

## CHAPTER 296

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**PROBATE, TRUSTS, AND FIDUCIARIES**


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## HOUSE BILL 14-1322

BY REPRESENTATIVE(S) McLachlan, Fields, Hullinghorst, Kagan, Rosenthal, Gardner, Schafer, Singer;  
also SENATOR(S) Roberts.

## AN ACT

## CONCERNING THE COLORADO PROBATE CODE.

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

**SECTION 1.** In Colorado Revised Statutes, 15-10-111, **amend** (1) (a) (I) as follows:

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

(1) (a) Whenever a decedent at the time of his or her death was a sole or joint lessee 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:

(I) A PERSON CLAIMING TO BE A SUCCESSOR OF THE DECEDENT, OR ACTING ON BEHALF OF a successor of the decedent, if such decedent was the sole lessee 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; or

**SECTION 2.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 2 of article 11 of title 15 as follows:

PART 2  
ELECTIVE-SHARE OF SURVIVING SPOUSE

**15-11-201. [Similar to 15-11-202 (1)] Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BONA FIDE PURCHASER" MEANS A PURCHASER FOR VALUE IN GOOD FAITH

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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.*

AND WITHOUT NOTICE OF AN ADVERSE CLAIM. THE NOTATION OF A STATE DOCUMENTARY FEE ON A RECORDED INSTRUMENT PURSUANT TO SECTION 39-13-103, C.R.S., IS PRIMA FACIE EVIDENCE THAT THE TRANSFER DESCRIBED THEREIN WAS MADE TO A BONA FIDE PURCHASER.

(2) "DECEDENT'S NONPROBATE TRANSFERS TO OTHERS" MEANS AMOUNTS THAT ARE INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-205.

(3) "FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP", WHETHER THE FRACTIONAL INTEREST IS UNILATERALLY SEVERABLE OR NOT, AND IF THE INTERESTS ARE EQUAL, MEANS THE FRACTION, THE NUMERATOR OF WHICH IS ONE AND THE DENOMINATOR OF WHICH, IF THE DECEDENT WAS A JOINT TENANT, IS ONE PLUS THE NUMBER OF JOINT TENANTS WHO SURVIVE THE DECEDENT AND WHICH, IF THE DECEDENT WAS NOT A JOINT TENANT, IS THE NUMBER OF JOINT TENANTS. IF THE INTERESTS ARE UNEQUAL, "FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP" MEANS THE DECEDENT'S INTEREST IMMEDIATELY PRECEDING THE DECEDENT'S DEATH.

(4) "MARRIAGE", AS IT RELATES TO A TRANSFER BY THE DECEDENT DURING MARRIAGE, MEANS ANY MARRIAGE OF THE DECEDENT TO THE DECEDENT'S SURVIVING SPOUSE.

(5) "NONADVERSE PARTY" MEANS A PERSON WHO DOES NOT HAVE A SUBSTANTIAL BENEFICIAL INTEREST IN THE TRUST OR OTHER PROPERTY ARRANGEMENT THAT WOULD BE ADVERSELY AFFECTED BY THE EXERCISE OR NONEXERCISE OF THE POWER THAT HE OR SHE POSSESSES RESPECTING THE TRUST OR OTHER PROPERTY ARRANGEMENT. A PERSON HAVING A GENERAL POWER OF APPOINTMENT OVER PROPERTY IS DEEMED TO HAVE A BENEFICIAL INTEREST IN THE PROPERTY.

(6) "POWER" OR "POWER OF APPOINTMENT" INCLUDES A POWER TO DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION, INCLUDING BENEFICIARY DESIGNATIONS UNDER INDIVIDUAL RETIREMENT ACCOUNTS AND ANNUITIES DESCRIBED IN SECTION 408 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AS WELL AS OTHER PENSION PLANS OR ARRANGEMENTS NOT SUBJECT TO PART 2 (SECTION 201 ET SEQ.) OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED (29 U.S.C. SEC. 1051 ET SEQ.).

(7) "PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT UNDER WHICH, AT THE TIME IN QUESTION, THE DECEDENT, WHETHER OR NOT HE OR SHE THEN HAD THE CAPACITY TO EXERCISE THE POWER, HELD A POWER TO CREATE A PRESENT OR FUTURE INTEREST IN HIMSELF OR HERSELF, HIS OR HER CREDITORS, HIS OR HER ESTATE, OR THE CREDITORS OF HIS OR HER ESTATE, AND INCLUDES A POWER TO REVOKE OR INVADE THE PRINCIPAL OF A TRUST OR OTHER PROPERTY ARRANGEMENT.

(8) "PROPERTY" INCLUDES VALUES SUBJECT TO A BENEFICIARY DESIGNATION.

(9) "RIGHT TO INCOME" INCLUDES A RIGHT TO PAYMENTS UNDER A COMMERCIAL OR PRIVATE ANNUITY, AN ANNUITY TRUST, A UNITRUST, OR A SIMILAR

ARRANGEMENT.

(10) "TRANSFER", AS IT RELATES TO A TRANSFER BY OR ON BEHALF OF THE DECEDENT, INCLUDES:

(a) AN EXERCISE OR RELEASE OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT;

(b) A LAPSE AT DEATH OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT; AND

(c) AN EXERCISE, RELEASE, OR LAPSE OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT THAT THE DECEDENT CREATED IN HIMSELF OR HERSELF AND OF A POWER DESCRIBED IN SECTION 15-11-205 (2) (b) THAT THE DECEDENT CONFERRED ON A NONADVERSE PARTY.

(11) "VALUE", UNLESS OTHERWISE INDICATED, MEANS FAIR MARKET VALUE AS OF THE DECEDENT'S DATE OF DEATH.

**15-11-202. [Similar to 15-11-201] Elective-share. (1) Elective-share amount.**

THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED IN THIS STATE HAS A RIGHT OF ELECTION, UNDER THE LIMITATIONS AND CONDITIONS STATED IN THIS PART 2, TO TAKE AN ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY PERCENT OF THE VALUE OF THE MARITAL-PROPERTY PORTION OF THE AUGMENTED ESTATE.

(2) (a) **Supplemental elective-share amount.** IF THE SUM OF THE AMOUNTS DESCRIBED IN SECTIONS 15-11-207, 15-11-209 (1) (a), AND THAT PART OF THE ELECTIVE-SHARE AMOUNT PAYABLE FROM THE DECEDENT'S NET PROBATE ESTATE AND NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-209 (3) (a) AND (3) (b) IS LESS THAN FIFTY THOUSAND DOLLARS, THE SURVIVING SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY THOUSAND DOLLARS, MINUS THE SUM OF THE AMOUNTS DESCRIBED IN THOSE SECTIONS. THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS PAYABLE FROM THE DECEDENT'S NET PROBATE ESTATE AND FROM RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN THE ORDER OF PRIORITY SET FORTH IN SECTION 15-11-209 (3) (a) AND (3) (b).

(b) THE COURT SHALL INCREASE OR DECREASE THE DOLLAR AMOUNT STATED IN PARAGRAPH (a) OF THIS SUBSECTION (2) BASED ON THE COST OF LIVING ADJUSTMENT AS CALCULATED AND SPECIFIED IN SECTION 15-10-112.

(3) **Effect of election on statutory benefits.** IF THE RIGHT OF ELECTION IS EXERCISED BY OR ON BEHALF OF THE SURVIVING SPOUSE, THE EXEMPT PROPERTY AND FAMILY ALLOWANCE, IF ANY, ARE NOT CHARGED AGAINST BUT ARE IN ADDITION TO THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS.

(4) **Nondomiciliary.** THE RIGHT, IF ANY, OF THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED OUTSIDE THIS STATE TO TAKE AN ELECTIVE-SHARE IN PROPERTY IN THIS STATE IS GOVERNED BY THE LAW OF THE DECEDENT'S DOMICILE AT DEATH.

