

## CHAPTER 196

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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HOUSE BILL 06-1273

BY REPRESENTATIVE(S) Liston, Berens, Kerr J., Larson, and Stafford;  
also SENATOR(S) Traylor.**AN ACT****CONCERNING THE RIGHT OF FINAL DISPOSITION OF THE REMAINS OF A DECEDENT.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 15-19-102 (1) (b), (1) (c), and (3) (a), Colorado Revised Statutes, are amended to read:**15-19-102. Legislative declaration - construction.** (1) The general assembly finds and declares that:

(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 FAILS TO PROVIDE THE RESOURCES NECESSARY TO CARRY OUT 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~~ MUST be stated in writing to better protect a third party who relies in good faith on such decisions.

(3) This article shall not be construed to:

(a) Subject to section 15-19-104 (3), invalidate a declaration ~~instrument~~ or A will, codicil, trust, power of appointment, or power of attorney;

**SECTION 2.** 15-19-103 (3), (4), (6), (7) (a) (I), (7) (a) (III), and (8), Colorado Revised Statutes, are amended to read:**15-19-103. Definitions.** As used in this article, unless the context otherwise requires:

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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.*

(3) "Declaration" ~~instrument~~ means a written instrument ~~signed by a declarant, governing~~ DIRECTING the LAWFUL 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 IN ACCORDANCE WITH THIS ARTICLE. A declaration may be made within a WILL; prepaid funeral, burial, or cremation contract; ~~with a mortuary or crematorium~~ DURABLE OR MEDICAL POWER OF ATTORNEY; OR ANY OTHER WRITTEN DOCUMENT, INCLUDING, BUT NOT LIMITED TO, A DOCUMENT GOVERNING THE DISPOSITION OF LAST REMAINS UNDER PART 7 OF ARTICLE 11 OF THIS TITLE.

(4) "Interested person" means the deceased's spouse, parent, adult child, sibling, grandchild, and other person designated in a declaration. ~~instrument.~~

(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~~ THE DECLARATION;

(III) Who is delegated discretion over ceremonial or dispositional arrangements in a declaration. ~~instrument.~~

(8) ~~"Unreasonable" means an act that is clearly unreasonable pursuant to the definition of "reasonable under the circumstances" under subsection (6) of this section.~~

**SECTION 3.** 15-19-104, Colorado Revised Statutes, is amended to read:

**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~~ THE PERSON APPOINTED TO direct the disposition of the declarant's last remains;

(c) The ceremonial arrangements to be performed after the declarant's death;

(d) ~~Who may~~ THE PERSON APPOINTED TO 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 DECLARANT'S last remains.

(b) This article shall govern all current and prior ~~declaration instruments~~ DECLARATIONS.

(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~~ A DECLARATION SHALL BE SIGNED AND DATED BY THE DECLARANT AND MAY BE NOTARIZED OR WITNESSED IN WRITING BY AT LEAST ONE ADULT WHO CONFIRMS THAT HE OR SHE WAS PRESENT WHEN THE DECLARANT SIGNED THE DECLARATION.

**SECTION 4.** 15-19-105, Colorado Revised Statutes, is amended to read:

**15-19-105. Reliance - declarations.** (1)(a) A third party who ~~acts in good faith~~ PROVIDES FOR THE LAWFUL DISPOSITION OF A DECLARANT'S REMAINS IN reliance on a declaration instrument that ~~is~~ APPEARS TO BE 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 OR ADMINISTRATIVE DISCIPLINE for such reliance.

(b)(I) A third party, ~~who deals~~ WHEN PRESENTED 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~~ WHEN the instrument was executed; AND

(C) THAT THE DECLARATION HAS NOT BEEN REVOKED.

