

OFFICE OF LEGISLATIVE LEGAL SERVICES

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AGENDA

Colorado Commission on Uniform State Laws

November 30, 2015, 1:00 p.m.

Committee Room: HCR 0112

1. Call to Order
2. Proposed 2016 legislative agenda
 - a. Uniform Fiduciary Access to Digital Assets, LLS 16-0126
 - b. Uniform Voidable Transactions Act Amendments (2014), LLS 16-0127
 - c. Uniform Recognition of Substitute Decision-Making Documents Act, LLS 16-0128
 - d. Revised Uniform Athlete Agents Act, LLS 16-0129
 - e. Uniform Commercial Real Estate Receivership Act, LLS 16-0131
 - f. Revised Uniform Residential Landlord and Tenant Act, LLS 16-0132
 - g. Uniform Trust Decanting Act, LLS 16-0133
 - h. Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, LLS 16-0134
3. Election of Chairperson for 2016
4. Next CCUSL meeting
5. Other business and public comment

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

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11.16.15

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LLS NO. 16-0126.01 Jerry Barry x4341

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Revised Uniform Fiduciary Access To Digital Assets"

A BILL FOR AN ACT

101 CONCERNING THE "REVISED UNIFORM FIDUCIARY ACCESS TO
102 DIGITAL ASSETS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Revised Uniform Fiduciary Access to Digital Assets Act", as amended, as Colorado law. The bill sets forth the conditions under which certain fiduciaries may access:

- The content of an electronic communication of a principal or decedent;

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 INFORMATION THAT IDENTIFIES EACH PERSON WITH WHICH A USER HAS
2 HAD AN ELECTRONIC COMMUNICATION, THE TIME AND DATE OF THE
3 COMMUNICATION, AND THE ELECTRONIC ADDRESS OF THE PERSON.

4 (5) "CONSERVATOR" MEANS A PERSON APPOINTED BY A COURT TO
5 MANAGE THE ESTATE OF A LIVING INDIVIDUAL. THE TERM INCLUDES A
6 LIMITED CONSERVATOR.

7 (6) "CONTENT OF AN ELECTRONIC COMMUNICATION" MEANS
8 INFORMATION CONCERNING THE SUBSTANCE OR MEANING OF THE
9 COMMUNICATION WHICH:

10 (a) HAS BEEN SENT OR RECEIVED BY A USER;

11 (b) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN
12 ELECTRONIC-COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED OR
13 MAINTAINED BY A CUSTODIAN PROVIDING A REMOTE-COMPUTING SERVICE
14 TO THE PUBLIC; AND

15 (c) IS NOT READILY ACCESSIBLE TO THE PUBLIC.

16 (7) "COURT" MEANS THE DISTRICT COURT, EXCEPT IN THE CITY
17 AND COUNTY OF DENVER WHERE IT IS THE PROBATE COURT.

18 (8) "CUSTODIAN" MEANS A PERSON THAT CARRIES, MAINTAINS,
19 PROCESSES, RECEIVES, OR STORES A DIGITAL ASSET OF A USER.

20 (9) "DESIGNATED RECIPIENT" MEANS A PERSON CHOSEN BY A USER
21 USING AN ON-LINE TOOL TO ADMINISTER DIGITAL ASSETS OF THE USER.

22 (10) "DIGITAL ASSET" MEANS AN ELECTRONIC RECORD IN WHICH
23 AN INDIVIDUAL HAS A RIGHT OR INTEREST. THE TERM DOES NOT INCLUDE
24 AN UNDERLYING ASSET OR LIABILITY UNLESS THE ASSET OR LIABILITY IS
25 ITSELF AN ELECTRONIC RECORD.

26 (11) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
27 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,

1 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

2 (12) "ELECTRONIC COMMUNICATION" HAS THE MEANING SET
3 FORTH IN 18 U.S.C. SEC. 2510(12), AS AMENDED.

4 (13) "ELECTRONIC-COMMUNICATION SERVICE" MEANS A
5 CUSTODIAN THAT PROVIDES TO A USER THE ABILITY TO SEND OR RECEIVE
6 AN ELECTRONIC COMMUNICATION.

7 (14) "FIDUCIARY" MEANS AN ORIGINAL, ADDITIONAL, OR
8 SUCCESSOR PERSONAL REPRESENTATIVE, CONSERVATOR, AGENT, OR
9 TRUSTEE.

10 (15) "INFORMATION" MEANS DATA, TEXT, IMAGES, VIDEOS,
11 SOUNDS, CODES, COMPUTER PROGRAMS, SOFTWARE, DATABASES, OR THE
12 LIKE.

13 (16) "ON-LINE TOOL" MEANS AN ELECTRONIC SERVICE PROVIDED
14 BY A CUSTODIAN THAT ALLOWS THE USER, IN AN AGREEMENT DISTINCT
15 FROM THE TERMS-OF-SERVICE AGREEMENT BETWEEN THE CUSTODIAN AND
16 USER, TO PROVIDE DIRECTIONS FOR DISCLOSURE OR NONDISCLOSURE OF
17 DIGITAL ASSETS TO A THIRD PERSON.

18 (17) "PERSON" MEANS AN INDIVIDUAL; ESTATE; BUSINESS OR
19 NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR
20 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER
21 LEGAL ENTITY.

22 (18) "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR,
23 ADMINISTRATOR, SPECIAL ADMINISTRATOR, OR PERSON THAT PERFORMS
24 SUBSTANTIALLY THE SAME FUNCTION UNDER LAW OF THIS STATE OTHER
25 THAN THIS PART 15.

26 (19) "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AN
27 AGENT AUTHORITY TO ACT IN THE PLACE OF A PRINCIPAL.

1 (20) "PRINCIPAL" MEANS AN INDIVIDUAL WHO GRANTS AUTHORITY
2 TO AN AGENT IN A POWER OF ATTORNEY.

3 (21) "PROTECTED PERSON" MEANS AN INDIVIDUAL FOR WHOM A
4 CONSERVATOR HAS BEEN APPOINTED. THE TERM INCLUDES AN INDIVIDUAL
5 FOR WHOM AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR
6 IS PENDING.

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

10 (23) "REMOTE-COMPUTING SERVICE" MEANS A CUSTODIAN THAT
11 PROVIDES TO A USER COMPUTER-PROCESSING SERVICES OR THE STORAGE
12 OF DIGITAL ASSETS BY MEANS OF AN ELECTRONIC COMMUNICATIONS
13 SYSTEM, AS DEFINED IN 18 U.S.C. SEC. 2510(14), AS AMENDED.

14 (24) "TERMS-OF-SERVICE AGREEMENT" MEANS AN AGREEMENT
15 THAT CONTROLS THE RELATIONSHIP BETWEEN A USER AND A CUSTODIAN.

16 (25) "TRUSTEE" MEANS A FIDUCIARY WITH LEGAL TITLE TO
17 PROPERTY UNDER AN AGREEMENT OR DECLARATION THAT CREATES A
18 BENEFICIAL INTEREST IN ANOTHER. THE TERM INCLUDES A SUCCESSOR
19 TRUSTEE.

20 (26) "USER" MEANS A PERSON THAT HAS AN ACCOUNT WITH A
21 CUSTODIAN.

22 (27) "WILL" INCLUDES A CODICIL, TESTAMENTARY INSTRUMENT
23 THAT ONLY APPOINTS AN EXECUTOR, AND INSTRUMENT THAT REVOKES OR
24 REVISES A TESTAMENTARY INSTRUMENT.

25 **15-1-1503. Applicability.** (1) THIS PART 15 APPLIES TO:

26 (a) A FIDUCIARY ACTING UNDER A WILL OR POWER OF ATTORNEY
27 EXECUTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15;

1 (b) A PERSONAL REPRESENTATIVE ACTING FOR A DECEDENT WHO
2 DIED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15;

3 (c) A CONSERVATORSHIP PROCEEDING COMMENCED BEFORE, ON,
4 OR AFTER THE EFFECTIVE DATE OF THIS PART 15; AND

5 (d) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON, OR
6 AFTER THE EFFECTIVE DATE OF THIS PART 15.

7 (2) THIS PART 15 APPLIES TO A CUSTODIAN IF THE USER RESIDES IN
8 THIS STATE OR RESIDED IN THIS STATE AT THE TIME OF THE USER'S DEATH.

9 (3) THIS PART 15 DOES NOT APPLY TO A DIGITAL ASSET OF AN
10 EMPLOYER USED BY AN EMPLOYEE IN THE ORDINARY COURSE OF THE
11 EMPLOYER'S BUSINESS.

12 **15-1-1504. User direction for disclosure of digital assets.** (1) A
13 USER MAY USE AN ON-LINE TOOL TO DIRECT THE CUSTODIAN TO DISCLOSE
14 OR TO NOT DISCLOSE SOME OR ALL OF THE USER'S DIGITAL ASSETS,
15 INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS. IF THE
16 ON-LINE TOOL ALLOWS THE USER TO MODIFY OR DELETE A DIRECTION AT
17 ALL TIMES, A DIRECTION REGARDING DISCLOSURE USING AN ON-LINE TOOL
18 OVERRIDES A CONTRARY DIRECTION BY THE USER IN A WILL, TRUST,
19 POWER OF ATTORNEY, OR OTHER RECORD.

20 (2) IF A USER HAS NOT USED AN ON-LINE TOOL TO GIVE DIRECTION
21 UNDER SUBSECTION (1) OF THIS SECTION OR IF THE CUSTODIAN HAS NOT
22 PROVIDED AN ON-LINE TOOL, THE USER MAY ALLOW OR PROHIBIT IN A
23 WILL, TRUST, POWER OF ATTORNEY, OR OTHER RECORD, DISCLOSURE TO A
24 FIDUCIARY OF SOME OR ALL OF THE USER'S DIGITAL ASSETS, INCLUDING
25 THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY
26 THE USER.

27 (3) A USER'S DIRECTION UNDER SUBSECTION (1) OR (2) OF THIS

1 SECTION OVERRIDES A CONTRARY PROVISION IN A TERMS-OF-SERVICE
2 AGREEMENT THAT DOES NOT REQUIRE THE USER TO ACT AFFIRMATIVELY
3 AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS OF SERVICE.

4 **15-1-1505. Terms-of-service agreement.** (1) THIS PART 15 DOES
5 NOT CHANGE OR IMPAIR A RIGHT OF A CUSTODIAN OR A USER UNDER A
6 TERMS-OF-SERVICE AGREEMENT TO ACCESS AND USE DIGITAL ASSETS OF
7 THE USER.

8 (2) THIS PART 15 DOES NOT GIVE A FIDUCIARY ANY NEW OR
9 EXPANDED RIGHTS OTHER THAN THOSE HELD BY THE USER FOR WHOM, OR
10 FOR WHOSE ESTATE, THE FIDUCIARY ACTS OR REPRESENTS.

11 (3) A FIDUCIARY'S ACCESS TO DIGITAL ASSETS MAY BE MODIFIED
12 OR ELIMINATED BY A USER, BY FEDERAL LAW, OR BY A TERMS-OF-SERVICE
13 AGREEMENT IF THE USER HAS NOT PROVIDED DIRECTION UNDER SECTION
14 15-1-1504.

15 **15-1-1506. Procedure for disclosing digital assets.** (1) WHEN
16 DISCLOSING DIGITAL ASSETS OF A USER UNDER THIS PART 15, THE
17 CUSTODIAN MAY AT ITS SOLE DISCRETION:

18 (a) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT FULL ACCESS
19 TO THE USER'S ACCOUNT;

20 (b) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT PARTIAL
21 ACCESS TO THE USER'S ACCOUNT SUFFICIENT TO PERFORM THE TASKS WITH
22 WHICH THE FIDUCIARY OR DESIGNATED RECIPIENT IS CHARGED; OR

23 (c) PROVIDE A FIDUCIARY OR DESIGNATED RECIPIENT A COPY IN A
24 RECORD OF ANY DIGITAL ASSET THAT, ON THE DATE THE CUSTODIAN
25 RECEIVED THE REQUEST FOR DISCLOSURE, THE USER COULD HAVE
26 ACCESSED IF THE USER WERE ALIVE AND HAD FULL CAPACITY AND ACCESS
27 TO THE ACCOUNT.

1 (2) A CUSTODIAN MAY ASSESS A REASONABLE ADMINISTRATIVE
2 CHARGE FOR THE COST OF DISCLOSING DIGITAL ASSETS UNDER THIS PART
3 15.

4 (3) A CUSTODIAN NEED NOT DISCLOSE UNDER THIS PART 15 A
5 DIGITAL ASSET DELETED BY A USER.

6 (4) IF A USER DIRECTS OR A FIDUCIARY REQUESTS A CUSTODIAN TO
7 DISCLOSE UNDER THIS PART 15 SOME, BUT NOT ALL, OF THE USER'S DIGITAL
8 ASSETS, THE CUSTODIAN NEED NOT DISCLOSE THE ASSETS IF SEGREGATION
9 OF THE ASSETS WOULD IMPOSE AN UNDUE BURDEN ON THE CUSTODIAN. IF
10 THE CUSTODIAN BELIEVES THE DIRECTION OR REQUEST IMPOSES AN UNDUE
11 BURDEN, THE CUSTODIAN OR FIDUCIARY MAY SEEK AN ORDER FROM THE
12 COURT TO DISCLOSE:

- 13 (a) A SUBSET LIMITED BY DATE OF THE USER'S DIGITAL ASSETS;
14 (b) ALL OF THE USER'S DIGITAL ASSETS TO THE FIDUCIARY OR
15 DESIGNATED RECIPIENT;
16 (c) NONE OF THE USER'S DIGITAL ASSETS; OR
17 (d) ALL OF THE USER'S DIGITAL ASSETS TO THE COURT FOR REVIEW
18 IN CAMERA.

19 **15-1-1507. Disclosure of content of electronic communications**
20 **of deceased user.** (1) IF A DECEASED USER CONSENTED OR A COURT
21 DIRECTS DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS
22 OF THE USER, THE CUSTODIAN SHALL DISCLOSE TO THE PERSONAL
23 REPRESENTATIVE OF THE ESTATE OF THE USER THE CONTENT OF AN
24 ELECTRONIC COMMUNICATION SENT OR RECEIVED BY THE USER IF THE
25 REPRESENTATIVE GIVES THE CUSTODIAN:

- 26 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
27 ELECTRONIC FORM;

1 (b) A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE USER;

2 (c) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
3 REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR COURT ORDER;

4 (d) UNLESS THE USER PROVIDED DIRECTION USING AN ON-LINE
5 TOOL, A COPY OF THE USER'S WILL, TRUST, POWER OF ATTORNEY, OR
6 OTHER RECORD EVIDENCING THE USER'S CONSENT TO DISCLOSURE OF THE
7 CONTENT OF ELECTRONIC COMMUNICATIONS; AND

8 (e) IF REQUESTED BY THE CUSTODIAN:

9 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
10 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
11 IDENTIFY THE USER'S ACCOUNT;

12 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

13 (III) A FINDING BY THE COURT THAT:

14 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN,
15 IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (I) OF
16 THIS PARAGRAPH (e);

17 (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC
18 COMMUNICATIONS OF THE USER WOULD NOT VIOLATE 18 U.S.C. SEC. 2701,
19 ET SEQ., AS AMENDED; 47 U.S.C. SEC. 222, AS AMENDED; OR OTHER
20 APPLICABLE LAW;

21 (C) UNLESS THE USER PROVIDED DIRECTION USING AN ON-LINE
22 TOOL, THE USER CONSENTED TO DISCLOSURE OF THE CONTENT OF
23 ELECTRONIC COMMUNICATIONS; OR

24 (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC
25 COMMUNICATIONS OF THE USER IS REASONABLY NECESSARY FOR
26 ADMINISTRATION OF THE ESTATE.

27 **15-1-1508. Disclosure of other digital assets of deceased user.**

1 (1) UNLESS THE USER PROHIBITED DISCLOSURE OF DIGITAL ASSETS OR
2 THE COURT DIRECTS OTHERWISE, A CUSTODIAN SHALL DISCLOSE TO THE
3 PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED USER A
4 CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE
5 USER AND DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC
6 COMMUNICATIONS, OF THE USER, IF THE REPRESENTATIVE GIVES THE
7 CUSTODIAN:

8 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
9 ELECTRONIC FORM;

10 (b) A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE USER;

11 (c) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
12 REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR COURT ORDER; AND

13 (d) IF REQUESTED BY THE CUSTODIAN:

14 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
15 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
16 IDENTIFY THE USER'S ACCOUNT;

17 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER;

18 (III) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE USER'S
19 DIGITAL ASSETS IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE
20 ESTATE; OR

21 (IV) A FINDING BY THE COURT THAT:

22 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN,
23 IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (I) OF
24 THIS PARAGRAPH (d); OR

25 (B) DISCLOSURE OF THE USER'S DIGITAL ASSETS IS REASONABLY
26 NECESSARY FOR ADMINISTRATION OF THE ESTATE.

27 **15-1-1509. Disclosure of content of electronic communications**

1 **of principal.** (1) TO THE EXTENT A POWER OF ATTORNEY EXPRESSLY
2 GRANTS AN AGENT AUTHORITY OVER THE CONTENT OF ELECTRONIC
3 COMMUNICATIONS SENT OR RECEIVED BY THE PRINCIPAL AND UNLESS
4 DIRECTED OTHERWISE BY THE PRINCIPAL OR THE COURT, A CUSTODIAN
5 SHALL DISCLOSE TO THE AGENT THE CONTENT IF THE AGENT GIVES THE
6 CUSTODIAN:

7 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
8 ELECTRONIC FORM;

9 (b) AN ORIGINAL OR COPY OF THE POWER OF ATTORNEY EXPRESSLY
10 GRANTING THE AGENT AUTHORITY OVER THE CONTENT OF ELECTRONIC
11 COMMUNICATIONS OF THE PRINCIPAL;

12 (c) A CERTIFICATION BY THE AGENT, UNDER PENALTY OF PERJURY,
13 THAT THE POWER OF ATTORNEY IS IN EFFECT; AND

14 (d) IF REQUESTED BY THE CUSTODIAN:

15 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
16 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
17 IDENTIFY THE PRINCIPAL'S ACCOUNT; OR

18 (II) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

19 **15-1-1510. Disclosure of other digital assets of principal.**

20 (1) UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE
21 PRINCIPAL, OR PROVIDED BY A POWER OF ATTORNEY, A CUSTODIAN SHALL
22 DISCLOSE TO AN AGENT WITH SPECIFIC AUTHORITY OVER DIGITAL ASSETS
23 OR GENERAL AUTHORITY TO ACT ON BEHALF OF A PRINCIPAL A CATALOGUE
24 OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE PRINCIPAL
25 AND DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC
26 COMMUNICATIONS, OF THE PRINCIPAL IF THE AGENT GIVES THE
27 CUSTODIAN:

1 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
2 ELECTRONIC FORM;

3 (b) AN ORIGINAL OR A COPY OF THE POWER OF ATTORNEY THAT
4 GIVES THE AGENT SPECIFIC AUTHORITY OVER DIGITAL ASSETS OR GENERAL
5 AUTHORITY TO ACT ON BEHALF OF THE PRINCIPAL;

6 (c) A CERTIFICATION BY THE AGENT, UNDER PENALTY OF PERJURY,
7 THAT THE POWER OF ATTORNEY IS IN EFFECT; AND

8 (d) IF REQUESTED BY THE CUSTODIAN:

9 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
10 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
11 IDENTIFY THE PRINCIPAL'S ACCOUNT; OR

12 (II) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

13 **15-1-1511. Disclosure of digital assets held in trust when**
14 **trustee is original user.** UNLESS OTHERWISE ORDERED BY THE COURT OR
15 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT
16 IS AN ORIGINAL USER OF AN ACCOUNT ANY DIGITAL ASSET OF THE
17 ACCOUNT HELD IN TRUST, INCLUDING A CATALOGUE OF ELECTRONIC
18 COMMUNICATIONS OF THE TRUSTEE AND THE CONTENT OF ELECTRONIC
19 COMMUNICATIONS.

20 **15-1-1512. Disclosure of contents of electronic**
21 **communications held in trust when trustee not original user.**

22 (1) UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER,
23 OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE
24 THAT IS NOT AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN
25 ELECTRONIC COMMUNICATION SENT OR RECEIVED BY AN ORIGINAL OR
26 SUCCESSOR USER AND CARRIED, MAINTAINED, PROCESSED, RECEIVED, OR
27 STORED BY THE CUSTODIAN IN THE ACCOUNT OF THE TRUST IF THE

1 TRUSTEE GIVES THE CUSTODIAN:

2 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
3 ELECTRONIC FORM;

4 (b) A CERTIFIED COPY OF THE TRUST INSTRUMENT OR A
5 REGISTRATION OF THE TRUST UNDER PART 1 OF ARTICLE 16 OF THIS TITLE
6 THAT INCLUDES CONSENT TO DISCLOSURE OF THE CONTENT OF
7 ELECTRONIC COMMUNICATIONS TO THE TRUSTEE;

8 (c) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF
9 PERJURY, THAT THE TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY
10 ACTING TRUSTEE OF THE TRUST; AND

11 (d) IF REQUESTED BY THE CUSTODIAN:

12 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
13 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
14 IDENTIFY THE TRUST'S ACCOUNT; OR

15 (II) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

16 **15-1-1513. Disclosure of other digital assets held in trust when**
17 **trustee not original user.** (1) UNLESS OTHERWISE ORDERED BY THE
18 COURT, DIRECTED BY THE USER, OR PROVIDED IN A TRUST, A CUSTODIAN
19 SHALL DISCLOSE, TO A TRUSTEE THAT IS NOT AN ORIGINAL USER OF AN
20 ACCOUNT, A CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR
21 RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND STORED, CARRIED, OR
22 MAINTAINED BY THE CUSTODIAN IN AN ACCOUNT OF THE TRUST AND ANY
23 DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC
24 COMMUNICATIONS, IN WHICH THE TRUST HAS A RIGHT OR INTEREST IF THE
25 TRUSTEE GIVES THE CUSTODIAN:

26 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
27 ELECTRONIC FORM;

1 (b) A CERTIFIED COPY OF THE TRUST INSTRUMENT OR A
2 REGISTRATION OF THE TRUST UNDER PART 1 OF ARTICLE 16 OF THIS TITLE;

3 (c) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF
4 PERJURY, THAT THE TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY
5 ACTING TRUSTEE OF THE TRUST; AND

6 (d) IF REQUESTED BY THE CUSTODIAN:

7 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
8 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
9 IDENTIFY THE TRUST'S ACCOUNT; OR

10 (II) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

11 **15-1-1514. Disclosure of digital assets to conservator of**

12 **protected person.** (1) AFTER AN OPPORTUNITY FOR A HEARING UNDER
13 ARTICLE 14 OF THIS TITLE, THE COURT MAY GRANT A CONSERVATOR
14 ACCESS TO THE DIGITAL ASSETS OF A PROTECTED PERSON.

15 (2) UNLESS OTHERWISE ORDERED BY THE COURT OR DIRECTED BY
16 THE USER, A CUSTODIAN SHALL DISCLOSE TO A CONSERVATOR THE
17 CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY A
18 PROTECTED PERSON AND ANY DIGITAL ASSETS, OTHER THAN THE CONTENT
19 OF ELECTRONIC COMMUNICATIONS, IN WHICH THE PROTECTED PERSON HAS
20 A RIGHT OR INTEREST IF THE CONSERVATOR GIVES THE CUSTODIAN:

21 (a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR
22 ELECTRONIC FORM;

23 (b) A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE
24 CONSERVATOR AUTHORITY OVER THE DIGITAL ASSETS OF THE PROTECTED
25 PERSON; AND

26 (c) IF REQUESTED BY THE CUSTODIAN:

27 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE

1 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
2 IDENTIFY THE ACCOUNT OF THE PROTECTED PERSON; OR

3 (II) EVIDENCE LINKING THE ACCOUNT TO THE PROTECTED PERSON.

4 (3) A CONSERVATOR WITH GENERAL AUTHORITY TO MANAGE THE
5 ASSETS OF A PROTECTED PERSON MAY REQUEST A CUSTODIAN OF THE
6 DIGITAL ASSETS OF THE PROTECTED PERSON TO SUSPEND OR TERMINATE
7 AN ACCOUNT OF THE PROTECTED PERSON FOR GOOD CAUSE. A REQUEST
8 MADE UNDER THIS SECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY
9 OF THE COURT ORDER GIVING THE CONSERVATOR AUTHORITY OVER THE
10 PROTECTED PERSON'S PROPERTY.

11 **15-1-1515. Fiduciary duty and authority.** (1) THE LEGAL
12 DUTIES IMPOSED ON A FIDUCIARY CHARGED WITH MANAGING TANGIBLE
13 PROPERTY APPLY TO THE MANAGEMENT OF DIGITAL ASSETS, INCLUDING:

- 14 (a) THE DUTY OF CARE;
15 (b) THE DUTY OF LOYALTY; AND
16 (c) THE DUTY OF CONFIDENTIALITY.

17 (2) A FIDUCIARY'S AUTHORITY WITH RESPECT TO A DIGITAL ASSET
18 OF A USER:

- 19 (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1-1504, IS
20 SUBJECT TO THE APPLICABLE TERMS OF SERVICE;
21 (b) IS SUBJECT TO OTHER APPLICABLE LAW, INCLUDING COPYRIGHT
22 LAW;
23 (c) IS LIMITED BY THE SCOPE OF THE FIDUCIARY'S DUTIES; AND
24 (d) MAY NOT BE USED TO IMPERSONATE THE USER.

25 (3) A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF A
26 DECEDENT, PROTECTED PERSON, PRINCIPAL, OR SETTLOR HAS THE RIGHT
27 TO ACCESS ANY DIGITAL ASSET IN WHICH THE DECEDENT, PROTECTED

1 PERSON, PRINCIPAL, OR SETTLOR HAD A RIGHT OR INTEREST AND THAT IS
2 NOT HELD BY A CUSTODIAN OR SUBJECT TO A TERMS-OF-SERVICE
3 AGREEMENT.

4 (4) A FIDUCIARY ACTING WITHIN THE SCOPE OF THE FIDUCIARY'S
5 DUTIES IS AN AUTHORIZED USER OF THE PROPERTY OF THE DECEDENT,
6 PROTECTED PERSON, PRINCIPAL, OR SETTLOR FOR THE PURPOSE OF
7 APPLICABLE COMPUTER-FRAUD AND UNAUTHORIZED-COMPUTER-ACCESS
8 LAWS, INCLUDING ARTICLE 5.5 OF TITLE 18, C.R.S.

9 (5) A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL
10 PROPERTY OF A DECEDENT, PROTECTED PERSON, PRINCIPAL, OR SETTLOR:

11 (a) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL
12 ASSET STORED IN IT; AND

13 (b) IS AN AUTHORIZED USER FOR THE PURPOSE OF
14 COMPUTER-FRAUD AND UNAUTHORIZED-COMPUTER-ACCESS LAWS,
15 INCLUDING ARTICLE 5.5 OF TITLE 18, C.R.S.

16 (6) A CUSTODIAN MAY DISCLOSE INFORMATION IN AN ACCOUNT TO
17 A FIDUCIARY OF THE USER WHEN THE INFORMATION IS REQUIRED TO
18 TERMINATE AN ACCOUNT USED TO ACCESS DIGITAL ASSETS LICENSED TO
19 THE USER.

20 (7) A FIDUCIARY OF A USER MAY REQUEST A CUSTODIAN TO
21 TERMINATE THE USER'S ACCOUNT. A REQUEST FOR TERMINATION MUST BE
22 IN WRITING, IN EITHER PHYSICAL OR ELECTRONIC FORM, AND
23 ACCOMPANIED BY:

24 (a) IF THE USER IS DECEASED, A CERTIFIED COPY OF THE DEATH
25 CERTIFICATE OF THE USER;

26 (b) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
27 REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR COURT ORDER,

1 COURT ORDER, POWER OF ATTORNEY, OR TRUST GIVING THE FIDUCIARY
2 AUTHORITY OVER THE ACCOUNT; AND

3 (c) IF REQUESTED BY THE CUSTODIAN:

4 (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
5 SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
6 IDENTIFY THE USER'S ACCOUNT;

7 (II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

8 (III) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC
9 ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION
10 SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c).

11 **15-1-1516. Custodian compliance and immunity.** (1) NOT
12 LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION REQUIRED
13 UNDER SECTIONS 15-1-1507 TO 15-1-1514, A CUSTODIAN SHALL COMPLY
14 WITH A REQUEST UNDER THIS PART 15 FROM A FIDUCIARY OR DESIGNATED
15 RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF
16 THE CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED
17 RECIPIENT MAY APPLY TO THE COURT FOR AN ORDER DIRECTING
18 COMPLIANCE.

19 (2) AN ORDER UNDER SUBSECTION (1) OF THIS SECTION DIRECTING
20 COMPLIANCE MUST CONTAIN A FINDING THAT COMPLIANCE IS NOT IN
21 VIOLATION OF 18 U.S.C. SEC. 2702, AS AMENDED.

22 (3) A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR
23 DISCLOSURE OR TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS PART
24 15.

25 (4) A CUSTODIAN MAY DENY A REQUEST UNDER THIS PART 15
26 FROM A FIDUCIARY OR DESIGNATED RECIPIENT FOR DISCLOSURE OF
27 DIGITAL ASSETS OR TO TERMINATE AN ACCOUNT IF THE CUSTODIAN IS

1 AWARE OF ANY LAWFUL ACCESS TO THE ACCOUNT FOLLOWING THE
2 RECEIPT OF THE FIDUCIARY'S REQUEST.

3 (5) THIS PART 15 DOES NOT LIMIT A CUSTODIAN'S ABILITY TO
4 OBTAIN, OR TO REQUIRE A FIDUCIARY OR DESIGNATED RECIPIENT
5 REQUESTING DISCLOSURE OR TERMINATION UNDER THIS PART 15 TO
6 OBTAIN, A COURT ORDER THAT:

7 (a) SPECIFIES THAT AN ACCOUNT BELONGS TO THE PROTECTED
8 PERSON OR PRINCIPAL;

9 (b) SPECIFIES THAT THERE IS SUFFICIENT CONSENT FROM THE
10 PROTECTED PERSON OR PRINCIPAL TO SUPPORT THE REQUESTED
11 DISCLOSURE; AND

12 (c) CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS
13 PART 15.

14 (6) A CUSTODIAN AND ITS OFFICERS, EMPLOYEES, AND AGENTS ARE
15 IMMUNE FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH
16 IN COMPLIANCE WITH THIS PART 15.

17 **15-1-1517. Uniformity of application and construction.** IN
18 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
19 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
20 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

21 **15-1-1518. Relation to electronic signatures in global and**
22 **national commerce act.** THIS PART 15 MODIFIES, LIMITS, OR SUPERSEDES
23 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
24 COMMERCE ACT", 15 U.S.C. SEC. 7001, ET SEQ., BUT DOES NOT MODIFY,
25 LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C. SEC.
26 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
27 DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SEC. 7003(b).

1 **SECTION 2. Inclusion of official comments.** The revisor shall
2 include in the publication of the "Revised Uniform Fiduciary Access to
3 Digital assets Act", as nonstatutory matter, following each section of the
4 part, the full text of the official comments to that section contained in the
5 official volume containing the 2015 official text of "Revised Uniform
6 Fiduciary Access to Digital Assets Act" issued by the Uniform Law
7 Commission, with any changes in the official comments or Colorado
8 comments to correspond to Colorado changes in the uniform act. The
9 revisor of statutes shall prepare the comments for approval by the
10 committee on legal services for publication.
11 <{*Does the Commission want a safety clause or the 90-day petition*
12 *language?*>

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
10.23.15

DRAFT

LLS NO. 16-0127.01 Bart Miller x2173

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Colorado Uniform Voidable Transactions Act"

A BILL FOR AN ACT

101 **CONCERNING THE ENACTMENT OF AMENDMENTS TO THE "COLORADO**
102 **UNIFORM FRAUDULENT TRANSFER ACT" RECOMMENDED BY**
103 **THE UNIFORM LAW COMMISSION, AND, IN CONNECTION**
104 **THEREWITH, CHANGING THE NAME OF THE "COLORADO**
105 **UNIFORM FRAUDULENT TRANSFER ACT" TO THE "COLORADO**
106 **UNIFORM VOIDABLE TRANSACTIONS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Colorado Commission on Uniform State Laws. In 2014 the

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

uniform law commission approved a set of amendments to the "Colorado Uniform Fraudulent Transfer Act" (act). The amendments changed the title of the act to the "Colorado Uniform Voidable Transactions Act". The amendment project was instituted to address a small number of narrowly defined issues and was not a comprehensive revision. The principal features of the amendments are:

- **Choice of law.** The amendments add a new provision that sets forth a choice of law rule applicable to claims for relief of the nature governed by the act.
- **Evidentiary matters.** New provisions add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims for relief and defenses under the act.
- **Deletion of the special definition of "insolvency" for partnerships.** The act as originally written set forth a special definition of "insolvency" applicable to partnerships. The amendments delete the original language with the result that the general definition of insolvency now applies to partnerships. One reason for this change is that the original provision gave a partnership full credit for the net worth of each of its general partners. That makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes. A more fundamental reason is that the general definition of insolvency does not credit a nonpartnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. There is no good reason to define insolvency differently for a partnership debtor than for a nonpartnership debtor whose debts are guaranteed by contract.
- **Defenses.** The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee as follows:
 - As originally written, the act created a complete defense to an action for a fraudulent transfer (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to the act the further requirement that the reasonably equivalent value must be given to the debtor.
 - The act created, in a provision derived from the

federal "Bankruptcy Code", a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from a person. The amendments clarify the meaning of the defense by rewording it to follow more closely the wording of the federal "Bankruptcy Code", which is substantially unchanged as of 2014. Among other things, the amendments make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for a money judgment.

- The act as originally written created a defense to an action for a fraudulent transfer or to avoid a transfer if the transfer results from enforcement of a security interest in compliance with the secured transactions provisions of the "Uniform Commercial Code". The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").
- **Series organizations.** A new provision of the act provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act only, even if it is not treated as a person for other purposes. This change responds to the emergence of the series organization as a significant form of business organization and the need to recognize this form of business organization only for purposes of this act.
- **Medium neutrality.** In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record" and related changes have been made.
- **Style.** The amendments make a number of stylistic changes that are not intended to change the meaning of the act. For example, the amended act consistently uses the word "voidable" to denote a transfer or obligation for which the act provides a remedy. As originally written, the act sometimes inconsistently used the word "fraudulent". No change in meaning is intended. Likewise, the retitling of the act is not intended to change its meaning.

1 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-8-101 as
2 follows:

3 **38-8-101. Short title.** THE SHORT TITLE OF this article, ~~shall be~~
4 ~~known and may be~~ WHICH WAS FORMERLY cited as the "Colorado
5 Uniform Fraudulent Transfer Act", IS THE "COLORADO UNIFORM
6 VOIDABLE TRANSACTIONS ACT".

7 **SECTION 2.** In Colorado Revised Statutes, 38-8-102, **amend** (1)
8 (a) introductory portion, (1) (a) (II), (1) (b) introductory portion, (1) (b)
9 (I), (1) (d), (3), and (10); and **add** (7.5), (9.5), (11.5), and (12.5) as
10 follows:

11 **38-8-102. Definitions.** As used in this article, unless the context
12 otherwise requires:

13 (1) "Affiliate" means:

14 (a) A person ~~who~~ THAT directly or indirectly owns, controls, or
15 holds with power to vote twenty percent or more of the outstanding
16 voting securities of the debtor, other than a person ~~who~~ THAT holds the
17 securities:

18 (II) Solely to secure a debt, if the person has not IN FACT exercised
19 the power to vote;

20 (b) A corporation, twenty percent or more of whose outstanding
21 voting securities are directly or indirectly owned, controlled, or held with
22 power to vote, by the debtor or a person ~~who~~ THAT directly or indirectly
23 owns, controls, or holds with power to vote, twenty percent or more of the
24 outstanding voting securities of the debtor, other than a person ~~who~~ THAT
25 holds the securities:

26 (I) As a fiduciary or agent without sole DISCRETIONARY power to
27 vote the securities; or

1 (d) A person ~~who~~ THAT operates the debtor's business under a
2 lease or other agreement or controls substantially all of the debtor's assets.

3 (3) "Claim", EXCEPT AS USED IN "CLAIM FOR RELIEF", means a
4 right to payment, whether or not the right is reduced to judgment,
5 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
6 undisputed, legal, equitable, secured, or unsecured.

7 (7.5) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
8 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
9 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

10 (9.5) "ORGANIZATION" MEANS A PERSON OTHER THAN AN
11 INDIVIDUAL.

12 (10) "Person" means an individual, ~~partnership, corporation,~~
13 ~~association, organization, government or governmental subdivision or~~
14 ~~agency, business trust,~~ estate, ~~trust or any other~~ BUSINESS OR NONPROFIT
15 ENTITY, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL
16 SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER legal ~~or~~
17 ~~commercial~~ entity.

18 (11.5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
19 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
20 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

21 (12.5) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
22 ADOPT A RECORD:

23 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

24 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
25 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

26 **SECTION 3.** In Colorado Revised Statutes, 38-8-103, **amend** (1)
27 and (2); and **repeal** (3) as follows:

1 **38-8-103. Insolvency.** (1) A debtor is insolvent if, AT A FAIR
2 VALUATION, the sum of the debtor's debts is greater than ~~all~~ THE SUM of
3 the debtor's assets. ~~at a fair valuation.~~

4 (2) A debtor ~~who~~ THAT is generally not paying ~~his~~ THE DEBTOR'S
5 debts as they become due, OTHER THAN AS A RESULT OF A BONA FIDE
6 DISPUTE, is presumed to be insolvent. THE PRESUMPTION IMPOSES ON THE
7 PARTY AGAINST WHICH THE PRESUMPTION IS DIRECTED THE BURDEN OF
8 PROVING THAT THE NONEXISTENCE OF INSOLVENCY IS MORE PROBABLE
9 THAN ITS EXISTENCE.

10 (3) ~~A partnership is insolvent under subsection (1) of this section~~
11 ~~if the sum of the partnership's debts is greater than the aggregate of all of~~
12 ~~the partnership's assets, at a fair valuation, and the sum of the excess of~~
13 ~~the value of each general partner's nonpartnership assets over the partner's~~
14 ~~nonpartnership debts.~~

15 **SECTION 4.** In Colorado Revised Statutes, 38-8-104, **amend** (2)
16 as follows:

17 **38-8-104. Value.** (2) For the purposes of sections ~~38-8-105~~
18 38-8-105 (1) (b) and 38-8-106, a person gives a reasonably equivalent
19 value if the person acquires an interest of the debtor in an asset pursuant
20 to a regularly conducted, noncollusive sale, foreclosing on assets subject
21 to a lien, or pursuant to the execution of a power of sale for the
22 acquisition or disposition of the interest of the debtor upon default under
23 a mortgage, deed of trust, or security agreement.

24 **SECTION 5.** In Colorado Revised Statutes, 38-8-105, **amend** (1)
25 introductory portion, (1) (b) (II), and (2) (k); and **add** (3) as follows:

26 **38-8-105. Transfer or obligation voidable as to present or**
27 **future creditor.** (1) A transfer made or obligation incurred by a debtor

1 is ~~fraudulent~~ VOIDABLE as to a creditor, whether the creditor's claim arose
2 before or after the transfer was made or the obligation was incurred, if the
3 debtor made the transfer or incurred the obligation:

4 (b) Without receiving a reasonably equivalent value in exchange
5 for the transfer or obligation, and the debtor:

6 (II) Intended to incur, or believed or reasonably should have
7 believed that ~~he~~ THE DEBTOR would incur, debts beyond ~~his~~ THE DEBTOR'S
8 ability to pay as they became due.

9 (2) In determining actual intent under paragraph (a) of subsection
10 (1) of this section, consideration may be given, among other factors, to
11 whether:

12 (k) The debtor transferred the essential assets of the business to
13 a lienor ~~who~~ THAT transferred the assets to an insider of the debtor.

14 (3) A CREDITOR MAKING A CLAIM FOR RELIEF UNDER SUBSECTION
15 (1) OF THIS SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE
16 CLAIM FOR RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

17 **SECTION 6.** In Colorado Revised Statutes, **amend** 38-8-106 as
18 follows:

19 **38-8-106. Transfer or obligation voidable as to present**
20 **creditor.** (1) A transfer made or obligation incurred by a debtor is
21 ~~fraudulent~~ VOIDABLE as to a creditor whose claim arose before the
22 transfer was made or the obligation was incurred if the debtor made the
23 transfer or incurred the obligation without receiving a reasonably
24 equivalent value in exchange for the transfer or obligation and the debtor
25 was insolvent at that time or the debtor became insolvent as a result of the
26 transfer or obligation.

27 (2) A transfer made by a debtor is ~~fraudulent~~ VOIDABLE as to a

1 creditor whose claim arose before the transfer was made if the transfer
2 was made to an insider for an antecedent debt, the debtor was insolvent
3 at that time, and the insider had reasonable cause to believe that the
4 debtor was insolvent.

5 (3) SUBJECT TO SECTION 38-8-103 (2), A CREDITOR MAKING A
6 CLAIM FOR RELIEF UNDER SUBSECTION (1) OR (2) OF THIS SECTION HAS THE
7 BURDEN OF PROVING THE ELEMENTS OF THE CLAIM FOR RELIEF BY A
8 PREPONDERANCE OF THE EVIDENCE.

9 **SECTION 7.** In Colorado Revised Statutes, 38-8-107, **amend** (1)
10 (a) (I), (4), and (5) (b) as follows:

11 **38-8-107. When transfer is made or obligation is incurred.**

12 (1) For the purposes of this article:

13 (a) A transfer is made:

14 (I) With respect to an asset that is real property other than a
15 fixture, but including the interest of a seller or purchaser under a contract
16 for the sale of the asset, when the transfer is so far perfected that a
17 good-faith purchaser of the asset from the debtor against ~~whom~~ WHICH
18 applicable law permits the transfer to be perfected cannot acquire an
19 interest in the asset that is superior to the interest of the transferee; and

20 (4) A transfer is not made until the debtor has acquired rights in
21 the asset transferred; AND

22 (5) An obligation is incurred:

23 (b) If evidenced by a ~~writing~~ RECORD, when the ~~writing~~ executed
24 RECORD SIGNED by the obligor is delivered to or for the benefit of the
25 obligee.

26 **SECTION 8.** In Colorado Revised Statutes, 38-8-108, **amend** (1)
27 (b) and (1) (c) as follows:

1 **38-8-108. Remedies of creditor.** (1) In an action for relief
2 against a transfer or obligation under this article, a creditor, subject to the
3 limitations in section 38-8-109, may obtain:

4 (b) An attachment or other provisional remedy against the asset
5 transferred or other property of the transferee ~~in accordance with the~~
6 ~~procedure prescribed by the Colorado rules of civil procedure~~ IF
7 AVAILABLE UNDER APPLICABLE LAW;

8 (c) With respect to a transfer made or obligation incurred that is
9 ~~fraudulent~~ VOIDABLE under section 38-8-105 (1) (a), a judgment for one
10 and one-half the value of the asset transferred or for one and one-half the
11 amount necessary to satisfy the creditor's claim, whichever is less,
12 together with the creditor's actual costs; except that any judgment entered
13 against a person under this paragraph (c) is in lieu of, not in addition to,
14 a judgment against the same person under section 38-8-109 (2). No
15 judgment may be entered pursuant to this paragraph (c) against a person
16 other than the debtor unless that person also acts with wrongful intent as
17 defined in section 38-8-105 (1) (a); otherwise, judgment for money
18 damages against a person other than the debtor may be entered only as
19 provided in section 38-8-109. No judgment may be entered under this
20 paragraph (c) unless a court of competent jurisdiction enters or has
21 entered a judgment or order establishing the validity of the creditor's
22 claim against the debtor.

23 **SECTION 9.** In Colorado Revised Statutes, 38-8-109, **amend** (1),
24 (2), (4) (a), (4) (b), (5) (b), and (6) (a); and **add** (7) and (8) as follows:

25 **38-8-109. Defenses, liability, and protection of transferee or**
26 **obligee.** (1) A transfer or obligation is not voidable under section
27 38-8-105 (1) (a) against a person ~~who~~ THAT took in good faith and for a

1 reasonably equivalent value GIVEN THE DEBTOR or against any subsequent
2 transferee or obligee.

3 (2) TO THE EXTENT A TRANSFER IS AVOIDABLE IN AN ACTION BY A
4 CREDITOR UNDER SECTION 38-8-108 (1) (a), THE FOLLOWING RULES APPLY:

5 (a) Except as otherwise provided in this section, ~~to the extent a~~
6 ~~transfer is voidable in an action by a creditor under section 38-8-108 (1)~~
7 ~~(a)~~, the creditor may recover judgment for the value of the asset
8 transferred, as adjusted under subsection (3) of this section, or the amount
9 necessary to satisfy the creditor's claim, whichever is less. The judgment
10 may be entered against:

11 ~~(a)~~ (I) The first transferee of the asset or the person for whose
12 benefit the transfer was made; or

13 ~~(b)~~ (II) ~~Any subsequent~~ AN IMMEDIATE OR MEDIATE transferee OF
14 THE FIRST TRANSFEREE, other than:

15 (A) A good-faith transferee ~~or obligee who~~ THAT took for value;
16 ~~or from any subsequent transferee or obligee.~~

17 (B) AN IMMEDIATE OR MEDIATE GOOD-FAITH TRANSFEREE OF A
18 PERSON DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH
19 (II).

20 (b) RECOVERY PURSUANT TO SECTION 38-8-108 (1) (a) OR (2) OF
21 THIS SECTION OR FROM THE ASSET TRANSFERRED OR ITS PROCEEDS, BY
22 LEVY OR OTHERWISE, IS AVAILABLE ONLY AGAINST A PERSON DESCRIBED
23 IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

24 (4) Notwithstanding voidability of a transfer or an obligation
25 under this article, a good-faith transferee or obligee is entitled, to the
26 extent of the value given the debtor for the transfer or obligation, to:

27 (a) A lien on or a right to retain ~~any~~ AN interest in the asset

1 transferred;

2 (b) Enforcement of ~~any~~ AN obligation incurred; or

3 (5) A transfer is not voidable under section 38-8-105 (1) (b) or
4 38-8-106 if the transfer results from:

5 (b) Enforcement of a security interest in compliance with the
6 provisions of the "Uniform Commercial Code - Secured Transactions",
7 article 9 of title 4, C.R.S., OTHER THAN ACCEPTANCE OF COLLATERAL IN
8 FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES.

9 (6) A transfer is not voidable under section 38-8-106 (2):

10 (a) To the extent the insider gave new value to or for the benefit
11 of the debtor after the transfer was made, ~~unless~~ EXCEPT TO THE EXTENT
12 the new value was secured by a valid lien;

13 (7) THE FOLLOWING RULES DETERMINE THE BURDEN OF PROVING
14 MATTERS REFERRED TO IN THIS SECTION:

15 (a) A PARTY THAT SEEKS TO INVOKE SUBSECTION (1), (4), (5), OR
16 (6) OF THIS SECTION HAS THE BURDEN OF PROVING THE APPLICABILITY OF
17 THAT SUBSECTION.

18 (b) EXCEPT AS PROVIDED IN PARAGRAPHS (c) AND (d) OF THIS
19 SUBSECTION (7), THE CREDITOR HAS THE BURDEN OF PROVING EACH
20 APPLICABLE ELEMENT OF SUBSECTION (2) OR (3) OF THIS SECTION.

21 (c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE
22 APPLICABILITY TO THE TRANSFEREE OF SUB-SUBPARAGRAPH (A) OR (B) OF
23 SUBPARAGRAPH (II) OF PARAGRAPH (a) of subsection (2) OF THIS SECTION.

24 (d) A PARTY THAT SEEKS ADJUSTMENT UNDER SUBSECTION (3) OF
25 THIS SECTION HAS THE BURDEN OF PROVING THE ADJUSTMENT.

26 (8) THE STANDARD OF PROOF REQUIRED TO ESTABLISH MATTERS
27 REFERRED TO IN THIS SECTION IS PREPONDERANCE OF THE EVIDENCE.

1 **SECTION 10.** In Colorado Revised Statutes, **amend** 38-8-110 as
2 follows:

3 **38-8-110. Extinguishment of claim for relief.** (1) A ~~cause of~~
4 ~~action~~ CLAIM FOR RELIEF with respect to a ~~fraudulent~~ transfer or
5 obligation under this article is extinguished unless action is brought:

6 (a) Under section 38-8-105 (1) (a), ~~within~~ NOT LATER THAN four
7 years after the transfer was made or the obligation was incurred or, if
8 later, ~~within~~ NOT LATER THAN one year after the transfer or obligation was
9 or could reasonably have been discovered by the claimant;

10 (b) Under section 38-8-105 (1) (b) or 38-8-106 (1), ~~within~~ NOT
11 LATER THAN four years after the transfer was made or the obligation was
12 incurred; or

13 (c) Under section 38-8-106 (2), ~~within~~ NOT LATER THAN one year
14 after the transfer was made. ~~or the obligation was incurred.~~

15 **SECTION 11.** In Colorado Revised Statutes, **add** 38-8-110.3,
16 38-8-110.5, and 38-8-113 as follows:

17 **38-8-110.3. Governing law.** (1) IN THIS SECTION, THE
18 FOLLOWING RULES DETERMINE A DEBTOR'S LOCATION:

19 (a) A DEBTOR WHO IS AN INDIVIDUAL IS LOCATED AT THE
20 INDIVIDUAL'S PRINCIPAL RESIDENCE.

21 (b) A DEBTOR THAT IS AN ORGANIZATION AND HAS ONLY ONE
22 PLACE OF BUSINESS IS LOCATED AT ITS PLACE OF BUSINESS.

23 (c) A DEBTOR THAT IS AN ORGANIZATION AND HAS MORE THAN
24 ONE PLACE OF BUSINESS IS LOCATED AT ITS CHIEF EXECUTIVE OFFICE.

25 (2) A CLAIM FOR RELIEF IN THE NATURE OF A CLAIM FOR RELIEF
26 UNDER THIS ARTICLE IS GOVERNED BY THE LOCAL LAW OF THE
27 JURISDICTION IN WHICH THE PROPERTY IS LOCATED WHEN THE TRANSFER

1 IS MADE OR THE OBLIGATION IS INCURRED, UNLESS THE PROPERTY IS
2 LOCATED IN COLORADO, IN WHICH CASE A CLAIM FOR RELIEF IN THE
3 NATURE OF A CLAIM FOR RELIEF UNDER THIS ARTICLE IS GOVERNED BY THE
4 LAW OF COLORADO.

5 **38-8-110.5. Application to series organizations - definitions.**

6 (1) IN THIS SECTION:

7 (a) "PROTECTED SERIES" MEANS AN ARRANGEMENT, HOWEVER
8 DENOMINATED, CREATED BY A SERIES ORGANIZATION THAT IS NOT
9 ESTABLISHED, FORMED, ORGANIZED, OR CREATED IN THIS STATE AND
10 THAT, PURSUANT TO THE LAW UNDER WHICH THE SERIES ORGANIZATION
11 IS ORGANIZED, HAS THE CHARACTERISTICS SET FORTH IN THIS SECTION.

12 (b) "SERIES ORGANIZATION" MEANS AN ORGANIZATION THAT IS
13 NOT ESTABLISHED, FORMED, ORGANIZED, OR CREATED IN THIS STATE AND
14 THAT, PURSUANT TO THE LAW UNDER WHICH IT IS ORGANIZED, HAS THE
15 FOLLOWING CHARACTERISTICS:

16 (I) THE ORGANIC RECORD OF THE ORGANIZATION PROVIDES FOR
17 CREATION BY THE ORGANIZATION OF ONE OR MORE PROTECTED SERIES,
18 HOWEVER DENOMINATED, WITH RESPECT TO SPECIFIED PROPERTY OF THE
19 ORGANIZATION, AND FOR RECORDS TO BE MAINTAINED FOR EACH
20 PROTECTED SERIES THAT IDENTIFY THE PROPERTY OF OR ASSOCIATED WITH
21 THE PROTECTED SERIES.

22 (II) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
23 ACTIVITIES OF, PROPERTY OF, OR ASSOCIATED WITH, A PARTICULAR
24 PROTECTED SERIES IS ENFORCEABLE AGAINST THE PROPERTY OF, OR
25 ASSOCIATED WITH, THE PROTECTED SERIES ONLY AND NOT AGAINST THE
26 PROPERTY OF, OR ASSOCIATED WITH, THE ORGANIZATION OR OTHER
27 PROTECTED SERIES OF THE ORGANIZATION.

1 (III) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
2 ACTIVITIES OR PROPERTY OF THE ORGANIZATION IS ENFORCEABLE AGAINST
3 THE PROPERTY OF THE ORGANIZATION ONLY AND NOT AGAINST THE
4 PROPERTY OF, OR ASSOCIATED WITH A PROTECTED SERIES OF, THE
5 ORGANIZATION. A SERIES ORGANIZATION AND EACH PROTECTED SERIES OF
6 THE ORGANIZATION IS A SEPARATE PERSON FOR PURPOSES OF THIS
7 ARTICLE, EVEN IF FOR OTHER PURPOSES A PROTECTED SERIES IS NOT A
8 PERSON SEPARATE FROM THE ORGANIZATION OR OTHER PROTECTED SERIES
9 OF THE ORGANIZATION.

10 (2) A SERIES ORGANIZATION AND EACH PROTECTED SERIES OF THE
11 ORGANIZATION IS A SEPARATE PERSON FOR PURPOSES OF THIS ARTICLE
12 ONLY, EVEN IF FOR OTHER PURPOSES A PROTECTED SERIES IS NOT A PERSON
13 SEPARATE FROM THE ORGANIZATION OR OTHER PROTECTED SERIES OF THE
14 ORGANIZATION.