**15-11-203. [Similar to 15-11-201 (1)] Composition of the marital-property portion of the augmented estate.** (1) SUBJECT TO SECTION 15-11-208, THE VALUE OF THE AUGMENTED ESTATE, TO THE EXTENT PROVIDED IN SECTIONS 15-11-204, 15-11-205, 15-11-206, AND 15-11-207, CONSISTS OF THE SUM OF THE VALUES OF ALL PROPERTY, WHETHER REAL OR PERSONAL, MOVABLE OR IMMOVABLE, TANGIBLE OR INTANGIBLE, WHEREVER SITUATED, THAT CONSTITUTES:

- (a) THE DECEDENT'S NET PROBATE ESTATE;
- (b) THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS;
- (c) THE DECEDENT'S NONPROBATE TRANSFERS TO THE SURVIVING SPOUSE; AND
- (d) THE SURVIVING SPOUSE'S PROPERTY AND NONPROBATE TRANSFERS TO OTHERS.

(2) THE VALUE OF THE MARITAL-PROPERTY PORTION OF THE AUGMENTED ESTATE CONSISTS OF THE SUM OF THE VALUES OF THE FOUR COMPONENTS OF THE AUGMENTED ESTATE AS DETERMINED UNDER SUBSECTION (1) OF THIS SECTION MULTIPLIED BY THE FOLLOWING PERCENTAGE:

IF THE DECEDENT AND THE SPOUSE WERE MARRIED TO EACH OTHER:	THE PERCENTAGE IS:
LESS THAN 1 YEAR	SUPPLEMENTAL AMOUNT ONLY.
1 YEAR BUT LESS THAN 2 YEARS	10%
2 YEARS BUT LESS THAN 3 YEARS	20%
3 YEARS BUT LESS THAN 4 YEARS	30%
4 YEARS BUT LESS THAN 5 YEARS	40%
5 YEARS BUT LESS THAN 6 YEARS	50%
6 YEARS BUT LESS THAN 7 YEARS	60%
7 YEARS BUT LESS THAN 8 YEARS	70%
8 YEARS BUT LESS THAN 9 YEARS	80%
9 YEARS BUT LESS THAN 10 YEARS	90%
10 YEARS OR MORE	100%

**15-11-204. [Similar to 15-11-201 (2) (a)] Decedent's net probate estate.** THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE DECEDENT'S PROBATE ESTATE, REDUCED BY FUNERAL AND ADMINISTRATIVE EXPENSES, FAMILY ALLOWANCE, EXEMPT PROPERTY, AND ENFORCEABLE CLAIMS.

**15-11-205. [Similar to 15-11-201 (2) (b)] Decedent's nonprobate transfers to others.** THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, NOT INCLUDED IN THE DECEDENT'S PROBATE ESTATE UNDER SECTION 15-11-204, OF ANY OF THE FOLLOWING TYPES, IN THE AMOUNT PROVIDED RESPECTIVELY FOR EACH TYPE OF TRANSFER:

(1) PROPERTY OWNED OR OWNED IN SUBSTANCE BY THE DECEDENT IMMEDIATELY BEFORE DEATH THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH. PROPERTY INCLUDED UNDER THIS CATEGORY CONSISTS OF:

(a) PROPERTY OVER WHICH THE DECEDENT ALONE, IMMEDIATELY BEFORE DEATH, HELD OR RETAINED A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT. THE AMOUNT INCLUDED IS THE VALUE OF THE PROPERTY SUBJECT TO THE POWER, TO THE EXTENT THAT THE PROPERTY PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; EXCEPT THAT PROPERTY OVER WHICH THE DECEDENT HAD ONLY A TESTAMENTARY POWER OF APPOINTMENT IS NOT INCLUDED. PROPERTY OVER WHICH THE DECEDENT HAD A GENERAL INTER VIVOS POWER OF APPOINTMENT OR WITHDRAWAL CREATED IN THE DECEDENT BY A THIRD PARTY IS INCLUDABLE UNLESS THE GOVERNING INSTRUMENT CONTAINS A PROVISION FOR ITS TERMINATION OR LAPSE, IN FULL OR IN PART, DURING THE LIFE OF THE DECEDENT.

(b) THE DECEDENT'S FRACTIONAL INTEREST IN REAL PROPERTY HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP CREATED DURING THE MARRIAGE TO THE SURVIVING SPOUSE, EXCEPT AS PROVIDED IN SECTION 15-11-208, AND THE DECEDENT'S FRACTIONAL INTEREST IN PERSONAL PROPERTY HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP. THE AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S FRACTIONAL INTEREST, TO THE EXTENT THAT THE FRACTIONAL INTEREST PASSED BY RIGHT OF SURVIVORSHIP AT THE DECEDENT'S DEATH TO A SURVIVING JOINT TENANT OTHER THAN THE DECEDENT'S SURVIVING SPOUSE.

(c) THE DECEDENT'S OWNERSHIP INTEREST IN PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP. THE AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S OWNERSHIP INTEREST, TO THE EXTENT THAT THE DECEDENT'S OWNERSHIP INTEREST PASSED AT THE DECEDENT'S DEATH TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE.

(d) EXCEPT AS PROVIDED IN SECTION 15-11-208, PROCEEDS OF INSURANCE, INCLUDING ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE DECEDENT IF THE DECEDENT OWNED THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH OR IF AND TO THE EXTENT THAT THE DECEDENT ALONE AND IMMEDIATELY BEFORE DEATH HELD A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OVER THE POLICY OR ITS PROCEEDS. THE AMOUNT INCLUDED IS THE VALUE OF THE PROCEEDS, TO THE EXTENT THAT THEY WERE PAYABLE AT THE DECEDENT'S DEATH TO OR FOR THE BENEFIT OF THE DECEDENT'S ESTATE OR SURVIVING SPOUSE.

(2) PROPERTY TRANSFERRED IN ANY OF THE FOLLOWING FORMS BY THE DECEDENT DURING MARRIAGE:

(a) ANY IRREVOCABLE TRANSFER IN WHICH THE DECEDENT RETAINED THE RIGHT TO THE POSSESSION OR ENJOYMENT OF, OR TO THE INCOME FROM, THE PROPERTY IF AND TO THE EXTENT THAT THE DECEDENT'S RIGHT TERMINATED AT OR CONTINUED BEYOND THE DECEDENT'S DEATH. THE AMOUNT INCLUDED IS THE VALUE OF THE FRACTION OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT RELATED, TO THE EXTENT THAT THE FRACTION OF THE PROPERTY PASSED OUTSIDE PROBATE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

(b) ANY TRANSFER IN WHICH THE DECEDENT CREATED A POWER OVER THE INCOME OR PRINCIPAL OF THE TRANSFERRED PROPERTY, EXERCISABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY OTHER PERSON OR EXERCISABLE BY A NONADVERSE PARTY, FOR THE BENEFIT OF THE DECEDENT, THE DECEDENT'S CREDITORS, THE DECEDENT'S ESTATE, OR THE CREDITORS OF THE DECEDENT'S ESTATE. THE AMOUNT INCLUDED WITH RESPECT TO A POWER OVER PROPERTY IS THE VALUE OF THE PROPERTY SUBJECT TO THE POWER, AND THE AMOUNT INCLUDED WITH RESPECT TO A POWER OVER INCOME IS THE VALUE OF THE PROPERTY THAT PRODUCES OR PRODUCED THE INCOME, TO THE EXTENT THAT THE POWER IN EITHER CASE WAS EXERCISABLE AT THE DECEDENT'S DEATH TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S SURVIVING SPOUSE OR TO THE EXTENT THAT THE PROPERTY SUBJECT TO THE POWER PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE. IF THE POWER IS A POWER OVER BOTH INCOME AND PROPERTY AND THE PRECEDING SENTENCE PRODUCES DIFFERENT AMOUNTS, THE AMOUNT INCLUDED IS THE GREATER AMOUNT.

