

CHAPTER 209

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 14-1353

BY REPRESENTATIVE(S) Gardner, Buckner, Fields, Kagan, Labuda, Schafer;
also SENATOR(S) Johnston.

AN ACT**CONCERNING POWERS OF APPOINTMENT.**

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

SECTION 1. In Colorado Revised Statutes, **add** article 2.5 to title 15 as follows:

ARTICLE 2.5
Uniform Powers of Appointment Act

PART 1
GENERAL PROVISIONS

15-2.5-101. Short title. THIS ARTICLE MAY BE CITED AS THE "COLORADO UNIFORM POWERS OF APPOINTMENT ACT".

15-2.5-102. Definitions. IN THIS ARTICLE:

(1) "APPOINTEE" MEANS A PERSON TO WHOM A POWERHOLDER MAKES AN APPOINTMENT OF APPOINTIVE PROPERTY.

(2) "APPOINTIVE PROPERTY" MEANS PROPERTY OR PROPERTY INTEREST SUBJECT TO A POWER OF APPOINTMENT.

(3) "BLANKET-EXERCISE CLAUSE" MEANS A CLAUSE IN AN INSTRUMENT, WHICH CLAUSE EXERCISES A POWER OF APPOINTMENT AND IS NOT A SPECIFIC-EXERCISE CLAUSE. THE TERM INCLUDES A CLAUSE THAT:

(a) EXPRESSLY USES THE WORDS "ANY POWER" IN EXERCISING ANY POWER OF

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

APPOINTMENT THE POWERHOLDER HAS;

(b) EXPRESSLY USES THE WORDS "ANY PROPERTY" IN APPOINTING ANY PROPERTY OVER WHICH THE POWERHOLDER HAS A POWER OF APPOINTMENT; OR

(c) DISPOSES OF ALL PROPERTY SUBJECT TO DISPOSITION BY THE POWERHOLDER.

(4) "DONOR" MEANS A PERSON WHO CREATES A POWER OF APPOINTMENT.

(5) "EXCLUSIONARY POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF ANY ONE OR MORE OF THE PERMISSIBLE APPOINTEES TO THE EXCLUSION OF THE OTHER PERMISSIBLE APPOINTEES.

(6) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF THE POWERHOLDER, THE POWERHOLDER'S ESTATE, A CREDITOR OF THE POWERHOLDER, OR A CREDITOR OF THE POWERHOLDER'S ESTATE.

(7) "GIFT-IN-DEFAULT CLAUSE" MEANS A CLAUSE IDENTIFYING A TAKER IN DEFAULT OF APPOINTMENT.

(8) "IMPERMISSIBLE APPOINTEE" MEANS A PERSON WHO IS NOT A PERMISSIBLE APPOINTEE.

(9) "INSTRUMENT" MEANS A RECORD.

(10) "NONGENERAL POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT THAT IS NOT A GENERAL POWER OF APPOINTMENT.

(11) "PERMISSIBLE APPOINTEE" MEANS A PERSON IN WHOSE FAVOR A POWERHOLDER MAY EXERCISE A POWER OF APPOINTMENT.

(12) "PERSON" MEANS AN INDIVIDUAL; ESTATE; TRUST; BUSINESS OR NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER LEGAL ENTITY.

(13) "POWERHOLDER" MEANS A PERSON IN WHOM A DONOR CREATES A POWER OF APPOINTMENT.

(14) "POWER OF APPOINTMENT" MEANS A POWER THAT ENABLES A POWERHOLDER ACTING IN A NONFIDUCIARY CAPACITY TO DESIGNATE A RECIPIENT OF AN OWNERSHIP INTEREST IN OR ANOTHER POWER OF APPOINTMENT OVER THE APPOINTIVE PROPERTY. THE TERM DOES NOT INCLUDE A POWER OF ATTORNEY.

(15) "PRESENTLY EXERCISABLE POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT EXERCISABLE BY THE POWERHOLDER AT THE RELEVANT TIME. THE TERM:

(a) INCLUDES A POWER OF APPOINTMENT NOT EXERCISABLE UNTIL THE OCCURRENCE OF A SPECIFIED EVENT, THE SATISFACTION OF AN ASCERTAINABLE STANDARD, OR THE PASSAGE OF A SPECIFIED TIME ONLY AFTER:

- (I) THE OCCURRENCE OF THE SPECIFIED EVENT;
- (II) THE SATISFACTION OF THE ASCERTAINABLE STANDARD; OR
- (III) THE PASSAGE OF THE SPECIFIED TIME; AND

(b) DOES NOT INCLUDE A POWER EXERCISABLE ONLY AT THE POWERHOLDER'S DEATH.