15 (3) THIS SECTION DOES NOT AUTHORIZE THE ESTABLISHMENT,
16 FORMATION, ORGANIZATION, OR CREATION OF A SERIES ORGANIZATION OR
17 PROTECTED SERIES PURSUANT TO COLORADO LAW OR THE RECOGNITION
18 OF A SERIES ORGANIZATION OR PROTECTED SERIES FOR ANY PURPOSE
19 OTHER THAN THIS ARTICLE.

20 **38-8-113. Relation to electronic signatures in federal**
21 **"Electronic Signatures in Global and National Commerce Act".** THIS
22 ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC
23 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC.
24 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101
25 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC
26 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT
27 ACT, 15 U.S.C. SEC. 7003 (b).

1 **SECTION 12.** In Colorado Revised Statutes, 2-5-102, **amend** (7)
2 as follows:

3 **2-5-102. Inclusions - nonstatutory.** (7) There shall be included
4 in the publication of the "~~Colorado Uniform Fraudulent Transfer Act~~"
5 "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT", as nonstatutory
6 matter, following each section of the article, the full text of the official
7 comments to that section contained in the official volume containing the
8 1984 official text of the "~~Uniform Fraudulent Transfer Act~~" "COLORADO
9 UNIFORM VOIDABLE TRANSACTIONS ACT" issued by the national
10 conference of commissioners on uniform state laws, INCLUDING CHANGES
11 TO THE OFFICIAL COMMENTS MADE BY THE 2014 AMENDMENTS TO THE
12 UNIFORM ACT, with any changes in the official comments or Colorado
13 comments to correspond to Colorado changes in the uniform act. The
14 comments shall be prepared by the revisor of statutes and approved for
15 publication by the committee on legal services.

16 **SECTION 13. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2016 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
11.6.15

DRAFT

LLS NO. 16-0128.01 Richard Sweetman x4333

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Substitute Decision-making Documents Act"

A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM RECOGNITION OF
102 SUBSTITUTE DECISION-MAKING DOCUMENTS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill adopts, with amendments, the "Uniform Recognition of Substitute Decision-making Documents Act" as Colorado law.

The bill establishes the circumstances under which a substitute decision-making document (document) is valid in this state. A person may assume in good faith that a document is genuine, valid, and still in

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

effect and that the decision-maker's authority is genuine, valid, and still in effect.

A person who is asked to accept a document shall do so within a reasonable amount of time. The person may not require an additional or different form of document for authority granted in the document presented. A person who refuses to accept a substitute document is subject to:

- A court order mandating acceptance of the document; and
- Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

A person is not required to accept a substitute document under certain described conditions.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 23 to title
3 15 as follows:

4 **ARTICLE 23**

5 **Substitute Decision-making Documents**

6 **15-23-101. Short title.** THE SHORT TITLE OF THIS ARTICLE IS THE
7 "COLORADO UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING
8 DOCUMENTS ACT".

9 **15-23-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
10 CONTEXT REQUIRES OTHERWISE:

11 (1) "DECISION-MAKER" MEANS A PERSON AUTHORIZED TO ACT FOR
12 AN INDIVIDUAL UNDER A SUBSTITUTE DECISION-MAKING DOCUMENT,
13 WHETHER DENOMINATED A DECISION-MAKER, AGENT, ATTORNEY-IN-FACT,
14 PROXY, OR REPRESENTATIVE, OR BY ANOTHER TITLE. THE TERM INCLUDES
15 AN ORIGINAL DECISION-MAKER, A CO-DECISION-MAKER, A SUCCESSOR
16 DECISION-MAKER, AND A PERSON TO WHOM A DECISION-MAKER'S
17 AUTHORITY IS DELEGATED.

18 (2) "GOOD FAITH" MEANS HONESTY IN FACT.

1 (3) "HEALTH CARE" MEANS A SERVICE OR PROCEDURE TO
2 MAINTAIN, DIAGNOSE, TREAT, OR OTHERWISE AFFECT AN INDIVIDUAL'S
3 PHYSICAL OR MENTAL CONDITION.

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

8 (5) "PERSONAL CARE" MEANS AN ARRANGEMENT OR SERVICE TO
9 PROVIDE AN INDIVIDUAL SHELTER, FOOD, CLOTHING, TRANSPORTATION,
10 EDUCATION, RECREATION, SOCIAL CONTACT, OR ASSISTANCE WITH THE
11 ACTIVITIES OF DAILY LIVING.

12 (6) "PROPERTY" MEANS ANYTHING THAT MAY BE SUBJECT TO
13 OWNERSHIP, WHETHER REAL OR PERSONAL OR LEGAL OR EQUITABLE, OR
14 ANY INTEREST OR RIGHT THEREIN.

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

18 (8) (a) "SUBSTITUTE DECISION-MAKING DOCUMENT" MEANS A
19 RECORD CREATED BY AN INDIVIDUAL TO AUTHORIZE A DECISION-MAKER
20 TO ACT FOR THE INDIVIDUAL WITH RESPECT TO HEALTH CARE OR
21 PERSONAL CARE.

22 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (8),
23 "SUBSTITUTE DECISION-MAKING DOCUMENT" DOES NOT INCLUDE A
24 RECORD CREATED BY AN INDIVIDUAL TO AUTHORIZE A DECISION-MAKER
25 TO ACT FOR THE INDIVIDUAL WITH RESPECT TO FINANCIAL MATTERS.

26 **15-23-103. Validity of substitute decision-making document.**

27 (1) A SUBSTITUTE DECISION-MAKING DOCUMENT EXECUTED

1 OUTSIDE THIS STATE IS VALID IN THIS STATE IF, WHEN THE DOCUMENT WAS
2 EXECUTED, THE EXECUTION COMPLIED WITH:

3 (a) THE LAW OF THE JURISDICTION INDICATED IN THE DOCUMENT
4 OR, IF NO JURISDICTION IS INDICATED, THE LAW OF THE JURISDICTION IN
5 WHICH THE DOCUMENT WAS EXECUTED; OR

6 (b) THE LAW OF THIS STATE.

7 (2) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PHOTOCOPY OR
8 ELECTRONICALLY TRANSMITTED COPY OF AN ORIGINAL SUBSTITUTE
9 DECISION-MAKING DOCUMENT HAS THE SAME EFFECT AS THE ORIGINAL.

10 **15-23-104. Meaning and effect of substitute decision-making**
11 **document.** THE MEANING AND EFFECT OF A SUBSTITUTE
12 DECISION-MAKING DOCUMENT AND THE AUTHORITY OF THE
13 DECISION-MAKER ARE DETERMINED BY THE LAW OF THE JURISDICTION
14 INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION IS INDICATED, THE
15 LAW OF THE JURISDICTION IN WHICH THE DOCUMENT WAS EXECUTED.

16 **15-23-105. Reliance on substitute decision-making document.**

17 (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON WHO IN GOOD
18 FAITH ACCEPTS A SUBSTITUTE DECISION-MAKING DOCUMENT WITHOUT
19 ACTUAL KNOWLEDGE THAT THE DOCUMENT IS VOID, INVALID, OR
20 TERMINATED, OR THAT THE AUTHORITY OF THE PURPORTED
21 DECISION-MAKER IS VOID, INVALID, OR TERMINATED, MAY ASSUME
22 WITHOUT INQUIRY THAT THE DOCUMENT IS GENUINE, VALID, AND STILL IN
23 EFFECT AND THAT THE DECISION-MAKER'S AUTHORITY IS GENUINE, VALID,
24 AND STILL IN EFFECT.

25 (2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE
26 DECISION-MAKING DOCUMENT MAY REQUEST AND WITHOUT FURTHER
27 INVESTIGATION RELY ON:

1 (a) THE DECISION-MAKER'S ASSERTION OF A FACT CONCERNING
2 THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE, THE
3 DECISION-MAKER, OR THE DOCUMENT;

4 (b) A TRANSLATION OF THE DOCUMENT IF THE DOCUMENT
5 CONTAINS, IN WHOLE OR IN PART, LANGUAGE OTHER THAN ENGLISH; AND

6 (c) AN OPINION OF COUNSEL REGARDING ANY MATTER OF LAW
7 CONCERNING THE DOCUMENT IF THE PERSON PROVIDES IN A RECORD THE
8 REASON FOR THE REQUEST.

9 **15-23-106. Obligation to accept substitute decision-making**
10 **document.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
11 THIS SECTION OR BY ANOTHER LAW OF THIS STATE, A PERSON WHO IS
12 ASKED TO ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT SHALL
13 ACCEPT WITHIN A REASONABLE TIME A DOCUMENT THAT PURPORTEDLY
14 MEETS THE VALIDITY REQUIREMENTS OF SECTION 15-23-103. THE PERSON
15 MAY NOT REQUIRE AN ADDITIONAL OR DIFFERENT FORM OF DOCUMENT FOR
16 AUTHORITY GRANTED IN THE DOCUMENT PRESENTED.

17 (2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE
18 DECISION-MAKING DOCUMENT IS NOT REQUIRED TO ACCEPT THE
19 DOCUMENT IF:

20 (a) THE PERSON OTHERWISE WOULD NOT BE REQUIRED IN THE
21 SAME CIRCUMSTANCES TO ACT IF REQUESTED BY THE INDIVIDUAL WHO
22 EXECUTED THE DOCUMENT;

23 (b) THE PERSON HAS ACTUAL KNOWLEDGE OF THE TERMINATION
24 OF THE DECISION-MAKER'S AUTHORITY OR THE DOCUMENT;

25 (c) THE PERSON'S REQUEST UNDER SECTION 15-23-105 (2) FOR THE
26 DECISION-MAKER'S ASSERTION OF FACT, A TRANSLATION, OR AN OPINION
27 OF COUNSEL IS REFUSED;

1 (d) THE PERSON IN GOOD FAITH BELIEVES THAT THE DOCUMENT IS
2 NOT VALID OR THE DECISION-MAKER DOES NOT HAVE THE AUTHORITY TO
3 REQUEST A PARTICULAR ACTION; OR

4 (e) THE PERSON MAKES, OR HAS ACTUAL KNOWLEDGE THAT
5 ANOTHER PERSON HAS MADE, A REPORT TO A LAW ENFORCEMENT AGENCY
6 OR TO A COUNTY DEPARTMENT OF SOCIAL SERVICES STATING A BELIEF
7 THAT THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE MAY BE
8 SUBJECT TO ABUSE, NEGLECT, EXPLOITATION, OR ABANDONMENT BY THE
9 DECISION-MAKER OR A PERSON ACTING FOR OR WITH THE
10 DECISION-MAKER.

11 (3) A PERSON WHO, IN VIOLATION OF THIS SECTION, REFUSES TO
12 ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT IS SUBJECT TO:

13 (a) A COURT ORDER MANDATING ACCEPTANCE OF THE DOCUMENT;
14 AND

15 (b) LIABILITY FOR REASONABLE ATTORNEY'S FEES AND COSTS
16 INCURRED IN AN ACTION OR PROCEEDING THAT MANDATES ACCEPTANCE
17 OF THE DOCUMENT.

18 **15-23-107. Remedies under other law.** THE REMEDIES UNDER
19 THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT ABROGATE ANY OTHER
20 RIGHT OR REMEDY AVAILABLE UNDER THE LAW OF THIS STATE.

21 **15-23-108. Uniformity of application and construction.** IN
22 APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE
23 CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
24 RESPECT TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

25 **15-23-109. Relation to the federal "Electronic Signatures in
26 Global and National Commerce Act".** THIS ARTICLE MODIFIES, LIMITS,
27 OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND

1 NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT
2 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.
3 SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
4 NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003
5 (b).

6 **15-23-110. Applicability.** THIS ARTICLE APPLIES TO A SUBSTITUTE
7 DECISION-MAKING DOCUMENT CREATED BEFORE, ON, OR AFTER THE
8 EFFECTIVE DATE OF THIS ARTICLE.

9 **SECTION 2. Inclusion of official comments.** The revisor of
10 statutes shall include in the publication of the "Colorado Uniform
11 Recognition of Substitute Decision-making Documents Act", as
12 nonstatutory matter, following each section of the act, the full text of the
13 official comments to that section contained in the official volume
14 containing the 2014 official text of the "Uniform Recognition of
15 Substitute Decision-making Documents Act" issued by the Uniform Law
16 Commission, with any changes in the official comments or Colorado
17 comments to correspond to Colorado changes in the uniform act. The
18 revisor shall prepare the comments for approval by the committee on
19 legal services.

20 **SECTION 3. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
11.4.15

DRAFT

LLS NO. 16-0129.01 Jane Ritter x4342

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Revised Uniform Athlete Agents Act 2015"

A BILL FOR AN ACT

101 CONCERNING THE "REVISED UNIFORM ATHLETE AGENTS ACT
102 (2015)".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Revised Uniform Athlete Agents Act (2015)" as drafted by the national conference of commissioners on uniform state laws. The "Revised Uniform Athlete Agents Act (2015)" replaces the "Uniform Athlete Agents Act" drafted by the national conference of commissioners on uniform state laws. New provisions for registration and renewal of

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 A MATTER RELATED TO FINANCES, BUSINESS PURSUITS, OR CAREER
2 MANAGEMENT DECISIONS, UNLESS THE INDIVIDUAL IS AN EMPLOYEE OF AN
3 EDUCATIONAL INSTITUTION AND IS ACTING EXCLUSIVELY AS AN EMPLOYEE
4 OF THE INSTITUTION FOR THE BENEFIT OF THE INSTITUTION; OR

5 (B) MANAGES THE BUSINESS AFFAIRS OF THE STUDENT ATHLETE
6 BY PROVIDING ASSISTANCE WITH BILLS, PAYMENTS, CONTRACTS, OR
7 TAXES; OR

8 (III) IN ANTICIPATION OF REPRESENTING A STUDENT ATHLETE FOR
9 A PURPOSE RELATED TO THE STUDENT ATHLETE'S PARTICIPATION IN
10 ATHLETICS:

11 (A) GIVES CONSIDERATION TO THE STUDENT ATHLETE OR
12 ANOTHER PERSON;

13 (B) SERVES THE STUDENT ATHLETE IN AN ADVISORY CAPACITY ON
14 A MATTER RELATED TO FINANCES, BUSINESS PURSUITS, OR CAREER
15 MANAGEMENT DECISIONS; OR

16 (C) MANAGES THE BUSINESS AFFAIRS OF THE STUDENT ATHLETE
17 BY PROVIDING ASSISTANCE WITH BILLS, PAYMENTS, CONTRACTS, OR
18 TAXES; BUT

19 (b) DOES NOT INCLUDE AN INDIVIDUAL WHO:

20 (I) ACTS SOLELY ON BEHALF OF A PROFESSIONAL SPORTS TEAM OR
21 ORGANIZATION; OR

22 (II) IS A LICENSED, REGISTERED, OR CERTIFIED PROFESSIONAL AND
23 OFFERS OR PROVIDES SERVICES TO A STUDENT ATHLETE THAT ARE
24 CUSTOMARILY PROVIDED BY MEMBERS OF THE PROFESSION, UNLESS THE
25 INDIVIDUAL:

26 (A) ALSO RECRUITS OR SOLICITS THE STUDENT ATHLETE TO ENTER
27 INTO AN AGENCY CONTRACT;

1 (B) ALSO, FOR COMPENSATION, PROCURES EMPLOYMENT OR
2 OFFERS, PROMISES, ATTEMPTS, OR NEGOTIATES TO OBTAIN EMPLOYMENT
3 FOR THE ATHLETE AS A PROFESSIONAL ATHLETE OR MEMBER OF A
4 PROFESSIONAL SPORTS TEAM OR ORGANIZATION; OR

5 (C) RECEIVES CONSIDERATION FOR PROVIDING THE SERVICES,
6 WHICH CONSIDERATION IS CALCULATED USING A DIFFERENT METHOD THAN
7 FOR AN INDIVIDUAL WHO IS NOT A STUDENT ATHLETE.

8 (3) "ATHLETIC DIRECTOR" MEANS THE INDIVIDUAL RESPONSIBLE
9 FOR ADMINISTERING THE OVERALL ATHLETIC PROGRAM OF AN
10 EDUCATIONAL INSTITUTION OR, IF AN EDUCATIONAL INSTITUTION HAS
11 SEPARATELY ADMINISTERED ATHLETIC PROGRAMS FOR MALE STUDENTS
12 AND FEMALE STUDENTS, THE ATHLETIC PROGRAM FOR MALES OR THE
13 ATHLETIC PROGRAM FOR FEMALES, AS APPROPRIATE.

14 (4) "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE
15 ELEMENTARY SCHOOL, SECONDARY SCHOOL, TECHNICAL OR VOCATIONAL
16 SCHOOL, COMMUNITY COLLEGE, COLLEGE, OR UNIVERSITY.

17 (5) "ENDORSEMENT CONTRACT" MEANS AN AGREEMENT UNDER
18 WHICH A STUDENT ATHLETE IS EMPLOYED OR RECEIVES CONSIDERATION
19 TO USE ON BEHALF OF THE OTHER PARTY ANY VALUE THAT THE STUDENT
20 ATHLETE MAY HAVE BECAUSE OF PUBLICITY, REPUTATION, FOLLOWING, OR
21 FAME OBTAINED BECAUSE OF ATHLETIC ABILITY OR PERFORMANCE.

22 (6) "ENROLLED" MEANS REGISTERED FOR COURSES AND
23 ATTENDING ATHLETIC PRACTICE OR CLASS. "ENROLLS" HAS A
24 CORRESPONDING MEANING.

25 (7) "INTERCOLLEGIATE SPORT" MEANS A SPORT PLAYED AT THE
26 COLLEGIATE LEVEL FOR WHICH ELIGIBILITY REQUIREMENTS FOR
27 PARTICIPATION BY A STUDENT ATHLETE ARE ESTABLISHED BY A NATIONAL

1 ASSOCIATION THAT PROMOTES OR REGULATES COLLEGIATE ATHLETICS.

2 (8) "INTERSCHOLASTIC SPORT" MEANS A SPORT PLAYED BETWEEN
3 EDUCATIONAL INSTITUTIONS THAT ARE NOT COMMUNITY COLLEGES,
4 COLLEGES, OR UNIVERSITIES.

5 (9) "LICENSED, REGISTERED, OR CERTIFIED PROFESSIONAL" MEANS
6 AN INDIVIDUAL LICENSED, REGISTERED, OR CERTIFIED AS AN ATTORNEY,
7 DEALER IN SECURITIES, FINANCIAL PLANNER, INSURANCE AGENT, REAL
8 ESTATE BROKER OR SALES AGENT, TAX CONSULTANT, ACCOUNTANT, OR
9 MEMBER OF A PROFESSION, OTHER THAN THAT OF ATHLETE AGENT, WHO
10 IS LICENSED, REGISTERED, OR CERTIFIED BY THE STATE OR A NATIONALLY
11 RECOGNIZED ORGANIZATION THAT LICENSES, REGISTERS, OR CERTIFIES
12 MEMBERS OF THE PROFESSION ON THE BASIS OF EXPERIENCE, EDUCATION,
13 OR TESTING.

14 (10) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
15 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
16 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
17 LEGAL ENTITY.

18 (11) "PROFESSIONAL-SPORTS-SERVICES CONTRACT" MEANS AN
19 AGREEMENT UNDER WHICH AN INDIVIDUAL IS EMPLOYED AS A
20 PROFESSIONAL ATHLETE OR AGREES TO RENDER SERVICES AS A PLAYER ON
21 A PROFESSIONAL SPORTS TEAM OR WITH A PROFESSIONAL SPORTS
22 ORGANIZATION.

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

26 (13) "RECRUIT OR SOLICIT" MEANS TO ATTEMPT TO INFLUENCE THE
27 CHOICE OF AN ATHLETE AGENT BY A STUDENT ATHLETE OR, IF THE

1 STUDENT ATHLETE IS A MINOR, A PARENT OR GUARDIAN OF THE ATHLETE.
2 THE TERM DOES NOT INCLUDE GIVING ADVICE ON THE SELECTION OF A
3 PARTICULAR ATHLETE AGENT IN A FAMILY, COACHING, OR SOCIAL
4 SITUATION UNLESS THE INDIVIDUAL GIVING THE ADVICE DOES SO BECAUSE
5 OF THE RECEIPT OR ANTICIPATED RECEIPT OF AN ECONOMIC BENEFIT,
6 DIRECTLY OR INDIRECTLY, FROM THE ATHLETE AGENT.

7 (14) "REGISTRATION" MEANS REGISTRATION AS AN ATHLETE
8 AGENT UNDER THIS PART 2.

9 (15) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
10 ADOPT A RECORD:

11 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

12 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
13 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

14 (16) "STATE" MEANS A STATE OF THE UNITED STATES, THE
15 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
16 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
17 JURISDICTION OF THE UNITED STATES.

18 (17) "STUDENT ATHLETE" MEANS AN INDIVIDUAL WHO IS ELIGIBLE
19 TO ATTEND AN EDUCATIONAL INSTITUTION AND ENGAGES IN, IS ELIGIBLE
20 TO ENGAGE IN, OR MAY BE ELIGIBLE IN THE FUTURE TO ENGAGE IN, ANY
21 INTERSCHOLASTIC OR INTERCOLLEGIATE SPORT. "STUDENT ATHLETE"
22 DOES NOT INCLUDE AN INDIVIDUAL PERMANENTLY INELIGIBLE TO
23 PARTICIPATE IN A PARTICULAR INTERSCHOLASTIC OR INTERCOLLEGIATE
24 SPORT FOR PURPOSES OF THAT SPORT.

25 **23-16-203. Authority - procedure.** THE PROVISIONS OF THE
26 "STATE ADMINISTRATIVE PROCEDURE ACT", ESTABLISHED IN ARTICLE 4
27 OF TITLE 24, C.R.S., APPLY TO THIS PART 2. THE SECRETARY OF STATE

1 MAY ADOPT RULES PURSUANT TO THE REQUIREMENTS OF THE "STATE
2 ADMINISTRATIVE PROCEDURE ACT" TO IMPLEMENT THE PROVISIONS OF
3 THIS PART 2.

4 **23-16-204. Athlete agent - registration required - void**
5 **contract.** (1) EXCEPT AS OTHERWISE PROVIDED FOR IN SUBSECTION (2) OF
6 THIS SECTION, AN INDIVIDUAL MAY NOT ACT AS AN ATHLETE AGENT IN
7 THIS STATE WITHOUT HOLDING A VALID CERTIFICATE OF REGISTRATION
8 UNDER THIS PART 2.

9 (2) PRIOR TO BEING ISSUED A CERTIFICATE OF REGISTRATION
10 UNDER THIS PART 2, AN INDIVIDUAL MAY ACT AS AN ATHLETE AGENT IN
11 THIS STATE FOR ALL PURPOSES, EXCEPT SIGNING AN AGENCY CONTRACT,
12 IF:

13 (a) A STUDENT ATHLETE OR ANOTHER PERSON ACTING ON BEHALF
14 OF THE STUDENT ATHLETE INITIATES COMMUNICATION WITH THE
15 INDIVIDUAL; AND

16 (b) NOT LATER THAN SEVEN DAYS AFTER AN INITIAL ACTION THAT
17 REQUIRES THE INDIVIDUAL TO REGISTER AS AN ATHLETE AGENT, THE
18 INDIVIDUAL SUBMITS AN APPLICATION FOR REGISTRATION AS AN ATHLETE
19 AGENT IN THIS STATE.

20 (3) AN AGENCY CONTRACT THAT RESULTS FROM CONDUCT IN
21 VIOLATION OF THIS SECTION IS VOID, AND THE ATHLETE AGENT OR
22 INDIVIDUAL SHALL RETURN ANY CONSIDERATION RECEIVED UNDER THE
23 CONTRACT.

24 **23-16-205. Registration as athlete agent - application -**
25 **requirements - reciprocal registration.** (1) AN APPLICANT FOR
26 REGISTRATION AS AN ATHLETE AGENT SHALL SUBMIT AN APPLICATION FOR
27 REGISTRATION TO THE SECRETARY OF STATE IN A FORM PRESCRIBED BY

1 THE SECRETARY OF STATE. THE APPLICANT MUST BE AN INDIVIDUAL, AND
2 THE APPLICANT SHALL SIGN THE APPLICATION UNDER PENALTY OF
3 PERJURY. THE APPLICATION MUST CONTAIN AT LEAST THE FOLLOWING
4 INFORMATION:

5 (a) THE NAME AND DATE AND PLACE OF BIRTH OF THE APPLICANT
6 AND THE FOLLOWING CONTACT INFORMATION FOR THE APPLICANT:

7 (I) THE ADDRESS OF THE APPLICANT'S PRINCIPAL PLACE OF
8 BUSINESS;

9 (II) WORK AND MOBILE TELEPHONE NUMBERS; AND

10 (III) ANY MEANS OF COMMUNICATING ELECTRONICALLY,
11 INCLUDING A FACSIMILE NUMBER, ELECTRONIC-MAIL ADDRESS, AND
12 PERSONAL AND BUSINESS OR EMPLOYER WEB SITES;

13 (b) THE NAME OF THE APPLICANT'S BUSINESS OR EMPLOYER, IF
14 APPLICABLE, INCLUDING FOR EACH BUSINESS OR EMPLOYER ITS MAILING
15 ADDRESS, TELEPHONE NUMBER, ORGANIZATION FORM, AND THE NATURE
16 OF THE BUSINESS;

17 (c) EACH SOCIAL MEDIA ACCOUNT WITH WHICH THE APPLICANT OR
18 THE APPLICANT'S BUSINESS OR EMPLOYER IS AFFILIATED;

19 (d) EACH BUSINESS OR OCCUPATION IN WHICH THE APPLICANT
20 ENGAGED WITHIN FIVE YEARS PRIOR TO THE DATE OF THE APPLICATION,
21 INCLUDING SELF-EMPLOYMENT AND EMPLOYMENT BY OTHERS, AND ANY
22 PROFESSIONAL OR OCCUPATIONAL LICENSE, REGISTRATION, OR
23 CERTIFICATION HELD BY THE APPLICANT DURING THAT TIME;

24 (e) A DESCRIPTION OF THE APPLICANT'S:

25 (I) FORMAL TRAINING AS AN ATHLETE AGENT;

26 (II) PRACTICAL EXPERIENCE AS AN ATHLETE AGENT; AND

27 (III) EDUCATIONAL BACKGROUND RELATING TO THE APPLICANT'S

1 ACTIVITIES AS AN ATHLETE AGENT;

2 (f) THE NAME OF EACH STUDENT ATHLETE FOR WHOM THE
3 APPLICANT ACTED AS AN ATHLETE AGENT WITHIN THE FIVE YEARS PRIOR
4 TO THE DATE OF THE APPLICATION OR, IF THE STUDENT ATHLETE IS A
5 MINOR, THE NAME OF HIS OR HER PARENT OR GUARDIAN, TOGETHER WITH
6 THE STUDENT ATHLETE'S SPORT AND LAST-KNOWN TEAM;

7 (g) THE NAME AND ADDRESS OF EACH PERSON WHO:

8 (I) IS A PARTNER, MEMBER, OFFICER, MANAGER, ASSOCIATE, OR
9 PROFIT SHARER OR DIRECTLY OR INDIRECTLY HOLDS AN EQUITY INTEREST
10 OF FIVE PERCENT OR GREATER OF THE ATHLETE AGENT'S BUSINESS IF IT IS
11 NOT A CORPORATION; AND

12 (II) IS AN OFFICER OR DIRECTOR OF A CORPORATION EMPLOYING
13 THE ATHLETE AGENT OR A SHAREHOLDER HAVING AN INTEREST OF FIVE
14 PERCENT OR GREATER IN THE CORPORATION;

15 (h) A DESCRIPTION OF THE STATUS OF ANY APPLICATION BY THE
16 APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS
17 SUBSECTION (1), FOR A STATE OR FEDERAL BUSINESS, PROFESSIONAL, OR
18 OCCUPATIONAL LICENSE, OTHER THAN AS AN ATHLETE AGENT, FROM A
19 STATE OR FEDERAL AGENCY, INCLUDING ANY DENIAL, REFUSAL TO RENEW,
20 SUSPENSION, WITHDRAWAL, OR TERMINATION OF THE LICENSE AND ANY
21 REPRIMAND OR CENSURE RELATED TO THE LICENSE;

22 (i) WHETHER THE APPLICANT, OR ANY PERSON NAMED PURSUANT
23 TO PARAGRAPH (g) OF THIS SUBSECTION (1), HAS PLEADED GUILTY OR NO
24 CONTEST TO, HAS BEEN CONVICTED OF, OR HAS CHARGES PENDING FOR, A
25 CRIME THAT WOULD INVOLVE MORAL TURPITUDE OR BE A FELONY IF
26 COMMITTED IN THIS STATE AND, IF SO, IDENTIFICATION OF:

27 (I) THE CRIME;

1 (II) THE LAW ENFORCEMENT AGENCY INVOLVED; AND

2 (III) IF APPLICABLE, THE DATE OF THE CONVICTION AND THE FINE
3 OR PENALTY IMPOSED;

4 (j) WHETHER, WITHIN FIFTEEN YEARS PRIOR TO THE DATE OF
5 APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
6 PARAGRAPH (g) OF THIS SUBSECTION (1), HAS BEEN A DEFENDANT OR
7 RESPONDENT IN A CIVIL PROCEEDING, INCLUDING A PROCEEDING SEEKING
8 AN ADJUDICATION AND, IF SO, THE DATE AND A FULL EXPLANATION OF
9 EACH PROCEEDING;

10 (k) WHETHER THE APPLICANT, OR ANY PERSON NAMED PURSUANT
11 TO PARAGRAPH (g) OF THIS SUBSECTION (1), HAS AN UNSATISFIED
12 JUDGMENT OR A JUDGMENT OF CONTINUING EFFECT, INCLUDING SPOUSAL
13 MAINTENANCE OR A DOMESTIC ORDER IN THE NATURE OF CHILD SUPPORT,
14 WHICH IS NOT CURRENT AT THE DATE OF THE APPLICATION;

15 (l) WHETHER, WITHIN TEN YEARS PRIOR TO THE DATE OF
16 APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
17 PARAGRAPH (g) OF THIS SUBSECTION (1), WAS ADJUDICATED BANKRUPT OR
18 WAS AN OWNER OF A BUSINESS THAT WAS ADJUDICATED BANKRUPT;

19 (m) WHETHER THERE HAS BEEN ANY ADMINISTRATIVE OR JUDICIAL
20 DETERMINATION THAT THE APPLICANT, OR ANY PERSON NAMED PURSUANT
21 TO PARAGRAPH (g) OF THIS SUBSECTION (1), MADE A FALSE, MISLEADING,
22 DECEPTIVE, OR FRAUDULENT REPRESENTATION;

23 (n) EACH INSTANCE IN WHICH CONDUCT OF THE APPLICANT, OR
24 ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION
25 (1), RESULTED IN THE IMPOSITION OF A SANCTION, SUSPENSION, OR
26 DECLARATION OF INELIGIBILITY TO PARTICIPATE IN AN INTERSCHOLASTIC,
27 INTERCOLLEGIATE, OR PROFESSIONAL ATHLETIC EVENT ON A STUDENT

1 ATHLETE OR A SANCTION ON AN EDUCATIONAL INSTITUTION;

2 (o) EACH SANCTION, SUSPENSION, OR DISCIPLINARY ACTION TAKEN
3 AGAINST THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
4 PARAGRAPH (g) OF THIS SUBSECTION (1), ARISING OUT OF OCCUPATIONAL
5 OR PROFESSIONAL CONDUCT;

6 (p) WHETHER THERE HAS BEEN A DENIAL OF AN APPLICATION FOR,
7 SUSPENSION OR REVOCATION OF, REFUSAL TO RENEW, OR ABANDONMENT
8 OF, THE REGISTRATION OF THE APPLICANT, OR ANY PERSON NAMED
9 PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), AS AN ATHLETE
10 AGENT IN ANY STATE;

11 (q) EACH STATE IN WHICH THE APPLICANT IS CURRENTLY
12 REGISTERED AS AN ATHLETE AGENT OR HAS APPLIED TO BE REGISTERED AS
13 AN ATHLETE AGENT;

14 (r) IF THE APPLICANT IS CERTIFIED OR REGISTERED BY A
15 PROFESSIONAL LEAGUE OR PLAYERS ASSOCIATION:

16 (I) THE NAME OF THE LEAGUE OR ASSOCIATION;

17 (II) THE DATE OF CERTIFICATION OR REGISTRATION, AND THE DATE
18 OF EXPIRATION OF THE CERTIFICATION OR REGISTRATION, IF ANY; AND

19 (III) IF APPLICABLE, THE DATE OF ANY DENIAL OF AN APPLICATION
20 FOR, SUSPENSION OR REVOCATION OF, REFUSAL TO RENEW, WITHDRAWAL
21 OF, OR TERMINATION OF, THE CERTIFICATION OR REGISTRATION OR ANY
22 REPRIMAND OR CENSURE RELATED TO THE CERTIFICATION OR
23 REGISTRATION; AND

24 (s) ANY ADDITIONAL INFORMATION REQUIRED BY THE SECRETARY
25 OF STATE.

26 (2) INSTEAD OF PROCEEDING AS PROVIDED IN SUBSECTION (1) OF
27 THIS SECTION, AN INDIVIDUAL REGISTERED AS AN ATHLETE AGENT IN

1 ANOTHER STATE MAY APPLY FOR REGISTRATION AS AN ATHLETE AGENT IN
2 THIS STATE BY SUBMITTING THE FOLLOWING INFORMATION TO THE
3 SECRETARY OF STATE:

4 (a) A COPY OF THE APPLICATION FOR REGISTRATION IN THE OTHER
5 STATE;

6 (b) A STATEMENT THAT IDENTIFIES ANY MATERIAL CHANGE IN THE
7 INFORMATION ON THE APPLICATION IN THE OTHER STATE OR VERIFIES
8 THERE IS NO MATERIAL CHANGE IN SUCH INFORMATION, SIGNED UNDER
9 PENALTY OF PERJURY; AND

10 (c) A COPY OF THE CERTIFICATE OF REGISTRATION FROM THE
11 OTHER STATE.

12 (3) THE SECRETARY OF STATE SHALL ISSUE A CERTIFICATE OF
13 REGISTRATION TO AN INDIVIDUAL WHO APPLIES FOR REGISTRATION
14 PURSUANT TO SUBSECTION (2) OF THIS SECTION IF THE SECRETARY OF
15 STATE DETERMINES:

16 (a) THE APPLICATION AND REGISTRATION REQUIREMENTS OF THE
17 OTHER STATE ARE SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE
18 THAN THOSE OF THIS PART 2; AND

19 (b) THE REGISTRATION HAS NOT BEEN REVOKED OR SUSPENDED
20 AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN ATHLETE
21 AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE INDIVIDUAL'S
22 REGISTRATION IN ANY STATE.

23 (4) FOR PURPOSES OF IMPLEMENTING SUBSECTION (3) OF THIS
24 SECTION, THE SECRETARY OF STATE SHALL:

25 (a) COOPERATE WITH NATIONAL ORGANIZATIONS CONCERNED
26 WITH ATHLETE AGENT ISSUES AND AGENCIES IN OTHER STATES WHICH
27 REGISTER ATHLETE AGENTS TO DEVELOP A COMMON REGISTRATION FORM

1 AND DETERMINE WHICH STATES HAVE LAWS THAT ARE SUBSTANTIALLY
2 SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS PART 2; AND

3 (b) EXCHANGE INFORMATION, INCLUDING INFORMATION RELATED
4 TO ACTIONS TAKEN AGAINST REGISTERED ATHLETE AGENTS OR THEIR
5 REGISTRATIONS, WITH THOSE ORGANIZATIONS AND AGENCIES.

6 **23-16-206. Certificate of registration - issuance or denial -**
7 **renewal.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS
8 SECTION, THE SECRETARY OF STATE SHALL ISSUE A CERTIFICATE OF
9 REGISTRATION TO AN APPLICANT FOR REGISTRATION WHO COMPLIES WITH
10 THE PROVISIONS OF SECTION 23-16-205 (1).

11 (2) THE SECRETARY OF STATE MAY REFUSE TO ISSUE A
12 CERTIFICATE OF REGISTRATION TO AN APPLICANT FOR REGISTRATION
13 UNDER SECTION 23-16-205 (1) IF THE SECRETARY OF STATE DETERMINES
14 THAT THE APPLICANT HAS ENGAGED IN CONDUCT THAT SIGNIFICANTLY
15 ADVERSELY REFLECTS ON THE APPLICANT'S FITNESS TO ACT AS AN
16 ATHLETE AGENT. IN MAKING THE DETERMINATION, THE SECRETARY OF
17 STATE MAY CONSIDER WHETHER THE APPLICANT HAS:

18 (a) PLEADED GUILTY OR NO CONTEST TO, HAS BEEN CONVICTED OF,
19 OR HAS CHARGES PENDING FOR, A CRIME THAT WOULD INVOLVE MORAL
20 TURPITUDE OR BE A FELONY IF COMMITTED IN THIS STATE;

21 (b) MADE A MATERIALLY FALSE, MISLEADING, DECEPTIVE, OR
22 FRAUDULENT REPRESENTATION IN THE APPLICATION OR AS AN ATHLETE
23 AGENT;

24 (c) ENGAGED IN CONDUCT THAT WOULD DISQUALIFY THE
25 APPLICANT FROM SERVING IN A FIDUCIARY CAPACITY;

26 (d) ENGAGED IN CONDUCT PROHIBITED BY SECTION 23-16-214;

27 (e) HAD A REGISTRATION AS AN ATHLETE AGENT SUSPENDED,

1 REVOKED, OR DENIED IN ANY STATE;

2 (f) BEEN REFUSED RENEWAL OF REGISTRATION AS AN ATHLETE
3 AGENT IN ANY STATE;

4 (g) ENGAGED IN CONDUCT RESULTING IN IMPOSITION OF A
5 SANCTION, SUSPENSION, OR DECLARATION OF INELIGIBILITY TO
6 PARTICIPATE IN AN INTERSCHOLASTIC, INTERCOLLEGIATE, OR
7 PROFESSIONAL ATHLETIC EVENT ON A STUDENT ATHLETE OR A SANCTION
8 ON AN EDUCATIONAL INSTITUTION; OR

9 (h) ENGAGED IN CONDUCT THAT ADVERSELY REFLECTS ON THE
10 APPLICANT'S CREDIBILITY, HONESTY, OR INTEGRITY.

11 (3) IN MAKING A DETERMINATION PURSUANT TO SUBSECTION (2)
12 OF THIS SECTION, THE SECRETARY OF STATE SHALL CONSIDER:

13 (a) HOW RECENTLY THE CONDUCT OCCURRED;

14 (b) THE NATURE OF THE CONDUCT AND THE CONTEXT IN WHICH IT
15 OCCURRED; AND

16 (c) OTHER RELEVANT CONDUCT OF THE APPLICANT.

17 (4) AN ATHLETE AGENT REGISTERED UNDER SUBSECTION (1) OF
18 THIS SECTION MAY APPLY TO RENEW THE REGISTRATION BY SUBMITTING
19 AN APPLICATION FOR RENEWAL IN A FORM PRESCRIBED BY THE SECRETARY
20 OF STATE. THE APPLICANT SHALL SIGN THE APPLICATION FOR RENEWAL
21 UNDER PENALTY OF PERJURY AND INCLUDE CURRENT INFORMATION ON
22 ALL MATTERS REQUIRED IN AN ORIGINAL APPLICATION FOR REGISTRATION.

23 (5) AN ATHLETE AGENT REGISTERED PURSUANT TO SECTION
24 23-16-205 (3) MAY RENEW THE REGISTRATION BY PROCEEDING PURSUANT
25 TO SUBSECTION (4) OF THIS SECTION OR, IF THE REGISTRATION IN THE
26 OTHER STATE HAS BEEN RENEWED, BY SUBMITTING TO THE SECRETARY OF
27 STATE COPIES OF THE APPLICATION FOR RENEWAL IN THE OTHER STATE

1 AND THE RENEWED REGISTRATION FROM THE OTHER STATE. THE
2 SECRETARY OF STATE SHALL RENEW THE REGISTRATION IF THE SECRETARY
3 OF STATE DETERMINES:

4 (a) THE REGISTRATION REQUIREMENTS OF THE OTHER STATE ARE
5 SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS
6 PART 2; AND

7 (b) THE RENEWED REGISTRATION HAS NOT BEEN SUSPENDED OR
8 REVOKED AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN
9 ATHLETE AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE
10 INDIVIDUAL'S REGISTRATION IN ANY STATE.

11 (6) A CERTIFICATE OF REGISTRATION OR RENEWAL OF
12 REGISTRATION UNDER THIS PART 2 IS VALID FOR TWO YEARS.

13 **23-16-207. Suspension, revocation, or refusal to renew**
14 **registration.** (1) THE SECRETARY OF STATE MAY LIMIT, SUSPEND,
15 REVOKE, OR REFUSE TO RENEW A REGISTRATION OF AN INDIVIDUAL
16 REGISTERED UNDER SECTION 23-16-206 (1) FOR CONDUCT THAT WOULD
17 HAVE JUSTIFIED REFUSAL TO ISSUE A CERTIFICATE OF REGISTRATION
18 UNDER SECTION 23-16-206 (2).

19 (2) THE SECRETARY OF STATE MAY SUSPEND OR REVOKE THE
20 REGISTRATION OF AN INDIVIDUAL REGISTERED UNDER SECTION 23-16-205
21 (3) OR RENEWED UNDER SECTION 23-16-206 (5) FOR ANY REASON FOR
22 WHICH THE SECRETARY OF STATE COULD HAVE REFUSED TO GRANT OR
23 RENEW REGISTRATION OR FOR CONDUCT THAT WOULD JUSTIFY REFUSAL TO
24 ISSUE A CERTIFICATE OF REGISTRATION UNDER SECTION 23-16-206 (2).

25 **23-16-208. Temporary registration.** THE SECRETARY OF STATE
26 MAY ISSUE A TEMPORARY CERTIFICATE OF REGISTRATION AS AN ATHLETE
27 AGENT WHILE AN APPLICATION FOR REGISTRATION OR RENEWAL OF

1 REGISTRATION IS PENDING.

2 **23-16-209. Registration and renewal fees.** AN APPLICATION FOR
3 REGISTRATION OR RENEWAL OF REGISTRATION AS AN ATHLETE AGENT
4 MUST BE ACCOMPANIED BY A FEE IN THE AMOUNT DETERMINED BY RULE
5 OF THE SECRETARY OF STATE.

6 **23-16-210. Required form of agency contract.** (1) AN AGENCY
7 CONTRACT MUST BE IN A RECORD SIGNED BY THE PARTIES.

8 (2) AN AGENCY CONTRACT MUST CONTAIN:

9 (a) A STATEMENT THAT THE ATHLETE AGENT IS REGISTERED AS AN
10 ATHLETE AGENT IN THIS STATE AND A LIST OF ANY OTHER STATES IN
11 WHICH HE OR SHE IS REGISTERED AS AN ATHLETE AGENT;

12 (b) THE AMOUNT AND METHOD OF CALCULATING THE
13 CONSIDERATION TO BE PAID BY THE STUDENT ATHLETE FOR SERVICES TO
14 BE PROVIDED BY THE ATHLETE AGENT UNDER THE CONTRACT AND ANY
15 OTHER CONSIDERATION THE ATHLETE AGENT HAS RECEIVED OR WILL
16 RECEIVE FROM ANY OTHER SOURCE FOR ENTERING INTO THE CONTRACT OR
17 FOR PROVIDING THE SERVICES;

18 (c) THE NAME OF ANY PERSON NOT LISTED IN THE ATHLETE
19 AGENT'S APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION
20 WHO WILL BE COMPENSATED BECAUSE THE STUDENT ATHLETE SIGNED THE
21 CONTRACT;

22 (d) A DESCRIPTION OF ANY EXPENSES THE STUDENT ATHLETE
23 AGREES TO REIMBURSE;

24 (e) A DESCRIPTION OF THE SERVICES TO BE PROVIDED TO THE
25 STUDENT ATHLETE BY THE ATHLETE AGENT;

26 (f) THE DURATION OF THE CONTRACT; AND

27 (g) THE DATE OF EXECUTION.

1 (3) SUBJECT TO SUBSECTION (7) OF THIS SECTION, AN AGENCY
2 CONTRACT MUST CONTAIN A CONSPICUOUS NOTICE IN BOLDFACE TYPE AND
3 IN SUBSTANTIALLY THE FOLLOWING FORM:

4 **WARNING TO STUDENT ATHLETE**

5 **IF YOU SIGN THIS CONTRACT:**

6 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE**
7 **AS A STUDENT ATHLETE IN YOUR SPORT;**

8 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72**
9 **HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE**
10 **NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU**
11 **PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND**
12 **YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC**
13 **DIRECTOR THAT YOU HAVE ENTERED INTO THIS**
14 **CONTRACT AND PROVIDE THE NAME AND CONTACT**
15 **INFORMATION OF THE ATHLETE AGENT; AND**

16 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14**
17 **DAYS AFTER SIGNING IT. CANCELLATION OF THIS**
18 **CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A**
19 **STUDENT ATHLETE IN YOUR SPORT.**

20 (4) AN AGENCY CONTRACT MUST BE ACCOMPANIED BY A
21 SEPARATE RECORD SIGNED BY THE STUDENT ATHLETE OR, IF THE STUDENT
22 ATHLETE IS A MINOR, HIS OR HER PARENT OR GUARDIAN, ACKNOWLEDGING
23 THAT SIGNING THE CONTRACT MAY RESULT IN THE LOSS OF THE STUDENT
24 ATHLETE'S ELIGIBILITY TO PARTICIPATE IN THE STUDENT ATHLETE'S SPORT.

25 (5) A STUDENT ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR,
26 HIS OR HER PARENT OR GUARDIAN, MAY VOID AN AGENCY CONTRACT THAT
27 DOES NOT CONFORM TO THIS SECTION. IF THE CONTRACT IS VOIDED, THE

1 STUDENT ATHLETE IS NOT REQUIRED TO RETURN ANY CONSIDERATION
2 RECEIVED FROM THE ATHLETE AGENT UNDER THE CONTRACT TO INDUCE
3 ENTERING INTO THE CONTRACT.

4 (6) AT THE TIME AN AGENCY CONTRACT IS EXECUTED, THE
5 ATHLETE AGENT SHALL GIVE THE STUDENT ATHLETE OR, IF THE STUDENT
6 ATHLETE IS A MINOR, HIS OR HER PARENT OR GUARDIAN, A COPY IN A
7 RECORD OF THE CONTRACT AND THE SEPARATE ACKNOWLEDGMENT
8 REQUIRED BY SUBSECTION (4) OF THIS SECTION.

9 (7) IF A STUDENT ATHLETE IS A MINOR, AN AGENCY CONTRACT
10 MUST BE SIGNED BY THE STUDENT ATHLETE'S PARENT OR GUARDIAN AND
11 THE NOTICE REQUIRED BY SUBSECTION (3) MUST BE REVISED
12 ACCORDINGLY.

13 **23-16-211. Notice to educational institution.** (1) AS USED IN
14 THIS SECTION, "COMMUNICATING OR ATTEMPTING TO COMMUNICATE"
15 MEANS CONTACTING OR ATTEMPTING TO CONTACT BY AN IN-PERSON
16 MEETING, A RECORD, OR ANY OTHER METHOD THAT CONVEYS OR
17 ATTEMPTS TO CONVEY A MESSAGE.

18 (2) WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN
19 AGENCY CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN
20 WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER OCCURS
21 FIRST, THE ATHLETE AGENT SHALL GIVE NOTICE IN A RECORD OF THE
22 EXISTENCE OF THE CONTACT TO THE ATHLETIC DIRECTOR OF THE
23 EDUCATIONAL INSTITUTION AT WHICH THE STUDENT ATHLETE IS ENROLLED
24 OR AT WHICH THE ATHLETE AGENT HAS REASONABLE GROUNDS TO
25 BELIEVE THE ATHLETE INTENDS TO ENROLL.

26 (3) WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN
27 AGENCY CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN

1 WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER OCCURS
2 FIRST, THE STUDENT ATHLETE SHALL INFORM THE ATHLETIC DIRECTOR OF
3 THE EDUCATIONAL INSTITUTION AT WHICH THE ATHLETE IS ENROLLED
4 THAT HE OR SHE HAS ENTERED INTO AN AGENCY CONTRACT AND THE
5 NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT.

6 (4) IF AN ATHLETE AGENT ENTERS INTO AN AGENCY CONTRACT
7 WITH A STUDENT ATHLETE AND THE STUDENT ATHLETE SUBSEQUENTLY
8 ENROLLS AT AN EDUCATIONAL INSTITUTION, THE ATHLETE AGENT SHALL
9 NOTIFY THE ATHLETIC DIRECTOR OF THE EDUCATIONAL INSTITUTION OF
10 THE CONTRACT'S EXISTENCE WITHIN SEVENTY-TWO HOURS AFTER THE
11 ATHLETE AGENT KNEW OR SHOULD HAVE KNOWN OF THE STUDENT
12 ATHLETE'S ENROLLMENT.

13 (5) IF AN ATHLETE AGENT HAS A RELATIONSHIP WITH A STUDENT
14 ATHLETE BEFORE THE STUDENT ATHLETE ENROLLS IN AN EDUCATIONAL
15 INSTITUTION AND RECEIVES AN ATHLETIC SCHOLARSHIP FROM THE
16 EDUCATIONAL INSTITUTION, THE ATHLETE AGENT SHALL NOTIFY THE
17 EDUCATIONAL INSTITUTION OF THE RELATIONSHIP WITHIN TEN DAYS AFTER
18 THE STUDENT ATHLETE'S ENROLLMENT IF THE ATHLETE AGENT KNOWS OR
19 SHOULD HAVE KNOWN OF THE ENROLLMENT AND:

20 (a) THE RELATIONSHIP WAS MOTIVATED IN WHOLE OR IN PART BY
21 THE INTENTION OF THE ATHLETE AGENT TO RECRUIT OR SOLICIT THE
22 STUDENT ATHLETE TO ENTER INTO AN AGENCY CONTRACT IN THE FUTURE;
23 OR

24 (b) THE ATHLETE AGENT DIRECTLY OR INDIRECTLY RECRUITED OR
25 SOLICITED THE STUDENT ATHLETE TO ENTER INTO AN AGENCY CONTRACT
26 BEFORE THE ENROLLMENT.

27 (6) AN ATHLETE AGENT SHALL GIVE NOTICE IN A RECORD TO THE

1 ATHLETIC DIRECTOR OF ANY EDUCATIONAL INSTITUTION AT WHICH A
2 STUDENT ATHLETE IS ENROLLED BEFORE THE ATHLETE AGENT
3 COMMUNICATES OR ATTEMPTS TO COMMUNICATE WITH:

4 (a) THE STUDENT ATHLETE OR, IF THE STUDENT ATHLETE IS A
5 MINOR, HIS OR HER PARENT OR GUARDIAN, TO INFLUENCE THE STUDENT
6 ATHLETE OR HIS OR HER PARENT OR GUARDIAN TO ENTER INTO AN AGENCY
7 CONTRACT; OR

8 (b) ANOTHER INDIVIDUAL WITH THE INTENT OF HAVING THAT
9 INDIVIDUAL INFLUENCE THE STUDENT ATHLETE OR, IF THE STUDENT
10 ATHLETE IS A MINOR, HIS OR HER PARENT OR GUARDIAN, TO ENTER INTO
11 AN AGENCY CONTRACT.

12 (7) IF A COMMUNICATION OR AN ATTEMPT TO COMMUNICATE WITH
13 AN ATHLETE AGENT IS INITIATED BY A STUDENT ATHLETE OR ANOTHER
14 INDIVIDUAL ON BEHALF OF THE STUDENT ATHLETE, THE ATHLETE AGENT
15 SHALL NOTIFY IN A RECORD THE ATHLETIC DIRECTOR OF ANY
16 EDUCATIONAL INSTITUTION AT WHICH THE STUDENT ATHLETE IS
17 ENROLLED. THE NOTIFICATION MUST BE MADE WITHIN TEN DAYS AFTER
18 THE COMMUNICATION OR ATTEMPT TO COMMUNICATE.

19 (8) AN EDUCATIONAL INSTITUTION THAT BECOMES AWARE OF A
20 VIOLATION OF THIS PART 2 BY AN ATHLETE AGENT SHALL PROVIDE NOTICE
21 OF THE VIOLATION TO THE SECRETARY OF STATE AND ANY PROFESSIONAL
22 LEAGUE OR PLAYERS ASSOCIATION WITH WHICH THE EDUCATIONAL
23 INSTITUTION IS AWARE THE ATHLETE AGENT IS LICENSED OR REGISTERED.

24 **23-16-212. Student athlete's right to cancel.** (1) A STUDENT
25 ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR, HIS OR HER PARENT OR
26 GUARDIAN, MAY:

27 (a) CANCEL AN AGENCY CONTRACT BY GIVING NOTICE IN A

1 RECORD OF CANCELLATION TO THE ATHLETE AGENT WITHIN FOURTEEN
2 DAYS AFTER THE CONTRACT IS SIGNED; AND

3 (b) NOT WAIVE THE RIGHT TO CANCEL AN AGENCY CONTRACT.

4 (2) IF A STUDENT ATHLETE, PARENT, OR GUARDIAN CANCELS AN
5 AGENCY CONTRACT, THE STUDENT ATHLETE, PARENT, OR GUARDIAN IS
6 NOT REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR
7 RETURN ANY CONSIDERATION RECEIVED FROM THE ATHLETE AGENT TO
8 INFLUENCE THE STUDENT ATHLETE TO ENTER INTO THE AGENCY
9 CONTRACT.