(3) PROPERTY THAT PASSED DURING MARRIAGE AND DURING THE TWO-YEAR PERIOD NEXT PRECEDING THE DECEDENT'S DEATH AS A RESULT OF A TRANSFER BY THE DECEDENT IF THE TRANSFER WAS OF ANY OF THE FOLLOWING TYPES:

(a) ANY PROPERTY THAT PASSED AS A RESULT OF THE TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION OR UNDER SUBSECTION (2) OF THIS SECTION IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED UNTIL THE DECEDENT'S DEATH. THE AMOUNT INCLUDED IS THE VALUE OF THE PROPERTY THAT WOULD HAVE BEEN INCLUDED UNDER THOSE PROVISIONS IF THE PROPERTY WERE VALUED AT THE TIME THAT THE RIGHT, INTEREST, OR POWER TERMINATED AND IS INCLUDED ONLY TO THE EXTENT THAT THE PROPERTY PASSED UPON TERMINATION TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT OR THE DECEDENT'S ESTATE, SPOUSE, OR SURVIVING SPOUSE. AS USED IN THIS SUBPARAGRAPH (1), "TERMINATION", WITH RESPECT TO A RIGHT OR AN INTEREST IN PROPERTY, OCCURS WHEN THE RIGHT OR INTEREST TERMINATES BY THE TERMS OF THE GOVERNING INSTRUMENT OR THE DECEDENT TRANSFERS OR RELINQUISHES THE RIGHT OF INTEREST AND, WITH RESPECT TO A POWER OVER PROPERTY, WHEN THE POWER TERMINATES BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE; EXCEPT THAT, WITH RESPECT TO A POWER DESCRIBED IN SUBPARAGRAPH (1) OF PARAGRAPH (a) OF THIS SUBSECTION (1), "TERMINATION" OCCURS WHEN THE POWER IS TERMINATED BY EXERCISE OR RELEASE BUT NOT OTHERWISE.

(b) ANY TRANSFER OF, OR RELATING TO, AN INSURANCE POLICY ON THE LIFE OF THE DECEDENT IF THE PROCEEDS WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (1) HAD THE TRANSFER NOT OCCURRED. THE AMOUNT INCLUDED IS THE VALUE OF THE INSURANCE PROCEEDS TO THE EXTENT THAT THE PROCEEDS WERE PAYABLE AT THE DECEDENT'S DEATH TO OR FOR THE BENEFIT OF THE DECEDENT'S ESTATE OR SURVIVING SPOUSE.

(c) ANY TRANSFER OF PROPERTY, TO THE EXTENT NOT OTHERWISE INCLUDED IN THE AUGMENTED ESTATE, MADE TO OR FOR THE BENEFIT OF A PERSON OTHER THAN

THE DECEDENT'S SURVIVING SPOUSE. THE AMOUNT INCLUDED IS THE VALUE OF THE TRANSFERRED PROPERTY TO THE EXTENT THAT THE AGGREGATE TRANSFERS TO ANY ONE DONEE IN EITHER OF THE TWO YEARS EXCEEDED THE AMOUNT EXCLUDABLE FROM TAXABLE GIFTS UNDER 26 U.S.C. SEC. 2503 (b) OR ITS SUCCESSOR ON THE DATE NEXT PRECEDING THE DATE OF THE DECEDENT'S DEATH.

**15-11-206. [Similar to 15-11-202 (2) (c)] Decedent's nonprobate transfers to the surviving spouse.** EXCLUDING PROPERTY PASSING TO THE SURVIVING SPOUSE UNDER THE FEDERAL SOCIAL SECURITY SYSTEM AFTER THE DECEDENT'S DATE OF DEATH, THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE TRANSFERS TO THE DECEDENT'S SURVIVING SPOUSE, WHICH CONSIST OF ALL PROPERTY THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH FROM THE DECEDENT TO THE SURVIVING SPOUSE BY REASON OF THE DECEDENT'S DEATH, INCLUDING:

(1) THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY HELD AS A JOINT TENANT WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THAT THE DECEDENT'S FRACTIONAL INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING JOINT TENANT;

(2) THE DECEDENT'S OWNERSHIP INTEREST IN PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THE DECEDENT'S OWNERSHIP INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING CO-OWNER; AND

(3) ALL OTHER PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-205 (1) OR (2) HAD IT PASSED TO OR FOR THE BENEFIT OF A PERSON OTHER THAN THE DECEDENT'S SPOUSE, SURVIVING SPOUSE, THE DECEDENT, OR THE DECEDENT'S CREDITORS, ESTATE, OR ESTATE CREDITORS.

**15-11-207. [Similar to 15-11-202 (2) (d)] Surviving spouse's property and nonprobate transfers to others.** (1) EXCEPT TO THE EXTENT INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-204 OR 15-11-206, THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF:

(a) PROPERTY THAT WAS OWNED BY THE DECEDENT'S SURVIVING SPOUSE AT THE DECEDENT'S DEATH, INCLUDING:

(I) THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP CREATED DURING THE MARRIAGE TO THE DECEDENT, EXCEPT AS PROVIDED IN SECTION 15-11-208, AND THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN PERSONAL PROPERTY HELD BY THE SURVIVING SPOUSE IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP;

(II) THE SURVIVING SPOUSE'S OWNERSHIP INTEREST IN PROPERTY OR ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP; AND

(III) PROPERTY THAT PASSED TO THE SURVIVING SPOUSE BY REASON OF THE DECEDENT'S DEATH BUT NOT INCLUDING THE SPOUSE'S RIGHT TO FAMILY ALLOWANCE, EXEMPT PROPERTY, OR PAYMENTS UNDER THE FEDERAL SOCIAL

SECURITY SYSTEM AFTER THE DECEDENT'S DATE OF DEATH; AND

(b) PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE SURVIVING SPOUSE'S NONPROBATE TRANSFERS TO OTHERS, OTHER THAN THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS INCLUDED UNDER SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1) HAD THE SPOUSE BEEN THE DECEDENT.

(2) PROPERTY INCLUDED UNDER THIS SECTION IS VALUED AT THE DECEDENT'S DEATH, TAKING THE FACT THAT THE DECEDENT PREDECEASED THE SPOUSE INTO ACCOUNT, BUT FOR PURPOSES OF SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE VALUES OF THE SPOUSE'S FRACTIONAL AND OWNERSHIP INTERESTS ARE DETERMINED IMMEDIATELY BEFORE THE DECEDENT'S DEATH IF THE DECEDENT WAS THEN A JOINT TENANT OR A CO-OWNER OF THE PROPERTY OR ACCOUNTS. FOR PURPOSES OF THIS SUBSECTION (2), PROCEEDS OF INSURANCE THAT WOULD HAVE BEEN INCLUDED IN THE SPOUSE'S NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-205 (1) (d) ARE NOT VALUED AS IF HE OR SHE WERE DECEASED.

(3) THE VALUE OF PROPERTY INCLUDED UNDER THIS SECTION IS REDUCED BY ENFORCEABLE CLAIMS AGAINST THE SURVIVING SPOUSE.

**15-11-208. [Similar to 15-11-202 (3)] Exclusions, valuations, and overlapping application.** (1) **Exclusions.** (a) THE VALUE OF ANY PROPERTY IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS:

(I) TO THE EXTENT THE DECEDENT RECEIVED ADEQUATE AND FULL CONSIDERATION IN MONEY OR MONEY'S WORTH FOR A TRANSFER OF THE PROPERTY; OR

(II) IF THE PROPERTY WAS TRANSFERRED WITH THE WRITTEN JOINDER OF, OR IF THE TRANSFER WAS CONSENTED TO IN WRITING BY, THE SURVIVING SPOUSE; OR

(III) IF THE PROPERTY WAS TRANSFERRED TO A BONA FIDE PURCHASER.

(b) FOR PURPOSES OF THIS SUBSECTION (1), IN THE ABSENCE OF A FINDING OF A CONTRARY INTENT, JOINDER IN THE FILING OF A GIFT TAX RETURN DOES NOT CONSTITUTE CONSENT OR JOINDER.

(c) ANY LIFE INSURANCE MAINTAINED PURSUANT TO A MARRIAGE DISSOLUTION SETTLEMENT AGREEMENT OR COURT ORDER OR ANY DISTRIBUTION FROM A PLAN QUALIFIED UNDER SECTION 401 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS TO THE EXTENT SUCH ITEMS ARE PAYABLE TO A PERSON OTHER THAN THE SURVIVING SPOUSE.

(d) LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT SHARING, RETIREMENT, AND OTHER BENEFIT PLANS PAYABLE TO PERSONS OTHER THAN THE DECEDENT'S SURVIVING SPOUSE OR THE DECEDENT'S ESTATE ARE EXCLUDED FROM THE AUGMENTED ESTATE.