(II) A third party who ~~reasonably relies~~ PROVIDES FOR THE LAWFUL DISPOSITION OF A DECLARANT'S REMAINS IN RELIANCE 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~~ A DECLARATION

SHALL BE BINDING ON ALL PERSONS WITH AN INTEREST IN THE DISPOSITION OF THE DECLARANT'S REMAINS. SECTION 15-19-106 (1) SHALL NOT VEST A RIGHT TO CONTROL DISPOSITION OR CEREMONIAL ARRANGEMENTS THAT CONFLICT WITH THOSE MADE BY A DECLARATION. IF THE DECLARATION CONFLICTS WITH THE DIRECTIONS OF ANY OTHER PERSON, THE DECLARATION SHALL CONTROL, AND A THIRD PARTY SHALL PROVIDE FOR THE LAWFUL DISPOSITION ACCORDING TO THE DECLARATION SO LONG AS:

(a) NO CHALLENGE TO THE VALIDITY OF THE DECLARATION EXISTS UNDER SUBSECTION (3) OF THIS SECTION; AND

(b) THE DECEASED PROVIDED THE RESOURCES NECESSARY TO CARRY OUT THE DISPOSITION.

~~(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.~~ A CHALLENGE TO THE VALIDITY OF THE DECLARATION OR THE COMPETENCY OF THE DECLARANT WHEN THE DECLARATION WAS EXECUTED SHALL BE RESOLVED BY THE PROBATE COURT. A THIRD PARTY WHO KNOWS A DECLARATION HAS BEEN CHALLENGED SHALL NOT BE LIABLE FOR REFUSING TO ACCEPT, INTER, CREMATE, OR OTHERWISE DISPOSE OF A DECLARANT'S REMAINS UNTIL THE THIRD PARTY RECEIVES A COURT ORDER OR OTHER REASONABLE CONFIRMATION THAT THE CHALLENGE HAS BEEN RESOLVED OR SETTLED.

**SECTION 5.** 15-19-106, Colorado Revised Statutes, is amended to read:

**15-19-106. Right to dispose of remains.** (1) SUBJECT TO SECTION 15-19-105 (2), 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~~ PURSUANT TO SECTION 15-19-104;

(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~~ A MAJORITY OF THE surviving parents or legal guardians of the decedent, ~~whose whereabouts are reasonably ascertainable~~ WHO SHALL ACT IN WRITING;

(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;~~

(h) ANY PERSON WHO IS WILLING TO ASSUME LEGAL AND FINANCIAL RESPONSIBILITY FOR THE FINAL DISPOSITION OF THE DECEDENT'S LAST REMAINS.

~~(2) To exercise the right to control final disposition pursuant to paragraph (c) of subsection (1) of this section, the majority of parents and guardians shall act in writing.~~

~~(3) If the assent of multiple persons under paragraph (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 judgment shall be consistent with the decedent's last wishes to the extent they are reasonable under the circumstances.~~ DISPUTES AMONG THE PERSONS LISTED UNDER SUBSECTION (1) OF THIS SECTION SHALL BE RESOLVED BY THE PROBATE COURT. A THIRD PARTY SHALL NOT BE LIABLE FOR REFUSING TO ACCEPT THE DECEDENT'S REMAINS OR DISPOSE OF THE DECEDENT'S REMAINS UNTIL THE PARTY RECEIVES A COURT ORDER OR OTHER REASONABLE CONFIRMATION THAT THE DISPUTE HAS BEEN RESOLVED OR SETTLED.

(4) (a) IF THE PERSON WITH THE RIGHT TO CONTROL DISPOSITION IS UNABLE OR UNWILLING TO MAKE SUCH DISPOSITION, OR IF THE PERSON'S WHEREABOUTS CANNOT BE REASONABLY ASCERTAINED, THEN THAT PERSON'S RIGHTS SHALL TERMINATE AND PASS TO THE FOLLOWING, IN THE FOLLOWING ORDER:

(I) THE REST OF THE PERSONS IN THE CLASS WITH THE SAME DEGREE OF RELATIONSHIP GRANTING THE SAME PRIORITY OF CONTROL OVER THE DISPOSITION PURSUANT TO SUBSECTION (1) OF THIS SECTION;

