

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0954.01 Richard Sweetman x4333

HOUSE BILL 14-1322

HOUSE SPONSORSHIP

McLachlan,

SENATE SPONSORSHIP

Roberts,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE COLORADO PROBATE CODE.

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>.)

The bill repeals and reenacts, with amendments, certain provisions relating to the elective-share of a surviving spouse.

A specific devisee has a right to specifically devised property in a testator's estate at death and, in the absence of other statutorily described property and moneys, a general pecuniary devise equal to the value, as of its date of disposition, of other specifically devised property disposed of during the testator's lifetime, but only to the extent it is established that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

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

3 (1) "BONA FIDE PURCHASER" MEANS A PURCHASER FOR VALUE IN
4 GOOD FAITH AND WITHOUT NOTICE OF AN ADVERSE CLAIM. THE NOTATION
5 OF A STATE DOCUMENTARY FEE ON A RECORDED INSTRUMENT PURSUANT
6 TO SECTION 39-13-103, C.R.S., IS PRIMA FACIE EVIDENCE THAT THE
7 TRANSFER DESCRIBED THEREIN WAS MADE TO A BONA FIDE PURCHASER.

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

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

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

25 (5) "NONADVERSE PARTY" MEANS A PERSON WHO DOES NOT HAVE
26 A SUBSTANTIAL BENEFICIAL INTEREST IN THE TRUST OR OTHER PROPERTY
27 ARRANGEMENT THAT WOULD BE ADVERSELY AFFECTED BY THE EXERCISE

1 OR NONEXERCISE OF THE POWER THAT HE OR SHE POSSESSES RESPECTING
2 THE TRUST OR OTHER PROPERTY ARRANGEMENT. A PERSON HAVING A
3 GENERAL POWER OF APPOINTMENT OVER PROPERTY IS DEEMED TO HAVE
4 A BENEFICIAL INTEREST IN THE PROPERTY.

5 (6) "POWER" OR "POWER OF APPOINTMENT" INCLUDES A POWER TO
6 DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION, INCLUDING
7 BENEFICIARY DESIGNATIONS UNDER INDIVIDUAL RETIREMENT ACCOUNTS
8 AND ANNUITIES DESCRIBED IN SECTION 408 OF THE FEDERAL "INTERNAL
9 REVENUE CODE OF 1986", AS AMENDED, AS WELL AS OTHER PENSION
10 PLANS OR ARRANGEMENTS NOT SUBJECT TO PART 2 (SECTION 201 ET SEQ.)
11 OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
12 1974", AS AMENDED (29 U.S.C. SEC. 1051 ET SEQ.).

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

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

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

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

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

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

5 (c) AN EXERCISE, RELEASE, OR LAPSE OF A PRESENTLY
6 EXERCISABLE GENERAL POWER OF APPOINTMENT THAT THE DECEDENT
7 CREATED IN HIMSELF OR HERSELF AND OF A POWER DESCRIBED IN SECTION
8 15-11-205 (2) (b) THAT THE DECEDENT CONFERRED ON A NONADVERSE
9 PARTY.

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

12 **15-11-202. [Formerly 15-11-201] Elective-share.**

13 (1) **Elective-share amount.** THE SURVIVING SPOUSE OF A DECEDENT WHO
14 DIES DOMICILED IN THIS STATE HAS A RIGHT OF ELECTION, UNDER THE
15 LIMITATIONS AND CONDITIONS STATED IN THIS PART 2, TO TAKE AN
16 ELECTIVE-SHARE AMOUNT EQUAL TO FIFTY PERCENT OF THE VALUE OF THE
17 MARITAL-PROPERTY PORTION OF THE AUGMENTED ESTATE.

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

1 THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS IN THE ORDER OF
2 PRIORITY SET FORTH IN SECTION 15-11-209 (3) (a) AND (3) (b).

