

## CHAPTER 37

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**PROBATE, TRUSTS, AND FIDUCIARIES**


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**HOUSE BILL 07-1003**

BY REPRESENTATIVE(S) Roberts, Carroll M., Gardner B., Kerr J., Looper, McGihon, Mitchell V., Stafford, Stephens, Swalm, Vaad, and Carroll T.;  
also SENATOR(S) Penry, and Williams.

**AN ACT**

**CONCERNING THE COLORADO PROBATE CODE, AND, IN CONNECTION THEREWITH, CLARIFYING THE PROCEDURE BY WHICH BANK PERSONNEL MAY OPEN A DECEDENT'S SAFE DEPOSIT BOX TO DETERMINE WHETHER A WILL IS INSIDE, AUTHORIZING A CUSTODIAN OF AN ACCOUNT CREATED UNDER THE COLORADO UNIFORM TRANSFERS TO MINORS ACT TO TRANSFER ACCOUNT ASSETS TO A QUALIFIED MINOR'S TRUST, AUTHORIZING A PUBLIC ADMINISTRATOR TO PETITION A COURT FOR APPOINTMENT TO ACT AS A CONSERVATOR TO PROTECT THE ASSETS OF A MISSING PERSON, AND AUTHORIZING A COURT TO APPOINT A SPECIAL ADMINISTRATOR FOR THE PROPER ADMINISTRATION OF AN ESTATE.**

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

**SECTION 1.** 15-10-111, Colorado Revised Statutes, is amended to read:

**15-10-111. Entry into safe deposit box of decedent - definitions.**

(1) Whenever a decedent at the time of his OR HER death was a SOLE OR JOINT lessee ~~or owner~~ of a safe deposit box, the custodian shall, prior to notice that a personal representative or special administrator has been appointed, allow access to the box by:

(a) A successor of the decedent, if such decedent was the sole lessee ~~or owner~~ of the box, upon presentation of an affidavit made pursuant to section 15-12-1201 for the purpose of delivering the contents of the box in accordance with said section; ~~and an official of the custodian or, if the custodian is an individual, the custodian or his attorney-in-fact shall be present during such entry solely to determine if the box contains an instrument purporting to be the will of the decedent; or~~

(b) A person who is reasonably believed to be an heir at law or devisee of the decedent, A PERSON NOMINATED AS A PERSONAL REPRESENTATIVE PURSUANT TO THE PROVISIONS OF SECTION 15-12-203 (1) (a), or the agent or attorney of such

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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.*

person for the purpose of determining whether the box contains AN INSTRUMENT THAT APPEARS TO BE a will of the decedent, deed to a burial plot, or burial instructions. ~~Such entry shall be made in the presence of an official of the custodian or, if the custodian is an individual, in the presence of the custodian or his attorney-in-fact.~~

(c) IF A PERSON DESCRIBED IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) DESIRES ACCESS TO A SAFE DEPOSIT BOX BUT DOES NOT POSSESS A KEY TO THE BOX, THE CUSTODIAN SHALL DRILL THE SAFE DEPOSIT BOX AT THE PERSON'S EXPENSE. THE CUSTODIAN SHALL RETAIN, IN A SECURE LOCATION AT THE PERSON'S EXPENSE, THE CONTENTS OF THE BOX OTHER THAN THE PURPORTED WILL, DEED TO A BURIAL PLOT, OR BURIAL INSTRUCTIONS. THE EXPENSES SHALL BE CONSIDERED AN ESTATE ADMINISTRATION EXPENSE.

(d) A REPRESENTATIVE OF THE CUSTODIAN SHALL BE PRESENT DURING THE ENTRY OF A SAFE DEPOSIT BOX PURSUANT TO THIS SECTION.

(e) NOTHING IN THIS SECTION AFFECTS THE RIGHTS AND RESPONSIBILITIES OF A PUBLIC ADMINISTRATOR, AS DESCRIBED IN SECTIONS 15-12-620 AND 15-12-621.

(1.5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CUSTODIAN" MEANS A BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR OTHER INSTITUTION ACTING AS A LESSOR OF A SAFE DEPOSIT BOX, AS DEFINED IN SECTION 11-46-101, C.R.S., OR SECTION 11-101-401, C.R.S.

(b) "REPRESENTATIVE OF A CUSTODIAN" MEANS AN AUTHORIZED OFFICER OR EMPLOYEE OF A CUSTODIAN.