(16) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(17) "SPECIFIC-EXERCISE CLAUSE" MEANS A CLAUSE IN AN INSTRUMENT, WHICH CLAUSE SPECIFICALLY REFERS TO AND EXERCISES A PARTICULAR POWER OF APPOINTMENT.

(18) "TAKER IN DEFAULT OF APPOINTMENT" MEANS A PERSON WHO TAKES ALL OR PART OF THE APPOINTIVE PROPERTY TO THE EXTENT THE POWERHOLDER DOES NOT EFFECTIVELY EXERCISE THE POWER OF APPOINTMENT.

(19) "TERMS OF THE INSTRUMENT" MEANS THE MANIFESTATION OF THE INTENT OF THE MAKER OF THE INSTRUMENT REGARDING THE INSTRUMENT'S PROVISIONS AS EXPRESSED IN THE INSTRUMENT OR AS MAY BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A LEGAL PROCEEDING.

15-2.5-103. Governing law. (1) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT:

- (a) THE CREATION, REVOCATION, OR AMENDMENT OF THE POWER IS GOVERNED BY THE LAW OF THE DONOR'S DOMICILE AT THE RELEVANT TIME; AND
- (b) THE EXERCISE, RELEASE, OR DISCLAIMER OF THE POWER, OR THE REVOCATION OR AMENDMENT OF THE EXERCISE, RELEASE, OR DISCLAIMER OF THE POWER, IS GOVERNED BY THE LAW OF THE POWERHOLDER'S DOMICILE AT THE RELEVANT TIME.

15-2.5-104. Supplementation by common law and principles of equity. UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THIS ARTICLE, THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT ITS PROVISIONS.

PART 2 CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

15-2.5-201. Creation of power of appointment. (1) A POWER OF APPOINTMENT IS CREATED ONLY IF:

- (a) THE INSTRUMENT CREATING THE POWER:
 - (I) IS VALID UNDER APPLICABLE LAW; AND

(II) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (b) OF THIS SECTION, TRANSFERS THE APPOINTIVE PROPERTY; AND

(b) THE TERMS OF THE INSTRUMENT CREATING THE POWER MANIFEST THE DONOR'S INTENT TO CREATE IN A POWERHOLDER A POWER OF APPOINTMENT OVER THE APPOINTIVE PROPERTY EXERCISABLE IN FAVOR OF A PERMISSIBLE APPOINTEE.

(2) SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO THE CREATION OF A POWER OF APPOINTMENT BY THE EXERCISE OF A POWER OF APPOINTMENT.

(3) A POWER OF APPOINTMENT MAY NOT BE CREATED IN A DECEASED INDIVIDUAL.

(4) SUBJECT TO AN APPLICABLE RULE AGAINST PERPETUITIES, A POWER OF APPOINTMENT MAY BE CREATED IN AN UNBORN OR UNASCERTAINED POWERHOLDER.

15-2.5-202. Nontransferability. A POWERHOLDER MAY NOT TRANSFER A POWER OF APPOINTMENT. IF A POWERHOLDER DIES WITHOUT EXERCISING OR RELEASING A POWER, THE POWER LAPSES.

15-2.5-203. Presumption of unlimited authority. (1) SUBJECT TO SECTION 15-2.5-205, AND UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, THE POWER IS:

(a) PRESENTLY EXERCISABLE;

(b) EXCLUSIONARY; AND

(c) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-2.5-204, GENERAL.

15-2.5-204. Exception to presumption of unlimited authority. (1) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, THE POWER IS NONGENERAL IF:

(a) THE POWER IS EXERCISABLE ONLY AT THE POWERHOLDER'S DEATH; AND

(b) THE PERMISSIBLE APPOINTEES OF THE POWER ARE A DEFINED AND LIMITED CLASS THAT DOES NOT INCLUDE THE POWERHOLDER'S ESTATE, THE POWERHOLDER'S CREDITORS, OR THE CREDITORS OF THE POWERHOLDER'S ESTATE.