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

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

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

16 **15-11-203. [Formerly 15-11-201 (1)] Composition of the**
17 **marital-property portion of the augmented estate.** (1) SUBJECT TO
18 SECTION 15-11-208, THE VALUE OF THE AUGMENTED ESTATE, TO THE
19 EXTENT PROVIDED IN SECTIONS 15-11-204, 15-11-205, 15-11-206, AND
20 15-11-207, CONSISTS OF THE SUM OF THE VALUES OF ALL PROPERTY,
21 WHETHER REAL OR PERSONAL, MOVABLE OR IMMOVABLE, TANGIBLE OR
22 INTANGIBLE, WHEREVER SITUATED, THAT CONSTITUTES:

23 (a) THE DECEDENT'S NET PROBATE ESTATE;

24 (b) THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS;

25 (c) THE DECEDENT'S NONPROBATE TRANSFERS TO THE SURVIVING
26 SPOUSE; AND

27 (d) THE SURVIVING SPOUSE'S PROPERTY AND NONPROBATE

1 TRANSFERS TO OTHERS.

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

7 IF THE DECEDENT AND THE SPOUSE	8 WERE MARRIED TO EACH OTHER:	THE PERCENTAGE IS:
9 LESS THAN 1 YEAR		SUPPLEMENTAL AMOUNT ONLY.
10 1 YEAR BUT LESS THAN 2 YEARS		10%
11 2 YEARS BUT LESS THAN 3 YEARS		20%
12 3 YEARS BUT LESS THAN 4 YEARS		30%
13 4 YEARS BUT LESS THAN 5 YEARS		40%
14 5 YEARS BUT LESS THAN 6 YEARS		50%
15 6 YEARS BUT LESS THAN 7 YEARS		60%
16 7 YEARS BUT LESS THAN 8 YEARS		70%
17 8 YEARS BUT LESS THAN 9 YEARS		80%
18 9 YEARS BUT LESS THAN 10 YEARS		90%
19 10 YEARS OR MORE		100%

20 **15-11-204. [Formerly 15-11-201 (2) (a)] Decedent's net probate**
21 **estate.** THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF
22 THE DECEDENT'S PROBATE ESTATE, REDUCED BY FUNERAL AND
23 ADMINISTRATIVE EXPENSES, FAMILY ALLOWANCE, EXEMPT PROPERTY,
24 AND ENFORCEABLE CLAIMS.

25 **15-11-205. [Formerly 15-11-201 (2) (b)] Decedent's**
26 **nonprobate transfers to others.** THE VALUE OF THE AUGMENTED
27 ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE

1 TRANSFERS TO OTHERS, NOT INCLUDED IN THE DECEDENT'S PROBATE
2 ESTATE UNDER SECTION 15-11-204, OF ANY OF THE FOLLOWING TYPES, IN
3 THE AMOUNT PROVIDED RESPECTIVELY FOR EACH TYPE OF TRANSFER:

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

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

22 (b) THE DECEDENT'S FRACTIONAL INTEREST IN REAL PROPERTY
23 HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF
24 SURVIVORSHIP CREATED DURING THE MARRIAGE TO THE SURVIVING
25 SPOUSE, EXCEPT AS PROVIDED IN SECTION 15-11-208, AND THE
26 DECEDENT'S FRACTIONAL INTEREST IN PERSONAL PROPERTY HELD BY THE
27 DECEDENT IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP. THE

1 AMOUNT INCLUDED IS THE VALUE OF THE DECEDENT'S FRACTIONAL
2 INTEREST, TO THE EXTENT THAT THE FRACTIONAL INTEREST PASSED BY
3 RIGHT OF SURVIVORSHIP AT THE DECEDENT'S DEATH TO A SURVIVING JOINT
4 TENANT OTHER THAN THE DECEDENT'S SURVIVING SPOUSE.