10 **23-16-213. Required records.** (1) AN ATHLETE AGENT SHALL
11 CREATE AND RETAIN THE FOLLOWING RECORDS FOR A PERIOD OF FIVE
12 YEARS:

13 (a) THE NAME AND ADDRESS OF EACH INDIVIDUAL REPRESENTED
14 BY THE ATHLETE AGENT;

15 (b) EACH AGENCY CONTRACT ENTERED INTO BY THE ATHLETE
16 AGENT; AND

17 (c) THE DIRECT COSTS INCURRED BY THE ATHLETE AGENT IN THE
18 RECRUITMENT OR SOLICITATION OF EACH STUDENT ATHLETE TO ENTER
19 INTO AN AGENCY CONTRACT.

20 (2) THE RECORDS DESCRIBED IN SUBSECTION (1) OF THIS SECTION
21 ARE OPEN TO INSPECTION BY THE SECRETARY OF STATE DURING NORMAL
22 BUSINESS HOURS.

23 **23-16-214. Prohibited conduct.** (1) AN ATHLETE AGENT, WITH
24 THE INTENT TO INFLUENCE A STUDENT ATHLETE OR, IF THE STUDENT
25 ATHLETE IS A MINOR, HIS OR HER PARENT OR GUARDIAN, TO ENTER INTO
26 AN AGENCY CONTRACT, MAY NOT TAKE ANY OF THE FOLLOWING ACTIONS
27 OR ENCOURAGE ANY OTHER INDIVIDUAL TO TAKE OR ASSIST ANY OTHER

1 INDIVIDUAL IN TAKING ANY OF THE FOLLOWING ACTIONS ON BEHALF OF
2 THE ATHLETE AGENT:

3 (a) GIVE MATERIALLY FALSE OR MISLEADING INFORMATION OR
4 MAKE A MATERIALLY FALSE PROMISE OR REPRESENTATION;

5 (b) FURNISH ANYTHING OF VALUE TO A STUDENT ATHLETE BEFORE
6 THE STUDENT ATHLETE ENTERS INTO THE AGENCY CONTRACT; OR

7 (c) FURNISH ANYTHING OF VALUE TO ANY INDIVIDUAL OTHER
8 THAN THE STUDENT ATHLETE OR ANOTHER REGISTERED ATHLETE AGENT.

9 (2) AN ATHLETE AGENT MAY NOT INTENTIONALLY DO ANY OF THE
10 FOLLOWING ACTIONS OR ENCOURAGE ANY OTHER INDIVIDUAL TO DO ANY
11 OF THE FOLLOWING ACTIONS ON BEHALF OF THE ATHLETE AGENT:

12 (a) INITIATE CONTACT, DIRECTLY OR INDIRECTLY, WITH A STUDENT
13 ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR, HIS OR HER PARENT OR
14 GUARDIAN, TO RECRUIT OR SOLICIT THE STUDENT ATHLETE OR HIS OR HER
15 PARENT OR GUARDIAN TO ENTER INTO AN AGENCY CONTRACT UNLESS THE
16 ATHLETE AGENT IS PROPERLY REGISTERED PURSUANT TO THIS PART 2;

17 (b) FAIL TO CREATE, RETAIN, OR PERMIT INSPECTION OF THE
18 RECORDS REQUIRED TO BE RETAINED BY SECTION 23-16-213;

19 (c) FAIL TO REGISTER WHEN REQUIRED BY SECTION 23-16-204;

20 (d) PROVIDE MATERIALLY FALSE OR MISLEADING INFORMATION IN
21 AN APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION;

22 (e) PREDATE OR POSTDATE AN AGENCY CONTRACT; OR

23 (f) FAIL TO NOTIFY A STUDENT ATHLETE OR, IF THE STUDENT
24 ATHLETE IS A MINOR, HIS OR HER PARENT OR GUARDIAN, BEFORE THE
25 STUDENT ATHLETE OR HIS OR HER PARENT OR GUARDIAN SIGNS AN
26 AGENCY CONTRACT FOR A PARTICULAR SPORT THAT THE SIGNING MAY
27 MAKE THE STUDENT ATHLETE INELIGIBLE TO PARTICIPATE AS A STUDENT

1 ATHLETE IN THAT SPORT.

2 **23-16-215. Criminal penalties.** AN ATHLETE AGENT WHO
3 VIOLATES SECTION 23-16-214 IS GUILTY OF A CLASS 2 MISDEMEANOR, AS
4 PROVIDED IN SECTION 18-1.3-501, C.R.S., FOR A FIRST OFFENSE AND IS
5 GUILTY OF A CLASS 6 FELONY, AS PROVIDED IN SECTION 18-1.3-401,
6 C.R.S., FOR A SECOND OR SUBSEQUENT OFFENSE.

7 **23-16-216. Civil remedy.** (1) AN EDUCATIONAL INSTITUTION OR
8 STUDENT ATHLETE MAY BRING AN ACTION FOR DAMAGES AGAINST AN
9 ATHLETE AGENT IF THE EDUCATIONAL INSTITUTION OR STUDENT ATHLETE
10 IS ADVERSELY AFFECTED BY AN ACT OR OMISSION OF THE ATHLETE AGENT
11 IN VIOLATION OF THIS PART 2. AN EDUCATIONAL INSTITUTION OR STUDENT
12 ATHLETE IS ADVERSELY AFFECTED BY AN ACT OR OMISSION OF AN
13 ATHLETE AGENT ONLY IF, BECAUSE OF THE ACT OR OMISSION, THE
14 EDUCATIONAL INSTITUTION OR AN INDIVIDUAL WHO WAS A STUDENT
15 ATHLETE AT THE TIME OF THE ACT OR OMISSION AND WHO WAS ALSO
16 ENROLLED IN THE EDUCATIONAL INSTITUTION:

17 (a) IS SUSPENDED OR DISQUALIFIED FROM PARTICIPATION IN AN
18 INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT BY OR UNDER THE
19 RULES OF A STATE OR NATIONAL FEDERATION OR ASSOCIATION THAT
20 PROMOTES OR REGULATES INTERSCHOLASTIC OR INTERCOLLEGIATE
21 SPORTS; OR

22 (b) SUFFERS FINANCIAL DAMAGE.

23 (2) A PLAINTIFF THAT PREVAILS IN AN ACTION UNDER THIS SECTION
24 MAY RECOVER COSTS AND REASONABLE ATTORNEY'S FEES. AN ATHLETE
25 AGENT FOUND LIABLE UNDER THIS SECTION FORFEITS ANY RIGHT OF
26 PAYMENT FOR ANYTHING OF BENEFIT OR VALUE PROVIDED TO THE
27 STUDENT ATHLETE AND SHALL REFUND ANY CONSIDERATION PAID TO THE

1 ATHLETE AGENT BY OR ON BEHALF OF THE STUDENT ATHLETE.

2 (3) A VIOLATION OF THIS PART 2 IS AN UNFAIR TRADE OR
3 DECEPTIVE PRACTICE PURSUANT TO THE LAWS OF THIS STATE.

4 **23-16-217. Civil penalty.** ON MOTION OF THE ATTORNEY
5 GENERAL OR THE DISTRICT ATTORNEY, THE COURT MAY IMPOSE A CIVIL
6 PENALTY OF NOT LESS THAN TWENTY-FIVE THOUSAND DOLLARS BUT NOT
7 MORE THAN FIFTY THOUSAND DOLLARS FOR A VIOLATION OF THIS PART 2.
8 MONEYS COLLECTED UNDER THIS SECTION SHALL BE TRANSMITTED TO THE
9 STATE TREASURER AND CREDITED TO THE GENERAL FUND.

10 **23-16-218. Uniformity of application and construction.** IN
11 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
12 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
13 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

14 **23-16-219. Relation to electronic signatures in global and**
15 **national commerce act.** THIS PART 2 MODIFIES, LIMITS, OR SUPERSEDES
16 THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE
17 ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR
18 SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR
19 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN
20 SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

21 **23-16-220. Severability.** IF ANY PROVISION OF THIS PART 2 OR ITS
22 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
23 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
24 THIS PART 2, WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
25 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
26 PART 2 ARE SEVERABLE.

27 **SECTION 2.** In Colorado Revised Statutes, **amend** 23-16-104 as

1 follows:

2 **23-16-104. Agent contracts - contents - notice - termination.**

3 (1) In addition to the requirements specified in ~~section 23-16-209~~
4 SECTION 23-16-210 for contracts with athlete agents, any agent contract
5 entered into between an athlete agent and a student athlete shall also
6 include:

7 (a) and (b) (Deleted by amendment, L. 2008, p. 1015, § 4,
8 effective July 1, 2008.)

9 (c) Any guarantees provided by the athlete agent to the student
10 athlete;

11 (d) In addition to the warning required to be given to the student
12 athlete as specified in ~~section 23-16-209 (c)~~ SECTION 23-16-210 (3), the
13 following statement in at least ten-point type that is bold-faced,
14 capitalized, underlined, or otherwise conspicuously set out from
15 surrounding written material:

16 **WARNING TO STUDENT ATHLETE:**

17 **DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT**
18 **OR IF IT CONTAINS BLANK SPACES. DO NOT SIGN THIS**
19 **CONTRACT IF IT DOES NOT SPECIFY ALL OF THE**
20 **GUARANTEES MADE TO YOU BY THE ATHLETE AGENT. IF**
21 **YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE**
22 **SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL**
23 **THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN**
24 **WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT**
25 **WITHIN FOURTEEN DAYS AFTER THE DATE ON WHICH**
26 **YOU SIGN THIS CONTRACT.**

27 (2) to (4) (Deleted by amendment, L. 2008, p. 1015, § 4, effective

1 July 1, 2008.)

2 **SECTION 3. Inclusion of official comments.** The revisor shall
3 include in the publication of the "Revised Uniform Athlete Agents Act
4 (2015)", as nonstatutory matter, following each section of the part, the
5 full text of the official comments to that section contained in the official
6 volume containing the 2015 official text of the "Revised Uniform Athlete
7 Agents Act (2015)" issued by the uniform law commission, with any
8 changes in the official comments or Colorado comments to correspond to
9 Colorado changes in the uniform act. The revisor of statutes shall prepare
10 the comments for approval by the committee on legal services for
11 publication.

12 **SECTION 4. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2016 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REDRAFT
11.16.15

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 16-0131.01 Jerry Barry x4341

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Commercial Real Estate Receivership Act"

A BILL FOR AN ACT

101 CONCERNING THE "UNIFORM COMMERCIAL REAL ESTATE
102 RECEIVERSHIP ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Commercial Real Estate Receivership Act" (the Act). The Act applies to receivers appointed for commercial real estate only and establishes a standard set of procedures and rules for the receiver's appointment, rights, and duties.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 46 to title
3 38 as follows:

4 **ARTICLE 46**

5 **Uniform Commercial Real Estate**

6 **Receivership Act**

7 **38-46-101. Short title.** THIS ARTICLE MAY BE CITED AS THE
8 "UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT".

9 **38-46-102. Definitions.** IN THIS ARTICLE:

10 (1) "AFFILIATE" MEANS:

11 (a) WITH RESPECT TO AN INDIVIDUAL:

12 (I) A COMPANION OF THE INDIVIDUAL;

13 (II) A LINEAL ANCESTOR OR DESCENDANT, WHETHER BY BLOOD OR
14 ADOPTION, OF:

15 (A) THE INDIVIDUAL; OR

16 (B) A COMPANION OF THE INDIVIDUAL;

17 (III) A COMPANION OF AN ANCESTOR OR DESCENDANT DESCRIBED
18 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a);

19 (IV) A SIBLING, AUNT, UNCLE, GREAT AUNT, GREAT UNCLE, FIRST
20 COUSIN, NIECE, NEPHEW, GRANDNIECE, OR GRANDNEPHEW OF THE
21 INDIVIDUAL, WHETHER RELATED BY THE WHOLE OR THE HALF BLOOD OR
22 ADOPTION, OR A COMPANION OF ANY OF THEM; OR

23 (V) ANY OTHER INDIVIDUAL OCCUPYING THE RESIDENCE OF THE
24 INDIVIDUAL; AND

25 (b) WITH RESPECT TO A PERSON OTHER THAN AN INDIVIDUAL:

26 (I) ANOTHER PERSON THAT DIRECTLY OR INDIRECTLY CONTROLS,

1 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE PERSON;

2 (II) AN OFFICER, DIRECTOR, MANAGER, MEMBER, PARTNER,
3 EMPLOYEE, OR TRUSTEE OR OTHER FIDUCIARY OF THE PERSON; OR

4 (III) A COMPANION OF, OR AN INDIVIDUAL OCCUPYING THE
5 RESIDENCE OF, AN INDIVIDUAL DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF
6 THIS PARAGRAPH (b).

7 (2) "COMPANION" MEANS:

8 (a) THE SPOUSE OF AN INDIVIDUAL;

9 (b) THE DOMESTIC PARTNER OF AN INDIVIDUAL; OR

10 (c) ANOTHER INDIVIDUAL IN A CIVIL UNION WITH AN INDIVIDUAL.

11 (3) "COURT" MEANS A DISTRICT COURT.

12 (4) "EXECUTORY CONTRACT" MEANS A CONTRACT, INCLUDING A
13 LEASE, UNDER WHICH EACH PARTY HAS AN UNPERFORMED OBLIGATION
14 AND THE FAILURE OF A PARTY TO COMPLETE PERFORMANCE WOULD
15 CONSTITUTE A MATERIAL BREACH.

16 (5) "GOVERNMENTAL UNIT" MEANS AN OFFICE, DEPARTMENT,
17 DIVISION, BUREAU, BOARD, COMMISSION, OR OTHER AGENCY OF THIS
18 STATE OR A SUBDIVISION OF THIS STATE.

19 (6) "LIEN" MEANS AN INTEREST IN PROPERTY WHICH SECURES
20 PAYMENT OR PERFORMANCE OF AN OBLIGATION.

21 (7) "MORTGAGE" MEANS A RECORD, HOWEVER DENOMINATED,
22 THAT CREATES OR PROVIDES FOR A CONSENSUAL LIEN ON REAL PROPERTY
23 OR RENTS, EVEN IF IT ALSO CREATES OR PROVIDES FOR A LIEN ON
24 PERSONAL PROPERTY.

25 (8) "MORTGAGEE" MEANS A PERSON ENTITLED TO ENFORCE AN
26 OBLIGATION SECURED BY A MORTGAGE.

27 (9) "MORTGAGOR" MEANS A PERSON THAT GRANTS A MORTGAGE

1 OR A SUCCESSOR IN OWNERSHIP OF THE REAL PROPERTY DESCRIBED IN THE
2 MORTGAGE.

3 (10) "OWNER" MEANS THE PERSON FOR WHOSE PROPERTY A
4 RECEIVER IS APPOINTED.

5 (11) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
6 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
7 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
8 LEGAL ENTITY.

9 (12) "PROCEEDS" MEANS THE FOLLOWING PROPERTY:

10 (a) WHATEVER IS ACQUIRED ON THE SALE, LEASE, LICENSE,
11 EXCHANGE, OR OTHER DISPOSITION OF RECEIVERSHIP PROPERTY;

12 (b) WHATEVER IS COLLECTED ON, OR DISTRIBUTED ON ACCOUNT
13 OF, RECEIVERSHIP PROPERTY;

14 (c) RIGHTS ARISING OUT OF RECEIVERSHIP PROPERTY;

15 (d) TO THE EXTENT OF THE VALUE OF RECEIVERSHIP PROPERTY,
16 CLAIMS ARISING OUT OF THE LOSS, NONCONFORMITY, OR INTERFERENCE
17 WITH THE USE OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE
18 TO THE PROPERTY; OR

19 (e) TO THE EXTENT OF THE VALUE OF RECEIVERSHIP PROPERTY
20 AND TO THE EXTENT PAYABLE TO THE OWNER OR MORTGAGEE, INSURANCE
21 PAYABLE BY REASON OF THE LOSS OR NONCONFORMITY OF, DEFECTS OR
22 INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO THE PROPERTY.

23 (13) "PROPERTY" MEANS ALL OF A PERSON'S RIGHT, TITLE, AND
24 INTEREST, BOTH LEGAL AND EQUITABLE, IN REAL AND PERSONAL
25 PROPERTY, TANGIBLE AND INTANGIBLE, WHEREVER LOCATED AND
26 HOWEVER ACQUIRED. THE TERM INCLUDES PROCEEDS, PRODUCTS,
27 OFFSPRING, RENTS, OR PROFITS OF OR FROM THE PROPERTY.

1 (14) "RECEIVER" MEANS A PERSON APPOINTED BY THE COURT AS
2 THE COURT'S AGENT, AND SUBJECT TO THE COURT'S DIRECTION, TO TAKE
3 POSSESSION OF, MANAGE, AND, IF AUTHORIZED BY THIS ARTICLE OR COURT
4 ORDER, TRANSFER, SELL, LEASE, LICENSE, EXCHANGE, COLLECT, OR
5 OTHERWISE DISPOSE OF RECEIVERSHIP PROPERTY.

6 (15) "RECEIVERSHIP" MEANS A PROCEEDING IN WHICH A RECEIVER
7 IS APPOINTED.

8 (16) "RECEIVERSHIP PROPERTY" MEANS THE PROPERTY OF AN
9 OWNER WHICH IS DESCRIBED IN THE ORDER APPOINTING A RECEIVER OR A
10 SUBSEQUENT ORDER. THE TERM INCLUDES ANY PROCEEDS, PRODUCTS,
11 OFFSPRING, RENTS, OR PROFITS OF OR FROM THE PROPERTY.

12 (17) "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS
13 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED ON AN ELECTRONIC
14 OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

15 (18) "RENTS" MEANS:

16 (a) SUMS PAYABLE FOR THE RIGHT TO POSSESS OR OCCUPY, OR FOR
17 THE ACTUAL POSSESSION OR OCCUPATION OF, REAL PROPERTY OF
18 ANOTHER PERSON;

19 (b) SUMS PAYABLE TO A MORTGAGOR UNDER A POLICY OF
20 RENTAL-INTERRUPTION INSURANCE COVERING REAL PROPERTY;

21 (c) CLAIMS ARISING OUT OF A DEFAULT IN THE PAYMENT OF SUMS
22 PAYABLE FOR THE RIGHT TO POSSESS OR OCCUPY REAL PROPERTY OF
23 ANOTHER PERSON;

24 (d) SUMS PAYABLE TO TERMINATE AN AGREEMENT TO POSSESS OR
25 OCCUPY REAL PROPERTY OF ANOTHER PERSON;

26 (e) SUMS PAYABLE TO A MORTGAGOR FOR PAYMENT OR
27 REIMBURSEMENT OF EXPENSES INCURRED IN OWNING, OPERATING, AND

1 MAINTAINING REAL PROPERTY OR CONSTRUCTING OR INSTALLING
2 IMPROVEMENTS ON REAL PROPERTY; OR

3 (f) OTHER SUMS PAYABLE UNDER AN AGREEMENT RELATING TO
4 THE REAL PROPERTY OF ANOTHER PERSON WHICH CONSTITUTE RENTS
5 UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE.

6 (19) "SECURED OBLIGATION" MEANS AN OBLIGATION THE
7 PAYMENT OR PERFORMANCE OF WHICH IS SECURED BY A SECURITY
8 AGREEMENT.

9 (20) "SECURITY AGREEMENT" MEANS AN AGREEMENT THAT
10 CREATES OR PROVIDES FOR A LIEN.

11 (21) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
12 ADOPT A RECORD:

13 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

14 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
15 AN ELECTRONIC SOUND, SYMBOL, OR PROCESS.

16 (22) "STATE" MEANS A STATE OF THE UNITED STATES, THE
17 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
18 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
19 JURISDICTION OF THE UNITED STATES.

20 **38-46-103. Notice and opportunity for hearing.** (1) EXCEPT AS
21 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE COURT
22 MAY ISSUE AN ORDER UNDER THIS ARTICLE ONLY AFTER NOTICE AND
23 OPPORTUNITY FOR A HEARING APPROPRIATE IN THE CIRCUMSTANCES.

24 (2) THE COURT MAY ISSUE AN ORDER UNDER THIS ARTICLE:

25 (a) WITHOUT PRIOR NOTICE IF THE CIRCUMSTANCES REQUIRE
26 ISSUANCE OF AN ORDER BEFORE NOTICE IS GIVEN;

27 (b) AFTER NOTICE AND WITHOUT A PRIOR HEARING IF THE

1 CIRCUMSTANCES REQUIRE ISSUANCE OF AN ORDER BEFORE A HEARING IS
2 HELD; OR

3 (c) AFTER NOTICE AND WITHOUT A HEARING IF NO INTERESTED
4 PARTY TIMELY REQUESTS A HEARING.

5 **38-46-104. Scope - exclusions.** (1) EXCEPT AS OTHERWISE
6 PROVIDED IN SUBSECTION (2) OR (3) OF THIS SECTION, THIS ARTICLE
7 APPLIES TO A RECEIVERSHIP FOR AN INTEREST IN REAL PROPERTY AND ANY
8 PERSONAL PROPERTY RELATED TO OR USED IN OPERATING THE REAL
9 PROPERTY.

10 (2) THIS ARTICLE DOES NOT APPLY TO A RECEIVERSHIP FOR AN
11 INTEREST IN REAL PROPERTY IMPROVED BY ONE TO FOUR DWELLING UNITS
12 UNLESS:

13 (a) THE INTEREST IS USED FOR AGRICULTURAL, COMMERCIAL,
14 INDUSTRIAL, OR MINERAL-EXTRACTION PURPOSES, OTHER THAN
15 INCIDENTAL USES BY AN OWNER OCCUPYING THE PROPERTY AS THE
16 OWNER'S PRIMARY RESIDENCE;

17 (b) THE INTEREST SECURES AN OBLIGATION INCURRED AT A TIME
18 WHEN THE PROPERTY WAS USED OR PLANNED FOR USE FOR AGRICULTURAL,
19 COMMERCIAL, INDUSTRIAL, OR MINERAL-EXTRACTION PURPOSES;

20 (c) THE OWNER PLANNED OR IS PLANNING TO DEVELOP THE
21 PROPERTY INTO ONE OR MORE DWELLING UNITS TO BE SOLD OR LEASED IN
22 THE ORDINARY COURSE OF THE OWNER'S BUSINESS; OR

23 (d) THE OWNER IS COLLECTING OR HAS THE RIGHT TO COLLECT
24 RENTS OR OTHER INCOME FROM THE PROPERTY FROM A PERSON OTHER
25 THAN AN AFFILIATE OF THE OWNER.

26 (3) THIS ARTICLE DOES NOT APPLY TO A RECEIVERSHIP
27 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS ARTICLE IN WHICH

1 THE RECEIVER IS A GOVERNMENTAL UNIT OR AN INDIVIDUAL ACTING IN AN
2 OFFICIAL CAPACITY ON BEHALF OF THE UNIT EXCEPT TO THE EXTENT
3 PROVIDED BY THE OTHER LAW.

4 (4) THIS ARTICLE DOES NOT LIMIT THE AUTHORITY OF A COURT TO
5 APPOINT A RECEIVER UNDER LAW OF THIS STATE OTHER THAN THIS
6 ARTICLE.

7 (5) UNLESS DISPLACED BY A PARTICULAR PROVISION OF THIS
8 ARTICLE, THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT THIS ARTICLE.

9 **38-46-105. Power of court.** THE COURT THAT APPOINTS A
10 RECEIVER UNDER THIS ARTICLE HAS EXCLUSIVE JURISDICTION TO DIRECT
11 THE RECEIVER AND DETERMINE ANY CONTROVERSY RELATED TO THE
12 RECEIVERSHIP OR RECEIVERSHIP PROPERTY.

13 **38-46-106. Appointment of receiver.** (1) THE COURT MAY
14 APPOINT A RECEIVER:

15 (a) BEFORE JUDGMENT, TO PROTECT A PARTY THAT
16 DEMONSTRATES AN APPARENT RIGHT, TITLE, OR INTEREST IN REAL
17 PROPERTY THAT IS THE SUBJECT OF THE ACTION, IF THE PROPERTY OR ITS
18 REVENUE-PRODUCING POTENTIAL:

19 (I) IS BEING SUBJECTED TO OR IS IN DANGER OF WASTE, LOSS,
20 DISSIPATION, OR IMPAIRMENT; OR

21 (II) HAS BEEN OR IS ABOUT TO BE THE SUBJECT OF A VOIDABLE
22 TRANSACTION;

23 (b) AFTER JUDGMENT:

24 (I) TO CARRY THE JUDGMENT INTO EFFECT; OR

25 (II) TO PRESERVE NONEXEMPT REAL PROPERTY PENDING APPEAL
26 OR WHEN AN EXECUTION HAS BEEN RETURNED UNSATISFIED AND THE
27 OWNER REFUSES TO APPLY THE PROPERTY IN SATISFACTION OF THE

1 JUDGMENT;

2 (c) IN AN ACTION IN WHICH A RECEIVER FOR REAL PROPERTY MAY
3 BE APPOINTED ON EQUITABLE GROUNDS; OR

4 (d) DURING THE TIME ALLOWED FOR REDEMPTION, TO PRESERVE
5 REAL PROPERTY SOLD IN AN EXECUTION OR FORECLOSURE SALE AND
6 SECURE ITS RENTS TO THE PERSON ENTITLED TO THE RENTS.

7 (2) IN CONNECTION WITH THE FORECLOSURE OR OTHER
8 ENFORCEMENT OF A MORTGAGE, THE COURT MAY APPOINT A RECEIVER FOR
9 THE MORTGAGED PROPERTY IF:

10 (a) APPOINTMENT IS NECESSARY TO PROTECT THE PROPERTY FROM
11 WASTE, LOSS, TRANSFER, DISSIPATION, OR IMPAIRMENT;

12 (b) THE MORTGAGOR AGREED IN A SIGNED RECORD TO
13 APPOINTMENT OF A RECEIVER ON DEFAULT;

14 (c) THE OWNER AGREED, AFTER DEFAULT AND IN A SIGNED
15 RECORD, TO APPOINTMENT OF A RECEIVER;

16 (d) THE PROPERTY AND ANY OTHER COLLATERAL HELD BY THE
17 MORTGAGEE ARE NOT SUFFICIENT TO SATISFY THE SECURED OBLIGATION;

18 (e) THE OWNER FAILS TO TURN OVER TO THE MORTGAGEE
19 PROCEEDS OR RENTS THE MORTGAGEE WAS ENTITLED TO COLLECT; OR

20 (f) THE HOLDER OF A SUBORDINATE LIEN OBTAINS APPOINTMENT
21 OF A RECEIVER FOR THE PROPERTY.

22 (3) THE COURT MAY CONDITION APPOINTMENT OF A RECEIVER
23 WITHOUT PRIOR NOTICE UNDER SECTION 38-46-103 (2) (a) OR WITHOUT A
24 PRIOR HEARING UNDER SECTION 38-46-103 (2) (b) ON THE GIVING OF
25 SECURITY BY THE PERSON SEEKING THE APPOINTMENT FOR THE PAYMENT
26 OF DAMAGES, REASONABLE ATTORNEY'S FEES, AND COSTS INCURRED OR
27 SUFFERED BY ANY PERSON IF THE COURT LATER CONCLUDES THAT THE

1 APPOINTMENT WAS NOT JUSTIFIED. IF THE COURT LATER CONCLUDES THAT
2 THE APPOINTMENT WAS JUSTIFIED, THE COURT SHALL RELEASE THE
3 SECURITY.

4 **38-46-107. Disqualification from appointment as receiver -**
5 **disclosure of interest.** (1) THE COURT MAY NOT APPOINT A PERSON AS
6 RECEIVER UNLESS THE PERSON SUBMITS TO THE COURT A STATEMENT
7 UNDER PENALTY OF PERJURY THAT THE PERSON IS NOT DISQUALIFIED.

8 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
9 SECTION, A PERSON IS DISQUALIFIED FROM APPOINTMENT AS RECEIVER IF
10 THE PERSON:

11 (a) IS AN AFFILIATE OF A PARTY;

12 (b) HAS AN INTEREST MATERIALLY ADVERSE TO AN INTEREST OF
13 A PARTY;

14 (c) HAS A MATERIAL FINANCIAL INTEREST IN THE OUTCOME OF THE
15 ACTION, OTHER THAN COMPENSATION THE COURT MAY ALLOW THE
16 RECEIVER;

17 (d) HAS A DEBTOR-CREDITOR RELATIONSHIP WITH A PARTY; OR

18 (e) HOLDS AN EQUITY INTEREST IN A PARTY, OTHER THAN A
19 NONCONTROLLING INTEREST IN A PUBLICLY TRADED COMPANY.

20 (3) A PERSON IS NOT DISQUALIFIED FROM APPOINTMENT AS
21 RECEIVER SOLELY BECAUSE THE PERSON:

22 (a) WAS APPOINTED RECEIVER OR IS OWED COMPENSATION IN AN
23 UNRELATED MATTER INVOLVING A PARTY OR WAS ENGAGED BY A PARTY
24 IN A MATTER UNRELATED TO THE RECEIVERSHIP;

25 (b) IS AN INDIVIDUAL OBLIGATED TO A PARTY ON A DEBT THAT IS
26 NOT IN DEFAULT AND WAS INCURRED PRIMARILY FOR PERSONAL, FAMILY,
27 OR HOUSEHOLD PURPOSES; OR

1 (c) MAINTAINS WITH A PARTY A DEPOSIT ACCOUNT AS DEFINED IN
2 SECTION 4-9-102 (29), C.R.S.

3 (4) A PERSON SEEKING APPOINTMENT OF A RECEIVER MAY
4 NOMINATE A PERSON TO SERVE AS RECEIVER, BUT THE COURT IS NOT
5 BOUND BY THE NOMINATION.

6 **38-46-108. Receiver's bond - alternative security.** (1) EXCEPT
7 AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, A RECEIVER
8 SHALL POST WITH THE COURT A BOND THAT:

9 (a) IS CONDITIONED ON THE FAITHFUL DISCHARGE OF THE
10 RECEIVER'S DUTIES;

11 (b) HAS ONE OR MORE SURETIES APPROVED BY THE COURT;

12 (c) IS IN AN AMOUNT THE COURT SPECIFIES; AND

13 (d) IS EFFECTIVE AS OF THE DATE OF THE RECEIVER'S
14 APPOINTMENT.

15 (2) THE COURT MAY APPROVE THE POSTING BY A RECEIVER WITH
16 THE COURT OF ALTERNATIVE SECURITY, SUCH AS A LETTER OF CREDIT OR
17 DEPOSIT OF FUNDS. THE RECEIVER MAY NOT USE RECEIVERSHIP PROPERTY
18 AS ALTERNATIVE SECURITY. INTEREST THAT ACCRUES ON DEPOSITED
19 FUNDS MUST BE PAID TO THE RECEIVER ON THE RECEIVER'S DISCHARGE.

20 (3) THE COURT MAY AUTHORIZE A RECEIVER TO ACT BEFORE THE
21 RECEIVER POSTS THE BOND OR ALTERNATIVE SECURITY REQUIRED BY THIS
22 SECTION.

23 (4) A CLAIM AGAINST A RECEIVER'S BOND OR ALTERNATIVE
24 SECURITY MUST BE MADE NOT LATER THAN ONE YEAR AFTER THE DATE
25 THE RECEIVER IS DISCHARGED.

26 **38-46-109. Status of receiver as lien creditor.** (1) ON
27 APPOINTMENT OF A RECEIVER, THE RECEIVER HAS THE STATUS OF A LIEN

1 CREDITOR UNDER:

2 (a) ARTICLE 9 OF TITLE 4, C.R.S., AS TO RECEIVERSHIP PROPERTY

3 THAT IS PERSONAL PROPERTY OR FIXTURES; AND

4 (b) ARTICLE 35 OF TITLE 38, C.R.S., AS TO RECEIVERSHIP

5 PROPERTY THAT IS REAL PROPERTY.

6 **38-46-110. Security agreement covering after-acquired**

7 **property.** EXCEPT AS OTHERWISE PROVIDED BY LAW OF THIS STATE OTHER

8 THAN THIS ARTICLE, PROPERTY THAT A RECEIVER OR OWNER ACQUIRES

9 AFTER APPOINTMENT OF THE RECEIVER IS SUBJECT TO A SECURITY

10 AGREEMENT ENTERED INTO BEFORE THE APPOINTMENT TO THE SAME

11 EXTENT AS IF THE COURT HAD NOT APPOINTED THE RECEIVER.

12 **38-46-111. Collection and turnover of receivership property.**

13 (1) UNLESS THE COURT ORDERS OTHERWISE, ON DEMAND BY A RECEIVER:

14 (a) A PERSON THAT OWES A DEBT THAT IS RECEIVERSHIP PROPERTY

15 AND IS MATURED OR PAYABLE ON DEMAND OR ON ORDER SHALL PAY THE

16 DEBT TO OR ON THE ORDER OF THE RECEIVER, EXCEPT TO THE EXTENT THE

17 DEBT IS SUBJECT TO SETOFF OR RECOUPMENT; AND

18 (b) SUBJECT TO SUBSECTION (3) OF THIS SECTION, A PERSON THAT

19 HAS POSSESSION, CUSTODY, OR CONTROL OF RECEIVERSHIP PROPERTY

20 SHALL TURN THE PROPERTY OVER TO THE RECEIVER.

21 (2) A PERSON THAT HAS NOTICE OF THE APPOINTMENT OF A

22 RECEIVER AND OWES A DEBT THAT IS RECEIVERSHIP PROPERTY MAY NOT

23 SATISFY THE DEBT BY PAYMENT TO THE OWNER.

24 (3) IF A CREDITOR HAS POSSESSION, CUSTODY, OR CONTROL OF

25 RECEIVERSHIP PROPERTY AND THE VALIDITY, PERFECTION, OR PRIORITY OF

26 THE CREDITOR'S LIEN ON THE PROPERTY DEPENDS ON THE CREDITOR'S

27 POSSESSION, CUSTODY, OR CONTROL, THE CREDITOR MAY RETAIN

1 POSSESSION, CUSTODY, OR CONTROL UNTIL THE COURT ORDERS ADEQUATE
2 PROTECTION OF THE CREDITOR'S LIEN.

3 (4) UNLESS A BONA FIDE DISPUTE EXISTS ABOUT A RECEIVER'S
4 RIGHT TO POSSESSION, CUSTODY, OR CONTROL OF RECEIVERSHIP
5 PROPERTY, THE COURT MAY SANCTION AS CIVIL CONTEMPT A PERSON'S
6 FAILURE TO TURN THE PROPERTY OVER WHEN REQUIRED BY THIS SECTION.

7 **38-46-112. Powers and duties of receiver.** (1) EXCEPT AS
8 LIMITED BY COURT ORDER OR LAW OF THIS STATE OTHER THAN THIS
9 ARTICLE, A RECEIVER MAY:

10 (a) COLLECT, CONTROL, MANAGE, CONSERVE, AND PROTECT
11 RECEIVERSHIP PROPERTY;

12 (b) OPERATE A BUSINESS CONSTITUTING RECEIVERSHIP PROPERTY,
13 INCLUDING PRESERVATION, USE, SALE, LEASE, LICENSE, EXCHANGE,
14 COLLECTION, OR DISPOSITION OF THE PROPERTY IN THE ORDINARY COURSE
15 OF BUSINESS;

16 (c) IN THE ORDINARY COURSE OF BUSINESS, INCUR UNSECURED
17 DEBT AND PAY EXPENSES INCIDENTAL TO THE RECEIVER'S PRESERVATION,
18 USE, SALE, LEASE, LICENSE, EXCHANGE, COLLECTION, OR DISPOSITION OF
19 RECEIVERSHIP PROPERTY;

20 (d) ASSERT A RIGHT, CLAIM, CAUSE OF ACTION, OR DEFENSE OF THE
21 OWNER WHICH RELATES TO RECEIVERSHIP PROPERTY;

22 (e) SEEK AND OBTAIN INSTRUCTION FROM THE COURT CONCERNING
23 RECEIVERSHIP PROPERTY, EXERCISE OF THE RECEIVER'S POWERS, AND
24 PERFORMANCE OF THE RECEIVER'S DUTIES;

25 (f) ON SUBPOENA, COMPEL A PERSON TO SUBMIT TO EXAMINATION
26 UNDER OATH, OR TO PRODUCE AND PERMIT INSPECTION AND COPYING OF
27 DESIGNATED RECORDS OR TANGIBLE THINGS, WITH RESPECT TO

1 RECEIVERSHIP PROPERTY OR ANY OTHER MATTER THAT MAY AFFECT
2 ADMINISTRATION OF THE RECEIVERSHIP;

3 (g) ENGAGE A PROFESSIONAL AS PROVIDED IN SECTION 38-46-115;

4 (h) APPLY TO A COURT OF ANOTHER STATE FOR APPOINTMENT AS
5 ANCILLARY RECEIVER WITH RESPECT TO RECEIVERSHIP PROPERTY
6 LOCATED IN THAT STATE; AND

7 (i) EXERCISE ANY POWER CONFERRED BY COURT ORDER, THIS
8 ARTICLE, OR LAW OF THIS STATE OTHER THAN THIS ARTICLE.

9 (2) WITH COURT APPROVAL, A RECEIVER MAY:

10 (a) INCUR DEBT FOR THE USE OR BENEFIT OF RECEIVERSHIP
11 PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS;

12 (b) MAKE IMPROVEMENTS TO RECEIVERSHIP PROPERTY;

13 (c) USE OR TRANSFER RECEIVERSHIP PROPERTY OTHER THAN IN
14 THE ORDINARY COURSE OF BUSINESS AS PROVIDED IN SECTION 38-46-116;

15 (d) ADOPT OR REJECT AN EXECUTORY CONTRACT OF THE OWNER
16 AS PROVIDED IN SECTION 38-46-117;

17 (e) PAY COMPENSATION TO THE RECEIVER AS PROVIDED IN SECTION
18 38-46-121, AND TO EACH PROFESSIONAL ENGAGED BY THE RECEIVER AS
19 PROVIDED IN SECTION 38-46-115;

20 (f) RECOMMEND ALLOWANCE OR DISALLOWANCE OF A CLAIM OF
21 A CREDITOR AS PROVIDED IN SECTION 38-46-120; AND

22 (g) MAKE A DISTRIBUTION OF RECEIVERSHIP PROPERTY AS
23 PROVIDED IN SECTION 38-46-120.

24 (3) A RECEIVER SHALL:

25 (a) PREPARE AND RETAIN APPROPRIATE BUSINESS RECORDS,
26 INCLUDING A RECORD OF EACH RECEIPT, DISBURSEMENT, AND DISPOSITION
27 OF RECEIVERSHIP PROPERTY;

1 (b) ACCOUNT FOR RECEIVERSHIP PROPERTY, INCLUDING THE
2 PROCEEDS OF A SALE, LEASE, LICENSE, EXCHANGE, COLLECTION, OR OTHER
3 DISPOSITION OF THE PROPERTY;

4 (c) FILE WITH THE CLERK AND RECORDER A COPY OF THE ORDER
5 APPOINTING THE RECEIVER AND, IF A LEGAL DESCRIPTION OF THE REAL
6 PROPERTY IS NOT INCLUDED IN THE ORDER, THE LEGAL DESCRIPTION;

7 (d) DISCLOSE TO THE COURT ANY FACT ARISING DURING THE
8 RECEIVERSHIP WHICH WOULD DISQUALIFY THE RECEIVER UNDER SECTION
9 38-46-107; AND

10 (e) PERFORM ANY DUTY IMPOSED BY COURT ORDER, THIS ARTICLE,
11 OR LAW OF THIS STATE OTHER THAN THIS ARTICLE.

12 (4) THE POWERS AND DUTIES OF A RECEIVER MAY BE EXPANDED,
13 MODIFIED, OR LIMITED BY COURT ORDER.

14 **38-46-113. Duties of owner.** (1) AN OWNER SHALL:

15 (a) ASSIST AND COOPERATE WITH THE RECEIVER IN THE
16 ADMINISTRATION OF THE RECEIVERSHIP AND THE DISCHARGE OF THE
17 RECEIVER'S DUTIES;

18 (b) PRESERVE AND TURN OVER TO THE RECEIVER ALL
19 RECEIVERSHIP PROPERTY IN THE OWNER'S POSSESSION, CUSTODY, OR
20 CONTROL;

21 (c) IDENTIFY ALL RECORDS AND OTHER INFORMATION RELATING
22 TO THE RECEIVERSHIP PROPERTY, INCLUDING A PASSWORD,
23 AUTHORIZATION, OR OTHER INFORMATION NEEDED TO OBTAIN OR
24 MAINTAIN ACCESS TO OR CONTROL OF THE RECEIVERSHIP PROPERTY, AND
25 MAKE AVAILABLE TO THE RECEIVER THE RECORDS AND INFORMATION IN
26 THE OWNER'S POSSESSION, CUSTODY, OR CONTROL;

27 (d) ON SUBPOENA, SUBMIT TO EXAMINATION UNDER OATH BY THE

1 RECEIVER CONCERNING THE ACTS, CONDUCT, PROPERTY, LIABILITIES, AND
2 FINANCIAL CONDITION OF THE OWNER OR ANY MATTER RELATING TO THE
3 RECEIVERSHIP PROPERTY OR THE RECEIVERSHIP; AND

4 (f) PERFORM ANY DUTY IMPOSED BY COURT ORDER, THIS ARTICLE,
5 OR LAW OF THIS STATE OTHER THAN THIS ARTICLE.

6 (2) IF AN OWNER IS A PERSON OTHER THAN AN INDIVIDUAL, THIS
7 SECTION APPLIES TO EACH OFFICER, DIRECTOR, MANAGER, MEMBER,
8 PARTNER, TRUSTEE, OR OTHER PERSON EXERCISING OR HAVING THE POWER
9 TO EXERCISE CONTROL OVER THE AFFAIRS OF THE OWNER.

10 (3) IF A PERSON KNOWINGLY FAILS TO PERFORM A DUTY IMPOSED
11 BY THIS SECTION, THE COURT MAY:

12 (a) AWARD THE RECEIVER ACTUAL DAMAGES CAUSED BY THE
13 PERSON'S FAILURE, REASONABLE ATTORNEY FEES, AND COSTS; AND

14 (b) SANCTION THE FAILURE AS CIVIL CONTEMPT.

15 **38-46-114. Stay - injunction.** (1) EXCEPT AS OTHERWISE
16 PROVIDED IN SUBSECTION (4) OF THIS SECTION OR ORDERED BY THE
17 COURT, AN ORDER APPOINTING A RECEIVER OPERATES AS A STAY,
18 APPLICABLE TO ALL PERSONS, OF AN ACT, ACTION, OR PROCEEDING:

19 (a) TO OBTAIN POSSESSION OF, EXERCISE CONTROL OVER, OR
20 ENFORCE A JUDGMENT AGAINST RECEIVERSHIP PROPERTY; AND

21 (b) TO ENFORCE A LIEN AGAINST RECEIVERSHIP PROPERTY TO THE
22 EXTENT THE LIEN SECURES A CLAIM AGAINST THE OWNER WHICH AROSE
23 BEFORE ENTRY OF THE ORDER.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS
25 SECTION, THE COURT MAY ENJOIN AN ACT, ACTION, OR PROCEEDING
26 AGAINST OR RELATING TO RECEIVERSHIP PROPERTY IF THE INJUNCTION IS
27 NECESSARY TO PROTECT THE PROPERTY OR FACILITATE ADMINISTRATION

1 OF THE RECEIVERSHIP.

2 (3) A PERSON WHOSE ACT, ACTION, OR PROCEEDING IS STAYED OR
3 ENJOINED UNDER THIS SECTION MAY APPLY TO THE COURT FOR RELIEF
4 FROM THE STAY OR INJUNCTION FOR CAUSE.

5 (4) AN ORDER UNDER SUBSECTION (1) OR (2) OF THIS SECTION
6 DOES NOT OPERATE AS A STAY OR INJUNCTION OF:

7 (a) AN ACT, ACTION, OR PROCEEDING TO FORECLOSE OR
8 OTHERWISE ENFORCE A MORTGAGE BY THE PERSON SEEKING APPOINTMENT
9 OF THE RECEIVER;

10 (b) AN ACT, ACTION, OR PROCEEDING TO PERFECT, OR MAINTAIN
11 OR CONTINUE THE PERFECTION OF, AN INTEREST IN RECEIVERSHIP
12 PROPERTY;

13 (c) COMMENCEMENT OR CONTINUATION OF A CRIMINAL
14 PROCEEDING;

15 (d) COMMENCEMENT OR CONTINUATION OF AN ACTION OR
16 PROCEEDING, OR ENFORCEMENT OF A JUDGMENT OTHER THAN A MONEY
17 JUDGMENT IN AN ACTION OR PROCEEDING, BY A GOVERNMENTAL UNIT TO
18 ENFORCE ITS POLICE OR REGULATORY POWER; OR

19 (e) ESTABLISHMENT BY A GOVERNMENTAL UNIT OF A TAX
20 LIABILITY AGAINST THE OWNER OR RECEIVERSHIP PROPERTY OR AN APPEAL
21 OF THE LIABILITY.

22 (5) THE COURT MAY VOID AN ACT THAT VIOLATES A STAY OR
23 INJUNCTION UNDER THIS SECTION.

24 (6) IF A PERSON KNOWINGLY VIOLATES A STAY OR INJUNCTION
25 UNDER THIS SECTION, THE COURT MAY:

26 (a) AWARD ACTUAL DAMAGES CAUSED BY THE VIOLATION,
27 REASONABLE ATTORNEY FEES, AND COSTS; AND

1 (b) SANCTION THE VIOLATION AS CIVIL CONTEMPT.

2 **38-46-115. Engagement and compensation of professional.**

3 (1) WITH COURT APPROVAL, A RECEIVER MAY ENGAGE AN ATTORNEY,
4 ACCOUNTANT, APPRAISER, AUCTIONEER, BROKER, OR OTHER
5 PROFESSIONAL TO ASSIST THE RECEIVER IN PERFORMING A DUTY OR
6 EXERCISING A POWER OF THE RECEIVER. THE RECEIVER SHALL DISCLOSE
7 TO THE COURT:

- 8 (a) THE IDENTITY AND QUALIFICATIONS OF THE PROFESSIONAL;
9 (b) THE SCOPE AND NATURE OF THE PROPOSED ENGAGEMENT;
10 (c) ANY POTENTIAL CONFLICT OF INTEREST; AND
11 (d) THE PROPOSED COMPENSATION.

12 (2) A PERSON IS NOT DISQUALIFIED FROM ENGAGEMENT UNDER
13 THIS SECTION SOLELY BECAUSE OF THE PERSON'S ENGAGEMENT BY,
14 REPRESENTATION OF, OR OTHER RELATIONSHIP WITH THE RECEIVER, A
15 CREDITOR, OR A PARTY. THIS ARTICLE DOES NOT PREVENT THE RECEIVER
16 FROM SERVING IN THE RECEIVERSHIP AS AN ATTORNEY, ACCOUNTANT,
17 AUCTIONEER, OR BROKER WHEN AUTHORIZED BY LAW.

18 (3) A RECEIVER OR PROFESSIONAL ENGAGED UNDER SUBSECTION
19 (1) OF THIS SECTION SHALL FILE WITH THE COURT AN ITEMIZED STATEMENT
20 OF THE TIME SPENT, WORK PERFORMED, AND BILLING RATE OF EACH
21 PERSON THAT PERFORMED THE WORK AND AN ITEMIZED LIST OF EXPENSES.
22 THE RECEIVER SHALL PAY THE AMOUNT APPROVED BY THE COURT.

23 **38-46-116. Use or transfer of receivership property not in**
24 **ordinary course of business.** (1) IN THIS SECTION, "GOOD FAITH" MEANS
25 HONESTY IN FACT AND THE OBSERVANCE OF REASONABLE COMMERCIAL
26 STANDARDS OF FAIR DEALING.

27 (2) WITH COURT APPROVAL, A RECEIVER MAY USE RECEIVERSHIP

1 PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS.

2 (3) WITH COURT APPROVAL, A RECEIVER MAY TRANSFER
3 RECEIVERSHIP PROPERTY OTHER THAN IN THE ORDINARY COURSE OF
4 BUSINESS BY SALE, LEASE, LICENSE, EXCHANGE, OR OTHER DISPOSITION.
5 UNLESS THE AGREEMENT OF SALE PROVIDES OTHERWISE, A SALE UNDER
6 THIS SECTION IS FREE AND CLEAR OF A LIEN OF THE PERSON THAT
7 OBTAINED APPOINTMENT OF THE RECEIVER, ANY SUBORDINATE LIEN, AND
8 ANY RIGHT OF REDEMPTION BUT IS SUBJECT TO A SENIOR LIEN.

9 (4) A LIEN ON RECEIVERSHIP PROPERTY WHICH IS EXTINGUISHED
10 BY A TRANSFER UNDER SUBSECTION (3) OF THIS SECTION ATTACHES TO THE
11 PROCEEDS OF THE TRANSFER WITH THE SAME VALIDITY, PERFECTION, AND
12 PRIORITY THE LIEN HAD ON THE PROPERTY IMMEDIATELY BEFORE THE
13 TRANSFER, EVEN IF THE PROCEEDS ARE NOT SUFFICIENT TO SATISFY ALL
14 OBLIGATIONS SECURED BY THE LIEN.

15 (5) A TRANSFER UNDER SUBSECTION (3) OF THIS SECTION MAY
16 OCCUR BY MEANS OTHER THAN A PUBLIC AUCTION SALE. A CREDITOR
17 HOLDING A VALID LIEN ON THE PROPERTY TO BE TRANSFERRED MAY
18 PURCHASE THE PROPERTY AND OFFSET AGAINST THE PURCHASE PRICE PART
19 OR ALL OF THE ALLOWED AMOUNT SECURED BY THE LIEN, IF THE CREDITOR
20 TENDERS FUNDS SUFFICIENT TO SATISFY IN FULL THE REASONABLE
21 EXPENSES OF TRANSFER AND THE OBLIGATION SECURED BY ANY SENIOR
22 LIEN EXTINGUISHED BY THE TRANSFER.

23 (6) A REVERSAL OR MODIFICATION OF AN ORDER APPROVING A
24 TRANSFER UNDER SUBSECTION (3) OF THIS SECTION DOES NOT AFFECT THE
25 VALIDITY OF THE TRANSFER TO A PERSON THAT ACQUIRED THE PROPERTY
26 IN GOOD FAITH OR REVIVE AGAINST THE PERSON ANY LIEN EXTINGUISHED
27 BY THE TRANSFER, WHETHER THE PERSON KNEW BEFORE THE TRANSFER OF

1 THE REQUEST FOR REVERSAL OR MODIFICATION, UNLESS THE COURT
2 STAYED THE ORDER BEFORE THE TRANSFER.

3 **38-46-117. Executory contract.** (1) IN THIS SECTION,
4 "TIMESHARE INTEREST" MEANS AN INTEREST HAVING A DURATION OF
5 MORE THAN THREE YEARS WHICH GRANTS ITS HOLDER THE RIGHT TO USE
6 AND OCCUPY AN ACCOMMODATION, FACILITY, OR RECREATIONAL SITE,
7 WHETHER IMPROVED OR NOT, FOR A SPECIFIC PERIOD LESS THAN A FULL
8 YEAR DURING ANY GIVEN YEAR.

9 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS
10 SECTION, WITH COURT APPROVAL, A RECEIVER MAY ADOPT OR REJECT AN
11 EXECUTORY CONTRACT OF THE OWNER RELATING TO RECEIVERSHIP
12 PROPERTY. THE COURT MAY CONDITION THE RECEIVER'S ADOPTION AND
13 CONTINUED PERFORMANCE OF THE CONTRACT ON TERMS APPROPRIATE
14 UNDER THE CIRCUMSTANCES. IF THE RECEIVER DOES NOT REQUEST COURT
15 APPROVAL TO ADOPT OR REJECT THE CONTRACT WITHIN A REASONABLE
16 TIME AFTER THE RECEIVER'S APPOINTMENT, THE RECEIVER IS DEEMED TO
17 HAVE REJECTED THE CONTRACT.

18 (3) A RECEIVER'S PERFORMANCE OF AN EXECUTORY CONTRACT
19 BEFORE COURT APPROVAL UNDER SUBSECTION (2) OF THIS SECTION OF ITS
20 ADOPTION OR REJECTION IS NOT AN ADOPTION OF THE CONTRACT AND
21 DOES NOT PRECLUDE THE RECEIVER FROM SEEKING APPROVAL TO REJECT
22 THE CONTRACT.

23 (4) A PROVISION IN AN EXECUTORY CONTRACT WHICH REQUIRES
24 OR PERMITS A FORFEITURE, MODIFICATION, OR TERMINATION OF THE
25 CONTRACT BECAUSE OF THE APPOINTMENT OF A RECEIVER OR THE
26 FINANCIAL CONDITION OF THE OWNER DOES NOT AFFECT A RECEIVER'S
27 POWER UNDER SUBSECTION (2) OF THIS SECTION TO ADOPT THE CONTRACT.

1 (5) A RECEIVER'S RIGHT TO POSSESS OR USE RECEIVERSHIP
2 PROPERTY PURSUANT TO AN EXECUTORY CONTRACT TERMINATES ON
3 REJECTION OF THE CONTRACT UNDER SUBSECTION (2) OF THIS SECTION.
4 REJECTION IS A BREACH OF THE CONTRACT EFFECTIVE IMMEDIATELY
5 BEFORE APPOINTMENT OF THE RECEIVER. A CLAIM FOR DAMAGES FOR
6 REJECTION OF THE CONTRACT MUST BE SUBMITTED BY THE LATER OF:

7 (a) THE TIME SET FOR SUBMITTING A CLAIM IN THE RECEIVERSHIP;
8 OR

9 (b) THIRTY DAYS AFTER THE COURT APPROVES THE REJECTION.