(e) ANY COMPLETED TRANSFERS MADE BY THE DECEDENT PRIOR TO JULY 1, 1974,

ARE EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

(f) ANY FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS CREATED BY A DONATIVE TRANSFER BY SOMEONE OTHER THAN THE DECEDENT OR THE SURVIVING SPOUSE, IS EXCLUDED FROM THE AUGMENTED ESTATE.

(2) **Valuations.** THE VALUE OF PROPERTY:

(a) INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-205, 15-11-206, OR 15-11-207 IS REDUCED IN EACH CATEGORY BY ENFORCEABLE CLAIMS AGAINST THE INCLUDED PROPERTY; AND

(b) INCLUDES THE COMMUTED VALUE OF ANY PRESENT OR FUTURE INTEREST AND THE COMMUTED VALUE OF AMOUNTS PAYABLE UNDER ANY TRUST, LIFE INSURANCE SETTLEMENT OPTION, ANNUITY CONTRACT, PUBLIC OR PRIVATE PENSION, DISABILITY COMPENSATION, DEATH BENEFIT OR RETIREMENT PLAN, OR ANY SIMILAR ARRANGEMENT, EXCLUSIVE OF THE FEDERAL SOCIAL SECURITY SYSTEM.

(3) **Overlapping application - no double inclusion.** IN CASE OF OVERLAPPING APPLICATION TO THE SAME PROPERTY OF THE PROVISIONS OF SECTION 15-11-205, 15-11-206, OR 15-11-207, THE PROPERTY IS INCLUDED IN THE AUGMENTED ESTATE UNDER THE PROVISION YIELDING THE HIGHEST VALUE AND UNDER ONLY ONE OVERLAPPING PROVISION IF THEY ALL YIELD THE SAME VALUE.

**15-11-209. [Similar to 15-11-203] Sources from which elective-share payable.**

(1) **Elective-share amount only.** (a) IN A PROCEEDING FOR AN ELECTIVE-SHARE, THE FOLLOWING ARE APPLIED FIRST TO SATISFY THE ELECTIVE-SHARE AMOUNT AND TO REDUCE OR ELIMINATE ANY CONTRIBUTIONS DUE FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS:

(I) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-204 (THE NET PROBATE ESTATE) WHICH PASS OR HAVE PASSED TO THE SURVIVING SPOUSE BY TESTATE OR INTESTATE SUCCESSION AND AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-206; AND

(II) THE MARITAL-PROPERTY PORTION OF AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-207 (THE SPOUSE'S PROPERTY).

(b) FOR THE PURPOSES OF THIS SUBSECTION (1), IF THE SURVIVING SPOUSE DISCLAIMS ANY PROPERTY, INCLUDING INTERESTS IN TRUST CREATED BY THE DECEDENT, SUCH PROPERTY SHALL NOT BE APPLIED UNDER THIS SUBSECTION (1) TO THE EXTENT THAT SUCH PROPERTY PASSES TO A PERSON OTHER THAN THE SURVIVING SPOUSE.

(2) **Marital-property portion.** THE MARITAL-PROPERTY PORTION UNDER SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION IS COMPUTED BY MULTIPLYING THE VALUE OF THE AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-207 BY THE PERCENTAGE OF THE AUGMENTED ESTATE SET FORTH IN THE SCHEDULE IN SECTION 15-11-203 (2) APPROPRIATE TO THE LENGTH OF TIME THE SPOUSE AND THE DECEDENT WERE

MARRIED TO EACH OTHER.

**(3) Unsatisfied balance - order of contribution.** If, AFTER THE APPLICATION OF SUBSECTION (1) OF THIS SECTION, THE ELECTIVE-SHARE AMOUNT IS NOT FULLY SATISFIED OR THE SURVIVING SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE-SHARE AMOUNT:

(a) AMOUNTS INCLUDED IN THE DECEDENT'S NET PROBATE ESTATE AFTER APPLICATION OF SUBSECTION (1) OF THIS SECTION AND IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS DESCRIBED IN SECTION 15-11-205 (3) (a) (DURING THE MARRIAGE AND THE TWO-YEAR PERIOD NEXT PRECEDING THE DECEDENT'S DEATH, THE DECEDENT'S INTEREST TERMINATED AND THE PROPERTY WAS TRANSFERRED TO SOMEONE OTHER THAN THE SPOUSE), AND IN SECTION 15-11-205 (3) (c) (ANY TRANSFER DURING THE SAME TWO-YEAR PERIOD BUT ONLY TO THE EXTENT THE TRANSFER EXCEEDED THE APPLICABLE GIFT TAX ANNUAL EXCLUSION) ARE APPLIED FIRST TO SATISFY THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE AMOUNT OR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT. THE DECEDENT'S NET PROBATE ESTATE AND THAT PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE SO APPLIED THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE AMOUNT OR FOR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS APPORTIONED AMONG THE RECIPIENTS OF THE DECEDENT'S NET PROBATE ESTATE AND OF THAT PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.

(b) If, AFTER THE APPLICATION OF SUBSECTION (1) OF THIS SECTION AND PARAGRAPH (a) OF THIS SUBSECTION (3), THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS NOT FULLY SATISFIED, THE REMAINING PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IS SO APPLIED THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS APPORTIONED AMONG THE RECIPIENTS OF THAT REMAINING PORTION OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.

**(4) Unsatisfied balance treated as general pecuniary devise.** THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT AS DETERMINED UNDER SUBSECTION (3) OF THIS SECTION IS TREATED AS A GENERAL PECUNIARY DEVISE FOR PURPOSES OF SECTION 15-12-904, BUT INTEREST SHALL COMMENCE TO RUN ONE YEAR AFTER DETERMINATION OF THE ELECTIVE SHARE AMOUNT BY THE COURT. THIS SUBSECTION (4) APPLIES ONLY TO ESTATES OF DECEDENTS WHO DIE ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

**15-11-210. [Similar to 15-11-204] Personal liability of recipients.** (1) ONLY ORIGINAL RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, AND THE DONEES OF THE RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, TO THE EXTENT THE DONEES HAVE THE PROPERTY OR ITS PROCEEDS, ARE LIABLE TO MAKE A PROPORTIONAL CONTRIBUTION TOWARD SATISFACTION OF THE SURVIVING SPOUSE'S ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE AMOUNT. A PERSON LIABLE TO MAKE A CONTRIBUTION MAY CHOOSE TO GIVE UP THE PROPORTIONAL PART OF THE DECEDENT'S NONPROBATE TRANSFERS TO HIM OR HER OR TO PAY THE VALUE OF THE AMOUNT FOR WHICH HE OR SHE IS LIABLE.

(2) IF ANY SECTION OR ANY PART OF ANY SECTION OF THIS PART 2 IS PREEMPTED BY ANY FEDERAL LAW OTHER THAN THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED, WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT INCLUDED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, A PERSON, WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT IS OBLIGATED TO RETURN THAT PAYMENT, ITEM OF PROPERTY, OR BENEFIT OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THAT PAYMENT OR THE VALUE OF THAT ITEM OF PROPERTY OR BENEFIT, AS PROVIDED IN SECTION 15-11-209, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THAT SECTION OR PART OF THAT SECTION NOT PREEMPTED.

(3) A BONA FIDE PURCHASER WHO PURCHASES PROPERTY FROM A RECIPIENT OR WHO RECEIVES A PAYMENT OR OTHER ITEM OF PROPERTY IN PARTIAL OR FULL SATISFACTION OF A LEGALLY ENFORCEABLE OBLIGATION, IS NEITHER OBLIGATED UNDER THIS PART 2 TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT NOR LIABLE UNDER THIS PART 2 FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THE ITEM OF PROPERTY OR BENEFIT.

**15-11-211. [Similar to 15-11-205] Proceeding for elective-share - time limit.**

(1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE ELECTION MUST BE MADE BY FILING IN THE COURT AND MAILING OR DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A PETITION FOR THE ELECTIVE-SHARE WITHIN NINE MONTHS AFTER THE DATE OF THE DECEDENT'S DEATH OR WITHIN SIX MONTHS AFTER THE PROBATE OF THE DECEDENT'S WILL, WHICHEVER LIMITATION LATER EXPIRES. THE SURVIVING SPOUSE MUST GIVE WRITTEN NOTICE OF THE TIME AND PLACE SET FOR HEARING TO PERSONS INTERESTED IN THE ESTATE AND TO THE DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE WHOSE INTERESTS WILL BE ADVERSELY AFFECTED BY THE TAKING OF THE ELECTIVE-SHARE.