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

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

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

23 (a) ANY IRREVOCABLE TRANSFER IN WHICH THE DECEDENT
24 RETAINED THE RIGHT TO THE POSSESSION OR ENJOYMENT OF, OR TO THE
25 INCOME FROM, THE PROPERTY IF AND TO THE EXTENT THAT THE
26 DECEDENT'S RIGHT TERMINATED AT OR CONTINUED BEYOND THE
27 DECEDENT'S DEATH. THE AMOUNT INCLUDED IS THE VALUE OF THE

1 FRACTION OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT RELATED,
2 TO THE EXTENT THAT THE FRACTION OF THE PROPERTY PASSED OUTSIDE
3 PROBATE TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE
4 DECEDENT'S ESTATE OR SURVIVING SPOUSE; OR

5 (b) ANY TRANSFER IN WHICH THE DECEDENT CREATED A POWER
6 OVER THE INCOME OR PRINCIPAL OF THE TRANSFERRED PROPERTY,
7 EXERCISABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY
8 OTHER PERSON OR EXERCISABLE BY A NONADVERSE PARTY, FOR THE
9 BENEFIT OF THE DECEDENT, THE DECEDENT'S CREDITORS, THE DECEDENT'S
10 ESTATE, OR THE CREDITORS OF THE DECEDENT'S ESTATE. THE AMOUNT
11 INCLUDED WITH RESPECT TO A POWER OVER PROPERTY IS THE VALUE OF
12 THE PROPERTY SUBJECT TO THE POWER, AND THE AMOUNT INCLUDED WITH
13 RESPECT TO A POWER OVER INCOME IS THE VALUE OF THE PROPERTY THAT
14 PRODUCES OR PRODUCED THE INCOME, TO THE EXTENT THAT THE POWER
15 IN EITHER CASE WAS EXERCISABLE AT THE DECEDENT'S DEATH TO OR FOR
16 THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S SURVIVING
17 SPOUSE OR TO THE EXTENT THAT THE PROPERTY SUBJECT TO THE POWER
18 PASSED AT THE DECEDENT'S DEATH, BY EXERCISE, RELEASE, LAPSE, IN
19 DEFAULT, OR OTHERWISE TO OR FOR THE BENEFIT OF ANY PERSON OTHER
20 THAN THE DECEDENT'S ESTATE OR SURVIVING SPOUSE. IF THE POWER IS A
21 POWER OVER BOTH INCOME AND PROPERTY AND THE PRECEDING SENTENCE
22 PRODUCES DIFFERENT AMOUNTS, THE AMOUNT INCLUDED IS THE GREATER
23 AMOUNT.

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

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

23 (b) ANY TRANSFER OF, OR RELATING TO, AN INSURANCE POLICY ON
24 THE LIFE OF THE DECEDENT IF THE PROCEEDS WOULD HAVE BEEN
25 INCLUDED IN THE AUGMENTED ESTATE UNDER SUBPARAGRAPH (IV) OF
26 PARAGRAPH (a) OF THIS SUBSECTION (1) HAD THE TRANSFER NOT
27 OCCURRED. THE AMOUNT INCLUDED IS THE VALUE OF THE INSURANCE

1 PROCEEDS TO THE EXTENT THAT THE PROCEEDS WERE PAYABLE AT THE
2 DECEDENT'S DEATH TO OR FOR THE BENEFIT OF THE DECEDENT'S ESTATE
3 OR SURVIVING SPOUSE.

4 (c) ANY TRANSFER OF PROPERTY, TO THE EXTENT NOT OTHERWISE
5 INCLUDED IN THE AUGMENTED ESTATE, MADE TO OR FOR THE BENEFIT OF
6 A PERSON OTHER THAN THE DECEDENT'S SURVIVING SPOUSE. THE AMOUNT
7 INCLUDED IS THE VALUE OF THE TRANSFERRED PROPERTY TO THE EXTENT
8 THAT THE AGGREGATE TRANSFERS TO ANY ONE DONEE IN EITHER OF THE
9 TWO YEARS EXCEEDED THE AMOUNT EXCLUDABLE FROM TAXABLE GIFTS
10 UNDER 26 U.S.C. SEC. 2503 (b) OR ITS SUCCESSOR ON THE DATE NEXT
11 PRECEDING THE DATE OF THE DECEDENT'S DEATH.