10 (6) IF AT THE TIME A RECEIVER IS APPOINTED, THE OWNER HAS THE
11 RIGHT TO ASSIGN AN EXECUTORY CONTRACT RELATING TO RECEIVERSHIP
12 PROPERTY UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE, THE
13 RECEIVER MAY ASSIGN THE CONTRACT WITH COURT APPROVAL.

14 (7) IF A RECEIVER REJECTS UNDER SUBSECTION (2) OF THIS
15 SECTION AN EXECUTORY CONTRACT FOR THE SALE OF RECEIVERSHIP
16 PROPERTY THAT IS REAL PROPERTY IN POSSESSION OF THE PURCHASER OR
17 A REAL-PROPERTY TIMESHARE INTEREST, THE PURCHASER MAY:

18 (a) TREAT THE REJECTION AS A TERMINATION OF THE CONTRACT,
19 AND IN THAT CASE THE PURCHASER HAS A LIEN ON THE PROPERTY FOR THE
20 RECOVERY OF ANY PART OF THE PURCHASE PRICE THE PURCHASER PAID;
21 OR

22 (b) RETAIN THE PURCHASER'S RIGHT TO POSSESSION UNDER THE
23 CONTRACT, AND IN THAT CASE THE PURCHASER SHALL CONTINUE TO
24 PERFORM ALL OBLIGATIONS ARISING UNDER THE CONTRACT AND MAY
25 OFFSET ANY DAMAGES CAUSED BY NONPERFORMANCE OF AN OBLIGATION
26 OF THE OWNER AFTER THE DATE OF THE REJECTION, BUT THE PURCHASER
27 HAS NO RIGHT OR CLAIM AGAINST OTHER RECEIVERSHIP PROPERTY OR THE

1 RECEIVER ON ACCOUNT OF THE DAMAGES.

2 (8) A RECEIVER MAY NOT REJECT AN UNEXPIRED LEASE OF REAL
3 PROPERTY UNDER WHICH THE OWNER IS THE LANDLORD IF:

4 (a) THE TENANT OCCUPIES THE LEASED PREMISES AS THE TENANT'S
5 PRIMARY RESIDENCE;

6 (b) THE RECEIVER WAS APPOINTED AT THE REQUEST OF A PERSON
7 OTHER THAN A MORTGAGEE; OR

8 (c) THE RECEIVER WAS APPOINTED AT THE REQUEST OF A
9 MORTGAGEE AND:

10 (I) THE LEASE IS SUPERIOR TO THE LIEN OF THE MORTGAGE;

11 (II) THE TENANT HAS AN ENFORCEABLE AGREEMENT WITH THE
12 MORTGAGEE OR THE HOLDER OF A SENIOR LIEN UNDER WHICH THE
13 TENANT'S OCCUPANCY WILL NOT BE DISTURBED AS LONG AS THE TENANT
14 PERFORMS ITS OBLIGATIONS UNDER THE LEASE;

15 (III) THE MORTGAGEE HAS CONSENTED TO THE LEASE, EITHER IN
16 A SIGNED RECORD OR BY ITS FAILURE TIMELY TO OBJECT THAT THE LEASE
17 VIOLATED THE MORTGAGE; OR

18 (IV) THE TERMS OF THE LEASE WERE COMMERCIALY REASONABLE
19 AT THE TIME THE LEASE WAS AGREED TO AND THE TENANT DID NOT KNOW
20 OR HAVE REASON TO KNOW THAT THE LEASE VIOLATED THE MORTGAGE.

21 **38-46-118. Defenses and immunities of receiver.** (1) A
22 RECEIVER IS ENTITLED TO ALL DEFENSES AND IMMUNITIES PROVIDED BY
23 LAW OF THIS STATE OTHER THAN THIS ARTICLE FOR AN ACT OR OMISSION
24 WITHIN THE SCOPE OF THE RECEIVER'S APPOINTMENT.

25 (2) A RECEIVER MAY BE SUED PERSONALLY FOR AN ACT OR
26 OMISSION IN ADMINISTERING RECEIVERSHIP PROPERTY ONLY WITH
27 APPROVAL OF THE COURT THAT APPOINTED THE RECEIVER.

1 **38-46-119. Interim report of receiver.** (1) A RECEIVER MAY FILE
2 OR, IF ORDERED BY THE COURT, SHALL FILE AN INTERIM REPORT THAT
3 INCLUDES:

4 (a) THE ACTIVITIES OF THE RECEIVER SINCE APPOINTMENT OR A
5 PREVIOUS REPORT;

6 (b) RECEIPTS AND DISBURSEMENTS, INCLUDING A PAYMENT MADE
7 OR PROPOSED TO BE MADE TO A PROFESSIONAL ENGAGED BY THE
8 RECEIVER;

9 (c) RECEIPTS AND DISPOSITIONS OF RECEIVERSHIP PROPERTY;

10 (d) FEES AND EXPENSES OF THE RECEIVER AND, IF NOT FILED
11 SEPARATELY, A REQUEST FOR APPROVAL OF PAYMENT OF THE FEES AND
12 EXPENSES; AND

13 (e) ANY OTHER INFORMATION REQUIRED BY THE COURT.

14 **38-46-120. Notice of appointment - claim against receivership**
15 **- distribution to creditors.** (1) EXCEPT AS OTHERWISE PROVIDED IN
16 SUBSECTION (6) OF THIS SECTION, A RECEIVER SHALL GIVE NOTICE OF
17 APPOINTMENT OF THE RECEIVER TO CREDITORS OF THE OWNER BY:

18 (a) DEPOSIT FOR DELIVERY THROUGH FIRST-CLASS MAIL OR OTHER
19 COMMERCIALY REASONABLE DELIVERY METHOD TO THE LAST-KNOWN
20 ADDRESS OF EACH CREDITOR; AND

21 (b) PUBLICATION AS DIRECTED BY THE COURT.

22 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS
23 SECTION, THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION MUST
24 SPECIFY THE DATE BY WHICH EACH CREDITOR HOLDING A CLAIM AGAINST
25 THE OWNER WHICH AROSE BEFORE APPOINTMENT OF THE RECEIVER MUST
26 SUBMIT THE CLAIM TO THE RECEIVER. THE DATE SPECIFIED MUST BE AT
27 LEAST NINETY DAYS AFTER THE LATER OF NOTICE UNDER PARAGRAPH (a)

1 OF SUBSECTION (1) OF THIS SECTION OR LAST PUBLICATION UNDER
2 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION. THE COURT MAY
3 EXTEND THE PERIOD FOR SUBMITTING THE CLAIM. UNLESS THE COURT
4 ORDERS OTHERWISE, A CLAIM THAT IS NOT SUBMITTED TIMELY IS NOT
5 ENTITLED TO A DISTRIBUTION FROM THE RECEIVERSHIP.

6 (3) A CLAIM SUBMITTED BY A CREDITOR UNDER THIS SECTION
7 MUST:

- 8 (a) STATE THE NAME AND ADDRESS OF THE CREDITOR;
- 9 (b) STATE THE AMOUNT AND BASIS OF THE CLAIM;
- 10 (c) IDENTIFY ANY PROPERTY SECURING THE CLAIM;
- 11 (d) BE SIGNED BY THE CREDITOR UNDER PENALTY OF PERJURY;

12 AND

13 (e) INCLUDE A COPY OF ANY RECORD ON WHICH THE CLAIM IS
14 BASED.

15 (4) AN ASSIGNMENT BY A CREDITOR OF A CLAIM AGAINST THE
16 OWNER IS EFFECTIVE AGAINST THE RECEIVER ONLY IF THE ASSIGNEE GIVES
17 TIMELY NOTICE OF THE ASSIGNMENT TO THE RECEIVER IN A SIGNED
18 RECORD.

19 (5) AT ANY TIME BEFORE ENTRY OF AN ORDER APPROVING A
20 RECEIVER'S FINAL REPORT, THE RECEIVER MAY FILE WITH THE COURT AN
21 OBJECTION TO A CLAIM OF A CREDITOR, STATING THE BASIS FOR THE
22 OBJECTION. THE COURT SHALL ALLOW OR DISALLOW THE CLAIM
23 ACCORDING TO LAW OF THIS STATE OTHER THAN THIS ARTICLE.

24 (6) IF THE COURT CONCLUDES THAT RECEIVERSHIP PROPERTY IS
25 LIKELY TO BE INSUFFICIENT TO SATISFY CLAIMS OF EACH CREDITOR
26 HOLDING A PERFECTED LIEN ON THE PROPERTY, THE COURT MAY ORDER
27 THAT:

1 (a) THE RECEIVER NEED NOT GIVE NOTICE UNDER SUBSECTION (1)
2 OF THIS SECTION OF THE APPOINTMENT TO ALL CREDITORS OF THE OWNER,
3 BUT ONLY SUCH CREDITORS AS THE COURT DIRECTS; AND

4 (b) UNSECURED CREDITORS NEED NOT SUBMIT CLAIMS UNDER THIS
5 SECTION.

6 (7) SUBJECT TO SECTION 38-46-121:

7 (a) A DISTRIBUTION OF RECEIVERSHIP PROPERTY TO A CREDITOR
8 HOLDING A PERFECTED LIEN ON THE PROPERTY MUST BE MADE IN
9 ACCORDANCE WITH THE CREDITOR'S PRIORITY UNDER LAW OF THIS STATE
10 OTHER THAN THIS ARTICLE; AND

11 (b) A DISTRIBUTION OF RECEIVERSHIP PROPERTY TO A CREDITOR
12 WITH AN ALLOWED UNSECURED CLAIM MUST BE MADE AS THE COURT
13 DIRECTS ACCORDING TO LAW OF THIS STATE OTHER THAN THIS ARTICLE.

14 **38-46-121. Fees and expenses.** (1) THE COURT MAY AWARD A
15 RECEIVER FROM RECEIVERSHIP PROPERTY THE REASONABLE AND
16 NECESSARY FEES AND EXPENSES OF PERFORMING THE DUTIES OF THE
17 RECEIVER AND EXERCISING THE POWERS OF THE RECEIVER.

18 (2) THE COURT MAY ORDER ONE OR MORE OF THE FOLLOWING TO
19 PAY THE REASONABLE AND NECESSARY FEES AND EXPENSES OF THE
20 RECEIVERSHIP, INCLUDING REASONABLE ATTORNEY FEES AND COSTS:

21 (a) A PERSON THAT REQUESTED THE APPOINTMENT OF THE
22 RECEIVER, IF THE RECEIVERSHIP DOES NOT PRODUCE SUFFICIENT FUNDS TO
23 PAY THE FEES AND EXPENSES; OR

24 (B) A PERSON WHOSE CONDUCT JUSTIFIED OR WOULD HAVE
25 JUSTIFIED THE APPOINTMENT OF THE RECEIVER UNDER SECTION 38-46-106

26 (a) (1).

27 **38-46-122. Removal of receiver - replacement - termination of**

1 **receivership.** (1) THE COURT MAY REMOVE A RECEIVER FOR CAUSE.

2 (2) THE COURT SHALL REPLACE A RECEIVER THAT DIES, RESIGNS,
3 OR IS REMOVED.

4 (3) IF THE COURT FINDS THAT A RECEIVER THAT RESIGNS OR IS
5 REMOVED, OR THE REPRESENTATIVE OF A RECEIVER THAT IS DECEASED,
6 HAS ACCOUNTED FULLY FOR AND TURNED OVER TO THE SUCCESSOR
7 RECEIVER ALL RECEIVERSHIP PROPERTY AND HAS FILED A REPORT OF ALL
8 RECEIPTS AND DISBURSEMENTS DURING THE SERVICE OF THE REPLACED
9 RECEIVER, THE REPLACED RECEIVER IS DISCHARGED.

10 (4) THE COURT MAY DISCHARGE A RECEIVER AND TERMINATE THE
11 COURT'S ADMINISTRATION OF THE RECEIVERSHIP PROPERTY IF THE COURT
12 FINDS THAT APPOINTMENT OF THE RECEIVER WAS IMPROVIDENT OR THAT
13 THE CIRCUMSTANCES NO LONGER WARRANT CONTINUATION OF THE
14 RECEIVERSHIP. IF THE COURT FINDS THAT THE APPOINTMENT WAS SOUGHT
15 WRONGFULLY OR IN BAD FAITH, THE COURT MAY ASSESS AGAINST THE
16 PERSON THAT SOUGHT THE APPOINTMENT:

17 (a) THE FEES AND EXPENSES OF THE RECEIVERSHIP, INCLUDING
18 REASONABLE ATTORNEY FEES AND COSTS; AND

19 (b) ACTUAL DAMAGES CAUSED BY THE APPOINTMENT, INCLUDING
20 REASONABLE ATTORNEY FEES AND COSTS.

21 **38-46-123. Final report of receiver - discharge.** (1) ON
22 COMPLETION OF A RECEIVER'S DUTIES, THE RECEIVER SHALL FILE A FINAL
23 REPORT INCLUDING:

24 (a) A DESCRIPTION OF THE ACTIVITIES OF THE RECEIVER IN THE
25 CONDUCT OF THE RECEIVERSHIP;

26 (b) A LIST OF RECEIVERSHIP PROPERTY AT THE COMMENCEMENT
27 OF THE RECEIVERSHIP AND ANY RECEIVERSHIP PROPERTY RECEIVED

1 DURING THE RECEIVERSHIP;

2 (c) A LIST OF DISBURSEMENTS, INCLUDING PAYMENTS TO
3 PROFESSIONALS ENGAGED BY THE RECEIVER;

4 (d) A LIST OF DISPOSITIONS OF RECEIVERSHIP PROPERTY;

5 (e) A LIST OF DISTRIBUTIONS MADE OR PROPOSED TO BE MADE
6 FROM THE RECEIVERSHIP FOR CREDITOR CLAIMS;

7 (f) IF NOT FILED SEPARATELY, A REQUEST FOR APPROVAL OF THE
8 PAYMENT OF FEES AND EXPENSES OF THE RECEIVER; AND

9 (g) ANY OTHER INFORMATION REQUIRED BY THE COURT.

10 (2) IF THE COURT APPROVES A FINAL REPORT FILED UNDER
11 SUBSECTION (1) OF THIS SECTION AND THE RECEIVER DISTRIBUTES ALL
12 RECEIVERSHIP PROPERTY, THE RECEIVER IS DISCHARGED.

13 **38-46-124. Receivership in another state - ancillary**
14 **proceeding.** (1) THE COURT MAY APPOINT A RECEIVER APPOINTED IN
15 ANOTHER STATE, OR THAT PERSON'S NOMINEE, AS AN ANCILLARY
16 RECEIVER WITH RESPECT TO PROPERTY LOCATED IN THIS STATE OR
17 SUBJECT TO THE JURISDICTION OF THE COURT FOR WHICH A RECEIVER
18 COULD BE APPOINTED UNDER THIS ARTICLE, IF:

19 (a) THE PERSON OR NOMINEE WOULD BE ELIGIBLE TO SERVE AS
20 RECEIVER UNDER SECTION 38-46-107; AND

21 (b) THE APPOINTMENT FURTHERS THE PERSON'S POSSESSION,
22 CUSTODY, CONTROL, OR DISPOSITION OF PROPERTY SUBJECT TO THE
23 RECEIVERSHIP IN THE OTHER STATE.

24 (2) THE COURT MAY ISSUE AN ORDER THAT GIVES EFFECT TO AN
25 ORDER ENTERED IN ANOTHER STATE APPOINTING OR DIRECTING A
26 RECEIVER.

27 (3) UNLESS THE COURT ORDERS OTHERWISE, AN ANCILLARY

1 RECEIVER APPOINTED UNDER SUBSECTION (1) OF THIS SECTION HAS THE
2 RIGHTS, POWERS, AND DUTIES OF A RECEIVER APPOINTED UNDER THIS
3 ARTICLE.

4 **38-46-125. Effect of enforcement by mortgage.** (1) A REQUEST
5 BY A MORTGAGEE FOR APPOINTMENT OF A RECEIVER, THE APPOINTMENT
6 OF A RECEIVER, OR APPLICATION BY A MORTGAGEE OF RECEIVERSHIP
7 PROPERTY OR PROCEEDS TO THE SECURED OBLIGATION DOES NOT:

8 (a) MAKE THE MORTGAGEE A MORTGAGEE IN POSSESSION OF THE
9 REAL PROPERTY;

10 (b) MAKE THE MORTGAGEE AN AGENT OF THE OWNER;

11 (c) CONSTITUTE AN ELECTION OF REMEDIES THAT PRECLUDES A
12 LATER ACTION TO ENFORCE THE SECURED OBLIGATION;

13 (d) MAKE THE SECURED OBLIGATION UNENFORCEABLE; OR

14 (e) LIMIT ANY RIGHT AVAILABLE TO THE MORTGAGEE WITH
15 RESPECT TO THE SECURED OBLIGATION.

16 **38-46-126. Uniformity of application and construction.** IN
17 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
18 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
19 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

20 **38-46-127. Relation to electronic signatures in global and**
21 **national commerce act.** THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES
22 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
23 COMMERCE ACT", 15 U.S.C. SEC. 7001, ET SEQ., BUT DOES NOT MODIFY,
24 LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C. SEC.
25 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
26 DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

27 **38-46-128. Transition.** THIS ARTICLE DOES NOT APPLY TO A

1 RECEIVERSHIP FOR WHICH THE RECEIVER WAS APPOINTED BEFORE THE
2 EFFECTIVE DATE OF THIS ARTICLE.

3 **SECTION 2. Inclusion of official comments.** The revisor shall
4 include in the publication of the "Uniform Commercial Real Estate
5 Receivership Act", as nonstatutory matter, following each section of the
6 article, the full text of the official comments to that section contained in
7 the official volume containing the 2015 official text of the "Uniform
8 Commercial Real Estate Receivership Act" issued by the Uniform Law
9 Commission, with any changes in the official comments or Colorado
10 comments to correspond to Colorado changes in the uniform act. The
11 revisor of statutes shall prepare the comments for approval by the
12 committee on legal services for.

13 **SECTION 3. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect September 1, 2016; except that,
15 if a referendum petition is filed pursuant to section 1 (3) of article V of
16 the state constitution against this act or an item, section, or part of this act
17 within the ninety-day period after final adjournment of the general
18 assembly, then the act, item, section, or part will not take effect unless
19 approved by the people at the general election to be held in November
20 2016 and, in such case, will take effect on the date of the official
21 declaration of the vote thereon by the governor.

22 (2) This act applies to appointments of receivers on or after the
23 applicable effective date of this act.

24 <*Does the commission want a safety clause or the above petition*
25 *language?*>

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
11.20.15

DRAFT

LLS NO. 16-0132.01 Yelana Love x2295

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Residential Landlord And Tenant Act 2015"

A BILL FOR AN ACT

101 CONCERNING ENACTMENT OF THE "REVISED UNIFORM RESIDENTIAL
102 LANDLORD AND TENANT ACT (2015)".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Residential Landlord and Tenant Act (2015)", drafted by the national conference of commissioners on uniform state laws. <{Use a condensed version of summary provided by CUSL.}>

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** article 12 of title 38 as follows:

4 **ARTICLE 12**

5 **Revised Uniform Residential Landlord and Tenant Act (2015)**

6 **PART 1**

7 **GENERAL PROVISIONS**

8 **38-12-101. Short title.** THE SHORT TITLE OF THIS ARTICLE IS THE
9 "REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)".

10 **38-12-102. Definitions.** IN THIS ARTICLE:

11 (1) "ACTION" MEANS AN ACTION FOR DAMAGES, POSSESSION,
12 EJECTMENT, QUIET TITLE, SPECIFIC PERFORMANCE, OR OTHER JUDICIAL
13 PROCEEDING IN WHICH RIGHTS UNDER A LEASE OR THIS ARTICLE ARE
14 DETERMINED.

15 (2) "ACTUAL DAMAGES" MEANS COMPENSATION FOR DIRECT,
16 CONSEQUENTIAL, OR INCIDENTAL INJURIES OR LOSSES. THE TERM
17 INCLUDES:

18 (A) AMOUNTS PAYABLE TO A LANDLORD OR TENANT UNDER THE
19 LEASE FOR A VIOLATION OF THE LEASE; AND

20 (B) DIMINUTION IN THE VALUE OF A DWELLING UNIT.

21 (3) "BANK" MEANS AN ORGANIZATION THAT ENGAGES IN THE
22 BUSINESS OF BANKING AND IS FEDERALLY INSURED. THE TERM INCLUDES
23 A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, AND
24 TRUST COMPANY.

25 (4) "BUILDING, HOUSING, FIRE, OR HEALTH CODE" INCLUDES ANY
26 LAW CONCERNING FITNESS FOR HABITATION OR THE CONSTRUCTION,
27 MAINTENANCE, OPERATION, OCCUPANCY, USE, OR APPEARANCE OF THE

1 PREMISES.

2 (5) "CONTACT PERSON" MEANS A PERSON DESIGNATED BY A
3 TENANT UNDER SECTION 38-12-109 (b).

4 (6) "CRIMINAL ACT" OR "CRIMINAL ACTIVITY" MEANS:

5 (A) THE MANUFACTURE, SALE, DISTRIBUTION, USE, OR POSSESSION
6 OF A CONTROLLED SUBSTANCE ON OR IN THE VICINITY OF THE PREMISES
7 WHICH IS CRIMINAL UNDER LAW OTHER THAN THIS ARTICLE; OR

8 (B) ACTIVITY THAT IS CRIMINAL UNDER LAW OTHER THAN THIS
9 ARTICLE AND THREATENS THE HEALTH OR SAFETY OF AN INDIVIDUAL ON
10 THE PREMISES OR THE LANDLORD OR LANDLORD'S AGENT ON OR OFF THE
11 PREMISES.

12 (7) "DIMINUTION IN THE VALUE OF A DWELLING UNIT" MEANS A
13 REDUCTION FROM RENT THAT REFLECTS THE EXTENT TO WHICH A
14 NONCOMPLIANT CONDITION OF THE PREMISES IMPAIRS THE TENANT'S USE
15 AND ENJOYMENT OF THE UNIT, AS DETERMINED BY A COURT BASED ON
16 EVIDENCE THAT NEED NOT INCLUDE EXPERT TESTIMONY.

17 (8) "DWELLING UNIT" MEANS PROPERTY LEASED TO A TENANT FOR
18 USE AS A HOME, RESIDENCE, OR SLEEPING PLACE BY AN INDIVIDUAL OR
19 TWO OR MORE INDIVIDUALS WHO MAINTAIN A COMMON HOUSEHOLD,
20 REGARDLESS OF THEIR RELATIONSHIP TO EACH OTHER. THE TERM
21 INCLUDES:

22 (A) A SINGLE-FAMILY RESIDENCE, TOGETHER WITH FIXTURES AND
23 APPURTENANCES, THE LAND ON WHICH IT IS LOCATED, AND ANY OTHER
24 STRUCTURE ON THE LAND; AND

25 (B) A STRUCTURE OR PART OF A STRUCTURE IN WHICH THE TENANT
26 RESIDES, TOGETHER WITH FIXTURES AND APPURTENANCES, AND ANY
27 OTHER AREA OF THE LAND ON WHICH THE STRUCTURE IS LOCATED TO

1 WHICH THE TENANT IS GIVEN AN EXCLUSIVE RIGHT OF POSSESSION DURING
2 THE TERM OF THE LEASE, INCLUDING A DESIGNATED PARKING SPACE OR
3 STORAGE AREA.

4 (9) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
5 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
6 ELECTROMAGNETIC, OR SIMILAR CAPABILITY.

7 (10) "ESSENTIAL SERVICE" MEANS HEAT, HOT AND COLD RUNNING
8 WATER, SEWAGE OR SEPTIC DISPOSAL, AND ELECTRICITY. THE TERM
9 INCLUDES GAS OR AIR CONDITIONING IF REQUIRED TO BE SUPPLIED TO A
10 TENANT BY THE LEASE OR LAW OTHER THAN THIS ARTICLE THAT, IF NOT
11 SUPPLIED TO THE TENANT, WOULD CREATE A SERIOUS THREAT TO THE
12 HEALTH, SAFETY, OR PROPERTY OF THE TENANT OR IMMEDIATE FAMILY
13 MEMBER.

14 (11) "FEES" MEANS AMOUNTS PAYABLE BY A TENANT TO A
15 LANDLORD THAT THE LANDLORD HAS NO OBLIGATION TO ACCOUNT FOR OR
16 RETURN TO THE TENANT EXCEPT AS OTHERWISE PROVIDED IN SECTION
17 38-12-405 (b). THE TERM DOES NOT INCLUDE RENT OR A SECURITY
18 DEPOSIT.

19 (12) "FUNDS" MEANS MONEY, CHECKS, BANK-ACCOUNT CREDITS,
20 CERTIFICATES OF DEPOSIT, OR THE LIKE.

21 (13) "GOOD FAITH" MEANS HONESTY IN FACT AND THE
22 OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

23 (14) "GUEST" MEANS AN INDIVIDUAL, OTHER THAN THE LANDLORD
24 OR LANDLORD'S AGENT, INVITED ON THE PREMISES BY A TENANT OR
25 IMMEDIATE FAMILY MEMBER.

26 (15) "IMMEDIATE FAMILY MEMBER" MEANS ANY OF THE
27 FOLLOWING WHO HABITUALLY RESIDES IN A DWELLING UNIT WITH A

1 TENANT:

2 (A) AN INDIVIDUAL RELATED TO THE TENANT BY BLOOD,
3 ADOPTION, MARRIAGE, CIVIL UNION, OR DOMESTIC PARTNERSHIP;

4 (B) AN INDIVIDUAL HAVING AN INTIMATE RELATIONSHIP WITH THE
5 TENANT; OR

6 (C) A FOSTER CHILD, STEPCHILD, OR WARD OF THE TENANT OR AN
7 INDIVIDUAL NAMED IN SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH
8 (15).

9 (16) "LANDLORD" MEANS:

10 (A) THE OWNER OF A DWELLING UNIT RENTED TO A TENANT;

11 (B) A SUCCESSOR IN INTEREST TO THE LANDLORD;

12 (C) A SUBLESSOR, ONLY IF THE LANDLORD DID NOT CONSENT TO
13 THE SUBLEASE; AND

14 (D) A PERSON THAT MANAGES THE UNIT OR ENTERS A LEASE ON
15 BEHALF OF THE OWNER OF THE UNIT AND FAILS TO COMPLY WITH SECTION
16 38-12-108 (c) AND (d), EXCEPT WITH RESPECT TO EVENTS OCCURRING
17 AFTER:

18 (i) THE TENANT IS GIVEN NOTICE IN A RECORD THAT COMPLIES
19 WITH SECTION 38-12-108 (c) AND (d); OR

20 (ii) THE DATE OF TERMINATION OF THE PERSON'S AUTHORITY TO
21 ACT ON BEHALF OF THE OWNER IF THAT AUTHORITY IS TERMINATED.

22 (17) "LAW" INCLUDES FEDERAL OR STATE STATUTES, CASE LAW,
23 ADMINISTRATIVE ACTION, AND LEGISLATIVE ACTS OF LOCAL
24 GOVERNMENTS.

25 (18) "LEASE" MEANS A CONTRACT, ORAL OR IN A RECORD,
26 BETWEEN A LANDLORD AND TENANT IN WHICH THE LANDLORD RENTS A
27 DWELLING UNIT TO THE TENANT FOR A TENANCY FOR A FIXED TERM OR A

1 PERIODIC TENANCY. THE TERM INCLUDES AN AMENDMENT TO THE LEASE,
2 RULES ADOPTED BY THE LANDLORD THAT WERE DISCLOSED TO THE
3 TENANT UNDER SECTION 38-12-108 (b) (4), AND, SUBJECT TO SECTION
4 38-12-304, RULES ADOPTED BY THE LANDLORD AFTER COMMENCEMENT
5 OF THE TERM OF THE LEASE.

6 (19) "NOTICE IN A RECORD" MEANS NOTICE THAT COMPLIES WITH
7 SECTION 38-12-107 (b).

8 (20) "OWNER" MEANS A PERSON VESTED WITH ALL OR PART OF:

9 (A) LEGAL TITLE TO THE PREMISES; OR

10 (B) BENEFICIAL OWNERSHIP AND A RIGHT TO PRESENT USE AND
11 ENJOYMENT OF THE PREMISES.

12 (21) "PERIODIC RENT" MEANS THE AMOUNT PAYABLE EACH MONTH
13 UNDER A TENANCY FOR A FIXED TERM OR A PERIODIC TENANCY FOR
14 MONTH TO MONTH OR PAYABLE EACH WEEK UNDER A PERIODIC TENANCY
15 FOR WEEK TO WEEK. IF RENT IS PAYABLE ANNUALLY, PERIODIC RENT IS
16 THE AMOUNT OF THE ANNUAL RENT DIVIDED BY TWELVE.

17 (22) "PERIODIC TENANCY" MEANS A TENANCY CREATED UNDER A
18 LEASE OR ARISING BY OPERATION OF LAW FOR EITHER MONTH TO MONTH
19 OR WEEK TO WEEK.

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

24 (24) "PREMISES" MEANS A DWELLING UNIT AND, TO THE EXTENT
25 OWNED BY THE LANDLORD, ANY STRUCTURE OF WHICH THE UNIT IS A PART.
26 THE TERM INCLUDES ANY AREA AND STRUCTURE OWNED BY THE
27 LANDLORD THAT ARE ASSOCIATED WITH THE STRUCTURE IN WHICH THE

1 DWELLING UNIT IS LOCATED AND HELD OUT BY THE LANDLORD FOR THE
2 USE OF TENANTS GENERALLY.

3 (25) "PREPAID RENT" MEANS RENT PAID TO A LANDLORD BEFORE
4 THE FIRST DAY OF THE RENTAL PERIOD TO WHICH IT IS TO BE APPLIED.

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

8 (27) "RENT", USED AS A NOUN, MEANS A PAYMENT FOR THE RIGHT
9 TO POSSESSION OF A DWELLING UNIT. THE TERM DOES NOT INCLUDE A
10 SECURITY DEPOSIT OR FEES.

11 (28) "REPAIRS" INCLUDES REMEDIATIONS.

12 (29) "SECURITY DEPOSIT" MEANS FUNDS PROVIDED TO A
13 LANDLORD TO SECURE PAYMENT OR PERFORMANCE OF A TENANT'S
14 OBLIGATIONS UNDER A LEASE OR THIS ARTICLE AND THE IDENTIFIABLE
15 PROCEEDS OF THE FUNDS, HOWEVER DENOMINATED. THE TERM DOES NOT
16 INCLUDE RENT OR FEES.

17 (30) "SECURITY INTEREST" MEANS AN INTEREST IN PERSONAL
18 PROPERTY THAT SECURES PAYMENT OR PERFORMANCE OF A TENANT'S
19 OBLIGATIONS UNDER A LEASE OR THIS ARTICLE.

20 (31) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
21 ADOPT A RECORD:

22 (A) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

23 (B) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
24 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS. FOR PURPOSES OF THIS
25 PARAGRAPH (31), "SYMBOL" INCLUDES AN ELECTRONIC-MAIL ADDRESS OR
26 OTHER IDENTIFYING HEADER.

27 (32) "STATE" MEANS A STATE OF THE UNITED STATES, THE

1 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
2 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
3 JURISDICTION OF THE UNITED STATES.

4 (33) "TENANCY FOR A FIXED TERM" MEANS A TENANCY UNDER A
5 LEASE FOR A FIXED OR COMPUTABLE PERIOD, REGARDLESS OF THE LENGTH
6 OF THE PERIOD.

7 (34) "TENANT" MEANS:

8 (A) A PERSON THAT IS A PARTY TO A LEASE OF A DWELLING UNIT
9 AND IS ENTITLED TO POSSESSION OF THE UNIT;

10 (B) AN ASSIGNEE OR SUBLESSEE OF A PERSON DESCRIBED IN
11 SUBPARAGRAPH (A) OF THIS PARAGRAPH (34) WHO HAS POSSESSION OF
12 THE UNIT WITH THE LANDLORD'S CONSENT; AND

13 (C) AN INDIVIDUAL AUTHORIZED TO OCCUPY THE UNIT BY A
14 PERSON DESCRIBED IN SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH
15 (34) THAT IS NOT AN INDIVIDUAL.

16 (35) "TENANT REPRESENTATIVE" MEANS:

17 (A) A PERSONAL REPRESENTATIVE OF A DECEASED TENANT'S
18 ESTATE; OR

19 (B) BEFORE THE APPOINTMENT OF A PERSONAL REPRESENTATIVE,
20 A CONTACT PERSON, OR, IN THE ABSENCE OF A CONTACT PERSON, A
21 PERSON THE LANDLORD REASONABLY BELIEVES TO BE AN HEIR OF THE
22 TENANT UNDER THE APPLICABLE INTESTATE SUCCESSION LAW.

23 (36) "UNEARNED RENT" MEANS RENT, INCLUDING PREPAID RENT,
24 THAT A TENANT PAID TO A LANDLORD FOR THE RIGHT TO POSSESSION OF
25 THE DWELLING UNIT FOR ANY PERIOD AFTER THE DATE THE LEASE
26 TERMINATES IN ACCORDANCE WITH ITS TERMS OR THIS ARTICLE. THE TERM
27 DOES NOT INCLUDE AN AMOUNT, INCLUDING RENT, OWED TO THE

1 LANDLORD FOR A PERIOD BEFORE OR AFTER THE DATE THE LEASE
2 TERMINATES DURING WHICH THE TENANT IS IN PHYSICAL POSSESSION OF
3 THE PREMISES.

4 (37) "WILLFUL" MEANS INTENTIONAL PERFORMANCE OF AN ACT
5 THE ACTOR KNOWS TO BE PROHIBITED BY THIS ARTICLE OR A LEASE,
6 INTENTIONAL FAILURE TO PERFORM AN ACT THE ACTOR KNOWS TO BE
7 REQUIRED BY THIS ARTICLE OR THE LEASE, OR DELIBERATE INDIFFERENCE
8 TO WHETHER THE PERFORMANCE OR FAILURE TO PERFORM VIOLATES THIS
9 ARTICLE OR THE LEASE. "WILLFULLY" HAS A CORRESPONDING MEANING.

10 <{Legislative Note: This act uses the term "lease" rather than "rental
11 agreement," which was used in the 1972 Act, because in many states
12 the lawyers and courts prefer the word lease. However, the mere use of
13 the term "lease" is not meant as a substantive change. If a state prefers
14 "rental agreement," the term can be substituted in place of the word
15 "lease.">

16 **38-12-103. Scope.** (a) IN THIS SECTION:

17 (1) "OCCUPANCY AS A VACATION RENTAL" MEANS OCCUPANCY
18 THAT HAS THE FOLLOWING CHARACTERISTICS:

19 (A) THE TENANT RENTS THE DWELLING UNIT FOR VACATION
20 PURPOSES ONLY AND HAS A PRINCIPAL RESIDENCE OTHER THAN THE UNIT;

21 (B) THE UNIT IS FURNISHED WITH PERSONAL PROPERTY NECESSARY
22 TO MAKE THE UNIT READY FOR IMMEDIATE OCCUPANCY BY THE TENANT;

23 AND

24 (C) THE OCCUPANCY DOES NOT EXCEED THIRTY CONSECUTIVE
25 DAYS.

26 (2) "TRANSIENT OCCUPANCY" MEANS OCCUPANCY IN A ROOM OR
27 SUITE OF ROOMS THAT HAS THE FOLLOWING CHARACTERISTICS:

1 (A) THE COST OF OCCUPANCY IS CHARGED ON A DAILY BASIS;

2 (B) THE OPERATOR OF THE ROOM OR SUITE PROVIDES
3 HOUSEKEEPING AND LINEN SERVICE AS PART OF THE REGULARLY CHARGED
4 COST OF OCCUPANCY; AND

5 (C) THE OCCUPANCY DOES NOT EXCEED THIRTY CONSECUTIVE
6 DAYS.

7 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS
8 SECTION, THIS ARTICLE APPLIES TO A LEASE OF A DWELLING UNIT IN THIS
9 STATE.

10 (c) THE FOLLOWING ARRANGEMENTS ARE NOT GOVERNED BY THIS
11 ARTICLE:

12 (1) RESIDENCE AT A PUBLIC OR PRIVATE FACILITY, IF INCIDENTAL
13 TO DETENTION OR THE PROVISION OF MEDICAL, MENTAL HEALTH,
14 GERIATRIC, COUNSELING, EDUCATIONAL, RELIGIOUS, DISABILITY,
15 PERSONAL SAFETY, OR SIMILAR SERVICE;

16 (2) OCCUPANCY UNDER A CONTRACT OF SALE OF, OR AN OPTION TO
17 PURCHASE, A DWELLING UNIT OR THE BUILDING OF WHICH IT IS A PART, IF
18 THE OCCUPANT IS THE PURCHASER OR OPTIONEE OR AN INDIVIDUAL WHO
19 HAS SUCCEEDED TO THE INTEREST OF THE PURCHASER OR OPTIONEE;

20 (3) OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL
21 ORGANIZATION IN A PART OF A STRUCTURE OPERATED FOR THE BENEFIT OF
22 THE ORGANIZATION;

23 (4) TRANSIENT OCCUPANCY;

24 (5) OCCUPANCY BY AN EMPLOYEE OF A LANDLORD WHEN THE
25 EMPLOYEE'S RIGHT TO OCCUPANCY IS CONDITIONED ON EMPLOYMENT IN
26 OR ABOUT THE PREMISES;

27 (6) OCCUPANCY BY A HOLDER OF A PROPRIETARY LEASE IN A

1 COOPERATIVE;

2 (7) OCCUPANCY UNDER A LEASE COVERING PREMISES USED BY THE
3 OCCUPANT FOR AGRICULTURAL PURPOSES;

4 (8) OCCUPANCY AS A VACATION RENTAL; AND

5 (9) A GROUND LEASE OF REAL PROPERTY, WHICH LEASE DOES NOT
6 INCLUDE A DWELLING UNIT.

7 **38-12-104. Enforcement - duty to mitigate.** (a) A RIGHT OR
8 OBLIGATION UNDER THIS ARTICLE IS ENFORCEABLE BY AN ACTION UNLESS
9 THE PROVISION CREATING THE RIGHT OR OBLIGATION PROVIDES
10 OTHERWISE.

11 (b) A PARTY SEEKING RELIEF UNDER THIS ARTICLE HAS A DUTY TO
12 MITIGATE DAMAGES.

13 **38-12-105. Obligation of good faith.** EVERY LEASE OR DUTY
14 UNDER THIS ARTICLE IMPOSES AN OBLIGATION OF GOOD FAITH IN ITS
15 PERFORMANCE AND ENFORCEMENT.

16 **38-12-106. Unconscionability.** (a) IF A COURT, AS A MATTER OF
17 LAW, FINDS A LEASE OR ANY PROVISION OF THE LEASE WAS
18 UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO
19 ENFORCE THE LEASE, ENFORCE THE REMAINDER OF THE LEASE WITHOUT
20 THE UNCONSCIONABLE PROVISION, OR LIMIT APPLICATION OF THE
21 UNCONSCIONABLE PROVISION TO AVOID AN UNCONSCIONABLE RESULT.

22 (b) IF A COURT, AS A MATTER OF LAW, FINDS A SETTLEMENT
23 AGREEMENT IN WHICH A PARTY WAIVED OR AGREED TO FOREGO A CLAIM
24 OR RIGHT UNDER A LEASE OR THIS ARTICLE WAS UNCONSCIONABLE AT THE
25 TIME IT WAS MADE, THE COURT MAY REFUSE TO ENFORCE THE
26 AGREEMENT, ENFORCE THE REMAINDER OF THE AGREEMENT WITHOUT THE
27 UNCONSCIONABLE PROVISION, OR LIMIT APPLICATION OF THE

1 UNCONSCIONABLE PROVISION TO AVOID AN UNCONSCIONABLE RESULT.

2 (c) IF A PARTY OR THE COURT PUTS UNCONSCIONABILITY IN ISSUE
3 UNDER SUBSECTION (a) OR (b) OF THIS SECTION, THE COURT SHALL ALLOW
4 THE PARTIES TO PRESENT EVIDENCE OF THE SETTING, PURPOSE, AND
5 EFFECT OF THE LEASE OR SETTLEMENT AGREEMENT TO AID THE COURT IN
6 MAKING THE DETERMINATION OF UNCONSCIONABILITY.

7 **38-12-107. Knowledge and notice - notice in a record.** (a) IN
8 THIS ARTICLE, A PERSON HAS NOTICE OF A FACT IF THE PERSON:

9 (1) HAS ACTUAL KNOWLEDGE OF THE FACT;

10 (2) RECEIVED NOTICE OF THE FACT UNDER SUBSECTION (d) OF THIS
11 SECTION; OR

12 (3) HAS REASON TO KNOW THE FACT EXISTS FROM ALL FACTS
13 KNOWN TO THE PERSON AT THE TIME IN QUESTION.

14 (b) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-1001 (c),
15 IF THIS ARTICLE REQUIRES NOTICE IN A RECORD TO A LANDLORD OR
16 TENANT, THE NOTICE MUST BE SIGNED BY THE PERSON GIVING IT AND:

17 (1) DELIVERED PERSONALLY TO THE LANDLORD OR TENANT;

18 (2) DEPOSITED IN THE MAIL WITH PROPER POSTAGE AND PROPERLY
19 ADDRESSED IF:

20 (A) SENT TO THE TENANT, TO THE MAILING ADDRESS SPECIFIED
21 UNDER SECTION 38-12-109; OR

22 (B) NO ADDRESS IS SPECIFIED, TO AN ADDRESS REASONABLE
23 UNDER THE CIRCUMSTANCES; OR

24 (3) UNLESS THE LANDLORD OR TENANT NOTIFIES THE OTHER AT
25 ANY TIME THAT NOTICE MAY BE GIVEN ONLY BY PERSONAL DELIVERY OR
26 BY MAIL AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION (b),
27 DELIVERED BY ANOTHER MEANS OF COMMUNICATION WITH COST OF

1 TRANSMISSION PROVIDED FOR AND PROPERLY ADDRESSED IF:

2 (A) SENT TO THE LANDLORD, TO AN ADDRESS SPECIFIED UNDER
3 SECTION 38-12-108; AND

4 (B) SENT TO THE TENANT, TO AN ADDRESS SPECIFIED UNDER
5 SECTION 38-12-109; OR

6 (C) NO ADDRESS IS SPECIFIED, TO AN ADDRESS REASONABLE
7 UNDER THE CIRCUMSTANCES.

8 (c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (b) OF THIS
9 SECTION, A PERSON GIVES NOTICE OF A FACT TO ANOTHER PERSON BY
10 TAKING STEPS REASONABLY CALCULATED TO INFORM THE OTHER PERSON,
11 WHETHER OR NOT THE OTHER PERSON LEARNS OF THE FACT.

12 (d) IN THIS ARTICLE, A PERSON RECEIVES NOTICE OF A FACT WHEN:

13 (1) THE FACT COMES TO THE PERSON'S ATTENTION; OR

14 (2) IF NOTICE IN A RECORD IS REQUIRED, THE NOTICE IS:

15 (A) PERSONALLY DELIVERED UNDER PARAGRAPH (1) OF
16 SUBSECTION (b) OF THIS SECTION; OR

17 (B) SENT OR DELIVERED UNDER PARAGRAPH (2) OR (3) OF
18 SUBSECTION (b) OF THIS SECTION.

19 **38-12-108. Required disclosures by landlord.** (a) BEFORE
20 ACCEPTING AN APPLICATION FEE, THE PROSPECTIVE LANDLORD SHALL
21 DISCLOSE TO THE PROSPECTIVE TENANT IN A RECORD THE CRITERIA THE
22 LANDLORD USES TO DETERMINE THE LANDLORD'S WILLINGNESS TO ENTER
23 INTO A LEASE WITH A TENANT.

24 (b) BEFORE ACCEPTING FUNDS TO BE APPLIED TO A SECURITY
25 DEPOSIT, PREPAID RENT, OR FEES OTHER THAN AN APPLICATION FEE, OR
26 BEFORE ENTERING INTO A LEASE, A PROSPECTIVE LANDLORD SHALL
27 DISCLOSE TO THE PROSPECTIVE TENANT IN A RECORD THE FOLLOWING:

1 (1) ANY CONDITION OF THE PREMISES THAT THE LANDLORD KNOWS
2 OR ON A REASONABLE INSPECTION OF THE PREMISES SHOULD HAVE KNOWN
3 WOULD CONSTITUTE A NONCOMPLIANCE UNDER SECTION 38-12-302 AND
4 WOULD MATERIALLY INTERFERE WITH THE HEALTH OR SAFETY OF THE
5 TENANT OR IMMEDIATE FAMILY MEMBER OR WOULD MATERIALLY
6 INTERFERE WITH THE USE AND ENJOYMENT OF THE PREMISES BY THE
7 TENANT OR IMMEDIATE FAMILY MEMBER;

8 (2) WHETHER, TO THE KNOWLEDGE OF THE LANDLORD, A
9 FORECLOSURE ACTION OR NONJUDICIAL FORECLOSURE PROCEEDING HAS
10 BEEN COMMENCED AGAINST THE PREMISES;

11 (3) IF RENT IS PREPAID, THE MONTH OR OTHER PERIOD OF THE
12 LEASE TO WHICH THE RENT IS TO BE APPLIED; AND

13 (4) THE RULES AFFECTING THE TENANT'S USE AND ENJOYMENT OF
14 THE PREMISES, WHETHER ADOPTED BY THE LANDLORD OR ANOTHER
15 PERSON.

16 (c) AT OR BEFORE COMMENCEMENT OF THE TERM OF A LEASE, THE
17 LANDLORD SHALL GIVE THE TENANT NOTICE IN A RECORD SPECIFYING:

18 (1) THE NAME OF:

19 (A) THE LANDLORD;

20 (B) ANY PERSON AUTHORIZED TO MANAGE THE PREMISES;

21 (C) THE OWNER OF THE PREMISES;

22 (D) ANY PERSON AUTHORIZED TO ACT FOR THE OWNER FOR
23 SERVICE OF PROCESS; AND

24 (E) ANY PERSON AUTHORIZED TO RECEIVE A NOTICE OR DEMAND
25 FOR THE OWNER;

26 (2) THE MAILING ADDRESS AND ANY ADDRESS TO BE USED FOR THE
27 RECEIPT OF ELECTRONIC COMMUNICATIONS BY THE LANDLORD OR ANY

1 PERSON DESIGNATED BY THE LANDLORD TO WHICH A NOTICE OR DEMAND
2 MUST BE SENT; AND

3 (3) THE ADDRESS TO, OR THE METHOD BY, WHICH THE TENANT
4 MUST DELIVER RENT.

5 (d) A LANDLORD SHALL KEEP CURRENT THE INFORMATION
6 REQUIRED BY SUBSECTION (c) OF THIS SECTION.

7 (e) IF THE PREMISES WERE IN FORECLOSURE BEFORE A LANDLORD
8 AND TENANT ENTERED INTO A LEASE AND THE DISCLOSURE REQUIRED BY
9 PARAGRAPH (2) OF SUBSECTION (b) OF THIS SECTION WAS NOT MADE, THE
10 TENANT MAY RECOVER ACTUAL DAMAGES RESULTING FROM THE
11 FORECLOSURE.

12 **38-12-109. Required disclosures by tenant.** (a) AT OR BEFORE
13 COMMENCEMENT OF THE TERM OF A LEASE, THE TENANT SHALL GIVE THE
14 LANDLORD NOTICE IN A RECORD SPECIFYING THE TENANT'S MAILING
15 ADDRESS AND ANY ADDRESS TO BE USED FOR THE RECEIPT OF ELECTRONIC
16 COMMUNICATIONS BY THE TENANT.

17 (b) AT THE REQUEST OF A LANDLORD, THE TENANT SHALL
18 DESIGNATE A CONTACT PERSON TO ACT FOR THE TENANT ON THE TENANT'S
19 DEATH, BY GIVING THE LANDLORD A RECORD SPECIFYING THE NAME AND,
20 IF KNOWN, THE MAILING ADDRESS, ANY ADDRESS TO BE USED FOR THE
21 RECEIPT OF ELECTRONIC COMMUNICATIONS, AND THE TELEPHONE NUMBER
22 OF THE CONTACT PERSON. IN THE ABSENCE OF A REQUEST BY THE
23 LANDLORD, THE TENANT MAY DESIGNATE A CONTACT PERSON IN THE SAME
24 MANNER.

25 (c) A TENANT SHALL KEEP CURRENT THE INFORMATION REQUIRED
26 BY SUBSECTIONS (a) AND (b) OF THIS SECTION. ON TERMINATION OF THE
27 LEASE, THE TENANT SHALL PROVIDE THE LANDLORD A FORWARDING

1 ADDRESS TO WHICH THE LANDLORD MUST SEND THE TENANT'S SECURITY
2 DEPOSIT AND UNEARNED RENT, OR OTHER COMMUNICATIONS.

3 **38-12-110. Principles of law and equity.** UNLESS DISPLACED BY
4 THE PARTICULAR PROVISIONS OF THIS ARTICLE, THE PRINCIPLES OF LAW
5 AND EQUITY SUPPLEMENT THIS ARTICLE.

6 PART 2

7 GENERAL PROVISIONS APPLICABLE TO LEASE

8 **38-12-201. Terms and conditions of lease - delivery of lease to**
9 **tenant.** (a) A LEASE MAY INCLUDE TERMS AND CONDITIONS NOT
10 PROHIBITED BY THIS ARTICLE OR LAW OTHER THAN THIS ARTICLE.

11 (b) UNLESS A LEASE OR LAW OTHER THAN THIS ARTICLE
12 OTHERWISE PROVIDES:

13 (1) THE TENANT SHALL PAY RENT FOR THE DWELLING UNIT FOR
14 THE TERM OF THE LEASE IN AN AMOUNT COMPARABLE TO THE RENT PAID
15 FOR OTHER DWELLING UNITS OF SIMILAR SIZE AND CONDITION IN THE SAME
16 OR A COMPARABLE LOCATION, DETERMINED AT THE COMMENCEMENT OF
17 THE TERM;

18 (2) RENT IS:

19 (A) PAYABLE WITHOUT DEMAND OR NOTICE:

20 (i) AT THE ADDRESS OR PLACE THE LANDLORD DESIGNATES UNDER
21 SECTION 38-12-108 (c) (3) OR, IF NO DESIGNATION IS MADE, AT THE
22 LANDLORD'S PLACE OF BUSINESS AT THE TIME THE LEASE WAS MADE; AND

23 (ii) ON THE FIRST DAY OF EACH MONTH OR AT THE BEGINNING OF
24 THE TERM IF THE TERM IS LESS THAN ONE MONTH; AND

25 (B) UNIFORMLY APPORTIONED FROM DAY TO DAY; AND

26 (3) A RENTAL PERIOD IS ON A MONTHLY BASIS BEGINNING WITH
27 THE FIRST DAY OF THE MONTH FOR A TENANCY FOR A FIXED TERM OF MORE

1 THAN ONE MONTH OR A PERIODIC TENANCY OF MONTH TO MONTH AND,
2 FOR ALL OTHER TENANCIES, THE RENTAL PERIOD BEGINS ON THE FIRST DAY
3 RENT IS PAID.

4 (c) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-202,
5 UNLESS THE LEASE CREATES A TENANCY FOR A FIXED TERM, THE TENANCY
6 IS A PERIODIC TENANCY FOR WEEK TO WEEK IF THE TENANT PAYS RENT
7 WEEKLY AND OTHERWISE IS A PERIODIC TENANCY FOR MONTH TO MONTH.

8 (d) A LANDLORD SHALL PROVIDE THE TENANT A COPY OF ANY
9 LEASE THAT IS SIGNED BY THEM OR, IF THE LEASE IS ENFORCEABLE UNDER
10 SECTION 38-12-202, SIGNED BY EITHER OF THEM.

11 (e) IF A LANDLORD WILLFULLY FAILS TO COMPLY WITH SUBSECTION
12 (d) OF THIS SECTION, THE TENANT MAY RECOVER ACTUAL DAMAGES OR
13 ONE MONTH'S PERIODIC RENT, WHICHEVER IS GREATER.

14 **38-12-202. Effect of unsigned lease - implied lease. (a)**
15 SUBJECT TO SUBSECTION (b) OF THIS SECTION:

16 (1) IF A LEASE SIGNED BY THE TENANT IS DELIVERED TO THE
17 LANDLORD AND THE LANDLORD FAILS TO SIGN THE LEASE AND RETURN IT
18 TO THE TENANT, ACCEPTANCE OF RENT BY THE LANDLORD WITHOUT A
19 RESERVATION OF RIGHTS GIVES THE LEASE THE SAME EFFECT AS IF THE
20 LEASE HAD BEEN SIGNED BY THE LANDLORD AND RETURNED TO THE
21 TENANT; AND

22 (2) IF A LEASE SIGNED BY THE LANDLORD IS DELIVERED TO THE
23 TENANT AND THE TENANT FAILS TO SIGN THE LEASE AND RETURN IT TO THE
24 LANDLORD, ACCEPTANCE OF POSSESSION AND PAYMENT OF RENT WITHOUT
25 A RESERVATION OF RIGHTS GIVES THE LEASE THE SAME EFFECT AS IF THE
26 LEASE HAD BEEN SIGNED BY THE TENANT AND RETURNED TO THE
27 LANDLORD.

1 (b) IF A LEASE GIVEN EFFECT UNDER SUBSECTION (a) OF THIS
2 SECTION PROVIDES FOR A TENANCY FOR A FIXED TERM LONGER THAN ONE
3 YEAR, THE LEASE IS EFFECTIVE FOR ONE YEAR.