(2) WITHIN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE SURVIVING SPOUSE MAY PETITION THE COURT FOR AN EXTENSION OF TIME FOR MAKING AN ELECTION. IF, WITHIN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE SPOUSE GIVES NOTICE OF THE PETITION TO ALL PERSONS INTERESTED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, THE COURT, FOR CAUSE SHOWN BY THE SURVIVING SPOUSE, MAY EXTEND THE TIME FOR ELECTION.

(3) IF THE SPOUSE MAKES AN ELECTION BY FILING A PETITION FOR THE ELECTIVE-SHARE MORE THAN NINE MONTHS AFTER THE DECEDENT'S DEATH, THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE NOT INCLUDED WITHIN THE AUGMENTED ESTATE UNLESS THE SPOUSE HAD FILED A PETITION FOR EXTENSION PRIOR TO THE EXPIRATION OF THE NINE-MONTH PERIOD AND THE COURT GRANTED THE EXTENSION.

(4) THE SURVIVING SPOUSE MAY WITHDRAW HIS OR HER DEMAND FOR AN ELECTIVE-SHARE AT ANY TIME BEFORE ENTRY OF A FINAL DETERMINATION BY THE COURT. WRITTEN NOTICE OF SUCH WITHDRAWAL MUST BE GIVEN TO PERSONS INTERESTED IN THE ESTATE AND THE DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE WHOSE INTERESTS MAY BE ADVERSELY AFFECTED BY THE TAKING OF THE ELECTIVE-SHARE.

(5) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE THE

ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS AND SHALL ORDER ITS PAYMENT FROM THE ASSETS OF THE AUGMENTED ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER SECTIONS 15-11-209 AND 15-11-210. IF IT APPEARS THAT A FUND OR PROPERTY INCLUDED IN THE AUGMENTED ESTATE HAS NOT COME INTO THE POSSESSION OF THE PERSONAL REPRESENTATIVE OR HAS BEEN DISTRIBUTED BY THE PERSONAL REPRESENTATIVE, THE COURT NEVERTHELESS SHALL FIX THE LIABILITY OF ANY PERSON WHO HAS ANY INTEREST IN THE FUND OR PROPERTY OR WHO HAS POSSESSION THEREOF, WHETHER AS TRUSTEE OR OTHERWISE. THE PROCEEDING MAY BE MAINTAINED AGAINST FEWER THAN ALL PERSONS AGAINST WHOM RELIEF COULD BE SOUGHT, BUT NO PERSON IS SUBJECT TO CONTRIBUTION IN ANY GREATER AMOUNT THAN HE OR SHE WOULD HAVE BEEN UNDER SECTIONS 15-11-209 AND 15-11-210 HAD RELIEF BEEN SECURED AGAINST ALL PERSONS SUBJECT TO CONTRIBUTION.

(6) AN ORDER OR JUDGMENT OF THE COURT MAY BE ENFORCED AS NECESSARY IN SUIT FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS OF THIS STATE OR OTHER JURISDICTIONS.

**15-11-212. [Similar to 15-11-206] Right of election personal to surviving spouse - incapacitated surviving spouse. (1) Surviving spouse must be living at time of election.** THE RIGHT OF ELECTION MAY BE EXERCISED ONLY BY A SURVIVING SPOUSE WHO IS LIVING WHEN THE PETITION FOR THE ELECTIVE-SHARE IS FILED IN THE COURT UNDER SECTION 15-11-211. IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING SPOUSE PERSONALLY, IT MAY BE EXERCISED ON THE SURVIVING SPOUSE'S BEHALF BY HIS OR HER CONSERVATOR, GUARDIAN, OR AGENT UNDER THE AUTHORITY OF A POWER OF ATTORNEY.

(2) **Incapacitated surviving spouse.** IF THE ELECTION IS EXERCISED ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON, THE COURT MUST SET ASIDE THAT PORTION OF THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS DUE FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS UNDER SECTION 15-11-209 (1) AND (3) AND MUST APPOINT A TRUSTEE TO ADMINISTER THAT PROPERTY FOR THE SUPPORT OF THE SURVIVING SPOUSE. FOR THE PURPOSES OF THIS SUBSECTION (2), AN ELECTION ON BEHALF OF A SURVIVING SPOUSE BY AN AGENT UNDER A DURABLE POWER OF ATTORNEY IS PRESUMED TO BE ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON. THE TRUSTEE MUST ADMINISTER THE TRUST IN ACCORDANCE WITH THE FOLLOWING TERMS AND SUCH ADDITIONAL TERMS AS THE COURT DETERMINES APPROPRIATE:

(a) EXPENDITURES OF INCOME AND PRINCIPAL MAY BE MADE IN THE MANNER, WHEN, AND TO THE EXTENT THAT THE TRUSTEE DETERMINES SUITABLE AND PROPER FOR THE SURVIVING SPOUSE'S SUPPORT, WITHOUT COURT ORDER BUT WITH REGARD TO OTHER SUPPORT, INCOME, AND PROPERTY OF THE SURVIVING SPOUSE AND BENEFITS OF MEDICAL OR OTHER FORMS OF ASSISTANCE FROM ANY STATE OR FEDERAL GOVERNMENT OR GOVERNMENTAL AGENCY FOR WHICH THE SURVIVING SPOUSE MUST QUALIFY ON THE BASIS OF NEED;

(b) DURING THE SURVIVING SPOUSE'S INCAPACITY, NEITHER THE SURVIVING SPOUSE NOR ANYONE ACTING ON BEHALF OF THE SURVIVING SPOUSE HAS A POWER TO TERMINATE THE TRUST, BUT IF THE SURVIVING SPOUSE REGAINS CAPACITY, THE

SURVIVING SPOUSE THEN ACQUIRES THE POWER TO TERMINATE THE TRUST AND ACQUIRE FULL OWNERSHIP OF THE TRUST PROPERTY FREE OF TRUST, BY DELIVERING TO THE TRUSTEE A WRITING SIGNED BY THE SURVIVING SPOUSE DECLARING THE TERMINATION; AND

(c) UPON THE SURVIVING SPOUSE'S DEATH, THE TRUSTEE SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING ORDER:

(I) UNDER THE RESIDUARY CLAUSE, IF ANY, OF THE WILL OF THE PREDECEASED SPOUSE AGAINST WHOM THE ELECTIVE-SHARE WAS TAKEN, AS IF THAT PREDECEASED SPOUSE DIED IMMEDIATELY AFTER THE SURVIVING SPOUSE; OR

(II) TO THAT PREDECEASED SPOUSE'S HEIRS UNDER SECTION 15-11-711.

**15-11-213. [Similar to 15-11-207] Waiver of right to elect and of other rights.**

(1) ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S., MADE ON OR AFTER JULY 1, 2014, IS UNENFORCEABLE UNLESS THE AFFIRMATION, MODIFICATION, OR WAIVER IS CONTAINED IN A PREMARITAL OR MARITAL AGREEMENT, AS DEFINED IN SECTION 14-2-302, C.R.S., THAT IS ENFORCEABLE UNDER PART 3 OF ARTICLE 2 OF TITLE 14, C.R.S.

(2) ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR OBLIGATION MADE BEFORE JULY 1, 2014, IS GOVERNED BY THE LAW IN EFFECT AT THE TIME THE AFFIRMATION, MODIFICATION, OR WAIVER WAS MADE.

**15-11-214. [Similar to 15-11-208] Protection of payors and other third parties.**

(1) ALTHOUGH UNDER THIS PART 2, A PAYMENT, ITEM OF PROPERTY, OR OTHER BENEFIT IS INCLUDED IN THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT OR FOR HAVING TAKEN ANY OTHER ACTION IN GOOD-FAITH RELIANCE ON THE VALIDITY OF A GOVERNING INSTRUMENT, UPON REQUEST AND SATISFACTORY PROOF OF THE DECEDENT'S DEATH, BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE FROM THE SURVIVING SPOUSE OR THE SPOUSE'S REPRESENTATIVE OF AN INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. A PAYOR OR OTHER THIRD PARTY IS LIABLE FOR PAYMENTS MADE OR OTHER ACTIONS TAKEN AFTER THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE OF AN INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. ANY FORM OR SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) OF THIS SECTION IS NOT SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT.