12 **15-11-206. [Formerly 15-11-202 (2) (c)] Decedent's nonprobate**
13 **transfers to the surviving spouse.** EXCLUDING PROPERTY PASSING TO
14 THE SURVIVING SPOUSE UNDER THE FEDERAL SOCIAL SECURITY SYSTEM
15 AFTER THE DECEDENT'S DATE OF DEATH, THE VALUE OF THE AUGMENTED
16 ESTATE INCLUDES THE VALUE OF THE DECEDENT'S NONPROBATE
17 TRANSFERS TO THE DECEDENT'S SURVIVING SPOUSE, WHICH CONSIST OF
18 ALL PROPERTY THAT PASSED OUTSIDE PROBATE AT THE DECEDENT'S DEATH
19 FROM THE DECEDENT TO THE SURVIVING SPOUSE BY REASON OF THE
20 DECEDENT'S DEATH, INCLUDING:

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

25 (2) THE DECEDENT'S OWNERSHIP INTEREST IN PROPERTY OR
26 ACCOUNTS HELD IN POD, TOD, OR CO-OWNERSHIP REGISTRATION WITH
27 THE RIGHT OF SURVIVORSHIP, TO THE EXTENT THE DECEDENT'S OWNERSHIP

1 INTEREST PASSED TO THE SURVIVING SPOUSE AS SURVIVING CO-OWNER;
2 AND

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

8 **15-11-207. [Formerly 15-11-202 (2) (d)] Surviving spouse's**
9 **property and nonprobate transfers to others.** (1) EXCEPT TO THE
10 EXTENT INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION 15-11-204
11 OR 15-11-206, THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE
12 VALUE OF:

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

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

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

24 (III) PROPERTY THAT PASSED TO THE SURVIVING SPOUSE BY
25 REASON OF THE DECEDENT'S DEATH BUT NOT INCLUDING THE SPOUSE'S
26 RIGHT TO FAMILY ALLOWANCE, EXEMPT PROPERTY, OR PAYMENTS UNDER
27 THE FEDERAL SOCIAL SECURITY SYSTEM AFTER THE DECEDENT'S DATE OF

1 DEATH; AND

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

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

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

20 **15-11-208. [Formerly 15-11-202 (3)] Exclusions, valuations,**
21 **and overlapping application. (1) Exclusions. (a) THE VALUE OF ANY**
22 **PROPERTY IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS**
23 **TO OTHERS:**

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

27 (II) IF THE PROPERTY WAS TRANSFERRED WITH THE WRITTEN

1 JOINDER OF, OR IF THE TRANSFER WAS CONSENTED TO IN WRITING BY, THE
2 SURVIVING SPOUSE; OR

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

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

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

15 (d) LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT
16 SHARING, RETIREMENT, AND OTHER BENEFIT PLANS QUALIFIED UNDER
17 SECTION 401 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986",
18 AS AMENDED, AND PAYABLE TO PERSONS OTHER THAN THE DECEDENT'S
19 SURVIVING SPOUSE OR THE DECEDENT'S ESTATE ARE EXCLUDED FROM THE
20 AUGMENTED ESTATE. FOR PURPOSES OF THIS SUBSECTION (1), INDIVIDUAL
21 RETIREMENT ACCOUNTS AND ANNUITIES DESCRIBED IN SECTION 408 OF
22 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
23 OTHER TAX-DEFERRED ANNUITIES OVER WHICH THE DECEDENT HAD A
24 PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT ARE NOT
25 EXCLUDED FROM THE AUGMENTED ESTATE.