4 (c) ABSENT A LEASE SIGNED BY THE LANDLORD OR TENANT THAT
5 IS DELIVERED TO THE OTHER, IF THE TENANT ACCEPTS POSSESSION AND
6 PAYS RENT TO THE LANDLORD WITHOUT A RESERVATION OF RIGHTS AND
7 THE LANDLORD ACCEPTS RENT FROM THE TENANT WITHOUT A
8 RESERVATION OF RIGHTS, THE TENANCY CREATED IS A PERIODIC TENANCY
9 FOR WEEK TO WEEK IF THE TENANT PAYS RENT WEEKLY AND IN ALL OTHER
10 CASES A PERIODIC TENANCY FOR MONTH TO MONTH.

11 **38-12-203. Prohibited provisions in lease.** (a) A LEASE MAY NOT
12 REQUIRE THE TENANT TO:

13 (1) UNLESS PERMITTED BY THIS ARTICLE, WAIVE OR FOREGO A
14 RIGHT OR REMEDY UNDER THIS ARTICLE;

15 (2) AUTHORIZE A PERSON TO CONFESS JUDGMENT ON A CLAIM
16 ARISING OUT OF THE LEASE OR THIS ARTICLE;

17 (3) PERFORM A DUTY IMPOSED ON THE LANDLORD BY SECTION
18 38-12-302;

19 (4) AGREE TO PAY ATTORNEY'S FEES AND COSTS OF THE LANDLORD
20 OTHER THAN THOSE PROVIDED BY THIS ARTICLE OR LAW OTHER THAN THIS
21 ARTICLE; OR

22 (5) AGREE TO EXCULPATE OR LIMIT A LIABILITY OF THE LANDLORD
23 ARISING UNDER THIS ARTICLE OR LAW OTHER THAN THIS ARTICLE OR
24 INDEMNIFY THE LANDLORD FOR THE LIABILITY AND THE COSTS
25 CONNECTED WITH THE LIABILITY.

26 (b) A PROVISION IN A LEASE PROHIBITED BY SUBSECTION (a) OF
27 THIS SECTION OR LAW OTHER THAN THIS ARTICLE IS UNENFORCEABLE. IF

1 THE LANDLORD SEEKS TO ENFORCE THE PROVISION OR ACCEPTS THE
2 TENANT'S VOLUNTARY COMPLIANCE WITH THE PROVISION, THE COURT
3 MAY AWARD THE TENANT AN AMOUNT NOT TO EXCEED THREE TIMES THE
4 PERIODIC RENT.

5 **38-12-204. Separation of rent from landlord duties prohibited.**

6 A LEASE, ASSIGNMENT, SUBLEASE, CONVEYANCE, TRUST DEED, OR
7 SECURITY INSTRUMENT MAY NOT AUTHORIZE A PERSON TO RECEIVE RENT
8 WITHOUT ASSUMING THE DUTIES IMPOSED ON THE LANDLORD BY THE
9 LEASE AND SECTION 38-12-302.

10 **38-12-205. Attorney fees and costs.** (a) IN THIS SECTION,
11 "PREVAILING PARTY" MEANS A PARTY THAT:

12 (1) INITIATED THE ENFORCEMENT OF A RIGHT OR REMEDY UNDER
13 A LEASE OR THIS ARTICLE AND SUBSTANTIALLY PREVAILED ON THE RIGHT
14 OR REMEDY ASSERTED; OR

15 (2) SUBSTANTIALLY PREVAILED IN DEFENDING AGAINST A RIGHT
16 OR REMEDY ASSERTED BY THE OTHER PARTY.

17 (b) IN AN ACTION TO ENFORCE A RIGHT OR REMEDY ARISING UNDER
18 A LEASE OR THIS ARTICLE, THE COURT SHALL AWARD THE PREVAILING
19 PARTY COSTS. THE COURT MAY AWARD THE PREVAILING PARTY
20 REASONABLE ATTORNEY FEES IF THE COURT DETERMINES THAT THE OTHER
21 PARTY DID NOT ACT IN GOOD FAITH, WILLFULLY PERFORMED AN ACT
22 PROHIBITED BY THE LEASE OR THIS ARTICLE, OR WILLFULLY REFRAINED
23 FROM PERFORMING AN ACT REQUIRED BY THE LEASE OR THIS ARTICLE.

24 (c) A COURT MAY NOT AWARD A LANDLORD ATTORNEY'S FEES OR
25 COSTS IN AN UNCONTESTED ACTION TO RECOVER POSSESSION OF A
26 DWELLING UNIT.

27 PART 3

LANDLORD DUTIES

38-12-301. Delivery of possession of dwelling unit to tenant. A

LANDLORD SHALL DELIVER PHYSICAL POSSESSION OF THE DWELLING UNIT TO THE TENANT AT THE COMMENCEMENT OF THE TERM OF THE LEASE.

38-12-302. Landlord duty to maintain premises in habitable

condition. (a) A LANDLORD HAS A NONWAIVABLE DUTY TO MAINTAIN THE PREMISES IN A HABITABLE CONDITION, INCLUDING MAKING NECESSARY REPAIRS. THE DUTY REQUIRES THE LANDLORD TO ENSURE THAT THE PREMISES:

(1) COMPLY WITH ALL OBLIGATIONS IMPOSED ON THE LANDLORD BY ANY APPLICABLE BUILDING, HOUSING, FIRE, OR HEALTH CODE OR OTHER LAW;

(2) HAVE EFFECTIVE WATERPROOFING AND WEATHER PROTECTION OF THE ROOF AND EXTERIOR WALLS, INCLUDING WINDOWS AND DOORS;

(3) HAVE PLUMBING FACILITIES THAT CONFORM TO LAW AND ARE MAINTAINED IN GOOD WORKING ORDER;

(4) HAVE ACCESS TO A WATER SUPPLY APPROVED UNDER LAW THAT CAN PROVIDE HOT AND COLD RUNNING WATER;

(5) HAVE ADEQUATE VENTILATION AND HEATING FACILITIES THAT CONFORM TO LAW AND ARE MAINTAINED IN GOOD WORKING ORDER;

(6) HAVE ELECTRICAL LIGHTING, WITH WIRING AND EQUIPMENT THAT CONFORM TO LAW AND ARE MAINTAINED IN GOOD WORKING ORDER;

(7) HAVE REASONABLE MEASURES IN PLACE TO CONTROL THE PRESENCE OF RODENTS, BEDBUGS, AND OTHER VERMIN AND TO PREVENT EXPOSURE TO UNSAFE LEVELS OF RADON, LEAD PAINT, ASBESTOS, TOXIC MOLD, AND OTHER HAZARDOUS SUBSTANCES;

(8) TO THE EXTENT THE PREMISES INCLUDE A COMMON AREA OR

1 OTHER AREAS UNDER THE LANDLORD'S CONTROL, HAVE REASONABLE
2 MEASURES IN PLACE TO MAKE THE AREA:

3 (A) CLEAN AND SANITARY;

4 (B) SAFE FOR NORMAL AND REASONABLY FORESEEABLE USE
5 CONSISTENT WITH THE LEASE AND IN GOOD REPAIR; AND

6 (C) REASONABLY FREE OF DEBRIS, FILTH, RUBBISH, GARBAGE, AND
7 THE ITEMS LISTED IN PARAGRAPH (7) OF THIS SUBSECTION (a);

8 (9) HAVE AN ADEQUATE NUMBER OF APPROPRIATE RECEPTACLES
9 IN REASONABLY CLEAN CONDITION IF THE LANDLORD IS OBLIGATED TO
10 PROVIDE TRASH REMOVAL OR RECYCLING SERVICE BY LAW OR AN
11 AGREEMENT IN A RECORD SIGNED BY THE LANDLORD AND TENANT;

12 (10) HAVE IN GOOD REPAIR FLOORS, DOORS, WINDOWS, WALLS,
13 CEILINGS, STAIRWAYS, AND RAILINGS;

14 (11) HAVE IN GOOD REPAIR OTHER FACILITIES AND APPLIANCES
15 SUPPLIED OR REQUIRED TO BE SUPPLIED BY THE LANDLORD;

16 (12) HAVE IN GOOD REPAIR LOCKS OR OTHER SECURITY DEVICES
17 ON ALL EXTERIOR DOORS AND ON WINDOWS THAT OPEN AND CLOSE,
18 INCLUDING THOSE OF THE DWELLING UNIT AND OTHER PARTS OF THE
19 PREMISES; AND

20 (13) HAVE IN GOOD WORKING ORDER ANY SAFETY EQUIPMENT
21 REQUIRED BY LAW.

22 (b) A LANDLORD HAS THE DUTY TO ENSURE THE PREMISES HAVE
23 ACCESS TO ESSENTIAL SERVICES, BUT THE LEASE MAY REQUIRE AN
24 ACCOUNT WITH A UTILITY PROVIDER OF AN ESSENTIAL SERVICE TO THE
25 DWELLING UNIT BE IN THE NAME OF THE TENANT AND THE TENANT PAY
26 THE PERIODIC COST FOR THE SERVICE. IF THE SERVICE IS NOT PROVIDED
27 BECAUSE THE TENANT FAILS TO PAY FOR THE SERVICE, THE LANDLORD

1 DOES NOT FAIL TO COMPLY WITH THIS SUBSECTION (b).

2 (c) IF A SUBLESSOR IS A LANDLORD FOR PURPOSES OF THIS
3 ARTICLE, THE SUBLESSOR HAS THE DUTY TO COMPLY WITH SUBSECTION (a)
4 OF THIS SECTION EXCEPT FOR DUTIES THAT WOULD REQUIRE THE
5 SUBLESSOR TO ACCESS PARTS OF THE PREMISES BEYOND THE SUBLESSOR'S
6 CONTROL.

7 (d) A LANDLORD AND TENANT MAY AGREE THAT THE TENANT IS TO
8 PERFORM SPECIFIED REPAIRS, MAINTENANCE TASKS, ALTERATIONS, OR
9 REMODELING ONLY IF:

10 (1) THE AGREEMENT IS IN A RECORD, OTHER THAN THE LEASE,
11 SIGNED BY THE PARTIES AND SUPPORTED BY ADEQUATE CONSIDERATION;

12 (2) THE WORK IS NOT NECESSARY TO CURE THE LANDLORD'S
13 NONCOMPLIANCE WITH PARAGRAPH (1) OF SUBSECTION (a) OF THIS
14 SECTION; AND

15 (3) THE AGREEMENT DOES NOT AFFECT THE OBLIGATION OF THE
16 LANDLORD TO OTHER TENANTS ON THE PREMISES.

17 (e) A LANDLORD MAY NOT TREAT PERFORMANCE OF AN
18 AGREEMENT DESCRIBED IN SUBSECTION (d) OF THIS SECTION AS A
19 CONDITION TO THE PERFORMANCE OF ANY OBLIGATION UNDER THE LEASE
20 OR THIS SECTION.

21 **38-12-303. Limitations on landlord liability.** (a) EXCEPT TO THE
22 EXTENT A LANDLORD AND TENANT OTHERWISE AGREE IN A SIGNED
23 RECORD, IF THE LANDLORD, IN A GOOD-FAITH SALE TO A BONA FIDE
24 PURCHASER, CONVEYS PREMISES THAT INCLUDE A DWELLING UNIT
25 SUBJECT TO A LEASE, THE FOLLOWING RULES APPLY:

26 (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION (a), THE LANDLORD IS RELIEVED OF LIABILITY UNDER THE

1 LEASE AND THIS ARTICLE AS TO AN EVENT THAT OCCURS AFTER THE LATER
2 OF THE CONVEYANCE TO THE PURCHASER OR NOTICE IN A RECORD BY THE
3 LANDLORD TO THE TENANT OF THE CONVEYANCE.

4 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-1205, THE
5 LANDLORD REMAINS LIABLE TO THE TENANT FOR THE AMOUNT OF ANY
6 SECURITY DEPOSIT AND UNEARNED RENT.

7 **38-12-304. Rules of landlord governing use and enjoyment of**
8 **premises.** (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-305 (a)
9 OR AS REQUIRED BY LAW OTHER THAN THIS ARTICLE, A LANDLORD MAY
10 ENFORCE A RULE OF THE LANDLORD IN EXISTENCE AT THE TIME THE LEASE
11 COMMENCED ONLY IF THE RULE WAS DISCLOSED TO THE TENANT UNDER
12 SECTION 38-12-108.

13 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d)
14 OF THIS SECTION, AFTER COMMENCEMENT OF THE TERM OF A LEASE, THE
15 LANDLORD MAY ADOPT OR MODIFY A RULE CONCERNING THE TENANT'S
16 USE AND ENJOYMENT OF THE PREMISES, BUT THE RULE OR MODIFICATION
17 MAY NOT TAKE EFFECT EARLIER THAN THIRTY DAYS AFTER THE LANDLORD
18 GIVES THE TENANT NOTICE IN A RECORD OF THE RULE OR MODIFICATION.

19 (c) IN A PERIODIC TENANCY FOR MONTH TO MONTH, A RULE OR
20 MODIFICATION ADOPTED UNDER SUBSECTION (b) OF THIS SECTION MAY
21 NOT TAKE EFFECT BEFORE THE EXPIRATION OF THE PERIOD IN SECTION
22 38-12-801 (b) (2) DURING WHICH THE TENANT OR LANDLORD COULD HAVE
23 EXERCISED THE RIGHT TO TERMINATE THE TENANCY.

24 (d) IN A TENANCY FOR A FIXED TERM, IF A RULE OR MODIFICATION
25 ADOPTED UNDER SUBSECTION (b) OF THIS SECTION SUBSTANTIALLY
26 MODIFIES THE TENANT'S BENEFIT OF THE BARGAIN AND IS NOT REQUIRED
27 BY LAW OTHER THAN THIS ARTICLE, THE RULE IS NOT ENFORCEABLE

1 AGAINST THE TENANT UNLESS THE TENANT CONSENTS IN A SIGNED
2 RECORD.

3 **38-12-305. Rules of third parties governing use and enjoyment**

4 **of the premises.** (a) IF, BEFORE THE COMMENCEMENT OF THE TERM OF A
5 LEASE, THE LANDLORD FAILS TO DISCLOSE A RULE ADOPTED BY A PERSON
6 OTHER THAN THE LANDLORD THAT SUBSTANTIALLY MODIFIES THE
7 TENANT'S BENEFIT OF THE BARGAIN AND IS NOT REQUIRED BY LAW OTHER
8 THAN THIS ARTICLE, AND THE RULE IS ENFORCED AGAINST THE TENANT,
9 THE TENANT MAY:

10 (1) RECOVER ACTUAL DAMAGES FROM THE LANDLORD; OR

11 (2) TERMINATE THE LEASE BY GIVING THE LANDLORD NOTICE IN A
12 RECORD THAT THE LEASE WILL TERMINATE ON A DATE SPECIFIED IN THE
13 NOTICE THAT MUST BE AT LEAST THIRTY DAYS AFTER THE NOTICE IS
14 GIVEN.

15 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS
16 SECTION, IF, AFTER THE COMMENCEMENT OF THE TERM OF A LEASE, A
17 PERSON OTHER THAN THE LANDLORD ADOPTS OR MODIFIES A RULE THAT
18 SUBSTANTIALLY MODIFIES THE TENANT'S BENEFIT OF THE BARGAIN AND IS
19 NOT REQUIRED BY LAW OTHER THAN THIS ARTICLE AND THE RULE IS
20 ENFORCED AGAINST THE TENANT, THE TENANT OF A TENANCY FOR A FIXED
21 TERM MAY TERMINATE THE LEASE BY GIVING THE LANDLORD NOTICE IN A
22 RECORD THAT THE LEASE WILL TERMINATE ON A DATE SPECIFIED IN THE
23 NOTICE THAT MUST BE AT LEAST THIRTY DAYS AFTER THE NOTICE IS GIVEN
24 OR, IN THE CASE OF A PERIODIC TENANCY, TERMINATE THE TENANCY IN
25 ACCORDANCE WITH SECTION 38-12-801.

26 (c) A TENANT MAY NOT TERMINATE A LEASE UNDER SUBSECTION
27 (b) OF THIS SECTION IF THE LEASE PROVIDES THE DWELLING UNIT IS

1 SUBJECT TO RULES OF A PERSON OTHER THAN THE LANDLORD AND THE
2 PERSON MAY MODIFY THE RULES AFTER THE COMMENCEMENT OF THE
3 TERM OF THE LEASE.

4 PART 4

5 TENANT REMEDIES

6 **38-12-401. Notice and opportunity to remedy.** (a) EXCEPT AS
7 OTHERWISE PROVIDED IN SECTION 38-12-403, IF A LANDLORD FAILS TO
8 COMPLY WITH THE LEASE OR SECTION 38-12-302, THE TENANT HAS THE
9 REMEDIES UNDER SECTION 38-12-402 IF THE TENANT GIVES THE
10 LANDLORD:

11 (1) NOTICE IN A RECORD OF THE NONCOMPLIANCE; AND

12 (2) AN OPPORTUNITY TO REMEDY THE NONCOMPLIANCE WITHIN
13 THE FOLLOWING PERIODS:

14 (A) SUBJECT TO SUBPARAGRAPH (B) OF THIS PARAGRAPH (2), NOT
15 LATER THAN FOURTEEN DAYS AFTER THE TENANT GAVE THE NOTICE; AND

16 (B) IF THE NONCOMPLIANCE INVOLVES FAILURE TO PROVIDE AN
17 ESSENTIAL SERVICE OR MATERIALLY INTERFERES WITH THE HEALTH OR
18 SAFETY OF THE TENANT OR IMMEDIATE FAMILY MEMBER, THE LANDLORD
19 SHALL REMEDY THE NONCOMPLIANCE AS SOON AS PRACTICABLE BUT NOT
20 LATER THAN FIVE DAYS AFTER THE TENANT GAVE THE NOTICE.

21 **38-12-402. Noncompliance by landlord generally.** (a) EXCEPT
22 AS OTHERWISE PROVIDED IN SECTION 38-12-403, IF A LANDLORD'S
23 NONCOMPLIANCE WITH THE LEASE OR SECTION 38-12-302 RESULTS IN THE
24 TENANT NOT RECEIVING AN ESSENTIAL SERVICE, MATERIALLY INTERFERES
25 WITH THE HEALTH OR SAFETY OF THE TENANT OR IMMEDIATE FAMILY
26 MEMBER, OR MATERIALLY INTERFERES WITH THE USE AND ENJOYMENT OF
27 THE PREMISES BY THE TENANT OR IMMEDIATE FAMILY MEMBER AND THE

1 NONCOMPLIANCE IS NOT REMEDIED DURING THE APPLICABLE PERIOD
2 SPECIFIED IN SECTION 38-12-401, THE TENANT MAY:

3 (1) TERMINATE THE LEASE, AS PROVIDED IN SECTION 38-12-404;

4 OR

5 (2) CONTINUE THE LEASE AND ELECT ONE OR MORE OF THE
6 FOLLOWING REMEDIES:

7 (A) SUBJECT TO SECTION 38-12-408, WITHHOLD RENT FOR THE
8 PERIOD OF NONCOMPLIANCE BEGINNING ON THE DATE THE TENANT GAVE
9 NOTICE UNDER SECTION 38-12-401;

10 (B) RECOVER ACTUAL DAMAGES;

11 (C) OBTAIN INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE, OR
12 OTHER EQUITABLE RELIEF;

13 (D) MAKE REPAIRS AND DEDUCT THE COST FROM THE RENT, AS
14 PROVIDED IN SECTION 38-12-406; OR

15 (E) SECURE AN ESSENTIAL SERVICE THE LANDLORD IS OBLIGATED
16 TO PROVIDE OR COMPARABLE SUBSTITUTE HOUSING DURING THE PERIOD
17 OF NONCOMPLIANCE, AS PROVIDED IN SECTION 38-12-407.

18 (b) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR
19 SECTION 38-12-302 DOES NOT MATERIALLY INTERFERE WITH THE HEALTH
20 OR SAFETY OF THE TENANT OR IMMEDIATE FAMILY MEMBER OR THE USE
21 AND ENJOYMENT OF THE PREMISES BY THE TENANT OR IMMEDIATE FAMILY
22 MEMBER, THE TENANT MAY ELECT ONE OR MORE OF THE REMEDIES
23 PROVIDED IN SUBPARAGRAPHS (B), (C), AND (D) OF PARAGRAPH (2) OF
24 SUBSECTION (a) OF THIS SECTION.

25 (c) A TENANT IS NOT ENTITLED TO A REMEDY UNDER THIS SECTION
26 TO THE EXTENT:

27 (1) THE LANDLORD'S NONCOMPLIANCE WAS CAUSED BY AN ACT OR

1 OMISSION OF THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST; OR
2 (2) THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST
3 PREVENTED THE LANDLORD FROM HAVING ACCESS TO THE DWELLING UNIT
4 TO REMEDY THE ACT OR OMISSION DESCRIBED IN THE NOTICE UNDER
5 SECTION 38-12-401.

6 **38-12-403. Limitations on remedies.** (a) IF A DWELLING UNIT OR
7 OTHER PART OF THE PREMISES IS SUBSTANTIALLY DAMAGED OR
8 DESTROYED BY A FIRE, OTHER CASUALTY, OR NATURAL DISASTER AND:

9 (1) THE UNIT OR OTHER PART OF THE PREMISES IS UNINHABITABLE
10 OR INACCESSIBLE OR CONTINUED OCCUPANCY OF THE UNIT IS UNLAWFUL,
11 THE TENANT MAY VACATE THE UNIT IMMEDIATELY AND, NOT LATER THAN
12 FOURTEEN DAYS AFTER VACATING THE UNIT, GIVE THE LANDLORD NOTICE
13 IN A RECORD OF THE TENANT'S INTENT TO TERMINATE THE LEASE, IN
14 WHICH CASE THE LEASE TERMINATES AS OF THE DATE THE TENANT
15 VACATES THE UNIT; OR

16 (2) IF CONTINUED OCCUPANCY OF THE UNIT IS LAWFUL, SUBJECT
17 TO THE LANDLORD'S RIGHT TO TERMINATE THE LEASE UNDER SUBSECTION
18 (b) OF THIS SECTION, THE TENANT, AFTER COMPLYING WITH SECTION
19 38-12-401, MAY CONTINUE THE LEASE AND SEEK THE REMEDIES PROVIDED
20 IN SECTION 38-12-402 (a) (2) (A), (a) (2) (B), (a) (2) (C), AND (a) (2) (D).

21 (b) IF A DWELLING UNIT OR OTHER PART OF THE PREMISES IS
22 SUBSTANTIALLY DAMAGED BY A FIRE, OTHER CASUALTY, OR NATURAL
23 DISASTER AND CONTINUED OCCUPANCY OF THE UNIT IS UNLAWFUL OR
24 DANGEROUS OR REQUIRES REPAIRS THAT CAN BE MADE ONLY IF THE
25 TENANT VACATES THE UNIT, THE LANDLORD MAY TERMINATE THE LEASE
26 BY GIVING THE TENANT NOTICE IN A RECORD THAT THE LEASE WILL
27 TERMINATE ON A SPECIFIED DATE, WHICH MUST BE AT LEAST FIVE DAYS

1 AFTER THE NOTICE IS GIVEN.

2 (c) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR
3 SECTION 38-12-302 MATERIALLY INTERFERES WITH THE HEALTH OR
4 SAFETY OF A TENANT OR IMMEDIATE FAMILY MEMBER OR THE USE AND
5 ENJOYMENT OF THE PREMISES BY THE TENANT OR IMMEDIATE FAMILY
6 MEMBER AND IT IS IMPOSSIBLE FOR THE LANDLORD TO REMEDY THE
7 NONCOMPLIANCE WITHIN THE APPLICABLE PERIOD SPECIFIED IN SECTION
8 38-12-401, THE TENANT MAY TERMINATE THE LEASE AS PROVIDED IN
9 SECTION 38-12-404 (b) OR, SUBJECT TO SUBSECTION (d) OF THIS SECTION,
10 CONTINUE THE LEASE AND RECOVER ACTUAL DAMAGES LIMITED TO
11 DIMINUTION IN THE VALUE OF THE DWELLING UNIT.

12 (d) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR
13 SECTION 38-12-302 MATERIALLY INTERFERES WITH THE HEALTH OR
14 SAFETY OF A TENANT OR IMMEDIATE FAMILY MEMBER OR THE USE AND
15 ENJOYMENT OF THE PREMISES BY THE TENANT OR IMMEDIATE FAMILY
16 MEMBER AND IT IS IMPOSSIBLE FOR THE LANDLORD TO REMEDY THE
17 NONCOMPLIANCE NOT LATER THAN THIRTY DAYS AFTER RECEIVING THE
18 NOTICE UNDER SECTION 38-12-401, THE LANDLORD MAY TERMINATE THE
19 LEASE BY GIVING THE TENANT NOTICE IN A RECORD THAT THE LEASE WILL
20 TERMINATE ON A SPECIFIED DATE, WHICH MUST BE AT LEAST THIRTY DAYS
21 AFTER THE LANDLORD GIVES THE NOTICE. THE LANDLORD MAY NOT RENT
22 THE UNIT FOR NINETY DAYS AFTER TERMINATION OF THE LEASE.

23 (e) IF A LEASE IS TERMINATED UNDER THIS SECTION, THE
24 LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND UNEARNED RENT
25 TO WHICH THE TENANT IS ENTITLED UNDER SECTION 38-12-1204.

26 (f) THIS SECTION DOES NOT PRECLUDE:

27 (1) A LANDLORD FROM SEEKING ACTUAL DAMAGES FROM THE

1 TENANT UNDER LAW OTHER THAN THIS ARTICLE FOR DAMAGE TO THE
2 PREMISES CAUSED BY AN ACT OR OMISSION OF THE TENANT, IMMEDIATE
3 FAMILY MEMBER, OR GUEST; OR

4 (2) A TENANT FROM SEEKING ACTUAL DAMAGES FROM THE
5 LANDLORD UNDER LAW OTHER THAN THIS ARTICLE IF THE FIRE OR OTHER
6 CASUALTY WAS CAUSED BY AN ACT OR OMISSION OF THE LANDLORD OR
7 LANDLORD'S AGENT.

8 **38-12-404. Material noncompliance by landlord - termination**

9 **of lease.** (a) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR
10 SECTION 38-12-302 MATERIALLY INTERFERES WITH THE HEALTH OR
11 SAFETY OF THE TENANT OR IMMEDIATE FAMILY MEMBER AND THE
12 NONCOMPLIANCE IS NOT REMEDIED WITHIN THE PERIOD SPECIFIED IN
13 SECTION 38-12-401 (a) (2) (B), THE TENANT MAY TERMINATE THE LEASE
14 BY GIVING THE LANDLORD NOTICE IN A RECORD OF THE TENANT'S INTENT
15 TO TERMINATE THE LEASE IMMEDIATELY OR ON A SPECIFIED DATE, WHICH
16 IS NOT LATER THAN THIRTY DAYS AFTER THE DATE OF THE NOTICE.

17 (b) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR
18 SECTION 38-12-302 MATERIALLY INTERFERES WITH THE USE AND
19 ENJOYMENT OF THE PREMISES UNRELATED TO THE HEALTH OR SAFETY OF
20 THE TENANT OR IMMEDIATE FAMILY MEMBER AND THE NONCOMPLIANCE
21 IS NOT REMEDIED WITHIN THE PERIOD SPECIFIED IN SECTION 38-12-401 (a)
22 (2) (A), THE TENANT MAY TERMINATE THE LEASE BY GIVING THE
23 LANDLORD NOTICE IN A RECORD OF THE TENANT'S INTENT TO TERMINATE
24 THE LEASE ON A SPECIFIED DATE, WHICH MUST BE AT LEAST FOURTEEN
25 DAYS AFTER THE EXPIRATION OF THE PERIOD ALLOWED UNDER SECTION
26 38-12-401 FOR THE REMEDY OF THE NONCOMPLIANCE.

27 (c) IN ADDITION TO TERMINATING A LEASE AS PROVIDED IN

1 SUBSECTION (a) OR (b) OF THIS SECTION, THE TENANT MAY RECOVER
2 ACTUAL DAMAGES.

3 (d) IF A TENANT TERMINATES A LEASE UNDER THIS SECTION, THE
4 LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND UNEARNED RENT
5 TO WHICH THE TENANT IS ENTITLED UNDER SECTION 38-12-1204.

6 **38-12-405. Landlord failure to deliver possession to tenant.**

7 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS SECTION,
8 IF A LANDLORD DOES NOT DELIVER PHYSICAL POSSESSION OF THE
9 DWELLING UNIT TO THE TENANT UNDER SECTION 38-12-301, THE TENANT
10 IS NOT REQUIRED TO PAY RENT UNTIL POSSESSION IS DELIVERED AND MAY:

11 (1) TERMINATE THE LEASE BY GIVING NOTICE IN A RECORD TO THE
12 LANDLORD AT ANY TIME BEFORE THE LANDLORD DELIVERS POSSESSION OF
13 THE UNIT TO THE TENANT; OR

14 (2) DEMAND PERFORMANCE OF THE LEASE BY THE LANDLORD AND:

15 (A) RECOVER ACTUAL DAMAGES AND OBTAIN POSSESSION OF THE
16 UNIT FROM THE LANDLORD; OR

17 (B) OBTAIN POSSESSION OF THE UNIT FROM ANY PERSON
18 WRONGFULLY IN POSSESSION BY ANY LAWFUL MEANS THE LANDLORD
19 COULD HAVE USED.

20 (b) IF A TENANT TERMINATES THE LEASE UNDER PARAGRAPH (1) OF
21 SUBSECTION (a) OF THIS SECTION, THE LANDLORD SHALL RETURN ANY
22 AMOUNTS RECEIVED FROM THE TENANT BEFORE THE COMMENCEMENT OF
23 THE TERM OF THE LEASE.

24 (c) IN ADDITION TO THE RIGHTS OF A TENANT UNDER SUBSECTIONS
25 (a) AND (b) OF THIS SECTION, IF A LANDLORD'S FAILURE TO DELIVER
26 POSSESSION TO THE TENANT UNDER SECTION 38-12-301 IS WILLFUL, THE
27 TENANT MAY RECOVER THREE TIMES THE PERIODIC RENT OR THREE TIMES

1 THE ACTUAL DAMAGES, WHICHEVER IS GREATER.

2 (d) IF A TENANT SEEKS POSSESSION UNDER SUBPARAGRAPH (B) OF
3 PARAGRAPH (2) OF SUBSECTION (a) OF THIS SECTION, THE TENANT IS
4 LIABLE TO THE LANDLORD FOR RENT AND MAY RECOVER FROM THE
5 PERSON WRONGFULLY IN POSSESSION THE DAMAGES PROVIDED IN SECTION
6 38-12-802.

7 **38-12-406. Repair by tenant.** (a) SUBJECT TO SUBSECTION (d) OF
8 THIS SECTION, IF A LANDLORD FAILS TO COMPLY WITH THE LEASE OR
9 SECTION 38-12-302, THE TENANT MAY GIVE NOTICE TO THE LANDLORD
10 UNDER SECTION 38-12-401 SPECIFYING THE NONCOMPLIANCE. IF THE
11 LANDLORD FAILS TO REMEDY THE NONCOMPLIANCE WITHIN THE
12 APPLICABLE PERIOD SPECIFIED IN SECTION 38-12-401 AND THE
13 REASONABLE COST TO REMEDY THE NONCOMPLIANCE DOES NOT EXCEED
14 ONE MONTH'S PERIODIC RENT, THE TENANT MAY MAKE REPAIRS TO
15 REMEDY THE NONCOMPLIANCE AT THE LANDLORD'S EXPENSE.

16 (b) A TENANT THAT MAKES REPAIRS UNDER SUBSECTION (a) OF
17 THIS SECTION IS ENTITLED TO RECOVER THE ACTUAL AND REASONABLE
18 COST INCURRED OR THE REASONABLE VALUE OF THE WORK PERFORMED TO
19 REMEDY THE NONCOMPLIANCE, NOT EXCEEDING ONE MONTH'S PERIODIC
20 RENT. UNLESS THE TENANT HAS BEEN REIMBURSED BY THE LANDLORD,
21 THE TENANT MAY DEDUCT THE COST OR VALUE FROM RENT AFTER
22 SUBMITTING TO THE LANDLORD AN ITEMIZED STATEMENT, ACCOMPANIED
23 BY RECEIPTS FOR PURCHASED ITEMS AND SERVICES.

24 (c) A REPAIR UNDER SUBSECTION (a) OF THIS SECTION MUST BE
25 MADE IN A PROFESSIONAL MANNER AND IN COMPLIANCE WITH APPLICABLE
26 LAW.

27 (d) A TENANT MAY NOT REPAIR A NONCOMPLIANCE AT THE

1 LANDLORD'S EXPENSE UNDER SUBSECTION (a) OF THIS SECTION TO THE
2 EXTENT:

3 (1) THE NONCOMPLIANCE WAS CAUSED BY AN ACT OR OMISSION OF
4 THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST; OR

5 (2) THE LANDLORD WAS UNABLE TO REMEDY THE NONCOMPLIANCE
6 WITHIN THE APPLICABLE PERIOD SPECIFIED IN SECTION 38-12-401 BECAUSE
7 THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST DENIED THE
8 LANDLORD ACCESS TO THE DWELLING UNIT.

9 (e) A TENANT'S USE OF THE REMEDY UNDER THIS SECTION IS
10 LIMITED TO ONE MONTH'S PERIODIC RENT DURING ANY TWELVE-MONTH
11 PERIOD.

12 **38-12-407. Failure of essential service.** (a) EXCEPT AS
13 OTHERWISE PROVIDED IN SECTION 38-12-403, IF A TENANT FAILS TO
14 RECEIVE AN ESSENTIAL SERVICE THE LANDLORD HAS A DUTY TO PROVIDE
15 UNDER SECTION 38-12-302 (b), THE TENANT MAY GIVE NOTICE TO THE
16 LANDLORD UNDER SECTION 38-12-401 SPECIFYING THE FAILURE. IF THE
17 LANDLORD FAILS TO PROVIDE THE ESSENTIAL SERVICE WITHIN THE
18 APPLICABLE PERIOD SPECIFIED IN SECTION 38-12-401, THE TENANT MAY:

19 (1) TAKE APPROPRIATE MEASURES TO SECURE THE ESSENTIAL
20 SERVICE DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE AND
21 DEDUCT THE ACTUAL AND REASONABLE COST FROM THE RENT; OR

22 (2) PROCURE COMPARABLE SUBSTITUTE HOUSING AT THE
23 LANDLORD'S EXPENSE DURING THE PERIOD OF THE NONCOMPLIANCE AND
24 RECOVER ACTUAL DAMAGES.

25 (b) THIS SECTION DOES NOT APPLY IF THE TENANT'S FAILURE TO
26 RECEIVE THE ESSENTIAL SERVICE WAS CAUSED BY AN ACT OR OMISSION OF
27 THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST.

1 **38-12-408. Landlord noncompliance as defense to action for**
2 **possession or nonpayment of rent - escrow account.** (a) IF A
3 LANDLORD FAILS TO COMPLY WITH THE LEASE OR SECTION 38-12-302 AND
4 THE TENANT HAS COMPLIED WITH SECTION 38-12-401, THE TENANT MAY
5 DEFEND AN ACTION BY THE LANDLORD BASED ON NONPAYMENT OF RENT
6 ON THE GROUND THAT NO RENT WAS DUE BECAUSE OF THE
7 NONCOMPLIANCE AND COUNTERCLAIM FOR ANY AMOUNT THE TENANT
8 MAY RECOVER UNDER THE LEASE OR THIS ARTICLE.

9 (b) IF A TENANT IS IN POSSESSION OF THE DWELLING UNIT WHEN
10 THE LANDLORD FILES AN ACTION BASED ON NONPAYMENT OF RENT, EITHER
11 PARTY MAY SEEK A COURT ORDER DIRECTING THE TENANT TO PAY ALL OR
12 PART OF THE UNPAID RENT AND ALL ADDITIONAL RENT AS IT ACCRUES INTO
13 AN ESCROW ACCOUNT WITH THE COURT OR A BANK OR OTHER ENTITY
14 AUTHORIZED BY THE COURT TO HOLD FUNDS IN ESCROW.

15 (c) IF RENT HAS BEEN PAID INTO ESCROW UNDER THIS SECTION AND
16 THE COURT DETERMINES THE LANDLORD FULLY COMPLIED WITH THE LEASE
17 AND SECTION 38-12-302, THE COURT SHALL ORDER THE IMMEDIATE
18 RELEASE TO THE LANDLORD OF RENT HELD IN ESCROW AND ENTER
19 JUDGMENT FOR ANY REMAINING RENT OWED.

20 (d) IF RENT HAS BEEN PAID INTO ESCROW UNDER THIS SECTION AND
21 THE COURT DETERMINES THAT THE LANDLORD'S NONCOMPLIANCE WITH
22 THE LEASE OR SECTION 38-12-302 MATERIALLY INTERFERES WITH THE
23 HEALTH OR SAFETY OF A TENANT OR AN IMMEDIATE FAMILY MEMBER OR
24 THE USE AND ENJOYMENT OF THE PREMISES BY THE TENANT OR AN
25 IMMEDIATE FAMILY MEMBER, THE COURT MAY ORDER ONE OR MORE OF
26 THE FOLLOWING:

27 (1) RELEASE TO THE LANDLORD OF ALL OR PART OF THE RENT HELD

1 IN ESCROW TO BE USED ONLY TO BRING THE PREMISES INTO COMPLIANCE
2 WITH THE LEASE OR SECTION 38-12-302;

3 (2) RETURN TO THE TENANT OF ALL OR PART OF THE RENT HELD IN
4 ESCROW IN COMPENSATION FOR:

5 (A) A REPAIR MADE BY THE TENANT IN COMPLIANCE WITH SECTION
6 38-12-406; OR

7 (B) ACTUAL DAMAGES;

8 (3) THE TENANT'S CONTINUED PAYMENT OF RENT INTO ESCROW AS
9 RENT BECOMES DUE OR ABATEMENT OF FUTURE RENT UNTIL THE
10 LANDLORD BRINGS THE PREMISES INTO COMPLIANCE WITH THE LEASE OR
11 SECTION 38-12-302; OR

12 (4) PAYMENT TO THE LANDLORD OF ANY RENT HELD IN ESCROW
13 NOT OTHERWISE PAYABLE TO THE TENANT.

14 (e) IF RENT HAS NOT BEEN PAID INTO ESCROW UNDER THIS SECTION
15 AND THE COURT DETERMINES THAT THE LANDLORD COMPLIED WITH THE
16 LEASE AND SECTION 38-12-302, THE COURT SHALL RENDER JUDGMENT FOR
17 UNPAID RENT.

18 (f) IF RENT HAS NOT BEEN PAID INTO ESCROW UNDER THIS SECTION
19 AND THE COURT DETERMINES THAT THE LANDLORD'S NONCOMPLIANCE
20 WITH THE LEASE OR SECTION 38-12-302 MATERIALLY INTERFERES WITH
21 THE HEALTH OR SAFETY OF A TENANT OR IMMEDIATE FAMILY MEMBER OR
22 THE USE AND ENJOYMENT OF THE PREMISES BY THE TENANT OR AN
23 IMMEDIATE FAMILY MEMBER, THE COURT SHALL RENDER JUDGMENT FOR
24 UNPAID RENT LESS ANY AMOUNT EXPENDED BY THE TENANT IN
25 COMPLIANCE WITH SECTION 38-12-406 TO REPAIR THE PREMISES AND
26 ACTUAL DAMAGES.

27 (g) IN ADDITION TO THE OTHER REMEDIES PROVIDED IN THIS

1 SECTION, THE COURT MAY AWARD POSSESSION OR OTHER APPROPRIATE
2 RELIEF IF THE COURT DETERMINES THE TENANT:

3 (1) ACTED IN BAD FAITH IN WITHHOLDING RENT; OR

4 (2) FAILED TO COMPLY WITH AN ORDER TO PAY RENT INTO ESCROW
5 UNDER SUBSECTION (b) OF THIS SECTION OR TO PAY RENT OR OTHER
6 AMOUNTS OWED TO THE LANDLORD UNDER THIS SECTION.

7 (h) THE COURT MAY NOT AWARD POSSESSION IF THE COURT
8 DETERMINES THAT THE TENANT WITHHELD RENT IN GOOD FAITH AND THE
9 TENANT COMPLIES WITH AN ORDER TO PAY UNPAID RENT INTO ESCROW OR
10 TO THE LANDLORD UNDER THIS SECTION.

11 <{Legislative Note: State laws may differ on whether a landlord can
12 bring a claim for both possession and rent in an expedited
13 summary-eviction proceeding. If a state limits a summary-eviction
14 proceeding to a claim for possession, the state will need to revise this
15 section accordingly to conform to that state's practice.>

16 **38-12-409. Unlawful removal - exclusion - interruption of**
17 **essential service.** (a) IF A LANDLORD UNLAWFULLY REMOVES OR
18 EXCLUDES THE TENANT FROM THE PREMISES OR WILLFULLY INTERRUPTS
19 OR CAUSES THE INTERRUPTION OF AN ESSENTIAL SERVICE THE LANDLORD
20 HAS THE DUTY TO PROVIDE TO THE TENANT, THE TENANT MAY RECOVER
21 THREE TIMES THE PERIODIC RENT OR THREE TIMES DAMAGES, WHICHEVER
22 IS GREATER, AND:

23 (1) RECOVER POSSESSION; OR

24 (2) TERMINATE THE LEASE BY GIVING THE LANDLORD NOTICE IN A
25 RECORD OF THE TENANT'S INTENT TO TERMINATE THE LEASE IMMEDIATELY
26 OR ON A LATER SPECIFIED DATE.

27 (b) IF A TENANT TERMINATES THE LEASE UNDER PARAGRAPH (2) OF

1 SUBSECTION (a) OF THIS SECTION, THE LANDLORD SHALL RETURN ANY
2 SECURITY DEPOSIT AND UNEARNED RENT TO WHICH THE TENANT IS
3 ENTITLED UNDER SECTION 38-12-1204.

4 PART 5

5 TENANT DUTIES

6 **38-12-501. Tenant duties - definition.** (a) IN THIS SECTION,
7 "NORMAL WEAR AND TEAR" MEANS DETERIORATION THAT RESULTS FROM
8 THE INTENDED USE OF A DWELLING UNIT, INCLUDING BREAKAGE OR
9 MALFUNCTION DUE TO AGE OR DETERIORATED CONDITION. THE TERM
10 DOES NOT INCLUDE DETERIORATION THAT RESULTS FROM NEGLIGENCE,
11 CARELESSNESS, ACCIDENT, OR ABUSE OF THE UNIT, FIXTURES, EQUIPMENT,
12 OR OTHER TANGIBLE PERSONAL PROPERTY BY THE TENANT, IMMEDIATE
13 FAMILY MEMBER, OR GUEST.

14 (b) A TENANT:

15 (1) SHALL COMPLY WITH THE OBLIGATIONS IMPOSED ON THE
16 TENANT BY THE LEASE AND THIS ARTICLE;

17 (2) SHALL COMPLY WITH THE OBLIGATIONS IMPOSED ON A TENANT
18 BY ANY BUILDING, HOUSING, FIRE, OR HEALTH CODE OR OTHER LAW;

19 (3) EXCEPT WITH RESPECT TO DUTIES IMPOSED ON THE LANDLORD
20 BY THE LEASE, THIS ARTICLE, OR LAW OTHER THAN THIS ARTICLE, SHALL
21 KEEP THE DWELLING UNIT REASONABLY SAFE AND SANITARY;

22 (4) SHALL REMOVE ALL GARBAGE, RUBBISH, AND OTHER DEBRIS
23 FROM THE UNIT IN A CLEAN AND SAFE MANNER;

24 (5) SHALL KEEP ALL PLUMBING FIXTURES IN THE UNIT
25 REASONABLY CLEAN;

26 (6) SHALL USE IN A REASONABLE MANNER ALL ELECTRICAL,
27 PLUMBING, HEATING, VENTILATING, AND AIR-CONDITIONING SYSTEMS AND

1 OTHER FACILITIES AND APPLIANCES ON THE PREMISES;

2 (7) WITHOUT THE LANDLORD'S CONSENT, MAY NOT
3 INTENTIONALLY OR NEGLIGENTLY:

4 (A) DESTROY, DEFACE, DAMAGE, IMPAIR, REMOVE, OR RENDER
5 INOPERATIVE ANY PART OF THE PREMISES;

6 (B) DESTROY, DEFACE, DAMAGE, IMPAIR, REMOVE, OR RENDER
7 INOPERATIVE ANY SAFETY EQUIPMENT ON THE PREMISES; OR

8 (C) PERMIT AN IMMEDIATE FAMILY MEMBER OR GUEST TO DO ANY
9 OF THE ACTS SPECIFIED IN THIS PARAGRAPH (7);

10 (8) MAY NOT DISTURB THE USE AND ENJOYMENT OF THE PREMISES
11 BY ANOTHER TENANT OR PERMIT AN IMMEDIATE FAMILY MEMBER OR
12 GUEST TO DO THE SAME;

13 (9) MAY NOT ENGAGE IN OR PERMIT AN IMMEDIATE FAMILY
14 MEMBER OR GUEST TO ENGAGE IN CRIMINAL ACTIVITY;

15 (10) SHALL NOTIFY THE LANDLORD WITHIN A REASONABLE TIME
16 OF ANY CONDITION OF THE PREMISES THAT REQUIRES REPAIR BY THE
17 LANDLORD UNDER THE LEASE OR SECTION 38-12-302;

18 (11) SHALL RETURN THE DWELLING UNIT TO THE LANDLORD AT
19 THE TERMINATION OF THE LEASE IN THE SAME CONDITION AS IT WAS AT
20 THE COMMENCEMENT OF THE TERM OF THE LEASE, WITH THE PREMISES
21 FREE OF ANY DAMAGE CAUSED BY THE TENANT, IMMEDIATE FAMILY
22 MEMBER, OR GUEST, EXCEPT FOR:

23 (A) NORMAL WEAR AND TEAR;

24 (B) DAMAGE RESULTING FROM A CAUSE BEYOND THE CONTROL OF
25 THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST; AND

26 (C) ANY ADDITION AND IMPROVEMENT INSTALLED ON THE
27 PREMISES WITH THE LANDLORD'S CONSENT; AND

1 (12) UNLESS THE LANDLORD AND TENANT OTHERWISE AGREE,
2 SHALL USE THE DWELLING UNIT ONLY FOR RESIDENTIAL PURPOSES.

3 PART 6

4 LANDLORD REMEDIES

5 **38-12-601. Tenant failure to pay rent - other noncompliance**
6 **with lease.** (a) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN
7 THIS ARTICLE AND SUBJECT TO SUBSECTION (b) OF THIS SECTION:

8 (1) A LANDLORD MAY TERMINATE A LEASE FOR NONPAYMENT OF
9 RENT WHEN THE RENT IS UNPAID WHEN DUE BY GIVING THE TENANT
10 NOTICE IN A RECORD STATING THAT IF THE RENT REMAINS UNPAID
11 FOURTEEN DAYS AFTER THE NOTICE IS GIVEN, THE LEASE WILL TERMINATE
12 ON EXPIRATION OF THE FOURTEEN-DAY PERIOD OR A LATER SPECIFIED
13 DATE; OR

14 (2) IF THERE IS A MATERIAL NONCOMPLIANCE WITH A LEASE OR
15 THIS ARTICLE BY THE TENANT, OTHER THAN NONPAYMENT OF RENT, THE
16 LANDLORD MAY GIVE THE TENANT NOTICE IN A RECORD SPECIFYING THE
17 ACT OR OMISSION CONSTITUTING THE NONCOMPLIANCE AND STATING THAT
18 IF THE NONCOMPLIANCE IS NOT REMEDIED NOT LATER THAN FOURTEEN
19 DAYS AFTER THE LANDLORD GIVES THE NOTICE, THE LEASE WILL
20 TERMINATE ON A SPECIFIED DATE THAT MUST BE AT LEAST THIRTY DAYS
21 AFTER THE LANDLORD GIVES THE NOTICE.

22 (b) A LANDLORD MAY TERMINATE THE LEASE WITHOUT GIVING THE
23 TENANT AN OPPORTUNITY TO REMEDY A NONCOMPLIANCE BY GIVING THE
24 TENANT THE NOTICE DESCRIBED IN SUBSECTION (c) OF THIS SECTION IF:

25 (1) THE TENANT FAILED TO PAY RENT IN A TIMELY MANNER ON AT
26 LEAST TWO OCCASIONS WITHIN THE FOUR-MONTH PERIOD PRECEDING THE
27 NOTICE TO TERMINATE THE LEASE;

1 (2) THE TENANT COMMITTED SUBSTANTIALLY THE SAME ACT OR
2 OMISSION FOR WHICH NOTICE UNDER PARAGRAPH (2) OF SUBSECTION (a)
3 OF THIS SECTION WAS GIVEN WITHIN SIX MONTHS PRECEDING THE LATEST
4 NONCOMPLIANCE;

5 (3) THE NONCOMPLIANCE BY THE TENANT, IMMEDIATE FAMILY
6 MEMBER, OR GUEST POSES AN ACTUAL AND IMMINENT THREAT TO THE
7 HEALTH OR SAFETY OF ANY INDIVIDUAL ON THE PREMISES OR THE
8 LANDLORD OR LANDLORD'S AGENT; OR

9 (4) SUBJECT TO SUBSECTION (e) OF THIS SECTION, THE TENANT,
10 IMMEDIATE FAMILY MEMBER, OR GUEST HAS COMMITTED A CRIMINAL ACT.

11 (c) NOTICE IN A RECORD TERMINATING A LEASE UNDER
12 SUBSECTION (b) OF THIS SECTION MUST SPECIFY THE REASON FOR THE
13 TERMINATION AND STATE THAT:

14 (1) FOR A TERMINATION UNDER PARAGRAPH (1) OR (2) OF
15 SUBSECTION (b) OF THIS SECTION, THE LEASE WILL TERMINATE ON A
16 SPECIFIED DATE, WHICH MUST BE AT LEAST FOURTEEN DAYS AFTER THE
17 LANDLORD GAVE THE NOTICE; OR

18 (2) FOR A TERMINATION UNDER PARAGRAPH (3) OR (4) OF
19 SUBSECTION (b) OF THIS SECTION, THE LEASE WILL TERMINATE
20 IMMEDIATELY OR ON A LATER SPECIFIED DATE.

21 (d) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, IF A TENANT
22 FAILS TO COMPLY WITH SECTION 38-12-501, THE LANDLORD MAY:

23 (1) OBTAIN INJUNCTIVE RELIEF OR SPECIFIC PERFORMANCE; OR

24 (2) REGARDLESS OF WHETHER THE LEASE TERMINATES AS A
25 RESULT OF THE TENANT'S NONCOMPLIANCE, RECOVER ACTUAL DAMAGES
26 OR LIQUIDATED DAMAGES AS PROVIDED BY THE LEASE.

27 (e) A LANDLORD MAY NOT TERMINATE A LEASE UNDER

1 PARAGRAPH (4) OF SUBSECTION (b) OF THIS SECTION IF THE CRIMINAL ACT
2 WAS THE ACT OF AN IMMEDIATE FAMILY MEMBER OR GUEST, AND THE
3 TENANT:

4 (1) NEITHER KNEW NOR SHOULD HAVE KNOWN THE ACT WAS
5 GOING TO BE COMMITTED; AND

6 (2) TOOK REASONABLE STEPS TO ENSURE THAT THERE WILL NOT
7 BE A REPEATED CRIMINAL ACT ON THE PREMISES BY THE IMMEDIATE
8 FAMILY MEMBER OR GUEST.

9 **38-12-602. Waiver of landlord right to terminate.** (a) SUBJECT
10 TO SUBSECTION (b) OF THIS SECTION, ACCEPTANCE BY A LANDLORD OF
11 RENT FOR TWO OR MORE SUCCESSIVE RENTAL PERIODS WITH KNOWLEDGE
12 OF NONCOMPLIANCE BY THE TENANT WITH THE LEASE OR THIS ARTICLE OR
13 ACCEPTANCE BY THE LANDLORD OF THE TENANT'S PERFORMANCE THAT
14 VARIES FROM THE TERMS OF THE LEASE OR THIS ARTICLE IS A WAIVER OF
15 THE LANDLORD'S RIGHT TO TERMINATE THE LEASE FOR THE
16 NONCOMPLIANCE, UNLESS THE LANDLORD AND TENANT OTHERWISE AGREE
17 AFTER THE NONCOMPLIANCE OCCURS.

18 (b) THIS SECTION DOES NOT PREVENT A LANDLORD OR TENANT
19 FROM EXERCISING A RIGHT UNDER SECTION 38-12-801 TO TERMINATE A
20 PERIODIC TENANCY.

21 **38-12-603. Distraint for rent abolished - lien prohibited.**

22 (a) DISTRAINT FOR RENT IS ABOLISHED.

23 (b) A LANDLORD MAY NOT CREATE, PERFECT, OR ENFORCE A LIEN
24 OR SECURITY INTEREST ON A TENANT'S TANGIBLE PERSONAL PROPERTY TO
25 SECURE THE TENANT'S PERFORMANCE UNDER THE LEASE OR THIS ARTICLE.
26 THIS SUBSECTION (b) DOES NOT APPLY TO A LIEN OR SECURITY INTEREST
27 CREATED OR PERFECTED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, AS

1 AMENDED.

2 **38-12-604. Abandonment - definition - remedy after**

3 **termination.** (a) IN THIS SECTION, "REASONABLE EFFORTS" MEANS STEPS
4 A LANDLORD WOULD TAKE TO RENT A DWELLING UNIT IF THE UNIT IS
5 VACATED AT THE END OF A TERM, INCLUDING SHOWING THE UNIT TO A
6 PROSPECTIVE TENANT OR ADVERTISING THE AVAILABILITY OF THE UNIT.