(2) If an instrument purporting to be a will ~~of the decedent~~ is found in a safe deposit box as the result of an entry pursuant to subsection (1) of this section, the purported will shall be removed ~~therefrom by the custodian or the representative of the custodian. and by him shall be mailed by registered or certified mail or delivered in person to the clerk of the district or probate court of the county wherein the decedent was resident. If there is doubt as to the county of residence of such decedent, the purported will shall be lodged in the office of the clerk of the proper court of the county wherein the safe deposit box is located. If the safe deposit box contains a deed to a burial plot or burial instructions not a part of a purported will, such instruments may be removed by the presumed successor, heir at law, or devisee, or the agent or attorney of any such person.~~

(a) THE REPRESENTATIVE OF THE CUSTODIAN MAY COPY THE PURPORTED WILL AT THE EXPENSE OF THE PERSON OR PERSONS AUTHORIZED TO HAVE ACCESS TO THE SAFE DEPOSIT BOX UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION AND MAY DELIVER THE COPY OF THE PURPORTED WILL TO THE PERSON OR TO THE PERSON'S AGENT OR ATTORNEY. IN COPYING THE PURPORTED WILL, THE REPRESENTATIVE OF THE CUSTODIAN SHALL NOT REMOVE ANY STAPLES OR OTHER FASTENING DEVICES OR DISASSEMBLE THE PURPORTED WILL IN ANY WAY.

(b) THE CUSTODIAN SHALL MAIL THE PURPORTED WILL BY REGISTERED OR CERTIFIED MAIL OR DELIVER THE PURPORTED WILL IN PERSON TO THE CLERK OF THE

DISTRICT OR PROBATE COURT OF THE COUNTY IN WHICH THE DECEDENT WAS A RESIDENT. IF THE CUSTODIAN IS UNABLE TO DETERMINE THE COUNTY OF RESIDENCE OF THE DECEDENT, THE CUSTODIAN SHALL MAIL THE PURPORTED WILL BY REGISTERED OR CERTIFIED MAIL OR DELIVER THE PURPORTED WILL IN PERSON TO THE OFFICE OF THE CLERK OF THE PROPER COURT OF THE COUNTY IN WHICH THE SAFE DEPOSIT BOX IS LOCATED.

(c) IF THE SAFE DEPOSIT BOX CONTAINS A DEED TO A BURIAL PLOT OR BURIAL INSTRUCTIONS THAT ARE NOT A PART OF A PURPORTED WILL, THE PERSON OR PERSONS AUTHORIZED TO HAVE ACCESS TO THE SAFE DEPOSIT BOX UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION MAY REMOVE THESE INSTRUMENTS.

(3) After the appointment of a personal representative or special administrator for the decedent, the personal representative or special administrator shall be permitted to enter the safe deposit box upon the same terms and conditions as the decedent was permitted to enter during his OR HER lifetime.

(4) If at the time of the decedent's death one or more other persons were legally permitted to enter the safe deposit box, their permission to enter shall continue, notwithstanding the death of the decedent.

(5) A CUSTODIAN SHALL NOT BE LIABLE TO A PERSON FOR AN ACTION TAKEN PURSUANT TO THIS SECTION OR FOR A FAILURE TO ACT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION UNLESS THE ACTION OR FAILURE TO ACT IS SHOWN TO HAVE RESULTED FROM THE CUSTODIAN'S BAD FAITH, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT.

**SECTION 2.** 11-50-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**11-50-102. Definitions.** As used in this article, unless the context otherwise requires:

(13.5) "QUALIFIED MINOR'S TRUST" MEANS A TRUST, INCLUDING A TRUST CREATED BY A CUSTODIAN, OF WHICH A MINOR IS THE SOLE CURRENT BENEFICIARY AND THAT SATISFIES THE REQUIREMENTS OF SECTION 2503 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986" AND THE REGULATIONS IMPLEMENTING THAT SECTION.

**SECTION 3.** 11-50-114, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**11-50-114. Powers of custodian.** (1.5) AT ANY TIME, A CUSTODIAN MAY TRANSFER PART OR ALL OF A CUSTODIAL PROPERTY TO A QUALIFIED MINOR'S TRUST WITHOUT A COURT ORDER. SUCH A TRANSFER TERMINATES THE CUSTODIANSHIP TO THE EXTENT OF THE TRANSFER.

**SECTION 4.** 15-12-622, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**15-12-622. Public administrator - acting as conservator or trustee.**

(4) **Missing persons.** A PUBLIC ADMINISTRATOR HAS STANDING TO PETITION A COURT OF APPROPRIATE JURISDICTION FOR HIS OR HER APPOINTMENT TO ACT AS A CONSERVATOR, TEMPORARY CONSERVATOR, OR SPECIAL CONSERVATOR TO PROTECT A PERSON'S ASSETS AND MANAGE THE PERSON'S ESTATE IF:

(a) THE PERSON IS MISSING, DETAINED, OR UNABLE TO RETURN TO THE UNITED STATES; AND

(b) NO INTERESTED PERSON HAS INITIATED PROTECTIVE PROCEEDINGS TO ACCOMPLISH THIS PURPOSE.

**SECTION 5.** 15-12-614 (1) (b), Colorado Revised Statutes, is amended to read:

**15-12-614. Special administrator - appointment.** (1) A special administrator may be appointed:

(b) In a formal proceeding by order of the court on the petition of any interested person, OR BY THE COURT ON THE COURT'S OWN MOTION, and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

**SECTION 6. Effective date.** This act shall take effect July 1, 2007.

**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: March 21, 2007