26 (e) ANY COMPLETED TRANSFERS MADE BY THE DECEDENT PRIOR
27 TO JULY 1, 1974, ARE EXCLUDED FROM THE DECEDENT'S NONPROBATE

1 TRANSFERS TO OTHERS.

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

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

8 (a) INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION
9 15-11-205, 15-11-206, OR 15-11-207 IS REDUCED IN EACH CATEGORY BY
10 ENFORCEABLE CLAIMS AGAINST THE INCLUDED PROPERTY; AND

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

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

23 **15-11-209. [Formerly 15-11-203] Sources from which**
24 **elective-share payable.** (1) **Elective-share amount only.** (a) IN A
25 PROCEEDING FOR AN ELECTIVE-SHARE, THE FOLLOWING ARE APPLIED FIRST
26 TO SATISFY THE ELECTIVE-SHARE AMOUNT AND TO REDUCE OR ELIMINATE
27 ANY CONTRIBUTIONS DUE FROM THE DECEDENT'S PROBATE ESTATE AND

1 RECIPIENTS OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS:

2 (I) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER
3 SECTION 15-11-204 (THE NET PROBATE ESTATE) WHICH PASS OR HAVE
4 PASSED TO THE SURVIVING SPOUSE BY TESTATE OR INTESTATE SUCCESSION
5 AND AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER SECTION
6 15-11-206; AND

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

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

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

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

26 (a) AMOUNTS INCLUDED IN THE DECEDENT'S NET PROBATE ESTATE
27 AFTER APPLICATION OF SUBSECTION (1) OF THIS SECTION AND IN THE

1 DECEDENT'S NONPROBATE TRANSFERS TO OTHERS DESCRIBED IN SECTION
2 15-11-205 (3) (a) (DURING THE MARRIAGE AND THE TWO-YEAR PERIOD
3 NEXT PRECEDING THE DECEDENT'S DEATH, THE DECEDENT'S INTEREST
4 TERMINATED AND THE PROPERTY WAS TRANSFERRED TO SOMEONE OTHER
5 THAN THE SPOUSE), AND IN SECTION 15-11-205 (3) (c) (ANY TRANSFER
6 DURING THE SAME TWO-YEAR PERIOD BUT ONLY TO THE EXTENT THE
7 TRANSFER EXCEEDED THE APPLICABLE GIFT TAX ANNUAL EXCLUSION) ARE
8 APPLIED FIRST TO SATISFY THE UNSATISFIED BALANCE OF THE
9 ELECTIVE-SHARE AMOUNT OR THE SUPPLEMENTAL ELECTIVE-SHARE
10 AMOUNT. THE DECEDENT'S NET PROBATE ESTATE AND THAT PORTION OF
11 THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE SO APPLIED
12 THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE
13 AMOUNT OR FOR THE SUPPLEMENTAL ELECTIVE-SHARE AMOUNT IS
14 APPORTIONED AMONG THE RECIPIENTS OF THE DECEDENT'S NET PROBATE
15 ESTATE AND OF THAT PORTION OF THE DECEDENT'S NONPROBATE
16 TRANSFERS TO OTHERS IN PROPORTION TO THE VALUE OF THEIR INTERESTS
17 THEREIN.

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

27 (4) **Unsatisfied balance treated as general pecuniary devise.**

1 THE UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL
2 ELECTIVE-SHARE AMOUNT AS DETERMINED UNDER SUBSECTION (3) OF THIS
3 SECTION IS TREATED AS A GENERAL PECUNIARY DEVISE FOR PURPOSES OF
4 SECTION 15-12-904.

5 **15-11-210. [Formerly 15-11-204] Personal liability of**
6 **recipients.** (1) ONLY ORIGINAL RECIPIENTS OF THE DECEDENT'S
7 NONPROBATE TRANSFERS TO OTHERS, AND THE DONEES OF THE RECIPIENTS
8 OF THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS, TO THE EXTENT
9 THE DONEES HAVE THE PROPERTY OR ITS PROCEEDS, ARE LIABLE TO MAKE
10 A PROPORTIONAL CONTRIBUTION TOWARD SATISFACTION OF THE
11 SURVIVING SPOUSE'S ELECTIVE-SHARE OR SUPPLEMENTAL
12 ELECTIVE-SHARE AMOUNT. A PERSON LIABLE TO MAKE A CONTRIBUTION
13 MAY CHOOSE TO GIVE UP THE PROPORTIONAL PART OF THE DECEDENT'S
14 NONPROBATE TRANSFERS TO HIM OR HER OR TO PAY THE VALUE OF THE
15 AMOUNT FOR WHICH HE OR SHE IS LIABLE.