(2) A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED MUST BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION. NOTICE TO A SALES REPRESENTATIVE OF THE PAYOR OR OTHER

THIRD PARTY DOES NOT CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY.

(3) UPON RECEIPT OF A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED, A PAYOR OR OTHER THIRD PARTY MAY PAY ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT ANY ITEM OF PROPERTY HELD BY IT TO OR WITH THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF NO PROCEEDINGS HAVE BEEN COMMENCED, TO OR WITH THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION DOES NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF NO PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY EVEN IF NO PROBATE PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT, TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO OR DEPOSITED WITH THE COURT.

(4) THE COURT SHALL HOLD THE FUNDS OR ITEM OF PROPERTY AND, UPON ITS DETERMINATION UNDER SECTION 15-11-211 (5), SHALL ORDER DISBURSEMENT IN ACCORDANCE WITH THE DETERMINATION. IF NO PETITION IS FILED IN THE COURT WITHIN THE SPECIFIED TIME UNDER SECTION 15-11-211 (1), OR, IF FILED, THE DEMAND FOR AN ELECTIVE-SHARE IS WITHDRAWN UNDER SECTION 15-11-211 (4), THE COURT SHALL ORDER DISBURSEMENT TO THE DESIGNATED BENEFICIARY. A FILING FEE, IF ANY, MAY BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT IN THE DISCRETION OF THE COURT. PAYMENTS OR TRANSFERS TO THE COURT OR DEPOSITS MADE INTO THE COURT DISCHARGE THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS FOR AMOUNTS SO PAID OR THE VALUE OF PROPERTY SO TRANSFERRED OR DEPOSITED.

(5) UPON PETITION TO THE COURT BY THE BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND SUBJECT TO CONDITIONS CONSISTENT WITH THIS SECTION.

**SECTION 3.** In Colorado Revised Statutes, 15-11-606, **amend** (1) (f) as follows:

**15-11-606. Nonademption of specified devises - unpaid proceeds of sale,**

**condemnation, or insurance - sale by conservator or agent.** (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and:

(f) ~~Unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by paragraphs (a) to (e) of this subsection~~ (1) IF NOT COVERED BY ANY OF PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (1), A GENERAL PECUNIARY DEVISE EQUAL TO THE VALUE AS OF ITS DATE OF DISPOSITION OF OTHER SPECIFICALLY DEVISED PROPERTY DISPOSED OF DURING THE TESTATOR'S LIFETIME, BUT ONLY TO THE EXTENT IT IS ESTABLISHED THAT ADEPTION WOULD BE INCONSISTENT WITH THE TESTATOR'S MANIFESTED PLAN OF DISTRIBUTION OR THAT AT THE TIME THE WILL WAS MADE, THE DATE OF DISPOSITION, OR OTHERWISE, THE TESTATOR DID NOT INTEND ADEPTION OF THE DEVISE.

**SECTION 4.** In Colorado Revised Statutes, **amend** 15-12-102 as follows:

**15-12-102. Necessity of order of probate for will.** Except as provided in sections 15-12-901, 15-12-1201, 15-13-204, and 15-13-205 and in part 13 of this article, to be effective to prove the transfer of any property or to nominate an ~~executor~~ A PERSONAL REPRESENTATIVE, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

**SECTION 5.** In Colorado Revised Statutes, 15-12-805, **amend** (1) introductory portion and (1) (g) as follows:

**15-12-805. Classification of claims.** (1) ~~The PERSONAL REPRESENTATIVE SHALL PAY~~ allowed claims against the estate of a decedent ~~shall be paid by the personal representative~~ in the following order:

(g) Any child support ~~claims~~ OBLIGATIONS of the decedent that were due and unpaid at death in accordance with a valid court order or agreement of record in which the decedent was a party, and any future child support obligations of the decedent as determined by the court;

**SECTION 6.** In Colorado Revised Statutes, 15-12-1201, **amend** (1) introductory portion, (1) (a), and (1) (d); and **add** (1.5), (3.5), (3.7), and (4) as follows:

**15-12-1201. Collection of personal property by affidavit.** (1) At any time ten or more days after the date of death of a decedent, any person indebted to the decedent or having possession of any personal property, including but not limited to funds on deposit at, OR ANY CONTENTS OF A SAFE DEPOSIT BOX AT, any financial institution; tangible personal property; or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall pay or deliver such property to a person claiming to be ~~the~~ A SUCCESSOR OF THE DECEDENT OR ACTING ON BEHALF OF A SUCCESSOR of the decedent upon being presented an affidavit made by or on behalf of the successor stating: ~~that~~

(a) The fair market value of property owned by the decedent and subject to

disposition by will or intestate succession at the time of his or her death, wherever that property is located, less liens and encumbrances, does not exceed ~~sixty thousand dollars~~ TWICE THE AMOUNT SET FORTH IN SECTION 15-11-403, AS ADJUSTED BY SECTION 15-10-112;

(d) Each ~~claiming successor~~ PERSON is entitled to payment or delivery of the property ~~in the respective proportion~~ AS set forth in such affidavit.

(1.5) AN INSTRUMENT OR OTHER PROPERTY THAT IS PAYABLE OR DELIVERABLE TO A DECEDENT OR TO THE ESTATE OF A DECEDENT IS CONSIDERED PROPERTY OF THE DECEDENT SUBJECT TO SUBSECTION (1) OF THIS SECTION. A SUCCESSOR OR PERSON ACTING ON BEHALF OF A SUCCESSOR UNDER SUBSECTION (1) OF THIS SECTION MAY ENDORSE AN INSTRUMENT THAT IS SO PAYABLE AND COLLECT SUCH AMOUNT.

(3.5) IN THE EVENT THAT AN INSTRUMENT OR OTHER EVIDENCE OF AN INDEBTEDNESS IS SECURED BY REAL PROPERTY, IN ORDER TO ACT ON BEHALF OF THE HOLDER OF THE INDEBTEDNESS SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER SECURITY DOCUMENT, THE PERSON MAKING THE AFFIDAVIT MUST RECORD, WITH THE CLERK AND RECORDER OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED, A COPY OF THE AFFIDAVIT AND A COPY OF THE DECEDENT'S DEATH CERTIFICATE OR A VERIFICATION OF DEATH DOCUMENT.

(3.7) PURSUANT TO SECTION 15-10-111 (1) (a) (I) AND (1) (b), A SAFE DEPOSIT BOX MAY BE ENTERED AND ITS CONTENTS SHALL BE DELIVERED UPON PRESENTATION OF AN AFFIDAVIT MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(4) THE DUTIES OWED TO A SUCCESSOR BY A PERSON ACTING ON BEHALF OF THE SUCCESSOR IN THE MAKING, PRESENTATION, OR OTHER USE OF AN AFFIDAVIT UNDER THIS SECTION ARE THE SAME AS THE DUTIES OF AN AGENT TO THE AGENT'S PRINCIPAL, AND THE BREACH OF SUCH DUTY IS SUBJECT TO THE SAME REMEDIES AS ARE AVAILABLE UNDER THE LAW OF THIS STATE WITH RESPECT TO AN AGENT SUBJECT TO PART 7 OF ARTICLE 14 OF THIS TITLE, INCLUDING BUT NOT LIMITED TO THE REMEDIES AVAILABLE UNDER PART 5 OF ARTICLE 10 OF THIS TITLE. A SUCCESSOR WHO MAKES, PRESENTS, OR USES SUCH AN AFFIDAVIT WHERE THERE ARE TWO OR MORE SUCCESSORS IS A PERSON ACTING ON BEHALF OF EACH OTHER SUCCESSOR.