15-2.5-205. Rules of classification - definitions. (1) IN THIS SECTION, "ADVERSE PARTY" MEANS A PERSON WITH A SUBSTANTIAL BENEFICIAL INTEREST IN PROPERTY, WHICH INTEREST WOULD BE AFFECTED ADVERSELY BY A POWERHOLDER'S EXERCISE OR NONEXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF THE POWERHOLDER, THE POWERHOLDER'S ESTATE, A CREDITOR OF THE POWERHOLDER, OR A CREDITOR OF THE POWERHOLDER'S ESTATE.

(2) IF A POWERHOLDER MAY EXERCISE A POWER OF APPOINTMENT ONLY WITH THE CONSENT OR JOINDER OF AN ADVERSE PARTY, THE POWER IS NONGENERAL.

(3) IF THE PERMISSIBLE APPOINTEES OF A POWER OF APPOINTMENT ARE NOT

DEFINED AND LIMITED, THE POWER IS EXCLUSIONARY.

15-2.5-206. Power of the donor to revoke or amend. (1) A DONOR MAY REVOKE OR AMEND A POWER OF APPOINTMENT ONLY TO THE EXTENT THAT:

- (a) THE INSTRUMENT CREATING THE POWER IS REVOCABLE BY THE DONOR; OR
- (b) THE DONOR RESERVES A POWER OF REVOCATION OR AMENDMENT IN THE INSTRUMENT CREATING THE POWER OF APPOINTMENT.

PART 3 EXERCISE OF POWER OF APPOINTMENT

15-2.5-301. Requisites for exercise of power of appointment. (1) A POWER OF APPOINTMENT MAY BE EXERCISED ONLY:

- (a) IF THE INSTRUMENT EXERCISING THE POWER IS VALID UNDER APPLICABLE LAW;
- (b) IF THE TERMS OF THE INSTRUMENT EXERCISING THE POWER:
 - (I) MANIFEST THE POWERHOLDER'S INTENT TO EXERCISE THE POWER; AND
 - (II) SUBJECT TO SECTION 15-2.5-304, SATISFY THE REQUIREMENTS OF EXERCISE, IF ANY, IMPOSED BY THE DONOR; AND
- (c) TO THE EXTENT THE APPOINTMENT IS A PERMISSIBLE EXERCISE OF THE POWER.

15-2.5-302. Intent to exercise - determining intent from residuary clause. (1) IN THIS SECTION:

- (a) "RESIDUARY CLAUSE" DOES NOT INCLUDE A RESIDUARY CLAUSE CONTAINING A BLANKET-EXERCISE CLAUSE OR A SPECIFIC-EXERCISE CLAUSE.
- (b) "WILL" INCLUDES A CODICIL AND A TESTAMENTARY INSTRUMENT THAT REVISES ANOTHER WILL.

(2) A RESIDUARY CLAUSE IN A POWERHOLDER'S WILL, OR A COMPARABLE CLAUSE IN THE POWERHOLDER'S REVOCABLE TRUST, MANIFESTS THE POWERHOLDER'S INTENT TO EXERCISE A POWER OF APPOINTMENT ONLY IF:

- (a) THE TERMS OF THE INSTRUMENT CONTAINING THE RESIDUARY CLAUSE DO NOT MANIFEST A CONTRARY INTENT;
- (b) THE POWER IS A GENERAL POWER EXERCISABLE IN FAVOR OF THE POWERHOLDER'S ESTATE;
- (c) THERE IS NO GIFT-IN-DEFAULT CLAUSE OR THE CLAUSE IS INEFFECTIVE; AND
- (d) THE POWERHOLDER DID NOT RELEASE THE POWER.

15-2.5-303. Intent to exercise - after-acquired power. (1) UNLESS THE TERMS

OF THE INSTRUMENT EXERCISING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT:

(a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), A BLANKET-EXERCISE CLAUSE EXTENDS TO A POWER ACQUIRED BY THE POWERHOLDER AFTER EXECUTING THE INSTRUMENT CONTAINING THE CLAUSE; AND

(b) IF THE POWERHOLDER IS ALSO THE DONOR OF THE POWER, THE CLAUSE DOES NOT EXTEND TO THE POWER UNLESS THERE IS NO GIFT-IN-DEFAULT CLAUSE OR THE GIFT-IN-DEFAULT CLAUSE IS INEFFECTIVE.