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

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

8 **15-11-211. [Formerly 15-11-205] Proceeding for elective-share**
9 **- time limit.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS
10 SECTION, THE ELECTION MUST BE MADE BY FILING IN THE COURT AND
11 MAILING OR DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A
12 PETITION FOR THE ELECTIVE-SHARE WITHIN NINE MONTHS AFTER THE DATE
13 OF THE DECEDENT'S DEATH OR WITHIN SIX MONTHS AFTER THE PROBATE
14 OF THE DECEDENT'S WILL, WHICHEVER LIMITATION LATER EXPIRES. THE
15 SURVIVING SPOUSE MUST GIVE WRITTEN NOTICE OF THE TIME AND PLACE
16 SET FOR HEARING TO PERSONS INTERESTED IN THE ESTATE AND TO THE
17 DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE
18 WHOSE INTERESTS WILL BE ADVERSELY AFFECTED BY THE TAKING OF THE
19 ELECTIVE-SHARE.

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

27 (3) IF THE SPOUSE MAKES AN ELECTION BY FILING A PETITION FOR

1 THE ELECTIVE-SHARE MORE THAN NINE MONTHS AFTER THE DECEDENT'S
2 DEATH, THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS ARE NOT
3 INCLUDED WITHIN THE AUGMENTED ESTATE UNLESS THE SPOUSE HAD
4 FILED A PETITION FOR EXTENSION PRIOR TO THE EXPIRATION OF THE
5 NINE-MONTH PERIOD AND THE COURT GRANTED THE EXTENSION.

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

13 (5) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE
14 THE ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS
15 AND SHALL ORDER ITS PAYMENT FROM THE ASSETS OF THE AUGMENTED
16 ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER SECTIONS
17 15-11-209 AND 15-11-210. IF IT APPEARS THAT A FUND OR PROPERTY
18 INCLUDED IN THE AUGMENTED ESTATE HAS NOT COME INTO THE
19 POSSESSION OF THE PERSONAL REPRESENTATIVE OR HAS BEEN
20 DISTRIBUTED BY THE PERSONAL REPRESENTATIVE, THE COURT
21 NEVERTHELESS SHALL FIX THE LIABILITY OF ANY PERSON WHO HAS ANY
22 INTEREST IN THE FUND OR PROPERTY OR WHO HAS POSSESSION THEREOF,
23 WHETHER AS TRUSTEE OR OTHERWISE. THE PROCEEDING MAY BE
24 MAINTAINED AGAINST FEWER THAN ALL PERSONS AGAINST WHOM RELIEF
25 COULD BE SOUGHT, BUT NO PERSON IS SUBJECT TO CONTRIBUTION IN ANY
26 GREATER AMOUNT THAN HE OR SHE WOULD HAVE BEEN UNDER SECTIONS
27 15-11-209 AND 15-11-210 HAD RELIEF BEEN SECURED AGAINST ALL

1 PERSONS SUBJECT TO CONTRIBUTION.

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

5 **15-11-212. [Formerly 15-11-206] Right of election personal to**
6 **surviving spouse - incapacitated surviving spouse. (1) Surviving**
7 **spouse must be living at time of election.** THE RIGHT OF ELECTION MAY
8 BE EXERCISED ONLY BY A SURVIVING SPOUSE WHO IS LIVING WHEN THE
9 PETITION FOR THE ELECTIVE-SHARE IS FILED IN THE COURT UNDER SECTION
10 15-11-211. IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING SPOUSE
11 PERSONALLY, IT MAY BE EXERCISED ON THE SURVIVING SPOUSE'S BEHALF
12 BY HIS OR HER CONSERVATOR, GUARDIAN, OR AGENT UNDER THE
13 AUTHORITY OF A POWER OF ATTORNEY.