7 (b) A TENANT ABANDONS A DWELLING UNIT IF:

8 (1) THE TENANT DELIVERS POSSESSION OF THE UNIT TO THE
9 LANDLORD BEFORE THE END OF THE TERM BY RETURNING THE KEYS OR
10 OTHER MEANS OF ACCESS OR OTHERWISE NOTIFIES THE LANDLORD THE
11 UNIT HAS BEEN VACATED; OR

12 (2) RENT THAT IS DUE WAS NOT PAID FOR AT LEAST FIVE DAYS AND
13 THE TENANT HAS:

14 (A) VACATED THE UNIT BY REMOVING SUBSTANTIALLY ALL OF THE
15 TENANT'S PERSONAL PROPERTY FROM THE UNIT AND THE PREMISES; AND

16 (B) CAUSED THE TERMINATION OF AN ESSENTIAL SERVICE OR
17 OTHERWISE INDICATED BY WORDS OR CONDUCT THAT THE TENANT HAS NO
18 INTENTION TO RETURN TO THE UNIT.

19 (c) IF A TENANT ABANDONS THE DWELLING UNIT BEFORE THE END
20 OF THE TERM OF THE LEASE, THE LANDLORD MAY RECOVER POSSESSION OF
21 THE UNIT WITHOUT A COURT ORDER AND MAY:

22 (1) ACCEPT THE TENANT'S ABANDONMENT OF THE UNIT BY NOTICE
23 IN A RECORD GIVEN TO THE TENANT, IN WHICH CASE:

24 (A) THE LEASE TERMINATES ON THE DATE OF ABANDONMENT;

25 (B) THE LANDLORD AND TENANT ARE LIABLE TO EACH OTHER
26 UNDER THE LEASE ONLY FOR A NONCOMPLIANCE WITH THE LEASE OR THIS
27 ARTICLE THAT OCCURRED BEFORE THE LEASE TERMINATES; AND

1 (C) THE LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND
2 UNEARNED RENT TO WHICH THE TENANT IS ENTITLED UNDER SECTION
3 38-12-1204; OR

4 (2) TREAT THE ABANDONMENT AS WRONGFUL.

5 (d) IF A LANDLORD TREATS ABANDONMENT OF A DWELLING UNIT
6 AS WRONGFUL UNDER PARAGRAPH (2) OF SUBSECTION (c) OF THIS
7 SECTION, THE TENANT REMAINS LIABLE UNDER THE LEASE, AND THE
8 LANDLORD HAS A DUTY TO MITIGATE BY MAKING A REASONABLE EFFORT
9 TO RENT THE UNIT, SUBJECT TO THE FOLLOWING RULES:

10 (1) THE LANDLORD'S DUTY TO MITIGATE DOES NOT TAKE PRIORITY
11 OVER THE LANDLORD'S RIGHT TO LEASE FIRST ANY OTHER DWELLING UNIT
12 THE LANDLORD HAS AVAILABLE TO LEASE.

13 (2) IF THE LANDLORD LEASES THE ABANDONED UNIT TO ANOTHER
14 PERSON FOR A TERM BEGINNING BEFORE THE EXPIRATION OF THE TERM OF
15 THE LEASE OF THE ABANDONING TENANT, THE LEASE TERMINATES AS OF
16 THE DATE OF THE NEW TENANCY AND THE LANDLORD MAY RECOVER
17 ACTUAL DAMAGES FROM THE ABANDONING TENANT.

18 (3) IF THE LANDLORD MAKES A REASONABLE EFFORT TO LEASE THE
19 ABANDONING TENANT'S UNIT BUT IS UNABLE TO LEASE IT OR IS ABLE TO
20 LEASE IT ONLY FOR AN AMOUNT LESS THAN THE RENT PAYABLE BY THE
21 ABANDONING TENANT, THE LANDLORD MAY RECOVER ACTUAL DAMAGES
22 FROM THE ABANDONING TENANT.

23 (4) IF THE LANDLORD FAILS TO MAKE A REASONABLE EFFORT TO
24 LEASE THE ABANDONING TENANT'S UNIT, THE LEASE TERMINATES AS OF
25 THE DATE OF ABANDONMENT, AND THE LANDLORD AND TENANT ARE
26 LIABLE TO EACH OTHER UNDER THE LEASE OR THIS ARTICLE ONLY FOR A
27 NONCOMPLIANCE WITH THE LEASE OR THIS ARTICLE THAT OCCURRED

1 BEFORE THE DATE OF ABANDONMENT.

2 (5) AFTER DEDUCTING THE LANDLORD'S ACTUAL DAMAGES, THE
3 LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND UNEARNED RENT
4 TO WHICH THE TENANT IS ENTITLED UNDER SECTION 38-12-1204.

5 **38-12-605. Limitation on self-help recovery.** (a) EXCEPT AS
6 OTHERWISE PROVIDED IN SECTION 38-12-604, A LANDLORD:

7 (1) MAY NOT RECOVER OR TAKE POSSESSION OF A DWELLING UNIT
8 BY AN ACT OF SELF-HELP, INCLUDING WILLFUL INTERRUPTION OR CAUSING
9 THE WILLFUL INTERRUPTION OF AN ESSENTIAL SERVICE TO THE UNIT; AND

10 (2) MAY RECOVER POSSESSION OF A DWELLING UNIT FOLLOWING
11 TERMINATION OF A LEASE ONLY THROUGH AN ACTION PERMITTED BY LAW
12 OTHER THAN THIS ARTICLE.

13 PART 7

14 ACCESS TO DWELLING UNIT

15 **38-12-701. Landlord access to dwelling unit.** (a) EXCEPT AS
16 OTHERWISE PROVIDED IN THIS SECTION, A LANDLORD MAY NOT ENTER A
17 DWELLING UNIT UNLESS:

18 (1) ENTRY IS PERMITTED BY THE LEASE OR THE TENANT
19 OTHERWISE AGREES;

20 (2) ENTRY IS UNDER A COURT ORDER;

21 (3) THE TENANT HAS ABANDONED THE UNIT UNDER SECTION
22 38-12-604; OR

23 (4) PERMITTED BY LAW OTHER THAN THIS ARTICLE.

24 (b) A TENANT MAY NOT UNREASONABLY WITHHOLD CONSENT FOR
25 THE LANDLORD TO ENTER THE DWELLING UNIT TO:

26 (1) INSPECT THE UNIT;

27 (2) MAKE A NECESSARY OR AGREED-TO REPAIR, ALTERATION, OR

1 IMPROVEMENT;

2 (3) SUPPLY A NECESSARY OR AGREED-TO SERVICE; OR

3 (4) EXHIBIT THE UNIT TO A PROSPECTIVE OR ACTUAL PURCHASER,
4 MORTGAGEE, TENANT, WORKER, OR CONTRACTOR OR A PUBLIC OFFICIAL
5 RESPONSIBLE FOR ENFORCING A BUILDING, HOUSING, FIRE, OR HEALTH
6 CODE OR OTHER LAW.

7 (c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OR (e) OF
8 THIS SECTION, A LANDLORD MAY ENTER A DWELLING UNIT ONLY AT A
9 REASONABLE TIME AND WITH THE TENANT'S CONSENT AND SHALL GIVE
10 THE TENANT AT LEAST TWENTY-FOUR HOURS' NOTICE OF THE INTENT TO
11 ENTER THE UNIT.

12 (d) FOR ROUTINE MAINTENANCE OR PEST CONTROL, A LANDLORD
13 MAY ENTER THE DWELLING UNIT WITHOUT THE TENANT'S CONSENT IF THE
14 LANDLORD GIVES THE TENANT:

15 (1) AT LEAST SEVENTY-TWO HOURS' NOTICE OF THE INTENT TO
16 ENTER THE UNIT; OR

17 (2) A FIXED SCHEDULE FOR MAINTENANCE OR PEST CONTROL AT
18 LEAST SEVENTY-TWO HOURS BEFORE THE FIRST SCHEDULED ENTRY INTO
19 THE UNIT.

20 (e) IN AN EMERGENCY, OR WHEN MAINTENANCE OR REPAIRS ARE
21 BEING MADE AT A TENANT'S REQUEST, THE LANDLORD MAY ENTER THE
22 DWELLING UNIT WITHOUT THE TENANT'S CONSENT IF THE LANDLORD GIVES
23 NOTICE THAT IS REASONABLE UNDER THE CIRCUMSTANCES. IF THE
24 LANDLORD ENTERS THE UNIT WHEN THE TENANT IS NOT PRESENT AND
25 NOTICE WAS NOT GIVEN, THE LANDLORD SHALL LEAVE NOTICE OF THE
26 ENTRY IN A CONSPICUOUS PLACE IN THE UNIT STATING THE FACT OF
27 ENTRY, THE DATE AND TIME OF ENTRY, AND THE REASON FOR THE ENTRY.

1 (f) WHEN NOTICE IS GIVEN UNDER THIS SECTION BEFORE THE
2 LANDLORD ENTERS THE UNIT, THE NOTICE MUST STATE THE INTENDED
3 PURPOSE FOR THE ENTRY AND THE DATE AND A REASONABLE PERIOD
4 DURING WHICH THE LANDLORD ANTICIPATES MAKING THE ENTRY.

5 (g) A LANDLORD MAY NOT ABUSE THE RIGHT UNDER THIS SECTION
6 TO ENTER A TENANT'S DWELLING UNIT OR USE THE RIGHT TO HARASS THE
7 TENANT.

8 **38-12-702. Remedies for abuse of access.** (a) IF A TENANT
9 UNREASONABLY REFUSES TO ALLOW THE LANDLORD ACCESS TO THE
10 DWELLING UNIT, THE LANDLORD MAY RECOVER ACTUAL DAMAGES OR ONE
11 MONTH'S PERIODIC RENT, WHICHEVER IS GREATER, AND:

12 (1) THE COURT MAY COMPEL THE TENANT TO GRANT THE
13 LANDLORD ACCESS TO THE UNIT; OR

14 (2) THE LANDLORD MAY TERMINATE THE LEASE BY GIVING THE
15 TENANT NOTICE IN A RECORD STATING THAT IF THE TENANT FAILS TO
16 GRANT THE LANDLORD ACCESS TO THE UNIT NOT LATER THAN FOURTEEN
17 DAYS AFTER THE NOTICE, THE LEASE WILL TERMINATE ON EXPIRATION OF
18 THE FOURTEEN-DAY PERIOD OR ON A LATER SPECIFIED DATE.

19 (b) IF A LANDLORD UNLAWFULLY ENTERS A TENANT'S DWELLING
20 UNIT, LAWFULLY ENTERS BUT IN AN UNREASONABLE MANNER, OR MAKES
21 REPEATED DEMANDS TO ENTER THAT ARE OTHERWISE LAWFUL BUT HAVE
22 THE EFFECT OF HARASSING THE TENANT, THE TENANT MAY RECOVER
23 ACTUAL DAMAGES OR ONE MONTH'S PERIODIC RENT, WHICHEVER IS
24 GREATER, AND:

25 (1) SEEK INJUNCTIVE RELIEF TO PREVENT THE RECURRENCE OF THE
26 CONDUCT; OR

27 (2) TERMINATE THE LEASE BY GIVING THE LANDLORD NOTICE IN A

1 RECORD THAT THE LEASE WILL TERMINATE IMMEDIATELY OR ON A LATER
2 SPECIFIED DATE WHICH IS NOT LATER THAN THIRTY DAYS AFTER NOTICE IS
3 GIVEN.

4 PART 8
5 PERIODIC AND HOLDOVER TENANCY;
6 DEATH OF TENANT

7 **38-12-801. Termination of periodic tenancy.** (a) A PERIODIC
8 TENANCY CONTINUES UNTIL THE LANDLORD OR TENANT GIVES THE OTHER
9 THE NOTICE UNDER SUBSECTION (b) OF THIS SECTION.

10 (b) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A
11 LANDLORD OR TENANT MAY TERMINATE A PERIODIC TENANCY:

12 (1) FOR WEEK TO WEEK, BY GIVING THE OTHER AT LEAST FIVE
13 DAYS' NOTICE IN A RECORD OF THE PARTY'S INTENT TO TERMINATE THE
14 TENANCY ON A SPECIFIED DATE; AND

15 (2) FOR MONTH TO MONTH, BY GIVING THE OTHER AT LEAST ONE
16 MONTH'S NOTICE IN A RECORD OF THE PARTY'S INTENT TO TERMINATE THE
17 TENANCY AT THE END OF THE MONTHLY PERIOD.

18 **38-12-802. Holdover tenancy.** (a) EXCEPT AS OTHERWISE
19 PROVIDED IN SUBSECTION (b) OF THIS SECTION AND SECTION 38-12-405 (a)
20 (2) (B), IF A TENANT REMAINS IN POSSESSION WITHOUT THE LANDLORD'S
21 CONSENT AFTER EXPIRATION OF A TENANCY FOR A FIXED TERM OR
22 TERMINATION OF A PERIODIC TENANCY, THE LANDLORD MAY BRING AN
23 ACTION FOR POSSESSION. IF THE TENANT'S HOLDOVER IS WILLFUL, THE
24 LANDLORD MAY RECOVER THREE TIMES THE PERIODIC RENT OR THREE
25 TIMES THE ACTUAL DAMAGES, WHICHEVER IS GREATER.

26 (b) UNLESS A LANDLORD AND TENANT OTHERWISE AGREE IN A
27 RECORD, IF THE TENANT REMAINS IN POSSESSION WITH THE LANDLORD'S

1 CONSENT AFTER EXPIRATION OF A TENANCY FOR A FIXED TERM, A
2 PERIODIC TENANCY FOR MONTH TO MONTH ARISES UNDER THE SAME
3 TERMS AS THE EXPIRED LEASE.

4 **38-12-803. Death of tenant.** (a) IF A SOLE TENANT UNDER A
5 LEASE DIES BEFORE THE END OF A TENANCY FOR A FIXED TERM OR A
6 PERIODIC TENANCY, THE TENANT'S SURVIVING SPOUSE, PARTNER IN A CIVIL
7 UNION, OR DOMESTIC PARTNER WHO RESIDES IN THE DWELLING UNIT MAY
8 ASSUME THE LEASE BY GIVING THE LANDLORD NOTICE IN A RECORD NOT
9 LATER THAN TWENTY DAYS AFTER THE TENANT'S DEATH STATING THE
10 INTENT OF THE SPOUSE OR PARTNER TO ASSUME THE LEASE. ON ASSUMING
11 THE LEASE, THE SPOUSE OR PARTNER BECOMES THE TENANT UNDER THE
12 LEASE.

13 (b) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR LAW
14 OTHER THAN THIS ARTICLE, A LANDLORD OR TENANT REPRESENTATIVE
15 MAY TERMINATE THE LEASE OF A DECEASED TENANT BY GIVING TO THE
16 OTHER AND TO A SURVIVING SPOUSE, PARTNER IN A CIVIL UNION, OR
17 DOMESTIC PARTNER OF THE TENANT WHO RESIDES IN THE DWELLING UNIT
18 NOTICE IN A RECORD. THE NOTICE MUST STATE THE LEASE WILL
19 TERMINATE ON A SPECIFIED DATE, WHICH MUST BE AT LEAST THIRTY DAYS
20 AFTER THE NOTICE IN THE CASE OF A TENANCY FOR A FIXED TERM OR A
21 SPECIFIED DATE CONSISTENT WITH SECTION 38-12-801 (b) IN THE CASE OF
22 A PERIODIC TENANCY. NOTICE SENT TO A SURVIVING SPOUSE OR PARTNER
23 MUST ALSO STATE THAT THE SURVIVING SPOUSE OR PARTNER HAS TWENTY
24 DAYS AFTER RECEIPT OF THE NOTICE TO ASSUME THE LEASE. IF THE SPOUSE
25 OR PARTNER ASSUMES THE LEASE, THE SPOUSE OR PARTNER BECOMES THE
26 TENANT UNDER THE LEASE.

27 (c) IF A DECEASED TENANT IS SURVIVED BY A SPOUSE OR PARTNER

1 IN A CIVIL UNION OR DOMESTIC PARTNER WHO RESIDES IN THE DWELLING
2 UNIT, NOTICE TO TERMINATE A LEASE UNDER SUBSECTION (b) OF THIS
3 SECTION MAY NOT BE GIVEN BEFORE THE TIME SPECIFIED IN SUBSECTION
4 (a) OF THIS SECTION EXPIRES.

5 (d) IF A LANDLORD IS UNABLE TO CONTACT A DECEASED TENANT'S
6 SURVIVING SPOUSE, PARTNER IN A CIVIL UNION, OR DOMESTIC PARTNER
7 WHO RESIDES IN THE DWELLING UNIT OR TENANT REPRESENTATIVE FOR
8 THE PURPOSE OF TERMINATING THE LEASE UNDER SUBSECTION (b) OF THIS
9 SECTION, THE LANDLORD MAY TERMINATE THE LEASE WITHOUT NOTICE IF
10 RENT THAT WAS DUE HAD NOT BEEN PAID FOR AT LEAST TWENTY-FIVE
11 DAYS.

12 PART 9

13 RETALIATION

14 **38-12-901. Retaliation prohibited.** (a) A LANDLORD MAY NOT
15 ENGAGE IN CONDUCT DESCRIBED IN SUBSECTION (b) OF THIS SECTION IF
16 THE LANDLORD'S PURPOSE IS TO RETALIATE AGAINST A TENANT THAT:

17 (1) COMPLAINED TO A GOVERNMENTAL AGENCY RESPONSIBLE FOR
18 ENFORCEMENT OF A BUILDING, HOUSING, FIRE, OR HEALTH CODE OR OTHER
19 LAW, ALLEGING A VIOLATION APPLICABLE TO THE PREMISES MATERIALLY
20 AFFECTING THE HEALTH OR SAFETY OF THE TENANT OR IMMEDIATE FAMILY
21 MEMBER;

22 (2) COMPLAINED TO A GOVERNMENTAL AGENCY RESPONSIBLE FOR
23 ENFORCEMENT OF LAWS PROHIBITING DISCRIMINATION IN RENTAL
24 HOUSING;

25 (3) COMPLAINED TO THE LANDLORD OF NONCOMPLIANCE WITH THE
26 LEASE OR SECTION 38-12-302;

27 (4) ORGANIZED OR BECAME A MEMBER OF A TENANT'S UNION OR

1 SIMILAR ORGANIZATION;

2 (5) EXERCISED OR ATTEMPTED TO EXERCISE A RIGHT OR REMEDY
3 UNDER THE LEASE, THIS ARTICLE, OR LAW OTHER THAN THIS ARTICLE; OR

4 (6) PURSUED AN ACTION OR ADMINISTRATIVE REMEDY AGAINST
5 THE LANDLORD OR TESTIFIED AGAINST THE LANDLORD IN COURT OR AN
6 ADMINISTRATIVE PROCEEDING.

7 (b) CONDUCT THAT MAY BE RETALIATORY UNDER SUBSECTION (a)
8 OF THIS SECTION INCLUDES DOING OR THREATENING TO DO ANY OF THE
9 FOLLOWING:

10 (1) INCREASING THE RENT OR FEES;

11 (2) DECREASING SERVICES, INCREASING THE TENANT'S
12 OBLIGATIONS, IMPOSING DIFFERENT RULES ON, OR SELECTIVELY
13 ENFORCING THE LANDLORD'S RULES AGAINST, THE TENANT OR IMMEDIATE
14 FAMILY MEMBER, OR OTHERWISE MATERIALLY ALTERING THE TERMS OF
15 THE LEASE;

16 (3) BRINGING AN ACTION FOR POSSESSION ON A GROUND OTHER
17 THAN NONPAYMENT OF RENT;

18 (4) REFUSING TO RENEW A TENANCY FOR A FIXED TERM UNDER A
19 LEASE CONTAINING A RENEWAL OPTION THAT IS EXERCISABLE BY THE
20 TENANT WITHOUT NEGOTIATION WITH THE LANDLORD, FOR ANY PERIOD
21 AFTER THE LEASE WOULD OTHERWISE TERMINATE;

22 (5) TERMINATING A PERIODIC TENANCY; OR

23 (6) COMMITTING A CRIMINAL ACT AGAINST THE TENANT,
24 IMMEDIATE FAMILY MEMBER, OR GUEST.

25 (c) A LANDLORD IS NOT LIABLE FOR RETALIATION UNDER
26 SUBSECTION (a) OF THIS SECTION IF:

27 (1) THE VIOLATION OF WHICH THE TENANT COMPLAINED UNDER

1 PARAGRAPH (1) OR (2) OF SUBSECTION (a) OF THIS SECTION WAS CAUSED
2 PRIMARILY BY THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST;

3 (2) THE TENANT'S CONDUCT DESCRIBED IN SUBSECTION (a) OF THIS
4 SECTION WAS IN AN UNREASONABLE MANNER OR AT AN UNREASONABLE
5 TIME OR WAS REPEATED IN A MANNER HARASSING THE LANDLORD;

6 (3) THE TENANT WAS IN DEFAULT IN THE PAYMENT OF RENT AT THE
7 TIME NOTICE OF THE ACTION DESCRIBED IN PARAGRAPH (3) OF SUBSECTION
8 (b) OF THIS SECTION WAS SENT;

9 (4) THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST
10 ENGAGED IN CONDUCT THAT THREATENED THE HEALTH OR SAFETY OF
11 ANOTHER TENANT ON THE PREMISES;

12 (5) THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST
13 ENGAGED IN A CRIMINAL ACT;

14 (6) THE LANDLORD IS SEEKING TO RECOVER POSSESSION BASED ON
15 A NOTICE TO TERMINATE THE LEASE, AND THE NOTICE WAS GIVEN TO THE
16 TENANT BEFORE THE TENANT ENGAGED IN CONDUCT DESCRIBED IN
17 SUBSECTION (a) OF THIS SECTION; OR

18 (7) THE LANDLORD IS COMPLYING OR COMPLIED WITH A BUILDING,
19 HOUSING, FIRE, OR HEALTH CODE OR OTHER LAW BY MAKING A REQUIRED
20 REPAIR, ALTERATION, REMODELING, OR DEMOLITION THAT EFFECTIVELY
21 DEPRIVES THE TENANT OF THE USE AND ENJOYMENT OF THE PREMISES.

22 **38-12-902. Tenant remedies for retaliatory conduct.** (a) IF A
23 LANDLORD'S PURPOSE FOR ENGAGING IN CONDUCT DESCRIBED IN SECTION
24 38-12-901 (b) IS TO RETALIATE AGAINST THE TENANT FOR CONDUCT
25 DESCRIBED IN SECTION 38-12-901 (a):

26 (1) THE TENANT HAS A DEFENSE AGAINST AN ACTION FOR
27 POSSESSION, MAY RECOVER POSSESSION, OR MAY TERMINATE THE LEASE;

1 AND

2 (2) THE TENANT MAY RECOVER THREE TIMES THE PERIODIC RENT
3 OR THREE TIMES THE ACTUAL DAMAGES, WHICHEVER IS GREATER.

4 (b) IF A TENANT TERMINATES A LEASE UNDER SUBSECTION (a) OF
5 THIS SECTION, THE LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND
6 UNEARNED RENT TO WHICH THE TENANT IS ENTITLED UNDER SECTION
7 38-12-1204.

8 (c) A TENANT'S EXERCISE OF A RIGHT UNDER THIS SECTION DOES
9 NOT RELEASE THE LANDLORD FROM LIABILITY UNDER SECTION 38-12-402.

10 **38-12-903. Presumption of retaliatory conduct.** (a) EXCEPT AS
11 OTHERWISE PROVIDED IN SUBSECTION (b) OF THIS SECTION, EVIDENCE
12 THAT A TENANT ENGAGED IN CONDUCT DESCRIBED IN SECTION 38-12-901
13 (a) WITHIN SIX MONTHS BEFORE THE LANDLORD'S ALLEGED RETALIATORY
14 CONDUCT CREATES A REBUTTABLE PRESUMPTION THAT THE PURPOSE OF
15 THE LANDLORD'S CONDUCT WAS RETALIATION.

16 (b) A PRESUMPTION DOES NOT ARISE UNDER SUBSECTION (a) OF
17 THIS SECTION IF THE TENANT ENGAGED IN CONDUCT DESCRIBED IN
18 SECTION 38-12-901 (a) AFTER THE LANDLORD GAVE THE TENANT NOTICE
19 OF THE LANDLORD'S INTENT TO ENGAGE IN CONDUCT DESCRIBED IN
20 SECTION 38-12-901 (b) (1) TO (b) (5).

21 (c) A LANDLORD MAY REBUT A PRESUMPTION UNDER SUBSECTION
22 (a) OF THIS SECTION BY A PREPONDERANCE OF EVIDENCE SHOWING THAT
23 THE LANDLORD HAD SUFFICIENT JUSTIFICATION FOR ENGAGING IN THE
24 CONDUCT THAT CREATED THE PRESUMPTION AND WOULD HAVE ENGAGED
25 IN THE CONDUCT IN THE SAME MANNER AND AT THE SAME TIME WHETHER
26 OR NOT THE TENANT ENGAGED IN CONDUCT DESCRIBED IN SECTION
27 38-12-901 (a).

1 TO THE LANDLORD OR AN ADDRESS PROVIDED UNDER SECTION 38-12-109
2 OR, IF NO ADDRESS IS PROVIDED, TO THE ADDRESS OF THE UNIT;

3 (2) INFORM THE TENANT OF THE RIGHT TO CONTACT THE
4 LANDLORD TO CLAIM THE PROPERTY WITHIN THE PERIOD SPECIFIED IN
5 SUBSECTION (d) OF THIS SECTION, SUBJECT TO PAYMENT OF THE
6 LANDLORD'S INVENTORYING, MOVING, AND STORAGE COSTS; AND

7 (3) PROVIDE A TELEPHONE NUMBER, ELECTRONIC-MAIL ADDRESS,
8 OR MAILING ADDRESS AT WHICH THE LANDLORD MAY BE CONTACTED.

9 (d) IF A TENANT CONTACTS THE LANDLORD TO CLAIM PERSONAL
10 PROPERTY NOT LATER THAN EIGHT DAYS AFTER THE LANDLORD GIVES
11 NOTICE UNDER PARAGRAPH (1) OF SUBSECTION (b) OF THIS SECTION, THE
12 LANDLORD SHALL PERMIT THE TENANT TO RETRIEVE PERSONAL PROPERTY
13 NOT LATER THAN FIVE DAYS AFTER THE DATE OF CONTACT OR WITHIN A
14 LONGER PERIOD TO WHICH THE PARTIES AGREE.

15 (e) A LANDLORD MAY REQUIRE THE TENANT TO PAY REASONABLE
16 INVENTORYING, MOVING, AND STORAGE COSTS BEFORE RETRIEVING
17 PERSONAL PROPERTY UNDER SUBSECTION (d) OF THIS SECTION.

18 (f) THIS SECTION DOES NOT PROHIBIT A LANDLORD FROM
19 IMMEDIATELY DISPOSING OF PERISHABLE FOOD, HAZARDOUS MATERIAL,
20 GARBAGE, AND TRASH OR TRANSFERRING AN ANIMAL TO AN
21 ANIMAL-CONTROL OFFICER, HUMANE SOCIETY, OR OTHER PERSON WILLING
22 TO CARE FOR THE ANIMAL.

23 (g) UNLESS A LANDLORD AND TENANT OTHERWISE AGREE, IF THE
24 TENANT FAILS TO CONTACT THE LANDLORD OR RETRIEVE PERSONAL
25 PROPERTY AS PROVIDED IN SUBSECTION (d) OF THIS SECTION, THE
26 PROPERTY IS DEEMED ABANDONED AND:

27 (1) IF A SALE IS ECONOMICALLY FEASIBLE, THE LANDLORD SHALL

1 SELL THE PROPERTY AND, AFTER DEDUCTING THE REASONABLE COST OF
2 INVENTORYING, MOVING, STORING, AND DISPOSING OF THE PROPERTY,
3 SHALL TREAT THE PROCEEDS AS PART OF THE TENANT'S SECURITY DEPOSIT;
4 OR

5 (2) IF A SALE IS NOT ECONOMICALLY FEASIBLE, THE LANDLORD
6 MAY DISPOSE OF THE PROPERTY IN ANY MANNER THE LANDLORD
7 CONSIDERS APPROPRIATE.

8 (h) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE
9 TO THE TENANT OR ANOTHER PERSON FOR A CLAIM ARISING FROM
10 REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.

11 (i) A LANDLORD THAT RECOVERS POSSESSION OF A DWELLING UNIT
12 UNDER A COURT ORDER IS NOT REQUIRED TO COMPLY WITH THIS SECTION.
13 IF A LANDLORD COMPLIES WITH THIS SECTION, THE LANDLORD IS NOT
14 LIABLE TO THE TENANT OR ANOTHER PERSON FOR A CLAIM ARISING FROM
15 REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.

16 **38-12-1002. Removal of personal property of deceased tenant**
17 **by tenant representative.** (a) IF A LANDLORD KNOWS THAT A TENANT
18 WHO WAS THE SOLE OCCUPANT OF THE DWELLING UNIT HAS DIED, THE
19 LANDLORD:

20 (1) SHALL NOTIFY A TENANT REPRESENTATIVE OF THE DEATH;

21 (2) SHALL GIVE THE REPRESENTATIVE ACCESS TO THE PREMISES AT
22 A REASONABLE TIME TO REMOVE ANY PERSONAL PROPERTY FROM THE
23 UNIT AND OTHER PERSONAL PROPERTY OF THE TENANT ELSEWHERE ON THE
24 PREMISES;

25 (3) MAY REQUIRE THE REPRESENTATIVE TO PREPARE AND SIGN AN
26 INVENTORY OF THE PROPERTY BEING REMOVED; AND

27 (4) SHALL PAY THE REPRESENTATIVE THE DECEASED TENANT'S

1 SECURITY DEPOSIT AND UNEARNED RENT TO WHICH THE TENANT
2 OTHERWISE WOULD HAVE BEEN ENTITLED UNDER SECTION 38-12-1204.

3 (b) A CONTACT PERSON OR HEIR ACCEPTS APPOINTMENT AS A
4 TENANT REPRESENTATIVE BY EXERCISING AUTHORITY UNDER THIS
5 ARTICLE OR OTHER ASSERTION OR CONDUCT INDICATING ACCEPTANCE.

6 (c) THE AUTHORITY OF A CONTACT PERSON OR HEIR TO ACT UNDER
7 THIS ARTICLE TERMINATES WHEN THE PERSON, HEIR, OR LANDLORD KNOWS
8 THAT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED FOR THE
9 DECEASED TENANT'S ESTATE.

10 (d) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE
11 TO THE TENANT'S ESTATE OR ANOTHER PERSON FOR UNEARNED RENT, A
12 SECURITY DEPOSIT, OR A CLAIM ARISING FROM REMOVAL OF PERSONAL
13 PROPERTY FROM THE PREMISES.

14 (e) A LANDLORD THAT WILLFULLY VIOLATES SUBSECTION (a) OF
15 THIS SECTION IS LIABLE TO THE ESTATE OF THE DECEASED TENANT FOR
16 ACTUAL DAMAGES.

17 (f) IN ADDITION TO THE RIGHTS PROVIDED IN THIS SECTION, A
18 TENANT REPRESENTATIVE HAS THE DECEASED TENANT'S RIGHTS AND
19 RESPONSIBILITIES UNDER SECTION 38-12-1001.

20 **38-12-1003. Disposition of personal property of deceased**
21 **tenant without tenant representative.** (a) IF A LANDLORD KNOWS OF
22 THE DEATH OF A TENANT WHO, AT THE TIME OF DEATH, WAS THE SOLE
23 OCCUPANT OF THE DWELLING UNIT, AND THE LANDLORD TERMINATES THE
24 LEASE UNDER SECTION 38-12-803 (d) BECAUSE THE LANDLORD IS UNABLE
25 TO CONTACT A TENANT REPRESENTATIVE, THE LANDLORD:

26 (1) SHALL MAIL NOTICE TO THE TENANT AT THE TENANT'S
27 LAST-KNOWN ADDRESS OR OTHER ADDRESS OF THE TENANT KNOWN TO

1 THE LANDLORD AND TO ANY PERSON THE TENANT HAS TOLD THE
2 LANDLORD TO CONTACT IN THE CASE OF AN EMERGENCY STATING:

3 (A) THE NAME OF THE TENANT AND ADDRESS OF THE DWELLING
4 UNIT;

5 (B) THE APPROXIMATE DATE OF THE TENANT'S DEATH;

6 (C) THAT, IF THE PERSONAL PROPERTY ON THE PREMISES IS NOT
7 CLAIMED WITHIN SIXTY DAYS AFTER THE NOTICE WAS SENT, THE PROPERTY
8 IS SUBJECT TO DISPOSAL BY THE LANDLORD; AND

9 (D) THE LANDLORD'S NAME, TELEPHONE NUMBER, AND MAIL OR
10 ELECTRONIC-MAIL ADDRESS AT WHICH THE LANDLORD MAY BE
11 CONTACTED TO CLAIM THE PROPERTY; AND

12 (2) WITH THE EXERCISE OF REASONABLE CARE, MAY LEAVE THE
13 PROPERTY IN THE DWELLING UNIT OR INVENTORY THE PROPERTY AND
14 STORE IT ON THE PREMISES OR IN ANOTHER PLACE OF SAFEKEEPING.

15 (b) IF A TENANT REPRESENTATIVE IS SUBSEQUENTLY IDENTIFIED,
16 THE REPRESENTATIVE MAY RETRIEVE THE DECEASED TENANT'S PERSONAL
17 PROPERTY FROM THE LANDLORD NOT LATER THAN SIXTY DAYS AFTER THE
18 NOTICE UNDER SUBSECTION (a) OF THIS SECTION. THE LANDLORD MAY
19 REQUIRE THE REPRESENTATIVE TO PAY THE REASONABLE INVENTORYING,
20 MOVING, AND STORAGE COSTS BEFORE RETRIEVING THE PROPERTY.

21 (c) IF A DECEASED TENANT'S PERSONAL PROPERTY IS NOT
22 RETRIEVED WITHIN THE TIME SPECIFIED IN SUBSECTION (b) OF THIS
23 SECTION, THE LANDLORD MAY DISPOSE OF THE PROPERTY IN COMPLIANCE
24 WITH SECTION 38-12-1001 (g).

25 (d) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE
26 TO THE TENANT'S ESTATE OR ANOTHER PERSON FOR A CLAIM ARISING FROM
27 REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.

PART 11

EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE,
STALKING, OR SEXUAL ASSAULT

38-12-1101. Definitions. IN THIS PART 11:

(1) "ATTESTING THIRD PARTY" MEANS A LAW ENFORCEMENT OFFICIAL, LICENSED HEALTH CARE PROFESSIONAL, VICTIM ADVOCATE, OR VICTIM-SERVICES PROVIDER.

(2) "DATING VIOLENCE" MEANS DATING VIOLENCE AS DEFINED IN [INSERT REFERENCE TO DEFINITION IN OTHER STATE LAW]. <{COLORADO DOES NOT DISTINGUISH DATING VIOLENCE FROM DOMESTIC VIOLENCE.}>

(3) "DOMESTIC VIOLENCE" MEANS DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S.

(4) "PERPETRATOR" MEANS AN INDIVIDUAL WHO COMMITS AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT ON A TENANT OR IMMEDIATE FAMILY MEMBER.

(5) "SEXUAL ASSAULT" MEANS SEXUAL ASSAULT AS DEFINED IN SECTION 18-3-402, C.R.S.

(6) "STALKING" MEANS STALKING AS DEFINED IN SECTION 18-3-602, C.R.S.

(7) "VICTIM ADVOCATE" MEANS AN INDIVIDUAL, WHETHER PAID OR SERVING AS A VOLUNTEER, WHO PROVIDES SERVICES TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT UNDER THE AUSPICES OR SUPERVISION OF A VICTIM-SERVICES PROVIDER, COURT, OR LAW ENFORCEMENT OR PROSECUTION AGENCY.

(8) "VICTIM-SERVICES PROVIDER" MEANS A PERSON THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT. THE TERM INCLUDES A RAPE CRISIS CENTER, DOMESTIC

1 VIOLENCE SHELTER, OR FAITH-BASED ORGANIZATION OR OTHER
2 ORGANIZATION WITH A HISTORY OF WORK CONCERNING DOMESTIC
3 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT.

4 <{Legislative Note: If an enacting jurisdiction has no legislation on
5 dating violence, it may either retain dating violence in this act and draft
6 its own definition of dating violence or delete dating violence as one of
7 the types of domestic violence under this act and delete other references
8 to dating violence in this section. A jurisdiction that does not use the
9 phrase "domestic violence", "dating violence", "stalking", or "sexual
10 assault" should replace the phrases used in this act with the appropriate
11 phrases used in the jurisdiction.>

12 **38-12-1102. Early release or termination of lease.** (a) SUBJECT
13 TO SUBSECTION (e) OF THIS SECTION, IF A VICTIM OF AN ACT OF DOMESTIC
14 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT IS A
15 TENANT OR IMMEDIATE FAMILY MEMBER AND HAS A REASONABLE FEAR OF
16 SUFFERING PSYCHOLOGICAL HARM OR A FURTHER ACT OF DOMESTIC
17 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT IF THE
18 VICTIM CONTINUES TO RESIDE IN THE DWELLING UNIT, THE TENANT,
19 WITHOUT THE NECESSITY OF THE LANDLORD'S CONSENT, IS RELEASED
20 FROM THE LEASE IF THE TENANT GIVES THE LANDLORD A NOTICE THAT
21 COMPLIES WITH SUBSECTION (b) OF THIS SECTION AND:

22 (1) A COPY OF A COURT ORDER THAT RESTRAINS A PERPETRATOR
23 FROM CONTACT WITH THE TENANT OR IMMEDIATE FAMILY MEMBER;

24 (2) EVIDENCE OF THE CONVICTION OR ADJUDICATION OF A
25 PERPETRATOR FOR AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE,
26 STALKING, OR SEXUAL ASSAULT AGAINST THE TENANT OR IMMEDIATE
27 FAMILY MEMBER; OR

1 (3) A VERIFICATION THAT COMPLIES WITH SECTION 38-12-1104.

2 (b) TO BE RELEASED FROM A LEASE UNDER SUBSECTION (a) OF THIS
3 SECTION, THE TENANT MUST GIVE THE LANDLORD NOTICE IN A RECORD
4 THAT:

5 (1) STATES THE TENANT'S INTENT TO BE RELEASED FROM THE
6 LEASE ON A DATE THAT MUST BE AT LEAST THIRTY DAYS FROM THE DATE
7 OF THE NOTICE OR, IF THE PERPETRATOR IS A COTENANT OF THE DWELLING
8 UNIT, AN EARLIER DATE;

9 (2) STATES FACTS GIVING RISE TO THE FEAR OF PSYCHOLOGICAL
10 HARM OR SUFFERING A FURTHER ACT OF DOMESTIC VIOLENCE, DATING
11 VIOLENCE, STALKING, OR SEXUAL ASSAULT IF THE VICTIM CONTINUES TO
12 RESIDE IN THE UNIT; AND

13 (3) IS GIVEN TO THE LANDLORD:

14 (A) NOT LATER THAN NINETY DAYS AFTER AN ACT OF DOMESTIC
15 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT AGAINST
16 THE TENANT OR IMMEDIATE FAMILY MEMBER;

17 (B) WHEN A COURT ORDER EXISTS THAT RESTRAINS A
18 PERPETRATOR FROM CONTACT WITH THE TENANT OR IMMEDIATE FAMILY
19 MEMBER BECAUSE OF AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE,
20 STALKING, OR SEXUAL ASSAULT; OR

21 (C) IF THE PERPETRATOR WAS INCARCERATED, NOT LATER THAN
22 NINETY DAYS AFTER THE TENANT ACQUIRED KNOWLEDGE THAT THE
23 PERPETRATOR IS NO LONGER INCARCERATED.

24 (c) IF THERE IS ONLY ONE INDIVIDUAL TENANT OF THE DWELLING
25 UNIT:

26 (1) A RELEASE UNDER SUBSECTION (a) OF THIS SECTION
27 TERMINATES THE LEASE ON THE DATE SPECIFIED IN THE NOTICE UNDER

1 SUBSECTION (b) OF THIS SECTION IF THE TENANT VACATES THE DWELLING
2 UNIT ON OR BEFORE THAT DATE; AND

3 (2) THE TENANT IS NOT LIABLE FOR RENT ACCRUING AFTER THE
4 LEASE TERMINATES OR OTHER ACTUAL DAMAGES RESULTING FROM
5 TERMINATION OF THE LEASE, BUT THE TENANT REMAINS LIABLE TO THE
6 LANDLORD FOR RENT AND OTHER AMOUNTS OWED TO THE LANDLORD
7 BEFORE TERMINATION OF THE LEASE.

8 (d) IF THERE ARE MULTIPLE INDIVIDUAL TENANTS OF THE
9 DWELLING UNIT:

10 (1) THE TENANT WHO GAVE NOTICE UNDER SUBSECTION (b) OF
11 THIS SECTION IS RELEASED FROM THE LEASE AS OF THE DATE SPECIFIED IN
12 THE NOTICE IF THE TENANT VACATES THE DWELLING UNIT ON OR BEFORE
13 THE SPECIFIED DATE, BUT THE RELEASE OF ONE TENANT UNDER THIS
14 SECTION DOES NOT TERMINATE THE LEASE WITH RESPECT TO OTHER
15 TENANTS;

16 (2) THE TENANT RELEASED FROM THE LEASE IS NOT LIABLE TO THE
17 LANDLORD OR ANY OTHER PERSON FOR RENT ACCRUING AFTER THE
18 TENANT'S RELEASE OR ACTUAL DAMAGES RESULTING FROM THE TENANT'S
19 RELEASE;

20 (3) ANY OTHER TENANT UNDER THE LEASE MAY RECOVER FROM
21 THE PERPETRATOR ACTUAL DAMAGES RESULTING FROM THE TERMINATION;
22 AND

23 (4) THE LANDLORD IS NOT REQUIRED TO RETURN TO THE TENANT
24 RELEASED FROM THE LEASE OR A REMAINING TENANT ANY SECURITY
25 DEPOSIT OR UNEARNED RENT TO WHICH THE TENANT IS OTHERWISE
26 ENTITLED UNDER SECTION 38-12-1204 UNTIL THE LEASE TERMINATES
27 WITH RESPECT TO ALL TENANTS.

1 (e) THIS SECTION DOES NOT APPLY IF A TENANT SEEKING THE
2 RELEASE FROM THE LEASE IS A PERPETRATOR.

3 **38-12-1103. Landlord obligations on early release or**
4 **termination.** (a) IF A TENANT IS RELEASED FROM A LEASE UNDER SECTION
5 38-12-1102, THE LANDLORD:

6 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-1102 (d)
7 (4), SHALL RETURN ANY SECURITY DEPOSIT AND UNEARNED RENT TO
8 WHICH THE TENANT IS ENTITLED UNDER SECTION 38-12-1204 AFTER THE
9 TENANT VACATES THE DWELLING UNIT;

10 (2) MAY NOT ASSESS A FEE OR PENALTY AGAINST THE TENANT FOR
11 EXERCISING A RIGHT GRANTED UNDER SECTION 38-12-1102; AND

12 (3) MAY NOT DISCLOSE INFORMATION REQUIRED TO BE REPORTED
13 TO THE LANDLORD UNDER SECTION 38-12-1102 UNLESS:

14 (A) THE TENANT PROVIDES SPECIFIC, TIME-LIMITED, AND
15 CONTEMPORANEOUS CONSENT TO THE DISCLOSURE IN A RECORD SIGNED
16 BY THE TENANT; OR

17 (B) THE INFORMATION IS REQUIRED TO BE DISCLOSED BY A COURT
18 ORDER OR LAW OTHER THAN THIS ARTICLE.

19 **38-12-1104. Verification.** (a) A VERIFICATION GIVEN BY A
20 TENANT UNDER SECTION 38-12-1102 (a) (3) MUST BE UNDER OATH AND
21 INCLUDE THE FOLLOWING:

22 (1) FROM THE TENANT:

23 (A) THE TENANT'S NAME AND THE ADDRESS OF THE DWELLING
24 UNIT;

25 (B) THE APPROXIMATE DATES ON WHICH AN ACT OF DOMESTIC
26 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT OCCURRED;

27 (C) THE APPROXIMATE DATE OF THE MOST RECENT ACT OF

1 DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT;

2 (D) A STATEMENT THAT BECAUSE OF AN ACT OF DOMESTIC
3 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT, THE
4 TENANT OR IMMEDIATE FAMILY MEMBER HAS A REASONABLE FEAR THAT
5 THE TENANT OR FAMILY MEMBER WILL SUFFER PSYCHOLOGICAL HARM OR
6 A FURTHER ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR
7 SEXUAL ASSAULT IF THE TENANT OR FAMILY MEMBER CONTINUES TO
8 RESIDE IN THE UNIT; AND

9 (E) A STATEMENT THAT THE REPRESENTATIONS IN THE
10 VERIFICATION ARE TRUE AND ACCURATE TO THE BEST OF THE TENANT'S
11 KNOWLEDGE AND THE TENANT UNDERSTANDS THAT THE VERIFICATION
12 COULD BE USED AS EVIDENCE IN COURT; AND

13 (2) FROM AN ATTESTING THIRD PARTY:

14 (A) THE NAME, BUSINESS ADDRESS, AND BUSINESS TELEPHONE
15 NUMBER OF THE PARTY;

16 (B) THE CAPACITY IN WHICH THE PARTY RECEIVED THE
17 INFORMATION REGARDING THE ACT OF DOMESTIC VIOLENCE, DATING
18 VIOLENCE, STALKING, OR SEXUAL ASSAULT;

19 (C) A STATEMENT THAT THE PARTY HAS READ THE TENANT'S
20 VERIFICATION AND BEEN ADVISED BY THE TENANT THAT THE TENANT OR
21 IMMEDIATE FAMILY MEMBER IS THE VICTIM OF AN ACT OF DOMESTIC
22 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT AND HAS
23 A REASONABLE FEAR THAT THE TENANT OR FAMILY MEMBER WILL SUFFER
24 PSYCHOLOGICAL HARM OR A FURTHER ACT OF DOMESTIC VIOLENCE,
25 DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT IF THE TENANT OR
26 FAMILY MEMBER CONTINUES TO RESIDE IN THE DWELLING UNIT; AND

27 (D) A STATEMENT THAT THE PARTY, BASED ON THE TENANT'S

1 VERIFICATION, BELIEVES THE TENANT AND UNDERSTANDS THAT THE
2 VERIFICATION MAY BE USED AS THE GROUND FOR RELEASING THE TENANT
3 FROM A LEASE OR TERMINATING THE TENANT'S INTEREST UNDER THE
4 LEASE.

5 (b) IF A VERIFICATION GIVEN TO A LANDLORD BY A TENANT UNDER
6 SECTION 38-12-1102 (a) (3) CONTAINS A REPRESENTATION OF A MATERIAL
7 FACT KNOWN BY THE TENANT TO BE FALSE, THE LANDLORD MAY RECOVER
8 AN AMOUNT NOT TO EXCEED THREE TIMES THE PERIODIC RENT OR THREE
9 TIMES ACTUAL DAMAGES, WHICHEVER IS GREATER.

10 **38-12-1105. Perpetrator liability for damages.** (a) A LANDLORD
11 MAY RECOVER FROM A PERPETRATOR ACTUAL DAMAGES RESULTING FROM
12 A TENANT'S EXERCISE OF A RIGHT UNDER SECTION 38-12-1102 AND, IF THE
13 PERPETRATOR IS A PARTY TO THE LEASE WHO REMAINS IN POSSESSION OF
14 THE DWELLING UNIT, HOLD THE PERPETRATOR LIABLE ON THE LEASE FOR
15 ALL OBLIGATIONS UNDER THE LEASE OR THIS ARTICLE.

16 (b) A PERPETRATOR MAY NOT RECOVER ACTUAL DAMAGES OR
17 OTHER RELIEF RESULTING FROM THE EXERCISE OF A RIGHT BY A TENANT
18 UNDER SECTION 38-12-1102 OR A LANDLORD UNDER THIS SECTION.

19 **38-12-1106. Change of lock or other security device.**

20 (a) SUBJECT TO SUBSECTIONS (b) AND (c) OF THIS SECTION, IF A TENANT
21 OR IMMEDIATE FAMILY MEMBER IS A VICTIM OF AN ACT OF DOMESTIC
22 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT, AND THE
23 TENANT HAS A REASONABLE FEAR THAT THE PERPETRATOR OR OTHER
24 PERSON ACTING ON THE PERPETRATOR'S BEHALF MAY ATTEMPT TO GAIN
25 ACCESS TO THE DWELLING UNIT, THE TENANT, WITHOUT THE LANDLORD'S
26 CONSENT, MAY CAUSE THE LOCKS OR OTHER SECURITY DEVICES FOR THE
27 UNIT TO BE CHANGED OR REKEYED IN A PROFESSIONAL MANNER AND

1 SHALL GIVE A KEY OR OTHER MEANS OF ACCESS FOR THE NEW LOCKS OR
2 SECURITY DEVICES TO THE LANDLORD AND ANY OTHER TENANT, OTHER
3 THAN THE PERPETRATOR, THAT IS A PARTY TO THE LEASE.

4 (b) IF LOCKS OR OTHER SECURITY DEVICES ARE CHANGED OR
5 REKEYED UNDER SUBSECTION (a) OF THIS SECTION, THE LANDLORD MAY
6 CHANGE OR REKEY THEM, AT THE TENANT'S EXPENSE, TO ENSURE
7 COMPATIBILITY WITH THE LANDLORD'S MASTER KEY OR OTHER MEANS OF
8 ACCESS OR OTHERWISE ACCOMMODATE THE LANDLORD'S REASONABLE
9 COMMERCIAL NEEDS.

10 (c) IF A PERPETRATOR IS A PARTY TO THE LEASE, LOCKS OR OTHER
11 SECURITY DEVICES MAY NOT BE CHANGED OR REKEYED UNDER
12 SUBSECTION (a) OF THIS SECTION UNLESS A COURT ORDER, OTHER THAN AN
13 EX PARTE ORDER, EXPRESSLY REQUIRES THAT THE PERPETRATOR VACATE
14 THE DWELLING UNIT OR RESTRAINS THE PERPETRATOR FROM CONTACT
15 WITH THE TENANT OR AN IMMEDIATE FAMILY MEMBER AND A COPY OF THE
16 ORDER HAS BEEN GIVEN TO THE LANDLORD.

17 (d) A PERPETRATOR MAY NOT RECOVER ACTUAL DAMAGES OR
18 OTHER RELIEF AGAINST A LANDLORD OR TENANT RESULTING FROM THE
19 EXERCISE OF A RIGHT BY THE LANDLORD OR TENANT UNDER THIS SECTION.

20 **38-12-1107. Effect of court order to vacate.** (a) ON ISSUANCE
21 OF A COURT ORDER REQUIRING A PERPETRATOR TO VACATE A DWELLING
22 UNIT BECAUSE OF AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE,
23 STALKING, OR SEXUAL ASSAULT, OTHER THAN AN EX PARTE ORDER,
24 NEITHER THE LANDLORD NOR TENANT HAS A DUTY TO:

25 (1) ALLOW THE PERPETRATOR ACCESS TO THE UNIT UNLESS
26 ACCOMPANIED BY A LAW ENFORCEMENT OFFICER; OR

27 (2) PROVIDE THE PERPETRATOR WITH ANY MEANS OF ACCESS TO

1 THE UNIT.

2 (b) IF A PERPETRATOR IS A PARTY TO THE LEASE, ON ISSUANCE OF
3 A COURT ORDER REQUIRING THE PERPETRATOR TO VACATE THE DWELLING
4 UNIT, OTHER THAN AN EX PARTE ORDER, THE PERPETRATOR'S INTEREST
5 UNDER THE LEASE TERMINATES, AND THE LANDLORD AND ANY REMAINING
6 TENANT MAY RECOVER FROM THE PERPETRATOR ACTUAL DAMAGES
7 RESULTING FROM THE TERMINATION.

8 (c) TERMINATION OF A PERPETRATOR'S INTEREST UNDER A LEASE
9 UNDER THIS SECTION DOES NOT TERMINATE THE INTEREST OF ANY OTHER
10 TENANT UNDER THE LEASE OR ALTER THE OBLIGATIONS OF ANY OTHER
11 TENANT UNDER THE LEASE.

12 (d) A LANDLORD IS NOT REQUIRED TO RETURN TO A PERPETRATOR
13 WHOSE INTEREST UNDER THE LEASE TERMINATES UNDER THIS SECTION OR
14 TO ANY REMAINING TENANT ANY SECURITY DEPOSIT OR UNEARNED RENT
15 UNTIL THE LEASE TERMINATES WITH RESPECT TO ALL TENANTS.