**SECTION 7.** In Colorado Revised Statutes, **amend** 15-12-1202 as follows:

**15-12-1202. Effect of affidavit.** (1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he OR SHE dealt with a personal representative of the decedent. He OR SHE is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of ~~their~~ THE right OF PERSONS ENTITLED THERETO in a proceeding brought for the purpose by or on behalf of ~~the~~ SUCH persons. ~~entitled thereto.~~

(3) IF A PROOF OF RIGHT HAS BEEN ESTABLISHED IN A PROCEEDING UNDER SUBSECTION (2) OF THIS SECTION, ANY PERSON TO WHOM AN AFFIDAVIT WAS DELIVERED AND WHO REFUSED, WITHOUT REASONABLE CAUSE, TO PAY, DELIVER, TRANSFER, OR ISSUE ANY PERSONAL PROPERTY OR EVIDENCE THEREOF BELONGING TO THE DECEDENT, AS PROVIDED IN SECTION 15-12-1201, SHALL BE LIABLE FOR ALL COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, INCURRED BY OR ON BEHALF OF THE PERSONS ENTITLED THERETO. THE PERSON TO WHOM AN AFFIDAVIT WAS DELIVERED BEARS THE BURDEN OF PROVING REASONABLE CAUSE BY A PREPONDERANCE OF THE EVIDENCE.

(4) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

**SECTION 8.** In Colorado Revised Statutes, 15-14-724, **amend** (1) (g) (I) as follows:

**15-14-724. Authority that requires specific grant - grant of general authority.** (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(g) Exercise:

(I) A power held by the principal in a fiduciary capacity THAT THE PRINCIPAL HAS THE AUTHORITY TO DELEGATE;

**SECTION 9.** In Colorado Revised Statutes, 15-16-702, **amend** (3) (b) as follows:

**15-16-702. Revocation or amendment of revocable trust.** (3) The settlor may revoke or amend a revocable trust:

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by any other method manifesting clear and convincing evidence of the settlor's intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust. A PROVISION IN A TRUST SPECIFYING A METHOD TO REVOKE OR AMEND THE TRUST DOES NOT MAKE THE SPECIFIED METHOD EXCLUSIVE UNLESS THE SPECIFIED METHOD IS REFERRED TO AS THE "SOLE", "EXCLUSIVE", OR "ONLY" METHOD OF REVOKING OR AMENDING THE TRUST OR THE PROVISION INCLUDES SIMILAR LANGUAGE MANIFESTING THE SETTLOR'S INTENT THAT THE TRUST MAY NOT BE REVOKED OR AMENDED BY ANY OTHER METHOD.

**SECTION 10.** In Colorado Revised Statutes, **add** part 8 to article 16 of title 15 as follows:

PART 8  
DIRECTED TRUSTEES

**15-16-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACTION", WITH RESPECT TO AN ACT OF A FIDUCIARY, INCLUDES A FAILURE TO ACT.

(2) "EXCLUDED TRUSTEE" MEANS ANY TRUSTEE THAT, UNDER THE TERMS OF THE GOVERNING INSTRUMENT, IS PRECLUDED FROM EXERCISING CERTAIN POWERS, WHICH POWERS MAY BE EXERCISED ONLY BY A TRUST ADVISOR DESIGNATED BY THE GOVERNING INSTRUMENT.

(3) "INVESTMENT DECISION" MEANS A FIDUCIARY DECISION REGARDING THE RETENTION, PURCHASE, SALE, EXCHANGE, TENDER, OR OTHER TRANSACTION AFFECTING THE OWNERSHIP OF OR RIGHTS IN ANY PROPERTY OWNED BY A TRUST AND, WITH RESPECT TO NON-PUBLICLY TRADED INVESTMENTS, THE DETERMINATION OF THE VALUE OF SUCH INVESTMENTS.

(4) "GOVERNING INSTRUMENT" MEANS A WILL, TRUST AGREEMENT OR DECLARATION, OR A COURT ORDER APPOINTING A TRUST ADVISOR.

(5) "NON-INVESTMENT DECISION" MEANS A FIDUCIARY DECISION REGARDING THE DISTRIBUTION, ADMINISTRATION, OR MANAGEMENT OF ANY PROPERTY OWNED BY A TRUST, OTHER THAN AN INVESTMENT DECISION.

(6) "QUALIFIED BENEFICIARY" HAS THE SAME MEANING SET FORTH IN SECTION 15-1-402 (10.5).

(7) "SETTLOR" INCLUDES A GRANTOR, A TRUSTOR, AND A TESTATOR.

(8) (a) "TRUST ADVISOR" MEANS A PERSON WHO IS:

(I) ACTING IN A FIDUCIARY CAPACITY; AND

(II) VESTED UNDER A GOVERNING INSTRUMENT WITH FIDUCIARY POWERS TO DIRECT A TRUSTEE'S ACTUAL OR PROPOSED INVESTMENT DECISIONS OR NON-INVESTMENT DECISIONS.

(b) A PERSON WHO HOLDS A NONFIDUCIARY POWER OVER A TRUST, INCLUDING A POWER OF APPOINTMENT AS DEFINED IN SECTION 15-2-102, IS NOT SUBJECT TO THE PROVISIONS OF THIS PART 8, REGARDLESS OF WHETHER HE OR SHE IS DESCRIBED AS A "TRUST ADVISOR" WITHIN A GOVERNING INSTRUMENT.

(9) "WILLFUL MISCONDUCT" MEANS INTENTIONAL WRONGDOING AND NOT MERE NEGLIGENCE, GROSS NEGLIGENCE, OR RECKLESSNESS.

**15-16-802. Default rules for directed trusts.** EXCLUDING THE REQUIREMENT THAT A TRUST ADVISOR ACT IN A FIDUCIARY CAPACITY, THE PROVISIONS OF THIS PART 8 ARE DEFAULT RULES THAT APPLY TO ANY TRUST FOR WHICH A TRUST

ADVISOR IS THEN ACTING, AND SUCH RULES MAY BE EXPANDED, RESTRICTED, ELIMINATED, OR OTHERWISE ALTERED BY THE PROVISIONS OF A GOVERNING INSTRUMENT.

**15-16-803. Trust advisor and excluded trustee.** (1) A TRUST ADVISOR WITH POWER OVER INVESTMENT DECISIONS IS SUBJECT TO THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF THIS TITLE. A TRUST ADVISOR WHO HAS SPECIAL SKILLS OR EXPERTISE OR WHO IS NAMED A TRUST ADVISOR IN RELIANCE UPON HIS OR HER REPRESENTATION THAT HE OR SHE HAS SPECIAL SKILLS OR EXPERTISE HAS A DUTY TO USE THOSE SPECIAL SKILLS OR EXPERTISE.

(2) THE POWERS AND DUTIES OF A TRUST ADVISOR, AND THE EXTENT OF SUCH POWERS AND DUTIES, ARE ESTABLISHED BY THE GOVERNING INSTRUMENT, AND THE EXERCISE OR NONEXERCISE OF SUCH POWERS AND DUTIES IS BINDING ON ALL OTHER PERSONS.

(3) THE POWERS AND DUTIES OF A TRUST ADVISOR MAY INCLUDE, BUT ARE NOT LIMITED TO:

(a) THE EXERCISE OF A SPECIFIC POWER OR THE PERFORMANCE OF A SPECIFIC DUTY OR FUNCTION THAT WOULD NORMALLY BE PERFORMED BY A TRUSTEE;

(b) THE DIRECTION OF A TRUSTEE'S ACTIONS REGARDING ALL INVESTMENT DECISIONS OR ONE OR MORE SPECIFIC INVESTMENT DECISIONS; OR

(c) THE DIRECTION OF A TRUSTEE'S ACTIONS RELATING TO ONE OR MORE SPECIFIC NON-INVESTMENT DECISIONS, INCLUDING THE EXERCISE OF DISCRETION TO MAKE DISTRIBUTIONS TO BENEFICIARIES.

(4) IF A GOVERNING INSTRUMENT PROVIDES THAT A TRUSTEE MUST FOLLOW THE DIRECTION OF A TRUST ADVISOR AND THE TRUSTEE ACTS IN ACCORDANCE WITH SUCH DIRECTION, THE TRUSTEE IS AN EXCLUDED TRUSTEE.

**15-16-804. Appointment and removal of trust advisors.** IF A GOVERNING INSTRUMENT DOES NOT INCLUDE EXPRESS PROVISIONS FOR THE REMOVAL OF A TRUST ADVISOR BUT DOES INCLUDE PROVISIONS FOR THE REMOVAL OF ONE OR MORE TRUSTEES, THE PROVISIONS FOR THE REMOVAL OF TRUSTEES ALSO GOVERN THE REMOVAL OF ANY THEN-SERVING TRUST ADVISOR.