15-2.5-304. Substantial compliance with donor-imposed formal requirement.

(1) A POWERHOLDER'S SUBSTANTIAL COMPLIANCE WITH A FORMAL REQUIREMENT OF APPOINTMENT IMPOSED BY THE DONOR, INCLUDING A REQUIREMENT THAT THE INSTRUMENT EXERCISING THE POWER OF APPOINTMENT MAKE REFERENCE OR SPECIFIC REFERENCE TO THE POWER, IS SUFFICIENT IF:

(a) THE POWERHOLDER KNOWS OF AND INTENDS TO EXERCISE THE POWER; AND

(b) THE POWERHOLDER'S MANNER OF ATTEMPTED EXERCISE OF THE POWER DOES NOT IMPAIR A MATERIAL PURPOSE OF THE DONOR IN IMPOSING THE REQUIREMENT.

15-2.5-305. Permissible appointment. (1) A POWERHOLDER OF A GENERAL POWER OF APPOINTMENT THAT PERMITS APPOINTMENT TO THE POWERHOLDER OR THE POWERHOLDER'S ESTATE MAY MAKE ANY APPOINTMENT, INCLUDING AN APPOINTMENT IN TRUST OR CREATING A NEW POWER OF APPOINTMENT, THAT THE POWERHOLDER COULD MAKE IN DISPOSING OF THE POWERHOLDER'S OWN PROPERTY.

(2) A POWERHOLDER OF A GENERAL POWER OF APPOINTMENT THAT PERMITS APPOINTMENT ONLY TO THE CREDITORS OF THE POWERHOLDER OR OF THE POWERHOLDER'S ESTATE MAY APPOINT ONLY TO THOSE CREDITORS.

(3) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, THE POWERHOLDER OF A NONGENERAL POWER MAY:

(a) MAKE AN APPOINTMENT IN ANY FORM, INCLUDING AN APPOINTMENT IN TRUST, IN FAVOR OF A PERMISSIBLE APPOINTEE;

(b) CREATE A GENERAL OR NONGENERAL POWER IN A PERMISSIBLE APPOINTEE; OR

(c) CREATE A NONGENERAL POWER IN AN IMPERMISSIBLE APPOINTEE TO APPOINT TO ONE OR MORE OF THE PERMISSIBLE APPOINTEES OF THE ORIGINAL NONGENERAL POWER.

15-2.5-306. Appointment to deceased appointee or permissible appointee's descendant. (1) AN APPOINTMENT TO A DECEASED APPOINTEE IS INEFFECTIVE.

(2) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, A POWERHOLDER OF A NONGENERAL POWER MAY EXERCISE THE POWER IN FAVOR OF, OR CREATE A NEW POWER OF APPOINTMENT IN, A DESCENDANT OF A DECEASED PERMISSIBLE APPOINTEE, WHICH DECEASED

APPOINTEE IS A DESCENDANT OF ONE OR MORE OF THE GRANDPARENTS OF THE DONOR, REGARDLESS OF WHETHER THE DESCENDANT IS DESCRIBED BY THE DONOR AS A PERMISSIBLE APPOINTEE.

15-2.5-307. Impermissible appointment. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-2.5-306, AN EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF AN IMPERMISSIBLE APPOINTEE IS INEFFECTIVE.

(2) AN EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A PERMISSIBLE APPOINTEE IS INEFFECTIVE TO THE EXTENT THE APPOINTMENT IS A FRAUD ON THE POWER.

15-2.5-308. Selective allocation doctrine. IF A POWERHOLDER EXERCISES A POWER OF APPOINTMENT IN A DISPOSITION THAT ALSO DISPOSES OF PROPERTY THE POWERHOLDER OWNS, THE OWNED PROPERTY AND THE APPOINTIVE PROPERTY MUST BE ALLOCATED IN THE PERMISSIBLE MANNER THAT BEST CARRIES OUT THE POWERHOLDER'S INTENT.