16 **38-12-1108. Termination of tenancy of perpetrator without**
17 **court order.** (a) IF A LANDLORD HAS A REASONABLE BELIEF THAT A
18 TENANT OR IMMEDIATE FAMILY MEMBER IS THE VICTIM OF AN ACT OF
19 DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT
20 AND ANOTHER TENANT OF THE SAME LANDLORD WHO RESIDES IN THE
21 SAME BUILDING AS THE TENANT IS THE PERPETRATOR, THE LANDLORD MAY
22 TERMINATE THE PERPETRATOR'S INTEREST IN THE LEASE BY GIVING THE
23 PERPETRATOR NOTICE IN A RECORD THAT THE PERPETRATOR'S INTEREST
24 WILL TERMINATE IMMEDIATELY OR ON A LATER SPECIFIED DATE, WHICH IS
25 NOT LATER THAN THIRTY DAYS AFTER NOTICE IS GIVEN. THE NOTICE MUST
26 STATE THAT THE LANDLORD HAS A REASONABLE BELIEF THAT THE
27 PERPETRATOR HAS COMMITTED AN ACT OF DOMESTIC VIOLENCE, DATING

1 VIOLENCE, STALKING, OR SEXUAL ASSAULT AND THE APPROXIMATE DATE
2 OF THE ACT.

3 (b) BEFORE GIVING NOTICE TO A PERPETRATOR UNDER SUBSECTION
4 (a) OF THIS SECTION, THE LANDLORD SHALL GIVE NOTICE OF THE
5 LANDLORD'S INTENT TO TERMINATE THE PERPETRATOR'S INTEREST TO THE
6 TENANT WHO WAS THE VICTIM OF THE ACT OF DOMESTIC VIOLENCE,
7 DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT OR WHOSE IMMEDIATE
8 FAMILY MEMBER WAS THE VICTIM. THIS NOTICE MAY BE GIVEN BY ANY
9 MEANS REASONABLY CALCULATED TO REACH THE TENANT, INCLUDING
10 ORAL COMMUNICATION, NOTICE IN A RECORD, OR NOTICE SENT TO THE
11 TENANT AT ANY OTHER ADDRESS AT WHICH THE LANDLORD REASONABLY
12 BELIEVES THE TENANT IS LOCATED.

13 (c) FAILURE OF A TENANT TO RECEIVE THE NOTICE OF THE
14 LANDLORD'S INTENT TO TERMINATE THE PERPETRATOR'S INTEREST UNDER
15 SUBSECTION (b) OF THIS SECTION DOES NOT AFFECT THE LANDLORD'S
16 RIGHT TO TERMINATE UNDER THIS SECTION OR EXPOSE THE LANDLORD TO
17 ANY LIABILITY.

18 (d) IF A LANDLORD TERMINATES A PERPETRATOR'S INTEREST
19 UNDER A LEASE UNDER THIS SECTION, ANY OTHER TENANT UNDER THE
20 LEASE MAY RECOVER FROM THE PERPETRATOR ACTUAL DAMAGES
21 RESULTING FROM THE TERMINATION.

22 (e) TERMINATION OF A PERPETRATOR'S INTEREST UNDER A LEASE
23 UNDER THIS SECTION DOES NOT TERMINATE THE INTEREST OF ANY OTHER
24 TENANT UNDER THE LEASE OR ALTER THE OBLIGATIONS OF ANY OTHER
25 TENANT UNDER THE LEASE.

26 (f) A LANDLORD IS NOT REQUIRED TO RETURN TO A PERPETRATOR
27 WHOSE INTEREST UNDER A LEASE IS TERMINATED UNDER THIS SECTION OR

1 TO ANY OTHER TENANT UNDER THE LEASE ANY SECURITY DEPOSIT OR
2 UNEARNED RENT UNTIL THE LEASE TERMINATES WITH RESPECT TO ALL
3 TENANTS.

4 (g) IN AN ACTION BETWEEN A LANDLORD AND TENANT INVOLVING
5 THE RIGHT OF THE LANDLORD TO TERMINATE THE TENANT'S INTEREST
6 UNDER THIS SECTION, THE LANDLORD MUST PROVE BY A PREPONDERANCE
7 OF THE EVIDENCE THAT THE LANDLORD HAD A REASONABLE BELIEF THAT
8 THE TENANT WAS A PERPETRATOR.

9 **38-12-1109. Landlord conduct with respect to victim.** (a) IN
10 THIS SECTION, "TENANT" INCLUDES AN APPLICANT SEEKING TO ENTER INTO
11 A LEASE WITH A LANDLORD.

12 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (d) AND (e)
13 OF THIS SECTION, A LANDLORD MAY NOT DO OR THREATEN TO DO ANY ACT
14 IN SECTION 38-12-901 (b) IF THE LANDLORD'S PURPOSE FOR ENGAGING IN
15 THE CONDUCT IS THAT:

16 (1) AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING,
17 OR SEXUAL ASSAULT COMMITTED AGAINST THE TENANT OR IMMEDIATE
18 FAMILY MEMBER RESULTED IN A VIOLATION OF THE LEASE OR THIS
19 ARTICLE BY THE TENANT; OR

20 (2) A COMPLAINT OF AN ACT OF DOMESTIC VIOLENCE, DATING
21 VIOLENCE, STALKING, OR SEXUAL ASSAULT COMMITTED AGAINST THE
22 TENANT OR IMMEDIATE FAMILY MEMBER RESULTED IN A LAW
23 ENFORCEMENT OR EMERGENCY RESPONSE.

24 (c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS
25 SECTION, A LANDLORD MAY NOT REFUSE OR THREATEN TO REFUSE TO RENT
26 A DWELLING UNIT IF THE LANDLORD'S PURPOSE FOR THE REFUSAL OR
27 THREAT IS THAT A TENANT OR AN IMMEDIATE FAMILY MEMBER IS OR HAS

1 BEEN THE VICTIM OF AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE,
2 STALKING, OR SEXUAL ASSAULT.

3 (d) EVIDENCE THAT ANY OF THE EVENTS DESCRIBED IN
4 SUBSECTION (b) OR (c) OF THIS SECTION OCCURRED WITHIN SIX MONTHS
5 BEFORE THE LANDLORD'S CONDUCT CREATES A PRESUMPTION THAT THE
6 PURPOSE OF THE LANDLORD'S CONDUCT WAS RETALIATION. THE
7 LANDLORD MAY REBUT THE PRESUMPTION BY A PREPONDERANCE OF
8 EVIDENCE SHOWING THAT THE LANDLORD HAD SUFFICIENT JUSTIFICATION
9 FOR ENGAGING IN THE CONDUCT DESCRIBED IN SUBSECTION (b) OR (c) OF
10 THIS SECTION AND WOULD HAVE ENGAGED IN THE CONDUCT IN THE SAME
11 MANNER AND AT THE SAME TIME REGARDLESS OF WHETHER THE EVENTS
12 DESCRIBED IN SUBSECTION (b) OR (c) OF THIS SECTION OCCURRED.

13 (e) A LANDLORD MAY TERMINATE THE LEASE OF A TENANT BY
14 GIVING THE TENANT NOTICE IN A RECORD THAT THE LEASE WILL
15 TERMINATE ON A DATE SPECIFIED IN THE NOTICE, WHICH MUST BE AT
16 LEAST THIRTY DAYS AFTER NOTICE IS GIVEN IF:

17 (1) WITHOUT THE LANDLORD'S PERMISSION, THE TENANT INVITED
18 A PERPETRATOR ONTO THE PREMISES OR ALLOWED A PERPETRATOR TO
19 OCCUPY THE DWELLING UNIT:

20 (A) AFTER THE LANDLORD GAVE THE TENANT NOTICE IN A RECORD
21 TO REFRAIN FROM INVITING THE PERPETRATOR ONTO THE PREMISES; OR

22 (B) DURING A TIME THE TENANT KNOWS THE PERPETRATOR IS
23 SUBJECT TO A NO-CONTACT COURT ORDER OR A COURT ORDER BARRING
24 THE PERPETRATOR FROM THE PREMISES; AND

25 (2) THE LANDLORD DEMONSTRATES THAT:

26 (A) THERE IS AN ACTUAL AND IMMINENT THREAT TO THE HEALTH
27 OR SAFETY OF ANY INDIVIDUAL ON THE PREMISES, THE LANDLORD, OR THE

1 LANDLORD'S AGENT IF THE LEASE IS NOT TERMINATED; OR

2 (B) THE PERPETRATOR HAS DAMAGED THE PREMISES.

3 (f) IF A LANDLORD WILLFULLY VIOLATES SUBSECTION (b) OR (c)
4 OF THIS SECTION, THE TENANT OR PROSPECTIVE TENANT MAY RECOVER
5 THREE TIMES THE PERIODIC RENT OR THREE TIMES ACTUAL DAMAGES,
6 WHICHEVER IS GREATER, AND:

7 (1) TERMINATE THE LEASE;

8 (2) DEFEND AN ACTION FOR POSSESSION ON THE GROUND THAT
9 THE LANDLORD VIOLATED SUBSECTION (b) OF THIS SECTION; OR

10 (3) OBTAIN APPROPRIATE INJUNCTIVE RELIEF.

11

PART 12

12

SECURITY DEPOSITS, FEES, AND UNEARNED RENT

13

38-12-1201. Payment required at the commencement of term

14

of lease - definition. (a) IN THIS PART 12, "BANK ACCOUNT" MEANS A
15 CHECKING, DEMAND, TIME, SAVINGS, PASSBOOK, OR SIMILAR ACCOUNT
16 MAINTAINED AT A BANK.

17

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d)

18

OF THIS SECTION, A LANDLORD MAY NOT REQUIRE THE TENANT TO PAY OR
19 AGREE TO PAY A SECURITY DEPOSIT, PREPAID RENT, OR ANY COMBINATION
20 THEREOF, IN AN AMOUNT THAT EXCEEDS TWO TIMES THE PERIODIC RENT.

21

(c) THE LIMIT ESTABLISHED IN SUBSECTION (b) OF THIS SECTION
22 DOES NOT INCLUDE THE FIRST MONTH'S RENT OR FEES.

23

(d) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS

24

ARTICLE, IF A TENANT KEEPS A PET ON THE PREMISES OR IS PERMITTED BY

25

THE LEASE TO MAKE ALTERATIONS TO THE PREMISES, THE LANDLORD MAY

26

REQUIRE THE TENANT TO PAY AN ADDITIONAL SECURITY DEPOSIT IN AN

27

AMOUNT COMMENSURATE WITH THE ADDITIONAL RISK OF DAMAGE TO THE

1 PREMISES.

2 **38-12-1202. Landlord, tenant, and third-party interests in**
3 **security deposit.** (a) THE FOLLOWING RULES APPLY TO A LANDLORD'S
4 INTEREST IN A SECURITY DEPOSIT:

5 (1) THE LANDLORD'S INTEREST IS LIMITED TO A SECURITY
6 INTEREST.

7 (2) NOTWITHSTANDING LAW OTHER THAN THIS ARTICLE, THE
8 LANDLORD'S SECURITY INTEREST IS EFFECTIVE AGAINST AND HAS PRIORITY
9 OVER EACH CREDITOR OF AND TRANSFEREE FROM THE TENANT.

10 (3) SUBJECT TO SUBSECTION (c) OF THIS SECTION, A CREDITOR OF
11 AND TRANSFEREE FROM THE LANDLORD CAN ACQUIRE NO GREATER
12 INTEREST IN A SECURITY DEPOSIT THAN THE INTEREST OF THE LANDLORD.

13 (b) THE FOLLOWING RULES APPLY TO A TENANT'S INTEREST IN A
14 SECURITY DEPOSIT:

15 (1) NOTWITHSTANDING LAW OTHER THAN THIS ARTICLE, THE
16 TENANT'S INTEREST HAS PRIORITY OVER ANY RIGHT OF SETOFF THE BANK
17 IN WHICH THE ACCOUNT IS MAINTAINED MAY HAVE FOR OBLIGATIONS
18 OWED TO THE BANK OTHER THAN CHARGES NORMALLY ASSOCIATED WITH
19 THE BANK'S MAINTENANCE OF THE ACCOUNT.

20 (2) THE TENANT'S INTEREST IS NOT ADVERSELY AFFECTED IF THE
21 DEPOSIT IS COMMINGLED WITH THE DEPOSITS OF OTHER TENANTS.

22 (3) THE EFFECT OF COMMINGLING OTHER THAN THAT ALLOWED IN
23 PARAGRAPH (2) OF THIS SUBSECTION (b) IS DETERMINED BY LAW OTHER
24 THAN THIS ARTICLE.

25 (c) PARAGRAPH (3) OF SUBSECTION (a) OF THIS SECTION DOES NOT
26 ABROGATE GENERALLY APPLICABLE RULES OF LAW ENABLING A
27 TRANSFEREE OF FUNDS TO TAKE THE FUNDS FREE OF COMPETING CLAIMS.

1 **38-12-1203. Safekeeping of security deposit.** (a) WITH RESPECT
2 TO FUNDS CONSTITUTING A SECURITY DEPOSIT, A LANDLORD:

3 (1) SHALL MAINTAIN THE ABILITY TO IDENTIFY THE FUNDS:

4 (A) BY HOLDING THE FUNDS IN A BANK ACCOUNT THAT IS USED
5 EXCLUSIVELY FOR SECURITY DEPOSITS, THAT IS MAINTAINED WITH A BANK
6 DOING BUSINESS IN THIS STATE, AND THE TITLE OF WHICH INDICATES THAT
7 IT CONTAINS SECURITY DEPOSITS; AND

8 (B) BY MAINTAINING RECORDS THAT INDICATE AT ALL TIMES THE
9 AMOUNT OF THE FUNDS ATTRIBUTABLE TO EACH TENANT WHOSE FUNDS
10 ARE BEING HELD IN THE ACCOUNT; AND

11 (2) MAY COMMINGLE THE FUNDS RECEIVED FROM OTHER TENANTS
12 AS SECURITY DEPOSITS IN THE SAME BANK ACCOUNT BUT MAY NOT
13 COMMINGLE OTHER FUNDS, INCLUDING THE LANDLORD'S PERSONAL OR
14 BUSINESS FUNDS, IN THE ACCOUNT.

15 (b) IF A LANDLORD FAILS TO COMPLY WITH SUBSECTION (a) OF THIS
16 SECTION, THE TENANT MAY RECOVER ACTUAL DAMAGES OR ONE TIMES
17 THE PERIODIC RENT, WHICHEVER IS GREATER.

18 (c) A BANK IN WHICH A LANDLORD DEPOSITS FUNDS CONSTITUTING
19 A SECURITY DEPOSIT HAS NO DUTY TO ENSURE THAT THE LANDLORD
20 PROPERLY APPLIES THE FUNDS.

21 (d) UNLESS A LEASE PROVIDES OTHERWISE, THE LANDLORD IS NOT
22 REQUIRED TO DEPOSIT A SECURITY DEPOSIT INTO AN INTEREST-BEARING
23 ACCOUNT OR TO PAY THE TENANT INTEREST ON THE DEPOSIT.

24 <{*Legislative Note: A state that wishes to require interest on a security*
25 *deposit should delete subsection (d) and replace it with a provision*
26 *governing the parties' rights regarding the interest.*>

27 **38-12-1204. Disposition of security deposit and unearned rent**

1 **on termination of lease.** (a) AFTER TERMINATION OF A LEASE, THE
2 TENANT IS ENTITLED TO THE AMOUNT BY WHICH THE SECURITY DEPOSIT
3 AND ANY UNEARNED RENT EXCEEDS THE AMOUNT THE LANDLORD IS OWED
4 UNDER THE LEASE OR THIS ARTICLE.

5 (b) NOT LATER THAN THIRTY DAYS AFTER A LEASE TERMINATES
6 AND THE TENANT VACATES THE PREMISES, THE LANDLORD SHALL
7 DETERMINE THE AMOUNT THE LANDLORD BELIEVES THE TENANT IS
8 ENTITLED TO UNDER SUBSECTION (a) OF THIS SECTION AND:

9 (1) TENDER THAT AMOUNT TO THE TENANT OR, IF THE TENANT HAS
10 DIED, THE TENANT REPRESENTATIVE;

11 (2) SEND THAT AMOUNT BY FIRST-CLASS MAIL, POSTAGE PREPAID,
12 TO AN ADDRESS PROVIDED BY THE TENANT OR, IF THE TENANT HAS DIED,
13 THE TENANT REPRESENTATIVE OR, IN THE ABSENCE OF THAT ADDRESS, TO
14 THE RELEVANT ADDRESS SPECIFIED IN SECTION 38-12-109; OR

15 (3) CAUSE A FUNDS TRANSFER IN THAT AMOUNT TO BE MADE, WITH
16 THE COST OF TRANSFER PAID, TO A BANK ACCOUNT DESIGNATED BY THE
17 TENANT OR, IF THE TENANT HAS DIED, THE TENANT REPRESENTATIVE.

18 (c) IF THE AMOUNT UNDER SUBSECTION (b) OF THIS SECTION IS
19 LESS THAN THE SUM OF THE TENANT'S SECURITY DEPOSIT AND ANY
20 UNEARNED RENT, THE LANDLORD SHALL PROVIDE THE TENANT OR TENANT
21 REPRESENTATIVE, WITHIN THE PERIOD SPECIFIED UNDER SUBSECTION (b)
22 OF THIS SECTION, A RECORD SPECIFYING EACH ITEM OF PROPERTY DAMAGE
23 OR OTHER UNFULFILLED OBLIGATION OF THE TENANT TO WHICH THE
24 SECURITY DEPOSIT OR UNEARNED RENT WAS APPLIED AND THE AMOUNT
25 APPLIED TO EACH ITEM.

26 (d) IF THE AMOUNT TO WHICH THE TENANT IS ENTITLED UNDER
27 SUBSECTION (a) OF THIS SECTION IS GREATER THAN THE AMOUNT PAID TO

1 THE TENANT OR TENANT REPRESENTATIVE, THE TENANT OR TENANT
2 REPRESENTATIVE MAY RECOVER THE DIFFERENCE.

3 (e) IF A LANDLORD FAILS TO COMPLY WITH SUBSECTION (b) OR (c)
4 OF THIS SECTION, THE COURT MAY AWARD THE TENANT OR TENANT
5 REPRESENTATIVE, IN ADDITION TO ANY AMOUNT RECOVERABLE UNDER
6 SUBSECTION (d) OF THIS SECTION, TWO HUNDRED FIFTY DOLLARS OR TWO
7 TIMES THE AMOUNT RECOVERABLE UNDER SUBSECTION (d) OF THIS
8 SECTION, WHICHEVER IS GREATER, UNLESS THE LANDLORD'S ONLY
9 NONCOMPLIANCE WAS THE FAILURE TO COMPLY WITH PARAGRAPH (2) OF
10 SUBSECTION (b) OF THIS SECTION AS A RESULT OF THE INADVERTENT
11 FAILURE TO PAY THE COST OF POSTAGE OR TRANSMISSION OR TO USE THE
12 PROPER ADDRESS.

13 (f) IF A SECURITY DEPOSIT AND UNEARNED RENT HELD BY A
14 LANDLORD ARE INSUFFICIENT TO SATISFY THE TENANT'S OBLIGATIONS
15 UNDER THE LEASE AND THIS ARTICLE, THE LANDLORD MAY RECOVER FROM
16 THE TENANT THE AMOUNT NECESSARY TO SATISFY THOSE OBLIGATIONS.

17 **38-12-1205. Disposition of security deposit on termination of**
18 **landlord interest in premises.** (a) WHEN A LANDLORD'S INTEREST IN THE
19 PREMISES TERMINATES, THE LANDLORD:

20 (1) IF THE LEASE CONTINUES, NOT LATER THAN THIRTY DAYS
21 AFTER THE TERMINATION OF THE LANDLORD'S INTEREST, SHALL TRANSFER
22 TO THE PERSON SUCCEEDING THE LANDLORD'S INTEREST IN THE PREMISES
23 ANY SECURITY DEPOSIT BEING HELD BY THE LANDLORD AND NOTIFY THE
24 TENANT IN A RECORD OF THE SUCCESSOR'S NAME AND ADDRESS, THE
25 AMOUNT TRANSFERRED, AND ANY CLAIM PREVIOUSLY MADE AGAINST THE
26 SECURITY DEPOSIT; OR

27 (2) IF THE LEASE TERMINATES AS A RESULT OF THE TERMINATION

1 OF THE LANDLORD'S INTEREST, SHALL COMPLY WITH SECTION 38-12-1204.

2 (b) IF A LANDLORD DIES BEFORE THE TERMINATION OF THE LEASE,
3 THE PERSONAL REPRESENTATIVE OF THE LANDLORD'S ESTATE BECOMES
4 THE LANDLORD UNTIL THE PREMISES ARE DISTRIBUTED TO THE SUCCESSOR.
5 IF THE PREMISES ARE DISTRIBUTED TO THE SUCCESSOR BEFORE THE
6 TERMINATION OF THE LEASE, THE SECURITY DEPOSIT HELD BY THE
7 REPRESENTATIVE MUST BE TRANSFERRED TO THE SUCCESSOR AND THE
8 REPRESENTATIVE SHALL NOTIFY THE TENANT IN A RECORD OF THE
9 SUCCESSOR'S NAME AND ADDRESS, THE AMOUNT TRANSFERRED TO THE
10 SUCCESSOR, AND ANY CLAIM PREVIOUSLY MADE AGAINST THE SECURITY
11 DEPOSIT. IF THE PREMISES ARE NOT DISTRIBUTED TO THE SUCCESSOR
12 BEFORE THE TERMINATION OF THE LEASE, THE REPRESENTATIVE SHALL
13 COMPLY WITH SECTION 38-12-1204.

14 (c) IF A LANDLORD OR PERSONAL REPRESENTATIVE OF THE
15 LANDLORD'S ESTATE COMPLIES WITH SUBSECTION (a) OR (b) OF THIS
16 SECTION, THE LANDLORD OR THE ESTATE HAS NO FURTHER LIABILITY WITH
17 RESPECT TO THE SECURITY DEPOSIT.

18 (d) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (e) OF THIS
19 SECTION, A SUCCESSOR TO A LANDLORD'S INTEREST IN THE PREMISES HAS
20 ALL RIGHTS AND OBLIGATIONS OF THE LANDLORD UNDER THIS ARTICLE
21 WITH RESPECT TO ANY SECURITY DEPOSIT HELD BY THE PREDECESSOR
22 LANDLORD WHICH HAS NOT BEEN RETURNED TO THE TENANT, WHETHER OR
23 NOT THE SECURITY DEPOSIT WAS TRANSFERRED OR DISTRIBUTED TO THE
24 SUCCESSOR.

25 (e) IF A LANDLORD'S INTEREST IS TERMINATED BY FORECLOSURE,
26 THE SUCCESSOR'S LIABILITY UNDER SUBSECTION (d) OF THIS SECTION IS
27 LIMITED TO THE SECURITY DEPOSIT RECEIVED BY THE SUCCESSOR.

PART 13

MISCELLANEOUS PROVISIONS

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38-12-1301. 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.

38-12-1302. Relation to "Electronic Signatures in Global and National Commerce Act". THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

38-12-1303. Application. THIS ARTICLE APPLIES ONLY TO A LEASE MADE ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AS AMENDED.

SECTION 2. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

UNEDITED
UNREVISED
DRAFT
11.25.15

DRAFT

LLS NO. 16-0133.01 Richard Sweetman x4333

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Trust Decanting Act"

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO UNIFORM TRUST DECANTING ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. “Decanting” is a term used to describe the distribution of assets from one trust into a second trust. The bill enacts the "Colorado Uniform Trust Decanting Act" (act), which allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 9 of article
3 16 of title 15 as follows:

4 **15-16-901. Short title.** THE SHORT TITLE OF THIS PART 9 IS THE
5 "COLORADO UNIFORM TRUST DECANTING ACT."

6 **15-16-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
7 CONTEXT REQUIRES OTHERWISE:

8 (1) "APPOINTIVE PROPERTY" MEANS THE PROPERTY OR PROPERTY
9 INTEREST SUBJECT TO A POWER OF APPOINTMENT.

10 (2) "ASCERTAINABLE STANDARD" MEANS A STANDARD RELATING
11 TO AN INDIVIDUAL'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE
12 WITHIN THE MEANING OF 26 U.S.C. SEC. 2041(b)(1)(A), AS AMENDED, OR
13 26 U.S.C. SEC. 2514(c)(1), AS AMENDED, AND ANY APPLICABLE
14 REGULATIONS.

15 (3) "AUTHORIZED FIDUCIARY" MEANS:

16 (a) A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A SETTLOR,
17 THAT HAS DISCRETION TO DISTRIBUTE OR DIRECT A TRUSTEE TO
18 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE FIRST TRUST TO ONE OR
19 MORE CURRENT BENEFICIARIES;

20 (b) A SPECIAL FIDUCIARY APPOINTED UNDER SECTION 9; OR

21 (c) A SPECIAL-NEEDS FIDUCIARY UNDER SECTION 13.

22 (4) "BENEFICIARY" MEANS A PERSON THAT:

23 (a) HAS A PRESENT OR FUTURE, VESTED OR CONTINGENT,
24 BENEFICIAL INTEREST IN A TRUST;

25 (b) HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY; OR

26 (c) IS AN IDENTIFIED CHARITABLE ORGANIZATION THAT WILL OR

1 MAY RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.

2 (5) "CHARITABLE INTEREST" MEANS AN INTEREST IN A TRUST
3 WHICH:

4 (a) IS HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION AND
5 MAKES THE ORGANIZATION A QUALIFIED BENEFICIARY;

6 (b) BENEFITS ONLY CHARITABLE ORGANIZATIONS AND, IF THE
7 INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION,
8 WOULD MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY; OR

9 (c) IS HELD SOLELY FOR CHARITABLE PURPOSES AND, IF THE
10 INTEREST WERE HELD BY AN IDENTIFIED CHARITABLE ORGANIZATION,
11 WOULD MAKE THE ORGANIZATION A QUALIFIED BENEFICIARY.

12 (6) "CHARITABLE ORGANIZATION" MEANS:

13 (a) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND
14 OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES; OR

15 (b) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY,
16 OR INSTRUMENTALITY, TO THE EXTENT IT HOLDS FUNDS EXCLUSIVELY FOR
17 A CHARITABLE PURPOSE.

18 (7) "CHARITABLE PURPOSE" MEANS THE RELIEF OF POVERTY, THE
19 ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH,
20 A MUNICIPAL OR OTHER GOVERNMENTAL PURPOSE, OR ANOTHER PURPOSE
21 THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

22 (8) "COURT" MEANS THE COURT IN THIS STATE HAVING
23 JURISDICTION IN MATTERS RELATING TO TRUSTS.

24 (9) "CURRENT BENEFICIARY" MEANS A BENEFICIARY THAT ON THE
25 DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED IS A DISTRIBUTE
26 OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL. THE TERM
27 INCLUDES THE HOLDER OF A PRESENTLY EXERCISABLE GENERAL POWER OF

1 APPOINTMENT BUT DOES NOT INCLUDE A PERSON THAT IS A BENEFICIARY
2 ONLY BECAUSE THE PERSON HOLDS ANY OTHER POWER OF APPOINTMENT.

3 (10) "DECANTING POWER" OR "THE DECANTING POWER" MEANS
4 THE POWER OF AN AUTHORIZED FIDUCIARY UNDER THIS PART 9 TO
5 DISTRIBUTE PROPERTY OF A FIRST TRUST TO ONE OR MORE SECOND TRUSTS
6 OR TO MODIFY THE TERMS OF THE FIRST TRUST.

7 (11) "EXPANDED DISTRIBUTIVE DISCRETION" MEANS A
8 DISCRETIONARY POWER OF DISTRIBUTION THAT IS NOT LIMITED TO AN
9 ASCERTAINABLE STANDARD OR A REASONABLY DEFINITE STANDARD.

10 (12) "FIRST TRUST" MEANS A TRUST OVER WHICH AN AUTHORIZED
11 FIDUCIARY MAY EXERCISE THE DECANTING POWER.

12 (13) "FIRST-TRUST INSTRUMENT" MEANS THE TRUST INSTRUMENT
13 FOR A FIRST TRUST.

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

18 (15) "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA,
19 INCLUDES A STATE OR COUNTRY.

20 (16) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
21 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
22 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
23 LEGAL ENTITY.

24 (17) "POWER OF APPOINTMENT" MEANS A POWER THAT ENABLES
25 A POWERHOLDER ACTING IN A NONFIDUCIARY CAPACITY TO DESIGNATE A
26 RECIPIENT OF AN OWNERSHIP INTEREST IN OR ANOTHER POWER OF
27 APPOINTMENT OVER THE APPOINTIVE PROPERTY. THE TERM DOES NOT

1 INCLUDE A POWER OF ATTORNEY.

2 (18) "POWERHOLDER" MEANS A PERSON IN WHICH A DONOR
3 CREATES A POWER OF APPOINTMENT.

4 (19) "PRESENTLY EXERCISABLE POWER OF APPOINTMENT" MEANS
5 A POWER OF APPOINTMENT EXERCISABLE BY THE POWERHOLDER AT THE
6 RELEVANT TIME. THE TERM:

7 (a) INCLUDES A POWER OF APPOINTMENT EXERCISABLE ONLY
8 AFTER THE OCCURRENCE OF A SPECIFIED EVENT, THE SATISFACTION OF AN
9 ASCERTAINABLE STANDARD, OR THE PASSAGE OF A SPECIFIED TIME ONLY
10 AFTER:

11 (I) THE OCCURRENCE OF THE SPECIFIED EVENT;

12 (II) THE SATISFACTION OF THE ASCERTAINABLE STANDARD; OR

13 (III) THE PASSAGE OF THE SPECIFIED TIME; AND

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

16 (20) "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY THAT ON
17 THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

18 (a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST
19 INCOME OR PRINCIPAL;

20 (b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
21 TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES
22 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (20) TERMINATED ON
23 THAT DATE WITHOUT CAUSING THE TRUST TO TERMINATE; OR

24 (c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
25 TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

26 (21) "REASONABLY DEFINITE STANDARD" MEANS A CLEARLY
27 MEASURABLE STANDARD UNDER WHICH A HOLDER OF A POWER OF

1 DISTRIBUTION IS LEGALLY ACCOUNTABLE WITHIN THE MEANING OF 26
2 U.S.C. SEC. 674(b)(5)(A), AS AMENDED, AND ANY APPLICABLE
3 REGULATIONS.

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

7 (23) "SECOND TRUST" MEANS:

8 (a) A FIRST TRUST AFTER MODIFICATION UNDER THIS PART 9; OR

9 (b) A TRUST TO WHICH A DISTRIBUTION OF PROPERTY FROM A FIRST
10 TRUST IS OR MAY BE MADE UNDER THIS PART 9.

11 (24) "SECOND-TRUST INSTRUMENT" MEANS THE TRUST
12 INSTRUMENT FOR A SECOND TRUST.

13 (25) "SETTLOR", EXCEPT AS OTHERWISE PROVIDED IN SECTION
14 15-16-925, MEANS A PERSON, INCLUDING A TESTATOR, THAT CREATES OR
15 CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES
16 OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF
17 THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THE PERSON'S
18 CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON HAS POWER TO
19 REVOKE OR WITHDRAW THAT PORTION.

20 (26) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
21 ADOPT A RECORD:

22 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

23 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN
24 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

25 (27) "STATE" MEANS A STATE OF THE UNITED STATES, THE
26 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
27 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE

1 JURISDICTION OF THE UNITED STATES.

2 (28) "TERMS OF THE TRUST" MEANS THE MANIFESTATION OF THE
3 SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN
4 THE TRUST INSTRUMENT, AS MAY BE ESTABLISHED BY OTHER EVIDENCE
5 THAT WOULD BE ADMISSIBLE IN A JUDICIAL PROCEEDING, OR AS MAY BE
6 ESTABLISHED BY COURT ORDER OR NONJUDICIAL SETTLEMENT
7 AGREEMENT.

8 (29) "TRUST INSTRUMENT" MEANS A RECORD EXECUTED BY THE
9 SETTLOR TO CREATE A TRUST OR BY ANY PERSON TO CREATE A SECOND
10 TRUST WHICH CONTAINS SOME OR ALL OF THE TERMS OF THE TRUST,
11 INCLUDING ANY AMENDMENTS.

12 **15-16-903. Scope.** (1) EXCEPT AS OTHERWISE PROVIDED IN
13 SUBSECTIONS (2) AND (3) OF THIS SECTION, THIS PART 9 APPLIES TO AN
14 EXPRESS TRUST THAT IS IRREVOCABLE OR REVOCABLE BY THE SETTLOR
15 ONLY WITH THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN
16 ADVERSE INTEREST.

17 (2) THIS PART 9 DOES NOT APPLY TO A TRUST HELD SOLELY FOR
18 CHARITABLE PURPOSES.

19 (3) SUBJECT TO SECTION 15-16-915, A TRUST INSTRUMENT MAY
20 RESTRICT OR PROHIBIT EXERCISE OF THE DECANTING POWER.

21 (4) THIS PART 9 DOES NOT LIMIT THE POWER OF A TRUSTEE,
22 POWERHOLDER, OR OTHER PERSON TO DISTRIBUTE OR APPOINT PROPERTY
23 IN FURTHER TRUST OR TO MODIFY A TRUST UNDER THE TRUST
24 INSTRUMENT, LAW OF THIS STATE OTHER THAN THIS PART 9, COMMON
25 LAW, A COURT ORDER, OR A NONJUDICIAL SETTLEMENT AGREEMENT.

26 (5) THIS PART 9 DOES NOT AFFECT THE ABILITY OF A SETTLOR TO
27 PROVIDE IN A TRUST INSTRUMENT FOR THE DISTRIBUTION OF THE TRUST

1 PROPERTY OR APPOINTMENT IN FURTHER TRUST OF THE TRUST PROPERTY
2 OR FOR MODIFICATION OF THE TRUST INSTRUMENT.

3 **15-16-904. Fiduciary duty.** (1) IN EXERCISING THE DECANTING
4 POWER, AN AUTHORIZED FIDUCIARY SHALL ACT IN ACCORDANCE WITH ITS
5 FIDUCIARY DUTIES, INCLUDING THE DUTY TO ACT IN ACCORDANCE WITH
6 THE PURPOSES OF THE FIRST TRUST.

7 (2) THIS PART 9 DOES NOT CREATE OR IMPLY A DUTY TO EXERCISE
8 THE DECANTING POWER OR TO INFORM BENEFICIARIES ABOUT THE
9 APPLICABILITY OF THIS PART 9.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN A FIRST-TRUST
11 INSTRUMENT, FOR PURPOSES OF THIS PART 9 [AND SECTIONS 801 AND
12 802(a) OF THE UNIFORM TRUST CODE], <{*check for matching cites in*
13 *Colorado Trust Code.*}> THE TERMS OF THE FIRST TRUST ARE DEEMED TO
14 INCLUDE THE DECANTING POWER.

15 **15-16-905. Application - governing law.** (1) THIS PART 9 APPLIES
16 TO A TRUST CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS
17 ACT WHICH:

18 (a) HAS ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE,
19 INCLUDING A TRUST WHOSE PRINCIPAL PLACE OF ADMINISTRATION HAS
20 BEEN CHANGED TO THIS STATE; OR

21 (b) PROVIDES BY ITS TRUST INSTRUMENT THAT IT IS GOVERNED BY
22 THE LAW OF THIS STATE OR IS GOVERNED BY THE LAW OF THIS STATE FOR
23 THE PURPOSE OF:

24 (I) ADMINISTRATION, INCLUDING ADMINISTRATION OF A TRUST
25 WHOSE GOVERNING LAW FOR PURPOSES OF ADMINISTRATION HAS BEEN
26 CHANGED TO THE LAW OF THIS STATE;

27 (II) CONSTRUCTION OF TERMS OF THE TRUST; OR

1 (III) DETERMINING THE MEANING OR EFFECT OF TERMS OF THE
2 TRUST.

3 **15-16-906. Reasonable reliance.** A TRUSTEE OR OTHER PERSON
4 THAT REASONABLY RELIES ON THE VALIDITY OF A DISTRIBUTION OF PART
5 OR ALL OF THE PROPERTY OF A TRUST TO ANOTHER TRUST, OR A
6 MODIFICATION OF A TRUST, UNDER THIS PART 9, LAW OF THIS STATE OTHER
7 THAN THIS PART 9, OR THE LAW OF ANOTHER JURISDICTION IS NOT LIABLE
8 TO ANY PERSON FOR ANY ACTION OR FAILURE TO ACT AS A RESULT OF THE
9 RELIANCE.

10 **15-16-907. Notice - exercise of decanting power.** (1) IN THIS
11 SECTION, A NOTICE PERIOD BEGINS ON THE DAY NOTICE IS GIVEN UNDER
12 SUBSECTION (3) OF THIS SECTION AND ENDS **63 DAYS** AFTER THE DAY
13 NOTICE IS GIVEN.

14 *<{Note: The Uniform Act actually indicates "59 days" above,*
15 *but it brackets this number in apparent recognition that different state*
16 *courts use different calendars. In Colorado, we have recently passed*
17 *several bills to amend our statutory language relating to court dates to*
18 *uniformly reflect a seven-day week (i.e., we use multiples of 7 for court*
19 *dates and schedules). So, would you like this to read "56 days" or "63*
20 *days"?">*

21 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 9, AN
22 AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER WITHOUT
23 THE CONSENT OF ANY PERSON AND WITHOUT COURT APPROVAL.

24 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS
25 SECTION, AN AUTHORIZED FIDUCIARY SHALL GIVE NOTICE IN A RECORD OF
26 THE INTENDED EXERCISE OF THE DECANTING POWER NOT LATER THAN **[60]**
27 **<{63?}>** DAYS BEFORE THE EXERCISE TO:

- 1 (a) EACH SETTLOR OF THE FIRST TRUST, IF LIVING OR THEN IN
2 EXISTENCE;
- 3 (b) EACH QUALIFIED BENEFICIARY OF THE FIRST TRUST;
- 4 (c) EACH HOLDER OF A PRESENTLY EXERCISABLE POWER OF
5 APPOINTMENT OVER ANY PART OR ALL OF THE FIRST TRUST;
- 6 (d) EACH PERSON THAT CURRENTLY HAS THE RIGHT TO REMOVE OR
7 REPLACE THE AUTHORIZED FIDUCIARY;
- 8 (e) EACH OTHER FIDUCIARY OF THE FIRST TRUST;
- 9 (f) EACH FIDUCIARY OF THE SECOND TRUST; AND
- 10 (g) [THE ATTORNEY GENERAL], IF SUBSECTION (2) OF SECTION
11 15-16-914 APPLIES.
- 12 (4) [AN AUTHORIZED FIDUCIARY IS NOT REQUIRED TO GIVE NOTICE
13 UNDER SUBSECTION (3) OF THIS SECTION TO A QUALIFIED BENEFICIARY
14 WHO IS A MINOR AND HAS NO REPRESENTATIVE OR] [AN AUTHORIZED
15 FIDUCIARY IS NOT REQUIRED TO GIVE NOTICE UNDER SUBSECTION (3) OF
16 THIS SECTION] TO A PERSON THAT IS NOT KNOWN TO THE FIDUCIARY OR IS
17 KNOWN TO THE FIDUCIARY BUT CANNOT BE LOCATED BY THE FIDUCIARY
18 AFTER REASONABLE DILIGENCE.
- 19 (5) A NOTICE UNDER SUBSECTION (3) OF THIS SECTION MUST:
- 20 (a) SPECIFY THE MANNER IN WHICH THE AUTHORIZED FIDUCIARY
21 INTENDS TO EXERCISE THE DECANTING POWER;
- 22 (b) SPECIFY THE PROPOSED EFFECTIVE DATE FOR EXERCISE OF THE
23 POWER;
- 24 (c) INCLUDE A COPY OF THE FIRST-TRUST INSTRUMENT; AND
- 25 (d) INCLUDE A COPY OF ALL SECOND-TRUST INSTRUMENTS.
- 26 (6) THE DECANTING POWER MAY BE EXERCISED BEFORE
27 EXPIRATION OF THE NOTICE PERIOD UNDER SUBSECTION (1) OF THIS

1 SECTION IF ALL PERSONS ENTITLED TO RECEIVE NOTICE WAIVE THE PERIOD
2 IN A SIGNED RECORD.

3 (7) THE RECEIPT OF NOTICE, WAIVER OF THE NOTICE PERIOD, OR
4 EXPIRATION OF THE NOTICE PERIOD DOES NOT AFFECT THE RIGHT OF A
5 PERSON TO FILE AN APPLICATION UNDER SECTION 15-16-909 ASSERTING
6 THAT:

7 (a) AN ATTEMPTED EXERCISE OF THE DECANTING POWER IS
8 INEFFECTIVE BECAUSE IT DID NOT COMPLY WITH THIS PART 9 OR WAS AN
9 ABUSE OF DISCRETION OR BREACH OF FIDUCIARY DUTY; OR

10 (b) SECTION 15-16-922 APPLIES TO THE EXERCISE OF THE
11 DECANTING POWER.

12 (8) AN EXERCISE OF THE DECANTING POWER IS NOT INEFFECTIVE
13 BECAUSE OF THE FAILURE TO GIVE NOTICE TO ONE OR MORE PERSONS
14 UNDER SUBSECTION (3) OF THIS SECTION IF THE AUTHORIZED FIDUCIARY
15 ACTED WITH REASONABLE CARE TO COMPLY WITH SUBSECTION (3) OF THIS
16 SECTION.

17 **15-16-908. Representation.** (1) NOTICE TO A PERSON WITH
18 AUTHORITY TO REPRESENT AND BIND ANOTHER PERSON UNDER A
19 FIRST-TRUST INSTRUMENT OR [THIS STATE'S TRUST CODE] HAS THE SAME
20 EFFECT AS NOTICE GIVEN DIRECTLY TO THE PERSON REPRESENTED.

21 (2) CONSENT OF OR WAIVER BY A PERSON WITH AUTHORITY TO
22 REPRESENT AND BIND ANOTHER PERSON UNDER A FIRST-TRUST
23 INSTRUMENT OR [THIS STATE'S TRUST CODE] IS BINDING ON THE PERSON
24 REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE
25 REPRESENTATION BEFORE THE CONSENT OR WAIVER OTHERWISE WOULD
26 BECOME EFFECTIVE.

1 (3) A PERSON WITH AUTHORITY TO REPRESENT AND BIND ANOTHER
2 PERSON UNDER A FIRST-TRUST INSTRUMENT OR [THIS STATE'S TRUST CODE]
3 MAY FILE AN APPLICATION UNDER SECTION 15-16-909 ON BEHALF OF THE
4 PERSON REPRESENTED.

5 (4) A SETTLOR MAY NOT REPRESENT OR BIND A BENEFICIARY
6 UNDER THIS PART 9.

7 **15-16-909. Court involvement.** (1) ON APPLICATION OF AN
8 AUTHORIZED FIDUCIARY, A PERSON ENTITLED TO NOTICE UNDER
9 SUBSECTION (3) OF SECTION 15-16-907, A BENEFICIARY, OR WITH RESPECT
10 TO A CHARITABLE INTEREST THE [ATTORNEY GENERAL] OR OTHER PERSON
11 THAT HAS STANDING TO ENFORCE THE CHARITABLE INTEREST, THE COURT
12 MAY:

13 (a) PROVIDE INSTRUCTIONS TO THE AUTHORIZED FIDUCIARY
14 REGARDING WHETHER A PROPOSED EXERCISE OF THE DECANTING POWER
15 IS PERMITTED UNDER THIS PART 9 AND CONSISTENT WITH THE FIDUCIARY
16 DUTIES OF THE AUTHORIZED FIDUCIARY;

17 (b) APPOINT A SPECIAL FIDUCIARY AND AUTHORIZE THE SPECIAL
18 FIDUCIARY TO DETERMINE WHETHER THE DECANTING POWER SHOULD BE
19 EXERCISED UNDER THIS PART 9 AND TO EXERCISE THE DECANTING POWER;

20 (c) APPROVE AN EXERCISE OF THE DECANTING POWER;

21 (d) DETERMINE THAT A PROPOSED OR ATTEMPTED EXERCISE OF
22 THE DECANTING POWER IS INEFFECTIVE BECAUSE:

23 (e) AFTER APPLYING SECTION 15-16-922, THE PROPOSED OR
24 ATTEMPTED EXERCISE DOES NOT OR DID NOT COMPLY WITH THIS PART 9;

25 OR

26 (f) THE PROPOSED OR ATTEMPTED EXERCISE WOULD BE OR WAS AN
27 ABUSE OF THE FIDUCIARY'S DISCRETION OR A BREACH OF FIDUCIARY DUTY;

1 (g) DETERMINE THE EXTENT TO WHICH SECTION 15-16-922 APPLIES
2 TO A PRIOR EXERCISE OF THE DECANTING POWER;

3 (h) PROVIDE INSTRUCTIONS TO THE TRUSTEE REGARDING THE
4 APPLICATION OF SECTION 15-16-922 TO A PRIOR EXERCISE OF THE
5 DECANTING POWER; OR

6 (i) ORDER OTHER RELIEF TO CARRY OUT THE PURPOSES OF THIS
7 PART 9.

8 (2) ON APPLICATION OF AN AUTHORIZED FIDUCIARY, THE COURT
9 MAY APPROVE:

10 (a) AN INCREASE IN THE FIDUCIARY'S COMPENSATION UNDER
11 SECTION 15-16-916; OR

12 (b) A MODIFICATION UNDER SECTION 15-16-918 OF A PROVISION
13 GRANTING A PERSON THE RIGHT TO REMOVE OR REPLACE THE FIDUCIARY.

14 **15-16-910. Formalities.** AN EXERCISE OF THE DECANTING POWER
15 MUST BE MADE IN A RECORD SIGNED BY AN AUTHORIZED FIDUCIARY. THE
16 SIGNED RECORD MUST, DIRECTLY OR BY REFERENCE TO THE NOTICE
17 REQUIRED BY SECTION 15-16-907, IDENTIFY THE FIRST TRUST AND THE
18 SECOND TRUST OR TRUSTS AND STATE THE PROPERTY OF THE FIRST TRUST
19 BEING DISTRIBUTED TO EACH SECOND TRUST AND THE PROPERTY, IF ANY,
20 THAT REMAINS IN THE FIRST TRUST.

21 **15-16-911. Decanting power under expanded distributive**
22 **discretion.** (1) IN THIS SECTION: *<{As none of the following four defined*
23 *terms are defined any differently in the Definitions section proper (i.e.,*
24 *section 15-16-902, above), I propose that we move them there.}>*

25 (a) "NONCONTINGENT RIGHT" MEANS A RIGHT THAT IS NOT
26 SUBJECT TO THE EXERCISE OF DISCRETION OR THE OCCURRENCE OF A
27 SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR. THE TERM DOES NOT

1 INCLUDE A RIGHT HELD BY A BENEFICIARY IF ANY PERSON HAS DISCRETION
2 TO DISTRIBUTE PROPERTY SUBJECT TO THE RIGHT TO ANY PERSON OTHER
3 THAN THE BENEFICIARY OR THE BENEFICIARY'S ESTATE.

4 (b) "PRESUMPTIVE REMAINDER BENEFICIARY" MEANS A QUALIFIED
5 BENEFICIARY OTHER THAN A CURRENT BENEFICIARY.

6 (c) "SUCCESSOR BENEFICIARY" MEANS A BENEFICIARY THAT IS NOT
7 A QUALIFIED BENEFICIARY ON THE DATE THE BENEFICIARY'S
8 QUALIFICATION IS DETERMINED. THE TERM DOES NOT INCLUDE A PERSON
9 THAT IS A BENEFICIARY ONLY BECAUSE THE PERSON HOLDS A
10 NONGENERAL POWER OF APPOINTMENT.

11 (d) "VESTED INTEREST" MEANS:

12 (I) A RIGHT TO A MANDATORY DISTRIBUTION THAT IS A
13 NONCONTINGENT RIGHT AS OF THE DATE OF THE EXERCISE OF THE
14 DECANTING POWER;

15 (II) A CURRENT AND NONCONTINGENT RIGHT, ANNUALLY OR MORE
16 FREQUENTLY, TO A MANDATORY DISTRIBUTION OF INCOME, A SPECIFIED
17 DOLLAR AMOUNT, OR A PERCENTAGE OF VALUE OF SOME OR ALL OF THE
18 TRUST PROPERTY;

19 (III) A CURRENT AND NONCONTINGENT RIGHT, ANNUALLY OR
20 MORE FREQUENTLY, TO WITHDRAW INCOME, A SPECIFIED DOLLAR
21 AMOUNT, OR A PERCENTAGE OF VALUE OF SOME OR ALL OF THE TRUST
22 PROPERTY;

23 (IV) A PRESENTLY EXERCISABLE GENERAL POWER OF
24 APPOINTMENT; OR

25 (V) A RIGHT TO RECEIVE AN ASCERTAINABLE PART OF THE TRUST
26 PROPERTY ON THE TRUST'S TERMINATION WHICH IS NOT SUBJECT TO THE

1 EXERCISE OF DISCRETION OR TO THE OCCURRENCE OF A SPECIFIED EVENT
2 THAT IS NOT CERTAIN TO OCCUR.

3 (2) SUBJECT TO SUBSECTION (3) OF THIS SECTION AND SECTION
4 15-16-914, AN AUTHORIZED FIDUCIARY THAT HAS EXPANDED
5 DISTRIBUTIVE DISCRETION OVER THE PRINCIPAL OF A FIRST TRUST FOR THE
6 BENEFIT OF ONE OR MORE CURRENT BENEFICIARIES MAY EXERCISE THE
7 DECANTING POWER OVER THE PRINCIPAL OF THE FIRST TRUST.

8 (3) SUBJECT TO SECTION 15-16-913, IN AN EXERCISE OF THE
9 DECANTING POWER UNDER THIS SECTION, A SECOND TRUST MAY NOT:

10 (a) INCLUDE AS A CURRENT BENEFICIARY A PERSON THAT IS NOT A
11 CURRENT BENEFICIARY OF THE FIRST TRUST, EXCEPT AS OTHERWISE
12 PROVIDED IN SUBSECTION (4) OF THIS SECTION;

13 (b) INCLUDE AS A PRESUMPTIVE REMAINDER BENEFICIARY OR
14 SUCCESSOR BENEFICIARY A PERSON THAT IS NOT A CURRENT BENEFICIARY,
15 PRESUMPTIVE REMAINDER BENEFICIARY, OR SUCCESSOR BENEFICIARY OF
16 THE FIRST TRUST, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF
17 THIS SECTION; OR

18 (c) REDUCE OR ELIMINATE A VESTED INTEREST.

19 (4) SUBJECT TO SECTION 15-16-914 AND PARAGRAPH (c) OF
20 SUBSECTION (3) OF THIS SECTION, IN AN EXERCISE OF THE DECANTING
21 POWER UNDER THIS SECTION, A SECOND TRUST MAY BE A TRUST CREATED
22 OR ADMINISTERED UNDER THE LAW OF ANY JURISDICTION AND MAY:

23 (a) RETAIN A POWER OF APPOINTMENT GRANTED IN THE FIRST
24 TRUST;

25 (b) OMIT A POWER OF APPOINTMENT GRANTED IN THE FIRST TRUST,
26 OTHER THAN A PRESENTLY EXERCISABLE GENERAL POWER OF
27 APPOINTMENT;

1 (c) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
2 POWERHOLDER IS A CURRENT BENEFICIARY OF THE FIRST TRUST AND THE
3 AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION TO
4 DISTRIBUTE PRINCIPAL TO THE BENEFICIARY; AND

5 (d) CREATE OR MODIFY A POWER OF APPOINTMENT IF THE
6 POWERHOLDER IS A PRESUMPTIVE REMAINDER BENEFICIARY OR
7 SUCCESSOR BENEFICIARY OF THE FIRST TRUST, BUT THE EXERCISE OF THE
8 POWER MAY TAKE EFFECT ONLY AFTER THE POWERHOLDER BECOMES, OR
9 WOULD HAVE BECOME IF THEN LIVING, A CURRENT BENEFICIARY.

10 (5) A POWER OF APPOINTMENT DESCRIBED IN PARAGRAPH (a), (b),
11 (c), OR (d) OF SUBSECTION (4) OF THIS SECTION MAY BE GENERAL OR
12 NONGENERAL. THE CLASS OF PERMISSIBLE APPOINTEES IN FAVOR OF WHICH
13 THE POWER MAY BE EXERCISED MAY BE BROADER THAN OR DIFFERENT
14 FROM THE BENEFICIARIES OF THE FIRST TRUST.

15 (6) IF AN AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE
16 DISCRETION OVER PART BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST,
17 THE FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS
18 SECTION OVER THAT PART OF THE PRINCIPAL OVER WHICH THE
19 AUTHORIZED FIDUCIARY HAS EXPANDED DISTRIBUTIVE DISCRETION.

20 **15-16-912. Decanting power under limited distributive**
21 **discretion.** (1) IN THIS SECTION, "LIMITED DISTRIBUTIVE DISCRETION"
22 MEANS A DISCRETIONARY POWER OF DISTRIBUTION THAT IS LIMITED TO AN
23 ASCERTAINABLE STANDARD OR A REASONABLY DEFINITE STANDARD.
24 *<{Again, as this term is not defined any differently in the Definitions*
25 *section proper (i.e., section 15-16-902, above), I propose that we move*
26 *it there.}>*

1 (2) AN AUTHORIZED FIDUCIARY THAT HAS LIMITED DISTRIBUTIVE
2 DISCRETION OVER THE PRINCIPAL OF THE FIRST TRUST FOR BENEFIT OF ONE
3 OR MORE CURRENT BENEFICIARIES MAY EXERCISE THE DECANTING POWER
4 OVER THE PRINCIPAL OF THE FIRST TRUST.

5 (3) UNDER THIS SECTION AND SUBJECT TO SECTION 15-16-914, A
6 SECOND TRUST MAY BE CREATED OR ADMINISTERED UNDER THE LAW OF
7 ANY JURISDICTION. UNDER THIS SECTION, THE SECOND TRUSTS, IN THE
8 AGGREGATE, MUST GRANT EACH BENEFICIARY OF THE FIRST TRUST
9 BENEFICIAL INTERESTS WHICH ARE SUBSTANTIALLY SIMILAR TO THE
10 BENEFICIAL INTERESTS OF THE BENEFICIARY IN THE FIRST TRUST.