**15-16-805. No duty to review actions of trust advisor.** AN EXCLUDED TRUSTEE HAS NO DUTY TO REVIEW OR MONITOR THE ACTIONS OF A TRUST ADVISOR.

**15-16-806. Duty to communicate - no duty to warn.** (1) A TRUSTEE HAS A DUTY TO KEEP A TRUST ADVISOR REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST WITH RESPECT TO ANY SPECIFIC DUTY OR FUNCTION BEING PERFORMED BY THE TRUST ADVISOR TO THE EXTENT THAT PROVIDING SUCH INFORMATION IS REASONABLY NECESSARY FOR THE TRUST ADVISOR TO PERFORM THE DUTY OR FUNCTION. A TRUST ADVISOR REQUESTING OR RECEIVING ANY SUCH INFORMATION FROM A TRUSTEE HAS NO DUTY TO MONITOR THE CONDUCT OF THE TRUSTEE OR TO PROVIDE ADVICE TO OR CONSULT WITH THE TRUSTEE.

(2) A TRUST ADVISOR HAS A DUTY TO KEEP THE TRUSTEE AND ANY OTHER TRUST ADVISORS REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST WITH RESPECT TO ALL DUTIES OR FUNCTIONS BEING PERFORMED BY THE TRUST ADVISOR TO THE EXTENT THAT PROVIDING SUCH INFORMATION IS REASONABLY NECESSARY FOR THE TRUSTEE AND ANY OTHER TRUST ADVISORS TO PERFORM THEIR DUTIES OR FUNCTIONS. A TRUSTEE REQUESTING OR RECEIVING ANY SUCH INFORMATION FROM A TRUST ADVISOR HAS NO DUTY TO MONITOR THE CONDUCT OF THE TRUST ADVISOR OR TO PROVIDE ADVICE TO OR CONSULT WITH THE TRUST ADVISOR.

(3) A TRUST ADVISOR HAS A DUTY TO KEEP THE BENEFICIARIES OF A TRUST REASONABLY INFORMED OF THE TRUST AND ITS ADMINISTRATION, TO THE EXTENT THAT SUCH INFORMATION RELATES TO A DUTY OR FUNCTION BEING PERFORMED BY THE TRUST ADVISOR. THIS DUTY IS GOVERNED BY SECTION 15-16-303.

(4) A TRUST ADVISOR HAS NO DUTY TO COMMUNICATE WITH OR WARN ANY BENEFICIARY OR THIRD PARTY CONCERNING ANY ACTION OR ACTIONS TAKEN BY ANY OTHER TRUST ADVISOR OR TRUSTEE.

**15-16-807. Excluded trustee not liable for action of trust advisor.** (1) IF AN EXCLUDED TRUSTEE IS REQUIRED TO FOLLOW THE DIRECTION OF A TRUST ADVISOR AND THE EXCLUDED TRUSTEE ACTS IN ACCORDANCE WITH SUCH DIRECTION, THE EXCLUDED TRUSTEE IS NOT LIABLE FOR ANY CAUSE OF ACTION RESULTING FROM THE ACT OF COMPLYING THEREWITH, EXCEPT IN CASES OF WILLFUL MISCONDUCT ON THE PART OF THE EXCLUDED TRUSTEE SO DIRECTED.

(2) AN EXCLUDED TRUSTEE HAS NO LIABILITY FOR ANY ACTION OF A TRUST ADVISOR.

**15-16-808. Power of trust advisor to act after death or incapacity of settlor.** THE POWER AND AUTHORITY OF A TRUST ADVISOR DOES NOT LAPSE AT THE DEATH OR INCAPACITY OF THE SETTLOR.

**15-16-809. Trust advisor subject to district court jurisdiction.** BY ACCEPTING APPOINTMENT TO SERVE AS A TRUST ADVISOR OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THE STATE OF COLORADO, THE TRUST ADVISOR IS SUBJECT TO THE JURISDICTION OF THE COURTS OF THE STATE OF COLORADO EVEN IF OTHER RELATED AGREEMENTS PROVIDE OTHERWISE, AND THE TRUST ADVISOR MAY BE MADE A PARTY TO ANY ACTION OR PROCEEDING IF ISSUES RELATE TO A DECISION OR ACTION OF THE TRUST ADVISOR.

**SECTION 11.** In Colorado Revised Statutes, **repeal** 15-1-307 as follows:

**15-1-307. Powers of investment in persons other than fiduciary.** ~~Whenever an instrument under which a fiduciary is acting reserves to the settlor or vests in an advisory or investment committee or in any other person or persons including one or more other fiduciaries, to the exclusion of the fiduciary or to the exclusion of one or more of several fiduciaries, authority to direct the making or retention of any investment, the excluded fiduciary or fiduciaries shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.~~

**SECTION 12.** In Colorado Revised Statutes, 15-10-112, **amend** (2) as follows:

**15-10-112. Cost of living adjustment of certain dollar amounts.** (2) The dollar amounts stated in sections 15-11-102, ~~15-11-201 (2)~~, 15-11-202 (2), 15-11-403, AND 15-11-405 ~~and 15-12-1201~~ apply to the estate of a decedent who died during or after 2010, but for the estate of a decedent who died after 2011, these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If the amount of the increase or decrease produced by the computation is not a multiple of one thousand dollars, then the amount of the increase or decrease is rounded down if it is an increase, or rounded up if it is a decrease, to the next multiple of one thousand dollars, but for the purpose of section 15-11-405, the periodic installment amount is the lump-sum amount divided by twelve. If the CPI for 2010 is changed by the bureau of labor statistics, the reference base index must be revised using the rebasing factor reported by the bureau of labor statistics, or other comparable data if a rebasing factor is not reported.

**SECTION 13.** In Colorado Revised Statutes, 15-12-916, **amend** (2) as follows:

**15-12-916. Apportionment of estate taxes.** (2) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate, subject to the exceptions specified in this section. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for tax apportionment purposes. In all instances not involving a spouse unprovided for in a will as provided in section 15-11-301 or an election by a surviving spouse as provided in ~~section 15-11-201~~ SECTION 15-11-202, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the method described in the will or other dispositive instrument controls. In instances involving such a spouse unprovided for in a will or election, if the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the apportionment of tax to the spouse unprovided for in the will or to the surviving spouse shall be in accordance with the method described in this code, and the apportionment of tax to the remaining persons interested in the estate shall be in accordance with the method described in the will or other dispositive instrument.

**SECTION 14.** In Colorado Revised Statutes, 15-10-201, **amend** (3) 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:

(3) "Augmented estate" means the estate described in ~~section 15-11-202~~ SECTIONS 15-11-203, 15-11-204, 15-11-205, 15-11-206, 15-11-207, AND 15-11-208.

**SECTION 15.** In Colorado Revised Statutes, 15-15-101, **amend** (5) and (6) as follows:

**15-15-101. Nonprobate transfers on death.** (5) Payment of the benefits due or the transfer of the rights given in accordance with a designation under the provisions of subsection (2) of this section shall not cause such benefits or rights to be included in the property administered as part of the designator's estate under this code or to be subject to the claims of his or her creditors, except as provided in ~~sections 15-11-202~~ PART 2 OF ARTICLE 11 OF THIS TITLE and IN SECTION 15-15-103.

(6) Except as otherwise provided in ~~sections 15-11-202~~ PART 2 OF ARTICLE 11 OF THIS TITLE and IN SECTION 15-15-103, the express provisions of the trust agreement, declaration of trust, or testamentary trust shall control and regulate the extent to which the benefits or rights payable or transferable under such a designation shall be subject to the debts of the designator if paid or transferred under the provisions of subsection (2) of this section.

**SECTION 16.** In Colorado Revised Statutes, 38-33.3-316, **amend** (2) (c) as follows:

**38-33.3-316. Lien for assessments.** (2) (c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section ~~15-11-201~~ 15-11-202, C.R.S.

**SECTION 17. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 6, 2014, if adjournment sine die is on May 7, 2014); 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 such period, 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 the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2014