15-2.5-309. Capture doctrine - disposition of ineffectively appointed property under general power. (1) TO THE EXTENT A POWERHOLDER OF A GENERAL POWER OF APPOINTMENT, OTHER THAN A POWER TO WITHDRAW PROPERTY FROM, REVOKE, OR AMEND A TRUST, MAKES AN INEFFECTIVE APPOINTMENT:

(a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF THE INEFFECTIVELY APPOINTED PROPERTY; OR

(b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE, OR TO THE EXTENT THE CLAUSE IS INEFFECTIVE, THE INEFFECTIVELY APPOINTED PROPERTY:

(I) PASSES TO:

(A) THE POWERHOLDER IF THE POWERHOLDER IS A PERMISSIBLE APPOINTEE AND LIVING; OR

(B) IF THE POWERHOLDER IS AN IMPERMISSIBLE APPOINTEE OR DECEASED, THE POWERHOLDER'S ESTATE IF THE ESTATE IS A PERMISSIBLE APPOINTEE; OR

(II) IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), PASSES UNDER A REVERSIONARY INTEREST TO THE DONOR OR TO THE DONOR'S TRANSFEREE OR SUCCESSOR IN INTEREST.

15-2.5-310. Disposition of unappointed property under released or unexercised general power. (1) TO THE EXTENT A POWERHOLDER RELEASES OR FAILS TO EXERCISE A GENERAL POWER OF APPOINTMENT OTHER THAN A POWER TO WITHDRAW PROPERTY FROM, REVOKE, OR AMEND A TRUST:

(a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF THE UNAPPOINTED PROPERTY; OR

(b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE OR TO THE EXTENT THE CLAUSE IS INEFFECTIVE:

(I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE UNAPPOINTED PROPERTY PASSES TO:

(A) THE POWERHOLDER IF THE POWERHOLDER IS A PERMISSIBLE APPOINTEE AND LIVING; OR

(B) IF THE POWERHOLDER IS AN IMPERMISSIBLE APPOINTEE OR DECEASED, THE POWERHOLDER'S ESTATE IF THE ESTATE IS A PERMISSIBLE APPOINTEE; OR

(II) TO THE EXTENT THE POWERHOLDER RELEASED THE POWER, OR IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE UNAPPOINTED PROPERTY PASSES UNDER A REVERSIONARY INTEREST TO THE DONOR OR TO THE DONOR'S TRANSFEREE OR SUCCESSOR IN INTEREST.

15-2.5-311. Disposition of unappointed property under released or unexercised nongeneral power. (1) TO THE EXTENT A POWERHOLDER RELEASES, INEFFECTIVELY EXERCISES, OR FAILS TO EXERCISE A NONGENERAL POWER OF APPOINTMENT:

(a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF THE UNAPPOINTED PROPERTY; OR

(b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE, OR TO THE EXTENT THE CLAUSE IS INEFFECTIVE, THE UNAPPOINTED PROPERTY:

(I) PASSES TO THE PERMISSIBLE APPOINTEES IF:

(A) THE PERMISSIBLE APPOINTEES ARE DEFINED AND LIMITED; AND

(B) THE TERMS OF THE INSTRUMENT CREATING THE POWER DO NOT MANIFEST A CONTRARY INTENT; OR

(II) IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), PASSES UNDER A REVERSIONARY INTEREST TO THE DONOR OR THE DONOR'S TRANSFEREE OR SUCCESSOR IN INTEREST.

15-2.5-312. Disposition of unappointed property if partial appointment to taker in default. UNLESS THE TERMS OF THE INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, IF THE POWERHOLDER MAKES A VALID PARTIAL APPOINTMENT TO A TAKER IN DEFAULT OF APPOINTMENT, THE TAKER IN DEFAULT OF APPOINTMENT MAY SHARE FULLY IN UNAPPOINTED PROPERTY.

15-2.5-313. Appointment to taker in default. IF A POWERHOLDER MAKES AN APPOINTMENT TO A TAKER IN DEFAULT OF APPOINTMENT AND THE APPOINTEE WOULD HAVE TAKEN THE PROPERTY UNDER A GIFT-IN-DEFAULT CLAUSE HAD THE PROPERTY NOT BEEN APPOINTED, THE POWER OF APPOINTMENT IS DEEMED NOT TO HAVE BEEN EXERCISED AND THE APPOINTEE TAKES THE PROPERTY UNDER THE CLAUSE.