11 (4) A POWER TO MAKE A DISTRIBUTION UNDER A SECOND TRUST
12 FOR THE BENEFIT OF A BENEFICIARY WHO IS AN INDIVIDUAL IS
13 SUBSTANTIALLY SIMILAR TO A POWER UNDER THE FIRST TRUST TO MAKE
14 A DISTRIBUTION DIRECTLY TO THE BENEFICIARY. A DISTRIBUTION IS FOR
15 THE BENEFIT OF A BENEFICIARY IF:

16 (a) THE DISTRIBUTION IS APPLIED FOR THE BENEFIT OF THE
17 BENEFICIARY;

18 (b) THE BENEFICIARY IS UNDER A LEGAL DISABILITY OR THE
19 TRUSTEE REASONABLY BELIEVES THE BENEFICIARY IS INCAPACITATED,
20 AND THE DISTRIBUTION IS MADE AS PERMITTED UNDER [THIS STATE'S
21 TRUST CODE]; OR

22 (c) THE DISTRIBUTION IS MADE AS PERMITTED UNDER THE TERMS
23 OF THE FIRST-TRUST INSTRUMENT AND THE SECOND-TRUST INSTRUMENT
24 FOR THE BENEFIT OF THE BENEFICIARY.

25 (5) IF AN AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE
26 DISCRETION OVER PART BUT NOT ALL OF THE PRINCIPAL OF A FIRST TRUST,
27 THE FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER THIS

1 SECTION OVER THAT PART OF THE PRINCIPAL OVER WHICH THE
2 AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE DISCRETION.

3 **15-16-913. Trust for beneficiary with disability.** (1) IN THIS
4 SECTION:

5 (a) "BENEFICIARY WITH A DISABILITY" MEANS A BENEFICIARY OF
6 A FIRST TRUST WHO THE SPECIAL-NEEDS FIDUCIARY BELIEVES MAY
7 QUALIFY FOR GOVERNMENTAL BENEFITS BASED ON DISABILITY, WHETHER
8 OR NOT THE BENEFICIARY CURRENTLY RECEIVES THOSE BENEFITS OR IS AN
9 INDIVIDUAL WHO HAS BEEN ADJUDICATED [INCOMPETENT].

10 (b) "GOVERNMENTAL BENEFITS" MEANS FINANCIAL AID OR
11 SERVICES FROM A STATE, FEDERAL, OR OTHER PUBLIC AGENCY.

12 (c) "SPECIAL-NEEDS FIDUCIARY" MEANS, WITH RESPECT TO A
13 TRUST THAT HAS A BENEFICIARY WITH A DISABILITY:

14 (I) A TRUSTEE OR OTHER FIDUCIARY, OTHER THAN A SETTLOR,
15 THAT HAS DISCRETION TO DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF
16 A FIRST TRUST TO ONE OR MORE CURRENT BENEFICIARIES;

17 (II) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER
18 PARAGRAPH (A) OF THIS SUBSECTION (3), A TRUSTEE OR OTHER FIDUCIARY,
19 OTHER THAN A SETTLOR, THAT HAS DISCRETION TO DISTRIBUTE PART OR
20 ALL OF THE INCOME OF THE FIRST TRUST TO ONE OR MORE CURRENT
21 BENEFICIARIES; OR

22 (III) IF NO TRUSTEE OR FIDUCIARY HAS DISCRETION UNDER
23 PARAGRAPH (a) OR (b) OF THIS SUBSECTION (3), A TRUSTEE OR OTHER
24 FIDUCIARY, OTHER THAN A SETTLOR, THAT IS REQUIRED TO DISTRIBUTE
25 PART OR ALL OF THE INCOME OR PRINCIPAL OF THE FIRST TRUST TO ONE OR
26 MORE CURRENT BENEFICIARIES.

1 (IV) "SPECIAL-NEEDS TRUST" MEANS A TRUST THE TRUSTEE
2 BELIEVES WOULD NOT BE CONSIDERED A RESOURCE FOR PURPOSES OF
3 DETERMINING WHETHER A BENEFICIARY WITH A DISABILITY IS ELIGIBLE
4 FOR GOVERNMENTAL BENEFITS.

5 <{*Again, because none of these terms are defined any*
6 *differently in the Definitions section proper (i.e., section 15-16-902,*
7 *above), I propose that we move them there.*>

8 (2) A SPECIAL-NEEDS FIDUCIARY MAY EXERCISE THE DECANTING
9 POWER DESCRIBED IN SECTION 15-16-911 OVER THE PRINCIPAL OF A FIRST
10 TRUST AS IF THE FIDUCIARY HAD AUTHORITY TO DISTRIBUTE PRINCIPAL TO
11 A BENEFICIARY WITH A DISABILITY SUBJECT TO EXPANDED DISTRIBUTIVE
12 DISCRETION IF:

13 (a) A SECOND TRUST IS A SPECIAL-NEEDS TRUST THAT BENEFITS
14 THE BENEFICIARY WITH A DISABILITY; AND

15 (b) THE SPECIAL-NEEDS FIDUCIARY DETERMINES THAT EXERCISE
16 OF THE DECANTING POWER WILL FURTHER THE PURPOSES OF THE FIRST
17 TRUST.

18 (3) IN AN EXERCISE OF THE DECANTING POWER UNDER THIS
19 SECTION, THE FOLLOWING RULES APPLY:

20 (a) NOTWITHSTANDING SECTION 15-15-911 (3) (b), THE INTEREST
21 IN THE SECOND TRUST OF A BENEFICIARY WITH A DISABILITY MAY:

22 (I) BE A POOLED TRUST AS DEFINED BY MEDICAID LAW FOR THE
23 BENEFIT OF THE BENEFICIARY WITH A DISABILITY UNDER 42 U.S.C. SEC.
24 1396P (d)(4)(C), AS AMENDED; OR

25 (II) CONTAIN PAYBACK PROVISIONS COMPLYING WITH
26 REIMBURSEMENT REQUIREMENTS OF MEDICAID LAW UNDER 42 U.S.C. SEC.
27 1396P (d)(4)(A), AS AMENDED.

1 (b) SECTION 15-16-911 (3) (c) DOES NOT APPLY TO THE INTERESTS
2 OF THE BENEFICIARY WITH A DISABILITY.

3 (c) EXCEPT AS AFFECTED BY ANY CHANGE TO THE INTERESTS OF
4 THE BENEFICIARY WITH A DISABILITY, THE SECOND TRUST, OR IF THERE
5 ARE TWO OR MORE SECOND TRUSTS, THE SECOND TRUSTS IN THE
6 AGGREGATE, MUST GRANT EACH OTHER BENEFICIARY OF THE FIRST TRUST
7 BENEFICIAL INTERESTS IN THE SECOND TRUSTS WHICH ARE
8 SUBSTANTIALLY SIMILAR TO THE BENEFICIARY'S BENEFICIAL INTERESTS IN
9 THE FIRST TRUST.

10 **15-16-914. Protection of charitable interest.** (1) IN THIS
11 SECTION:

12 (a) "DETERMINABLE CHARITABLE INTEREST" MEANS A CHARITABLE
13 INTEREST THAT IS A RIGHT TO A MANDATORY DISTRIBUTION CURRENTLY,
14 PERIODICALLY, ON THE OCCURRENCE OF A SPECIFIED EVENT, OR AFTER THE
15 PASSAGE OF A SPECIFIED TIME AND WHICH IS UNCONDITIONAL OR WILL BE
16 HELD SOLELY FOR CHARITABLE PURPOSES.

17 (b) "UNCONDITIONAL" MEANS NOT SUBJECT TO THE OCCURRENCE
18 OF A SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR, OTHER THAN A
19 REQUIREMENT IN A TRUST INSTRUMENT THAT A CHARITABLE
20 ORGANIZATION BE IN EXISTENCE OR QUALIFY UNDER A PARTICULAR
21 PROVISION OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS
22 AMENDED, ON THE DATE OF THE DISTRIBUTION, IF THE CHARITABLE
23 ORGANIZATION MEETS THE REQUIREMENT ON THE DATE OF
24 DETERMINATION.

25 *<{Again, because neither of these terms are defined any*
26 *differently in the Definitions section proper (i.e., section 15-16-902,*
27 *above), I propose that we move them there.}>*

1 (2) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE
2 INTEREST, [THE ATTORNEY GENERAL] HAS THE RIGHTS OF A QUALIFIED
3 BENEFICIARY AND MAY REPRESENT AND BIND THE CHARITABLE INTEREST.

4 (3) IF A FIRST TRUST CONTAINS A CHARITABLE INTEREST, THE
5 SECOND TRUST OR TRUSTS MAY NOT:

6 (a) DIMINISH THE CHARITABLE INTEREST;

7 (b) DIMINISH THE INTEREST OF AN IDENTIFIED CHARITABLE
8 ORGANIZATION THAT HOLDS THE CHARITABLE INTEREST;

9 (c) ALTER ANY CHARITABLE PURPOSE STATED IN THE FIRST-TRUST
10 INSTRUMENT; OR

11 (d) ALTER ANY CONDITION OR RESTRICTION RELATED TO THE
12 CHARITABLE INTEREST.

13 (4) IF THERE ARE TWO OR MORE SECOND TRUSTS, THE SECOND
14 TRUSTS SHALL BE TREATED AS ONE TRUST FOR PURPOSES OF DETERMINING
15 WHETHER THE EXERCISE OF THE DECANTING POWER DIMINISHES THE
16 CHARITABLE INTEREST OR DIMINISHES THE INTEREST OF AN IDENTIFIED
17 CHARITABLE ORGANIZATION FOR PURPOSES OF SUBSECTION (3) OF THIS
18 SECTION.

19 (5) IF A FIRST TRUST CONTAINS A DETERMINABLE CHARITABLE
20 INTEREST, THE SECOND TRUST OR TRUSTS THAT INCLUDE A CHARITABLE
21 INTEREST PURSUANT TO SUBSECTION (3) OF THIS SECTION MUST BE
22 ADMINISTERED UNDER THE LAW OF THIS STATE UNLESS:

23 (a) [THE ATTORNEY GENERAL], AFTER RECEIVING NOTICE UNDER
24 SECTION 7, FAILS TO OBJECT IN A SIGNED RECORD DELIVERED TO THE
25 AUTHORIZED FIDUCIARY WITHIN THE NOTICE PERIOD;

1 (b) [THE ATTORNEY GENERAL] CONSENTS IN A SIGNED RECORD TO
2 THE SECOND TRUST OR TRUSTS BEING ADMINISTERED UNDER THE LAW OF
3 ANOTHER JURISDICTION; OR

4 (c) THE COURT APPROVES THE EXERCISE OF THE DECANTING
5 POWER.

6 (6) THIS PART 9 DOES NOT LIMIT THE POWERS AND DUTIES OF THE
7 [ATTORNEY GENERAL] UNDER LAW OF THIS STATE OTHER THAN THIS PART
8 9.

9 **15-16-915. Trust limitation on decanting.** (1) AN AUTHORIZED
10 FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO THE EXTENT
11 THE FIRST-TRUST INSTRUMENT EXPRESSLY PROHIBITS EXERCISE OF:

12 (a) THE DECANTING POWER; OR

13 (b) A POWER GRANTED BY STATE LAW TO THE FIDUCIARY TO
14 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE TRUST TO ANOTHER
15 TRUST OR TO MODIFY THE TRUST.

16 (2) EXERCISE OF THE DECANTING POWER IS SUBJECT TO ANY
17 RESTRICTION IN THE FIRST-TRUST INSTRUMENT THAT EXPRESSLY APPLIES
18 TO EXERCISE OF:

19 (a) THE DECANTING POWER; OR

20 (b) A POWER GRANTED BY STATE LAW TO A FIDUCIARY TO
21 DISTRIBUTE PART OR ALL OF THE PRINCIPAL OF THE TRUST TO ANOTHER
22 TRUST OR TO MODIFY THE TRUST.

23 (3) A GENERAL PROHIBITION OF THE AMENDMENT OR REVOCATION
24 OF A FIRST TRUST, A SPENDTHRIFT CLAUSE, OR A CLAUSE RESTRAINING THE
25 VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST
26 DOES NOT PRECLUDE EXERCISE OF THE DECANTING POWER.

1 (4) SUBJECT TO SUBSECTIONS (1) AND (2) OF THIS SECTION, AN
2 AUTHORIZED FIDUCIARY MAY EXERCISE THE DECANTING POWER UNDER
3 THIS PART 9 EVEN IF THE FIRST-TRUST INSTRUMENT PERMITS THE
4 AUTHORIZED FIDUCIARY OR ANOTHER PERSON TO MODIFY THE
5 FIRST-TRUST INSTRUMENT OR TO DISTRIBUTE PART OR ALL OF THE
6 PRINCIPAL OF THE FIRST TRUST TO ANOTHER TRUST.

7 (5) IF A FIRST-TRUST INSTRUMENT CONTAINS AN EXPRESS
8 PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR AN
9 EXPRESS RESTRICTION DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE
10 PROVISION MUST BE INCLUDED IN THE SECOND-TRUST INSTRUMENT.

11 **15-16-916. Change in compensation.** (1) IF A FIRST-TRUST
12 INSTRUMENT SPECIFIES AN AUTHORIZED FIDUCIARY'S COMPENSATION, THE
13 FIDUCIARY MAY NOT EXERCISE THE DECANTING POWER TO INCREASE THE
14 FIDUCIARY'S COMPENSATION ABOVE THE SPECIFIED COMPENSATION
15 UNLESS:

16 (a) ALL QUALIFIED BENEFICIARIES OF THE SECOND TRUST CONSENT
17 TO THE INCREASE IN A SIGNED RECORD; OR

18 (b) THE INCREASE IS APPROVED BY THE COURT.

19 (2) IF A FIRST-TRUST INSTRUMENT DOES NOT SPECIFY AN
20 AUTHORIZED FIDUCIARY'S COMPENSATION, THE FIDUCIARY MAY NOT
21 EXERCISE THE DECANTING POWER TO INCREASE THE FIDUCIARY'S
22 COMPENSATION ABOVE THE COMPENSATION PERMITTED BY [THIS STATE'S
23 TRUST CODE] UNLESS:

24 (a) ALL QUALIFIED BENEFICIARIES OF THE SECOND TRUST CONSENT
25 TO THE INCREASE IN A SIGNED RECORD; OR

26 (b) THE INCREASE IS APPROVED BY THE COURT.

1 (3) A CHANGE IN AN AUTHORIZED FIDUCIARY'S COMPENSATION
2 WHICH IS INCIDENTAL TO OTHER CHANGES MADE BY THE EXERCISE OF THE
3 DECANTING POWER IS NOT AN INCREASE IN THE FIDUCIARY'S
4 COMPENSATION FOR PURPOSES OF SUBSECTIONS (1) AND (2) OF THIS
5 SECTION.

6 **15-17-917. Relief from liability and indemnification.**

7 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SECOND-TRUST
8 INSTRUMENT MAY NOT RELIEVE AN AUTHORIZED FIDUCIARY FROM
9 LIABILITY FOR BREACH OF TRUST TO A GREATER EXTENT THAN THE
10 FIRST-TRUST INSTRUMENT.

11 (2) A SECOND-TRUST INSTRUMENT MAY PROVIDE FOR
12 INDEMNIFICATION OF AN AUTHORIZED FIDUCIARY OF THE FIRST TRUST OR
13 ANOTHER PERSON ACTING IN A FIDUCIARY CAPACITY UNDER THE FIRST
14 TRUST FOR ANY LIABILITY OR CLAIM THAT WOULD HAVE BEEN PAYABLE
15 FROM THE FIRST TRUST IF THE DECANTING POWER HAD NOT BEEN
16 EXERCISED.

17 (3) A SECOND-TRUST INSTRUMENT MAY NOT REDUCE FIDUCIARY
18 LIABILITY IN THE AGGREGATE.

19 (4) SUBJECT TO SUBSECTION (3) OF THIS SECTION, A SECOND-TRUST
20 INSTRUMENT MAY DIVIDE AND REALLOCATE FIDUCIARY POWERS AMONG
21 FIDUCIARIES, INCLUDING ONE OR MORE TRUSTEES, DISTRIBUTION
22 ADVISORS, INVESTMENT ADVISORS, TRUST PROTECTORS, OR OTHER
23 PERSONS, AND RELIEVE A FIDUCIARY FROM LIABILITY FOR AN ACT OR
24 FAILURE TO ACT OF ANOTHER FIDUCIARY AS PERMITTED BY LAW OF THIS
25 STATE OTHER THAN THIS PART 9.

26 **15-16-918. Removal or replacement of authorized fiduciary.**

27 (1) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE DECANTING

1 POWER TO MODIFY A PROVISION IN A FIRST-TRUST INSTRUMENT GRANTING
2 ANOTHER PERSON POWER TO REMOVE OR REPLACE THE FIDUCIARY UNLESS:

3 (a) THE PERSON HOLDING THE POWER CONSENTS TO THE
4 MODIFICATION IN A SIGNED RECORD AND THE MODIFICATION APPLIES ONLY
5 TO THE PERSON;

6 (b) THE PERSON HOLDING THE POWER AND THE QUALIFIED
7 BENEFICIARIES OF THE SECOND TRUST CONSENT TO THE MODIFICATION IN
8 A SIGNED RECORD AND THE MODIFICATION GRANTS A SUBSTANTIALLY
9 SIMILAR POWER TO ANOTHER PERSON; OR

10 (c) THE COURT APPROVES THE MODIFICATION AND THE
11 MODIFICATION GRANTS A SUBSTANTIALLY SIMILAR POWER TO ANOTHER
12 PERSON.

13 **15-16-919. Tax-related limitations.** (1) IN THIS SECTION:

14 (a) "GRANTOR TRUST" MEANS A TRUST AS TO WHICH A SETTLOR OF
15 A FIRST TRUST IS CONSIDERED THE OWNER UNDER 26 U.S.C. SECS.
16 671-677, AS AMENDED, OR 26 U.S.C. SEC. 679, AS AMENDED.

17 (b) "INTERNAL REVENUE CODE" MEANS THE UNITED STATES
18 INTERNAL REVENUE CODE OF 1986, AS AMENDED.

19 (c) "NONGRANTOR TRUST" MEANS A TRUST THAT IS NOT A
20 GRANTOR TRUST.

21 (d) "QUALIFIED BENEFITS PROPERTY" MEANS PROPERTY SUBJECT
22 TO THE MINIMUM DISTRIBUTION REQUIREMENTS OF 26 U.S.C. SEC.
23 401(a)(9), AS AMENDED, AND ANY APPLICABLE REGULATIONS, OR TO ANY
24 SIMILAR REQUIREMENTS THAT REFER TO 26 U.S.C. SEC. 401(a)(9) OR THE
25 REGULATIONS.

26 (2) AN EXERCISE OF THE DECANTING POWER IS SUBJECT TO THE
27 FOLLOWING LIMITATIONS:

1 (a) IF A FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
2 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
3 THIS SECTION, FOR A MARITAL DEDUCTION FOR PURPOSES OF THE GIFT OR
4 ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR A STATE GIFT,
5 ESTATE, OR INHERITANCE TAX, THE SECOND-TRUST INSTRUMENT MUST
6 NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN OR OMITTED FROM
7 THE TRUST INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY WAS
8 TRANSFERRED, WOULD HAVE PREVENTED THE TRANSFER FROM
9 QUALIFYING FOR THE DEDUCTION, OR WOULD HAVE REDUCED THE
10 AMOUNT OF THE DEDUCTION, UNDER THE SAME PROVISIONS OF THE
11 INTERNAL REVENUE CODE OR STATE LAW UNDER WHICH THE TRANSFER
12 QUALIFIED.

13 (b) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
14 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
15 THIS SECTION, FOR A CHARITABLE DEDUCTION FOR PURPOSES OF THE
16 INCOME, GIFT, OR ESTATE TAX UNDER THE INTERNAL REVENUE CODE OR
17 A STATE INCOME, GIFT, ESTATE, OR INHERITANCE TAX, THE SECOND-TRUST
18 INSTRUMENT MUST NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED
19 IN OR OMITTED FROM THE TRUST INSTRUMENT FOR THE TRUST TO WHICH
20 THE PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED THE
21 TRANSFER FROM QUALIFYING FOR THE DEDUCTION, OR WOULD HAVE
22 REDUCED THE AMOUNT OF THE DEDUCTION, UNDER THE SAME PROVISIONS
23 OF THE INTERNAL REVENUE CODE OR STATE LAW UNDER WHICH THE
24 TRANSFER QUALIFIED.

25 (c) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
26 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
27 THIS SECTION, FOR THE EXCLUSION FROM THE GIFT TAX DESCRIBED IN 26

1 U.S.C. SEC. 2503(b), AS AMENDED, THE SECOND-TRUST INSTRUMENT MUST
2 NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN OR OMITTED FROM
3 THE TRUST INSTRUMENT FOR THE TRUST TO WHICH THE PROPERTY WAS
4 TRANSFERRED, WOULD HAVE PREVENTED THE TRANSFER FROM
5 QUALIFYING UNDER 26 U.S.C. SEC. 2503(b), AS AMENDED. IF THE FIRST
6 TRUST CONTAINS PROPERTY THAT QUALIFIED, OR WOULD HAVE QUALIFIED
7 BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN THIS SECTION, FOR THE
8 EXCLUSION FROM THE GIFT TAX DESCRIBED IN 26 U.S.C. SEC. 2503(b), AS
9 AMENDED, BY APPLICATION OF 26 U.S.C. SEC. 2503(c), AS AMENDED, THE
10 SECOND-TRUST INSTRUMENT MUST NOT INCLUDE OR OMIT A TERM THAT,
11 IF INCLUDED OR OMITTED FROM THE TRUST INSTRUMENT FOR THE TRUST
12 TO WHICH THE PROPERTY WAS TRANSFERRED, WOULD HAVE PREVENTED
13 THE TRANSFER FROM QUALIFYING UNDER 26 U.S.C. SEC. 2503(c), AS
14 AMENDED.

15 (d) IF THE PROPERTY OF THE FIRST TRUST INCLUDES SHARES OF
16 STOCK IN AN S CORPORATION, AS DEFINED IN 26 U.S.C. SEC. 1361, AS
17 AMENDED, AND THE FIRST TRUST IS, OR BUT FOR PROVISIONS OF THIS PART
18 9 OTHER THAN THIS SECTION WOULD BE, A PERMITTED SHAREHOLDER
19 UNDER ANY PROVISION OF 26 U.S.C. SEC. 1361, AS AMENDED, AN
20 AUTHORIZED FIDUCIARY MAY EXERCISE THE POWER WITH RESPECT TO
21 PART OR ALL OF THE S-CORPORATION STOCK ONLY IF ANY SECOND TRUST
22 RECEIVING THE STOCK IS A PERMITTED SHAREHOLDER UNDER 26 U.S.C.
23 SEC. 1361(c)(2), AS AMENDED. IF THE PROPERTY OF THE FIRST TRUST
24 INCLUDES SHARES OF STOCK IN AN S CORPORATION AND THE FIRST TRUST
25 IS, OR BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN THIS SECTION
26 WOULD BE, A QUALIFIED SUBCHAPTER-S TRUST WITHIN THE MEANING OF
27 26 U.S.C. SEC. 1361(d), AS AMENDED, THE SECOND-TRUST INSTRUMENT

1 MUST NOT INCLUDE OR OMIT A TERM THAT PREVENTS THE SECOND TRUST
2 FROM QUALIFYING AS A QUALIFIED SUBCHAPTER-S TRUST.

3 (e) IF THE FIRST TRUST CONTAINS PROPERTY THAT QUALIFIED, OR
4 WOULD HAVE QUALIFIED BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN
5 THIS SECTION, FOR A ZERO INCLUSION RATIO FOR PURPOSES OF THE
6 GENERATION-SKIPPING TRANSFER TAX UNDER 26 U.S.C. SEC. 2642(c), AS
7 AMENDED, THE SECOND-TRUST INSTRUMENT MUST NOT INCLUDE OR OMIT
8 A TERM THAT, IF INCLUDED IN OR OMITTED FROM THE FIRST-TRUST
9 INSTRUMENT, WOULD HAVE PREVENTED THE TRANSFER TO THE FIRST
10 TRUST FROM QUALIFYING FOR A ZERO INCLUSION RATIO UNDER 26 U.S.C.
11 SEC. 2642(c), AS AMENDED.

12 (f) IF THE FIRST TRUST IS DIRECTLY OR INDIRECTLY THE
13 BENEFICIARY OF QUALIFIED BENEFITS PROPERTY, THE SECOND-TRUST
14 INSTRUMENT MAY NOT INCLUDE OR OMIT ANY TERM THAT, IF INCLUDED IN
15 OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE
16 INCREASED THE MINIMUM DISTRIBUTIONS REQUIRED WITH RESPECT TO THE
17 QUALIFIED BENEFITS PROPERTY UNDER 26 U.S.C. SEC. 401(A)(9), AS
18 AMENDED, AND ANY APPLICABLE REGULATIONS, OR ANY SIMILAR
19 REQUIREMENTS THAT REFER TO 26 U.S.C. SEC. 401(a)(9), AS AMENDED OR
20 THE REGULATIONS. IF AN ATTEMPTED EXERCISE OF THE DECANTING POWER
21 VIOLATES THE PRECEDING SENTENCE, THE TRUSTEE IS DEEMED TO HAVE
22 HELD THE QUALIFIED BENEFITS PROPERTY AND ANY REINVESTED
23 DISTRIBUTIONS OF THE PROPERTY AS A SEPARATE SHARE FROM THE DATE
24 OF THE EXERCISE OF THE POWER, AND SECTION 15-16-922 APPLIES TO THE
25 SEPARATE SHARE.

26 (g) IF THE FIRST TRUST QUALIFIES AS A GRANTOR TRUST BECAUSE
27 OF THE APPLICATION OF 26 U.S.C. SEC. 672(f)(2)(A), AS AMENDED, THE

1 SECOND TRUST MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN
2 OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE
3 PREVENTED THE FIRST TRUST FROM QUALIFYING UNDER 26 U.S.C. SEC.
4 672(F)(2)(A), AS AMENDED.

5 (h) IN THIS PARAGRAPH (h), "TAX BENEFIT" MEANS A FEDERAL OR
6 STATE TAX DEDUCTION, EXEMPTION, EXCLUSION, OR OTHER BENEFIT NOT
7 OTHERWISE LISTED IN THIS SECTION, EXCEPT FOR A BENEFIT ARISING FROM
8 BEING A GRANTOR TRUST. SUBJECT TO PARAGRAPH (I) OF THIS SUBSECTION
9 (2), A SECOND-TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM
10 THAT, IF INCLUDED IN OR OMITTED FROM THE FIRST-TRUST INSTRUMENT,
11 WOULD HAVE PREVENTED QUALIFICATION FOR A TAX BENEFIT IF:

12 (I) THE FIRST-TRUST INSTRUMENT EXPRESSLY INDICATES AN
13 INTENT TO QUALIFY FOR THE BENEFIT OR THE FIRST-TRUST INSTRUMENT
14 CLEARLY IS DESIGNED TO ENABLE THE FIRST TRUST TO QUALIFY FOR THE
15 BENEFIT; AND

16 (II) THE TRANSFER OF PROPERTY HELD BY THE FIRST TRUST OR THE
17 FIRST TRUST QUALIFIED, OR BUT FOR PROVISIONS OF THIS PART 9 OTHER
18 THAN THIS SECTION, WOULD HAVE QUALIFIED FOR THE TAX BENEFIT.

19 (i) SUBJECT TO PARAGRAPH (d) OF THIS SUBSECTION (2):

20 (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (g) OF THIS
21 SUBSECTION (2), THE SECOND TRUST MAY BE A NONGRANTOR TRUST, EVEN
22 IF THE FIRST TRUST IS A GRANTOR TRUST; AND

23 (II) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (j) OF THIS
24 SUBSECTION (2), THE SECOND TRUST MAY BE A GRANTOR TRUST, EVEN IF
25 THE FIRST TRUST IS A NONGRANTOR TRUST.

1 (j) AN AUTHORIZED FIDUCIARY MAY NOT EXERCISE THE
2 DECANTING POWER IF A SETTLOR OBJECTS IN A SIGNED RECORD DELIVERED
3 TO THE FIDUCIARY WITHIN THE NOTICE PERIOD AND EITHER:

4 (I) THE FIRST TRUST AND A SECOND TRUST ARE BOTH GRANTOR
5 TRUSTS, IN WHOLE OR IN PART, THE FIRST TRUST GRANTS THE SETTLOR OR
6 ANOTHER PERSON THE POWER TO CAUSE THE SECOND TRUST TO CEASE TO
7 BE A GRANTOR TRUST, AND THE SECOND TRUST DOES NOT GRANT AN
8 EQUIVALENT POWER TO THE SETTLOR OR OTHER PERSON; OR

9 (II) THE FIRST TRUST IS A NONGRANTOR TRUST AND A SECOND
10 TRUST IS A GRANTOR TRUST, IN WHOLE OR IN PART, WITH RESPECT TO THE
11 SETTLOR, UNLESS:

12 (A) THE SETTLOR HAS THE POWER AT ALL TIMES TO CAUSE THE
13 SECOND TRUST TO CEASE TO BE A GRANTOR TRUST; OR

14 (B) THE FIRST-TRUST INSTRUMENT CONTAINS A PROVISION
15 GRANTING THE SETTLOR OR ANOTHER PERSON A POWER THAT WOULD
16 CAUSE THE FIRST TRUST TO CEASE TO BE A GRANTOR TRUST AND THE
17 SECOND-TRUST INSTRUMENT CONTAINS THE SAME PROVISION.

18 **15-16-920. Duration of second trust.** (1) SUBJECT TO
19 **SUBSECTION (2) OF THIS SECTION**, A SECOND TRUST MAY HAVE A
20 DURATION THAT IS THE SAME AS OR DIFFERENT FROM THE DURATION OF
21 THE FIRST TRUST.

22 (2) TO THE EXTENT THAT PROPERTY OF A SECOND TRUST IS
23 ATTRIBUTABLE TO PROPERTY OF THE FIRST TRUST, THE PROPERTY OF THE
24 SECOND TRUST IS SUBJECT TO ANY RULES GOVERNING MAXIMUM
25 PERPETUITY, ACCUMULATION, OR SUSPENSION OF THE POWER OF
26 ALIENATION WHICH APPLY TO PROPERTY OF THE FIRST TRUST.

1 **15-16-921. Need to distribute not required.** AN AUTHORIZED
2 FIDUCIARY MAY EXERCISE THE DECANTING POWER **REGARDLESS OF**
3 **WHETHER** UNDER THE FIRST TRUST'S DISCRETIONARY DISTRIBUTION
4 STANDARD THE FIDUCIARY WOULD HAVE MADE OR COULD HAVE BEEN
5 COMPELLED TO MAKE A DISCRETIONARY DISTRIBUTION OF PRINCIPAL AT
6 THE TIME OF THE EXERCISE.

7 **15-16-922. Saving provision.** (1) IF EXERCISE OF THE DECANTING
8 POWER WOULD BE EFFECTIVE UNDER THIS PART 9 EXCEPT THAT THE
9 SECOND-TRUST INSTRUMENT IN PART DOES NOT COMPLY WITH THIS PART
10 9, THE EXERCISE OF THE POWER IS EFFECTIVE AND THE FOLLOWING RULES
11 APPLY WITH RESPECT TO THE PRINCIPAL OF THE SECOND TRUST
12 ATTRIBUTABLE TO THE EXERCISE OF THE POWER:

13 (a) A PROVISION IN THE SECOND-TRUST INSTRUMENT WHICH IS NOT
14 PERMITTED UNDER THIS PART 9 IS VOID TO THE EXTENT NECESSARY TO
15 COMPLY WITH THIS PART 9.

16 (b) A PROVISION REQUIRED BY THIS PART 9 TO BE IN THE
17 SECOND-TRUST INSTRUMENT WHICH IS NOT CONTAINED IN THE
18 INSTRUMENT IS DEEMED TO BE INCLUDED IN THE INSTRUMENT TO THE
19 EXTENT NECESSARY TO COMPLY WITH THIS PART 9.

20 (2) IF A TRUSTEE OR OTHER FIDUCIARY OF A SECOND TRUST
21 DETERMINES THAT **SUBSECTION (1) OF THIS SECTION** APPLIES TO A PRIOR
22 EXERCISE OF THE DECANTING POWER, THE FIDUCIARY SHALL TAKE
23 CORRECTIVE ACTION CONSISTENT WITH THE FIDUCIARY'S DUTIES.

24 **15-16-923. Trust for care of animal.** (1) IN THIS SECTION:

25 (a) "ANIMAL TRUST" MEANS A TRUST OR AN INTEREST IN A TRUST
26 CREATED TO PROVIDE FOR THE CARE OF ONE OR MORE ANIMALS.

1 (b) "PROTECTOR" MEANS A PERSON APPOINTED IN AN ANIMAL
2 TRUST TO ENFORCE THE TRUST ON BEHALF OF THE ANIMAL OR, IF NO SUCH
3 PERSON IS APPOINTED IN THE TRUST, A PERSON APPOINTED BY THE COURT
4 FOR THAT PURPOSE.

5 (2) THE DECANTING POWER MAY BE EXERCISED OVER AN ANIMAL
6 TRUST THAT HAS A PROTECTOR TO THE EXTENT THE TRUST COULD BE
7 DECANTED UNDER THIS PART 9 IF EACH ANIMAL THAT BENEFITS FROM THE
8 TRUST WERE AN INDIVIDUAL, IF THE PROTECTOR CONSENTS IN A SIGNED
9 RECORD TO THE EXERCISE OF THE POWER.

10 (3) A PROTECTOR FOR AN ANIMAL HAS THE RIGHTS UNDER THIS
11 PART 9 OF A QUALIFIED BENEFICIARY.

12 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 9, IF
13 A FIRST TRUST IS AN ANIMAL TRUST, IN AN EXERCISE OF THE DECANTING
14 POWER, THE SECOND TRUST MUST PROVIDE THAT TRUST PROPERTY MAY BE
15 APPLIED ONLY TO ITS INTENDED PURPOSE FOR THE PERIOD THE FIRST TRUST
16 BENEFITTED THE ANIMAL.

17 **15-16-924. Terms of second trust.** A REFERENCE IN [THIS STATE'S
18 TRUST CODE] TO A TRUST INSTRUMENT OR TERMS OF THE TRUST INCLUDES
19 A SECOND-TRUST INSTRUMENT AND THE TERMS OF THE SECOND TRUST.

20 **15-16-925. Settlor.** (1) FOR PURPOSES OF LAW OF THIS STATE
21 OTHER THAN THIS PART 9 AND SUBJECT TO SUBSECTION (2) OF THIS
22 SECTION, A SETTLOR OF A FIRST TRUST IS DEEMED TO BE THE SETTLOR OF
23 THE SECOND TRUST WITH RESPECT TO THE PORTION OF THE PRINCIPAL OF
24 THE FIRST TRUST SUBJECT TO THE EXERCISE OF THE DECANTING POWER.

25 (2) IN DETERMINING SETTLOR INTENT WITH RESPECT TO A SECOND
26 TRUST, THE INTENT OF A SETTLOR OF THE FIRST TRUST, A SETTLOR OF THE
27 SECOND TRUST, AND THE AUTHORIZED FIDUCIARY MAY BE CONSIDERED.

1 **15-16-926. Later-discovered property.** (1) EXCEPT AS
2 OTHERWISE PROVIDED IN **SUBSECTION (3) OF THIS SECTION**, IF EXERCISE OF
3 THE DECANTING POWER WAS INTENDED TO DISTRIBUTE ALL THE PRINCIPAL
4 OF THE FIRST TRUST TO ONE OR MORE SECOND TRUSTS, LATER-DISCOVERED
5 PROPERTY BELONGING TO THE FIRST TRUST AND PROPERTY PAID TO OR
6 ACQUIRED BY THE FIRST TRUST AFTER THE EXERCISE OF THE POWER IS
7 PART OF THE TRUST ESTATE OF THE SECOND TRUST OR TRUSTS.

8 (2) EXCEPT AS OTHERWISE PROVIDED IN **SUBSECTION (3) OF THIS**
9 **SECTION**, IF EXERCISE OF THE DECANTING POWER WAS INTENDED TO
10 DISTRIBUTE LESS THAN ALL THE PRINCIPAL OF THE FIRST TRUST TO ONE OR
11 MORE SECOND TRUSTS, LATER-DISCOVERED PROPERTY BELONGING TO THE
12 FIRST TRUST OR PROPERTY PAID TO OR ACQUIRED BY THE FIRST TRUST
13 AFTER EXERCISE OF THE POWER REMAINS PART OF THE TRUST ESTATE OF
14 THE FIRST TRUST.

15 (3) AN AUTHORIZED FIDUCIARY MAY PROVIDE IN AN EXERCISE OF
16 THE DECANTING POWER OR BY THE TERMS OF A SECOND TRUST FOR
17 DISPOSITION OF LATER-DISCOVERED PROPERTY BELONGING TO THE FIRST
18 TRUST OR PROPERTY PAID TO OR ACQUIRED BY THE FIRST TRUST AFTER
19 EXERCISE OF THE POWER.

20 **15-16-927. Obligations.** A DEBT, LIABILITY, OR OTHER
21 OBLIGATION ENFORCEABLE AGAINST PROPERTY OF A FIRST TRUST IS
22 ENFORCEABLE TO THE SAME EXTENT AGAINST THE PROPERTY WHEN HELD
23 BY THE SECOND TRUST AFTER EXERCISE OF THE DECANTING POWER.

24 **15-16-928. Uniformity of application and construction.** IN
25 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
26 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
27 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

1 **15-16-929. Relation to electronic signatures in global and**
2 **national commerce act.** THIS PART 9 MODIFIES, LIMITS, OR SUPERSEDES
3 THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE
4 ACT, 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR
5 SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C. SEC. 7001(c), OR
6 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN
7 SECTION 103(b) OF THAT ACT, 15 U.S.C. SEC. 7003(b).

8 **15-16-930. Severability.** IF ANY PROVISION OF THIS PART 9 OR ITS
9 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
10 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
11 THIS PART 9 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
12 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
13 PART 9 ARE SEVERABLE.

14 <{Conforming amendments?}>

15 **SECTION 2. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (**August**
18 **10, 2016**, if adjournment sine die is on May 11, 2016); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2016 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor. <{**Do you want**
25 **to specify another effective date for this act?**}>

UNEDITED
UNREVISED
DRAFT
11.25.15

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REDRAFT
11.23.15

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 16-0134.01 Michael Dohr x4347

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Canadian DV Protection Order Enforcement"

A BILL FOR AN ACT

101 CONCERNING CREATION OF THE "UNIFORM RECOGNITION AND
102 ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE
103 PROTECTION ORDERS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act" as recommended by the national conference of commissioners on uniform state laws. The bill allows a peace officer to enforce a Canadian domestic violence protection order.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 THREATENING CONDUCT DIRECTED AT A PROTECTED INDIVIDUAL.

2 (2) "DOMESTIC PROTECTION ORDER" MEANS AN INJUNCTION OR
3 OTHER ORDER ISSUED BY A TRIBUNAL WHICH RELATES TO DOMESTIC OR
4 FAMILY VIOLENCE LAWS TO PREVENT AN INDIVIDUAL FROM ENGAGING IN
5 VIOLENT OR THREATENING ACTS AGAINST, HARASSMENT OF, DIRECT OR
6 INDIRECT CONTACT OR COMMUNICATION WITH, OR BEING IN PHYSICAL
7 PROXIMITY TO ANOTHER INDIVIDUAL.

8 (3) "ISSUING COURT" MEANS THE COURT THAT ISSUES A CANADIAN
9 DOMESTIC VIOLENCE PROTECTION ORDER.

10 (4) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL
11 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 2 TO ENFORCE
12 A DOMESTIC PROTECTION ORDER.

13 (5) "PERSON" MEANS AN INDIVIDUAL; ESTATE; BUSINESS OR
14 NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR
15 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER
16 LEGAL ENTITY.

17 (6) "PROTECTED INDIVIDUAL" MEANS AN INDIVIDUAL PROTECTED
18 BY A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER.

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

22 (8) "RESPONDENT" MEANS AN INDIVIDUAL AGAINST WHOM A
23 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS ISSUED.

24 (9) "STATE" MEANS A STATE OF THE UNITED STATES, THE
25 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
26 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
27 JURISDICTION OF THE UNITED STATES.

1 (10) "TRIBUNAL" MEANS A COURT, AGENCY, OR OTHER ENTITY
2 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 2 TO
3 ESTABLISH, ENFORCE, OR MODIFY A DOMESTIC PROTECTION ORDER.

4 **13-14-203. Enforcement of Canadian domestic violence**
5 **protection order by law enforcement officer.** (1) IF A LAW
6 ENFORCEMENT OFFICER DETERMINES UNDER SUBSECTION (2) OR (3) OF
7 THIS SECTION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VALID
8 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER EXISTS AND THE
9 ORDER HAS BEEN VIOLATED, THE OFFICER SHALL ENFORCE THE TERMS OF
10 THE CANADIAN DOMESTIC VIOLENCE ORDER AS IF THEY WERE IN AN ORDER
11 OF A TRIBUNAL. PRESENTATION TO A LAW ENFORCEMENT OFFICER OF A
12 CERTIFIED COPY OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
13 IS NOT REQUIRED FOR ENFORCEMENT.

14 (2) PRESENTATION TO A LAW ENFORCEMENT OFFICER OF A RECORD
15 OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER THAT IDENTIFIES
16 BOTH A PROTECTED INDIVIDUAL AND A RESPONDENT AND ON ITS FACE IS
17 IN EFFECT CONSTITUTES PROBABLE CAUSE TO BELIEVE THAT A VALID
18 ORDER EXISTS.

19 (3) IF A RECORD OF A CANADIAN DOMESTIC VIOLENCE PROTECTION
20 ORDER IS NOT PRESENTED AS PROVIDED IN SUBSECTION (2) OF THIS
21 SECTION, A LAW ENFORCEMENT OFFICER MAY CONSIDER OTHER
22 INFORMATION IN DETERMINING WHETHER THERE IS PROBABLE CAUSE TO
23 BELIEVE THAT A VALID CANADIAN DOMESTIC VIOLENCE PROTECTION
24 ORDER EXISTS.

25 (4) IF A LAW ENFORCEMENT OFFICER DETERMINES THAT AN
26 OTHERWISE VALID CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
27 CANNOT BE ENFORCED BECAUSE THE RESPONDENT HAS NOT BEEN NOTIFIED

1 OF OR SERVED WITH THE ORDER, THE OFFICER SHALL NOTIFY THE
2 PROTECTED INDIVIDUAL THAT THE OFFICER WILL MAKE REASONABLE
3 EFFORTS TO CONTACT THE RESPONDENT, CONSISTENT WITH THE SAFETY OF
4 THE PROTECTED INDIVIDUAL. AFTER NOTICE TO THE PROTECTED
5 INDIVIDUAL AND CONSISTENT WITH THE SAFETY OF THE INDIVIDUAL, THE
6 LAW ENFORCEMENT OFFICER SHALL MAKE A REASONABLE EFFORT TO
7 INFORM THE RESPONDENT OF THE ORDER; NOTIFY THE RESPONDENT OF THE
8 TERMS OF THE ORDER; PROVIDE A RECORD OF THE ORDER, IF AVAILABLE,
9 TO THE RESPONDENT; AND ALLOW THE RESPONDENT A REASONABLE
10 OPPORTUNITY TO COMPLY WITH THE ORDER BEFORE THE OFFICER
11 ENFORCES THE ORDER.

12 (5) IF A LAW ENFORCEMENT OFFICER DETERMINES THAT AN
13 INDIVIDUAL IS A PROTECTED INDIVIDUAL, THE OFFICER SHALL INFORM THE
14 INDIVIDUAL OF AVAILABLE LOCAL VICTIM SERVICES.

15 **13-14-204. Enforcement of Canadian domestic violence**
16 **protection order by tribunal.** (1) A TRIBUNAL MAY ISSUE AN ORDER
17 ENFORCING OR REFUSING TO ENFORCE A CANADIAN DOMESTIC VIOLENCE
18 PROTECTION ORDER ON APPLICATION OF:

19 (a) A PERSON AUTHORIZED BY LAW OF THIS STATE OTHER THAN
20 THIS PART 2 TO SEEK ENFORCEMENT OF A DOMESTIC PROTECTION ORDER;
21 OR

22 (b) A RESPONDENT.

23 (2) IN A PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION, THE
24 TRIBUNAL SHALL FOLLOW THE PROCEDURES OF THIS STATE FOR
25 ENFORCEMENT OF A DOMESTIC PROTECTION ORDER. AN ORDER ENTERED
26 UNDER THIS SECTION IS LIMITED TO THE ENFORCEMENT OF THE TERMS OF
27 THE CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER AS DESCRIBED

1 IN SECTION 13-14-202 (1).

2 (3) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS
3 ENFORCEABLE UNDER THIS SECTION IF:

4 (a) THE ORDER IDENTIFIES A PROTECTED INDIVIDUAL AND A
5 RESPONDENT;

6 (b) THE ORDER IS VALID AND IN EFFECT;

7 (c) THE ISSUING COURT HAD JURISDICTION OVER THE PARTIES AND
8 THE SUBJECT MATTER UNDER LAW APPLICABLE IN THE ISSUING COURT;
9 AND

10 (d) THE ORDER WAS ISSUED AFTER:

11 (I) THE RESPONDENT WAS GIVEN REASONABLE NOTICE AND HAD
12 AN OPPORTUNITY TO BE HEARD BEFORE THE COURT ISSUED THE ORDER; OR

13 (II) IN THE CASE OF AN EX PARTE ORDER, THE RESPONDENT WAS
14 GIVEN REASONABLE NOTICE AND HAD OR WILL HAVE AN OPPORTUNITY TO
15 BE HEARD WITHIN A REASONABLE TIME AFTER THE ORDER WAS ISSUED, IN
16 A MANNER CONSISTENT WITH THE RIGHT OF THE RESPONDENT TO DUE
17 PROCESS.

18 (4) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER VALID
19 ON ITS FACE IS PRIMA FACIE EVIDENCE OF ITS ENFORCEABILITY UNDER THIS
20 SECTION.

21 (5) A CLAIM THAT A CANADIAN DOMESTIC VIOLENCE PROTECTION
22 ORDER DOES NOT COMPLY WITH SUBSECTION (3) OF THIS SECTION IS AN
23 AFFIRMATIVE DEFENSE IN A PROCEEDING SEEKING ENFORCEMENT OF THE
24 ORDER. IF THE TRIBUNAL DETERMINES THAT THE ORDER IS NOT
25 ENFORCEABLE, THE TRIBUNAL SHALL ISSUE AN ORDER THAT THE
26 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS NOT ENFORCEABLE
27 UNDER THIS SECTION AND SECTION 13-14-203 AND MAY NOT BE

1 REGISTERED UNDER SECTION 13-14-205.

2 (6) THIS SECTION APPLIES TO ENFORCEMENT OF A PROVISION OF A
3 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER AGAINST A PARTY TO
4 THE ORDER IN WHICH EACH PARTY IS A PROTECTED INDIVIDUAL AND
5 RESPONDENT ONLY IF:

6 (a) THE PARTY SEEKING ENFORCEMENT OF THE ORDER FILED A
7 PLEADING REQUESTING THE ORDER FROM THE ISSUING COURT; AND

8 (b) THE COURT MADE SPECIFIC FINDINGS THAT ENTITLED THE
9 PARTY TO THE ENFORCEMENT SOUGHT.

10 **13-14-205. Registration of a Canadian domestic violence**
11 **protection order.** (1) AN INDIVIDUAL MAY REGISTER A CANADIAN
12 DOMESTIC VIOLENCE PROTECTION ORDER IN THIS STATE. TO REGISTER THE
13 ORDER, THE INDIVIDUAL MUST PRESENT A COPY OF THE ORDER TO:

14 (a) A TRIBUNAL OR OTHER AGENCY RESPONSIBLE FOR THE
15 REGISTRATION OF DOMESTIC PROTECTION ORDERS; OR

16 (b) AN AGENCY DESIGNATED BY THE STATE, WHICH SHALL
17 PRESENT THE CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER TO THE
18 TRIBUNAL RESPONSIBLE FOR THE REGISTRATION OF DOMESTIC PROTECTION
19 ORDERS.

20 (2) ON RECEIPT OF A CERTIFIED COPY OF A CANADIAN DOMESTIC
21 VIOLENCE PROTECTION ORDER, THE TRIBUNAL OR OTHER AGENCY
22 RESPONSIBLE FOR THE REGISTRATION OF THE DOMESTIC PROTECTION
23 ORDERS SHALL REGISTER THE ORDER IN ACCORDANCE WITH THIS SECTION.

24 (3) AN INDIVIDUAL REGISTERING A CANADIAN DOMESTIC
25 VIOLENCE PROTECTION ORDER UNDER THIS SECTION SHALL FILE AN
26 AFFIDAVIT STATING THAT, TO THE BEST OF THE INDIVIDUAL'S KNOWLEDGE,
27 THE ORDER IS VALID AND IN EFFECT.

1 (4) AFTER A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
2 IS REGISTERED UNDER THIS SECTION, THE RESPONSIBLE TRIBUNAL OR
3 OTHER AGENCY SHALL PROVIDE THE INDIVIDUAL REGISTERING THE
4 CANADIAN ORDER A CERTIFIED COPY OF THE REGISTERED ORDER.

5 (5) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
6 REGISTERED UNDER THIS SECTION MAY BE ENTERED IN A STATE OR
7 FEDERAL REGISTRY OF PROTECTION ORDERS IN ACCORDANCE WITH
8 APPLICABLE LAW.

9 (6) AN INACCURATE, EXPIRED, OR UNENFORCEABLE CANADIAN
10 DOMESTIC VIOLENCE PROTECTION ORDER MAY BE CORRECTED OR
11 REMOVED FROM THE REGISTRY OF PROTECTION ORDERS MAINTAINED IN
12 THIS STATE IN ACCORDANCE WITH LAW OF THIS STATE OTHER THAN THIS
13 PART 2.

14 (7) A FEE MAY NOT BE CHARGED FOR THE REGISTRATION OF A
15 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER.

16 (8) REGISTRATION IN THIS STATE OR FILING UNDER LAW OF THIS
17 STATE OTHER THAN THIS PART 2 OF A CANADIAN DOMESTIC VIOLENCE
18 PROTECTION ORDER IS NOT REQUIRED FOR ITS ENFORCEMENT UNDER THIS
19 PART 2.

20 **13-14-206. Immunity.** THE STATE, A STATE AGENCY, A LOCAL
21 GOVERNMENTAL AGENCY, LAW ENFORCEMENT OFFICER, PROSECUTING
22 ATTORNEY, CLERK OF COURT, AND STATE OR LOCAL GOVERNMENTAL
23 OFFICIAL ACTING IN AN OFFICIAL CAPACITY ARE IMMUNE FROM CIVIL AND
24 CRIMINAL LIABILITY FOR AN ACT OR OMISSION ARISING OUT OF THE
25 REGISTRATION OR ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE
26 PROTECTION ORDER OR THE DETENTION OR ARREST OF AN ALLEGED
27 VIOLATOR OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IF

1 THE ACT OR OMISSION WAS A GOOD FAITH EFFORT TO COMPLY WITH THIS
2 PART 2.

3 **13-14-207. Other remedies.** AN INDIVIDUAL WHO SEEKS A
4 REMEDY UNDER THIS PART 2 MAY SEEK OTHER LEGAL OR EQUITABLE
5 REMEDIES.

6 **13-14-208. Uniformity of application and construction.** IN
7 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
8 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
9 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

10 **13-14-209. Relation to electronic signatures in global and**
11 **national commerce act.** THIS PART 2 MODIFIES, LIMITS, OR SUPERSEDES
12 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
13 COMMERCE ACT", 15 U.S.C. SEC. 7001, ET SEQ., BUT DOES NOT MODIFY,
14 LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C. SEC.
15 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
16 DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SEC. 7003(b).

17 **13-14-210. Transition.** THIS PART 2 APPLIES TO A CANADIAN
18 DOMESTIC VIOLENCE PROTECTION ORDER ISSUED BEFORE, ON, OR AFTER
19 THE EFFECTIVE DATE OF THIS PART 2 AND TO A CONTINUING ACTION FOR
20 ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
21 COMMENCED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 2.
22 A REQUEST FOR ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE
23 PROTECTION ORDER MADE ON OR AFTER THE EFFECTIVE DATE OF THIS PART
24 2 FOR A VIOLATION OF THE ORDER OCCURRING BEFORE, ON, OR AFTER THE
25 EFFECTIVE DATE OF THIS PART 2 IS GOVERNED BY THIS PART 2.

26 **13-14-211. Severability.** IF ANY PROVISION OF THIS ACT OR ITS
27 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE

1 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
2 THIS PART 2 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
3 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
4 PART 2 ARE SEVERABLE.

5 **SECTION 2. Inclusion of official comments.** The revisor shall
6 include in the publication of the "Uniform Recognition and Enforcement
7 of Canadian Domestic Violence Protection Orders Act", as nonstatutory
8 matter, following each section of the article, the full text of the official
9 comments to that section contained in the official volume containing the
10 2015 official text of the "Uniform Recognition and Enforcement of
11 Canadian Domestic Violence Protection Orders Act" issued by the
12 Uniform Law Commission, with any changes in the official comments or
13 Colorado comments to correspond to Colorado changes in the uniform
14 act. The revisor of statutes shall prepare the comments for approval by the
15 committee on legal services for publication.
16 <{Do you want an safety clause or petition clause? Do you want a
17 specific effective date?}>