(II) THE NEXT CLASS OF PERSONS IN THE ORDER LISTED IN SUBSECTION (1) OF THIS SECTION IF NO ONE ELSE WITH THE SAME DEGREE OF RELATIONSHIP GRANTING THE SAME PRIORITY OF CONTROL OVER THE DISPOSITION OF THIS SECTION EXISTS OR POSSESSES THE RIGHT OF FINAL DISPOSITION PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(b) THE PERSON WITH THE RIGHT TO CONTROL DISPOSITION SHALL BE PRESUMED TO BE UNABLE OR UNWILLING TO PROVIDE FOR SUCH DISPOSITION, OR THE PERSON'S WHEREABOUTS SHALL BE PRESUMED UNKNOWN, IF THE PERSON HAS FAILED TO MAKE OR APPOINT ANOTHER PERSON TO MAKE FINAL ARRANGEMENTS FOR THE DISPOSITION OF THE DECEDENT WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE DECEDENT'S DEATH OR WITHIN TEN DAYS AFTER THE DECEDENT'S DEATH, WHICHEVER IS EARLIER.

(c) IF A PERSON IS UNABLE OR UNWILLING TO MAKE A DISPOSITION UNDER THIS SUBSECTION (4), SUCH PERSON SHALL NOT BE COUNTED AS A MEMBER OF THE CLASS WITH THE SAME DEGREE OF RELATIONSHIP GRANTING THE SAME PRIORITY OF CONTROL OVER THE DISPOSITION PURSUANT TO SUBSECTION (1) OF THIS SECTION WHEN DETERMINING THE NUMBER THAT MAKES A MAJORITY OF SUCH CLASS.

(5) IF THE PERSONS ENUMERATED IN SUBSECTION (1) OF THIS SECTION ARE NOT WILLING OR ABLE TO PROVIDE FOR THE FINAL DISPOSITION OF A DECEDENT'S REMAINS, OR IF THE PERSONS' WHEREABOUTS CANNOT BE REASONABLY ASCERTAINED, THEN THE PUBLIC ADMINISTRATOR RESPONSIBLE FOR THE DECEDENT'S ESTATE OR THE PERSON WHO CONTROLS INDIGENT BURIALS IN THE COUNTY IN WHICH THE DEATH OCCURRED SHALL MAKE ARRANGEMENTS FOR THE FINAL DISPOSITION OF THE DECEDENT'S REMAINS.

(6) A THIRD PARTY WHO PROVIDES FOR THE FINAL DISPOSITION OF A DECEDENT'S REMAINS UPON AUTHORIZATION FROM A PERSON WHO CLAIMED TO HAVE THE RIGHT TO CONTROL THE FINAL DISPOSITION SHALL BE IMMUNE FROM CIVIL LIABILITY AND ADMINISTRATIVE DISCIPLINE.

**SECTION 6.** 15-19-107, Colorado Revised Statutes, is amended to read:

**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~~ CONCERNING the disposition of my last remains AND THOSE PROVISIONS CONCERNING DISPOSITION OF MY LAST REMAINS FOUND IN A WILL, CODICIL, OR POWER OF ATTORNEY, 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 ascertainable creditors of the declarant, and the declarant's financial situation prior to death.~~

I may revoke or amend this declaration in writing at any time. I agree that a third party who receives a copy of this declaration may act according to it. Revocation of this declaration is not effective as to a third party until the third party learns of my revocation. My estate shall indemnify any third party for costs incurred as a result of claims that arise against the third party because of good-faith reliance on this declaration.

I execute this declaration as my free and voluntary act, on \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_  
(Declarant)

THE FOLLOWING SECTION REGARDING ORGAN AND TISSUE DONATION IS OPTIONAL. To make a donation, initial the option you select and sign below.

In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

A. \_\_\_\_\_ Any needed organs/tissues

B. \_\_\_\_\_ The following organs/tissues:  
\_\_\_\_\_  
\_\_\_\_\_

Donor signature: \_\_\_\_\_

Notarization optional:



**SECTION 8. 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 (August 9, 2006, if adjournment sine die is on May 10, 2006); 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 declarations and final dispositions made on or after the effective date of this act.

Approved: May 11, 2006