15-2.5-314. Powerholder's authority to revoke or amend exercise. (1) A

POWERHOLDER MAY REVOKE OR AMEND AN EXERCISE OF A POWER OF APPOINTMENT ONLY TO THE EXTENT THAT:

(a) THE POWERHOLDER RESERVES A POWER OF REVOCATION OR AMENDMENT IN THE INSTRUMENT EXERCISING THE POWER OF APPOINTMENT AND, IF THE POWER IS NONGENERAL, THE TERMS OF THE INSTRUMENT CREATING THE POWER OF APPOINTMENT DO NOT PROHIBIT THE RESERVATION; OR

(b) THE TERMS OF THE INSTRUMENT CREATING THE POWER OF APPOINTMENT PROVIDE THAT THE EXERCISE IS REVOCABLE OR AMENDABLE.

PART 4
DISCLAIMER OR RELEASE; CONTRACT
TO APPOINT OR NOT TO APPOINT

15-2.5-401. Disclaimer. (1) SUBJECT TO THE "UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT", PART 12 OF ARTICLE 11 OF THIS TITLE:

(a) A POWERHOLDER MAY DISCLAIM ALL OR PART OF A POWER OF APPOINTMENT; AND

(b) A PERMISSIBLE APPOINTEE, APPOINTEE, OR TAKER IN DEFAULT OF APPOINTMENT MAY DISCLAIM ALL OR PART OF AN INTEREST IN APPOINTIVE PROPERTY.

15-2.5-402. Authority to release. A POWERHOLDER MAY RELEASE A POWER OF APPOINTMENT, IN WHOLE OR IN PART, EXCEPT TO THE EXTENT THE TERMS OF THE INSTRUMENT CREATING THE POWER PREVENT THE RELEASE.

15-2.5-403. Method of release. (1) A POWERHOLDER OF A RELEASABLE POWER OF APPOINTMENT MAY RELEASE THE POWER IN WHOLE OR IN PART:

(a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF THE INSTRUMENT CREATING THE POWER; OR

(b) IF THE TERMS OF THE INSTRUMENT CREATING THE POWER DO NOT PROVIDE A METHOD, OR THE METHOD PROVIDED IN THE TERMS OF THE INSTRUMENT IS NOT EXPRESSLY MADE EXCLUSIVE, BY:

(I) DELIVERING A WRITING DECLARING THE EXTENT TO WHICH THE POWER IS RELEASED TO A PERSON WHO COULD BE ADVERSELY AFFECTED BY AN EXERCISE OF THE POWER;

(II) JOINING WITH SOME OR ALL OF THE TAKERS IN DEFAULT IN MAKING AN OTHERWISE-EFFECTIVE TRANSFER OF AN INTEREST IN THE PROPERTY THAT IS SUBJECT TO THE POWER, IN WHICH CASE THE POWER IS RELEASED TO THE EXTENT THAT A SUBSEQUENT EXERCISE OF THE POWER WOULD DEFEAT THE INTEREST TRANSFERRED;

(III) CONTRACTING WITH A PERSON WHO COULD BE ADVERSELY AFFECTED BY AN EXERCISE OF THE POWER NOT TO EXERCISE THE POWER, IN WHICH CASE THE POWER IS RELEASED TO THE EXTENT THAT A SUBSEQUENT EXERCISE OF THE POWER WOULD

VIOLATE THE TERMS OF THE CONTRACT; OR

(IV) COMMUNICATING IN ANY OTHER APPROPRIATE MANNER AN INTENT TO RELEASE THE POWER, IN WHICH CASE THE POWER IS RELEASED TO THE EXTENT THAT A SUBSEQUENT EXERCISE OF THE POWER WOULD BE CONTRARY TO MANIFESTED INTENT.

15-2.5-404. Revocation or amendment of release. (1) A POWERHOLDER MAY REVOKE OR AMEND A RELEASE OF A POWER OF APPOINTMENT ONLY TO THE EXTENT THAT:

(a) THE INSTRUMENT OF RELEASE IS REVOCABLE BY THE POWERHOLDER; OR

(b) THE POWERHOLDER RESERVES A POWER OF REVOCATION OR AMENDMENT IN THE INSTRUMENT OF RELEASE.

