ARTICLE 15 OF TITLE 15, C.R.S.

SECTION 5. Effective date. 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 (August 4, 2004, if adjournment sine die is on May 5, 2004); 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.

Approved: May 12, 2004