15-2.5-405. Power to contract - presently exercisable power of appointment. (1) A POWERHOLDER OF A PRESENTLY EXERCISABLE POWER OF APPOINTMENT MAY CONTRACT:

(a) NOT TO EXERCISE THE POWER IF THE CONTRACT, WHEN MADE, DOES NOT CONFER A BENEFIT ON A PERSON OTHER THAN A TAKER IN DEFAULT OR A PERMISSIBLE APPOINTEE; OR

(b) TO EXERCISE THE POWER IF THE CONTRACT, WHEN MADE, DOES NOT CONFER A BENEFIT ON AN IMPERMISSIBLE APPOINTEE.

15-2.5-406. Power to contract - power of appointment not presently exercisable. (1) A POWERHOLDER OF A POWER OF APPOINTMENT THAT IS NOT PRESENTLY EXERCISABLE MAY CONTRACT TO EXERCISE OR NOT TO EXERCISE THE POWER ONLY IF THE POWERHOLDER:

(a) IS ALSO THE DONOR OF THE POWER; AND

(b) HAS RESERVED THE POWER IN THE INSTRUMENT CREATING THE POWER.

PART 5
[Reserved]

PART 6
MISCELLANEOUS PROVISIONS

15-2.5-601. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS ARTICLE, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

15-2.5-602. Relation to electronic signatures in global and national commerce act. THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101

(c) OF THAT ACT, 15 U.S.C. SECTION 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SECTION 7003 (b).

15-2.5-603. Application to existing relationships. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ON THE EFFECTIVE DATE OF THIS ARTICLE OR OF ANY AMENDMENT TO THIS ARTICLE:

(a) THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES TO A POWER OF APPOINTMENT CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE;

(b) THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES TO ANY PROCEEDINGS IN COURT THEN PENDING OR THEREAFTER COMMENCED CONCERNING A POWER OF APPOINTMENT, EXCEPT TO THE EXTENT THAT IN THE OPINION OF THE COURT THE FORMER PROCEDURE SHOULD BE MADE APPLICABLE IN A PARTICULAR CASE IN THE INTEREST OF JUSTICE OR BECAUSE OF INFEASIBILITY OF APPLICATION OF THE PROCEDURE OF THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE, IN WHICH CASE THE PARTICULAR PROVISION OF THIS ARTICLE DOES NOT APPLY AND THE SUPERSEDED LAW APPLIES;

(c) A RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES TO AN INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN THE TERMS OF THE INSTRUMENT;

(d) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (a) TO (c) OF THIS SUBSECTION (1), AN ACTION DONE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE IS NOT AFFECTED BY THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE; AND

(e) NO PROVISION OF THIS ARTICLE OR OF ANY AMENDMENT TO THIS ARTICLE SHALL APPLY RETROACTIVELY IF THE COURT DETERMINES THAT SUCH APPLICATION WOULD CAUSE THE PROVISIONS TO BE RETROSPECTIVE IN ITS OPERATION IN VIOLATION OF SECTION 11 OF ARTICLE II OF THE STATE CONSTITUTION.

(2) IF A RIGHT IS ACQUIRED, EXTINGUISHED, OR BARRED ON THE EXPIRATION OF A PRESCRIBED PERIOD THAT COMMENCED UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, THE LAW CONTINUES TO APPLY TO THE RIGHT.

SECTION 2. In Colorado Revised Statutes, **repeal** article 2 of title 15, 15-11-608, and 15-11-704.

SECTION 3. In Colorado Revised Statutes, **add** 15-1-201.5 as follows:

15-1-201.5. Definitions. AS USED IN THIS PART 2, "DONEE" HAS THE SAME MEANING AS "POWERHOLDER" AS SET FORTH IN SECTION 15-2.5-102 (13).

SECTION 4. In Colorado Revised Statutes, 15-10-201, **add** (16.7) as follows:

15-10-201. General definitions. Subject to additional definitions contained in

this article and the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this code:

(16.7) "DONEE", AS USED IN THE CONTEXT OF POWERS OF APPOINTMENT, HAS THE SAME MEANING AS "POWERHOLDER" AS SET FORTH IN SECTION 15-2.5-102 (13).

SECTION 5. Act subject to petition - effective date. This act takes effect July 1, 2015; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on July 1, 2015, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: May 15, 2014