14 (2) **Incapacitated surviving spouse.** IF THE ELECTION IS
15 EXERCISED ON BEHALF OF A SURVIVING SPOUSE WHO IS AN INCAPACITATED
16 PERSON, THE COURT MUST SET ASIDE THAT PORTION OF THE
17 ELECTIVE-SHARE AND SUPPLEMENTAL ELECTIVE-SHARE AMOUNTS DUE
18 FROM THE DECEDENT'S PROBATE ESTATE AND RECIPIENTS OF THE
19 DECEDENT'S NONPROBATE TRANSFERS TO OTHERS UNDER SECTION
20 15-11-209 (1) AND (3) AND MUST APPOINT A TRUSTEE TO ADMINISTER
21 THAT PROPERTY FOR THE SUPPORT OF THE SURVIVING SPOUSE. FOR THE
22 PURPOSES OF THIS SUBSECTION (2), AN ELECTION ON BEHALF OF A
23 SURVIVING SPOUSE BY AN AGENT UNDER A DURABLE POWER OF ATTORNEY
24 IS PRESUMED TO BE ON BEHALF OF A SURVIVING SPOUSE WHO IS AN
25 INCAPACITATED PERSON. THE TRUSTEE MUST ADMINISTER THE TRUST IN
26 ACCORDANCE WITH THE FOLLOWING TERMS AND SUCH ADDITIONAL TERMS
27 AS THE COURT DETERMINES APPROPRIATE:

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

9 (b) DURING THE SURVIVING SPOUSE'S INCAPACITY, NEITHER THE
10 SURVIVING SPOUSE NOR ANYONE ACTING ON BEHALF OF THE SURVIVING
11 SPOUSE HAS A POWER TO TERMINATE THE TRUST, BUT IF THE SURVIVING
12 SPOUSE REGAINS CAPACITY, THE SURVIVING SPOUSE THEN ACQUIRES THE
13 POWER TO TERMINATE THE TRUST AND ACQUIRE FULL OWNERSHIP OF THE
14 TRUST PROPERTY FREE OF TRUST, BY DELIVERING TO THE TRUSTEE A
15 WRITING SIGNED BY THE SURVIVING SPOUSE DECLARING THE
16 TERMINATION; AND

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

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

23 (II) TO THAT PREDECEASED SPOUSE'S HEIRS UNDER SECTION
24 15-11-711.

25 **15-11-213. [Formerly 15-11-207] Waiver of right to elect and**
26 **of other rights.** (1) ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A
27 MARITAL RIGHT OR OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S.,

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

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

9 **15-11-214. [Formerly 15-11-208] Protection of payors and**
10 **other third parties.** (1) ALTHOUGH UNDER THIS PART 2, A PAYMENT,
11 ITEM OF PROPERTY, OR OTHER BENEFIT IS INCLUDED IN THE DECEDENT'S
12 NONPROBATE TRANSFERS TO OTHERS, A PAYOR OR OTHER THIRD PARTY IS
13 NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM OF
14 PROPERTY OR OTHER BENEFIT TO A BENEFICIARY DESIGNATED IN A
15 GOVERNING INSTRUMENT OR FOR HAVING TAKEN ANY OTHER ACTION IN
16 GOOD-FAITH RELIANCE ON THE VALIDITY OF A GOVERNING INSTRUMENT,
17 UPON REQUEST AND SATISFACTORY PROOF OF THE DECEDENT'S DEATH,
18 BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE
19 FROM THE SURVIVING SPOUSE OR THE SPOUSE'S REPRESENTATIVE OF AN
20 INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A
21 PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. A PAYOR OR OTHER
22 THIRD PARTY IS LIABLE FOR PAYMENTS MADE OR OTHER ACTIONS TAKEN
23 AFTER THE PAYOR OR OTHER THIRD PARTY RECEIVED WRITTEN NOTICE OF
24 AN INTENTION TO FILE A PETITION FOR THE ELECTIVE-SHARE OR THAT A
25 PETITION FOR THE ELECTIVE-SHARE HAS BEEN FILED. ANY FORM OR
26 SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) OF
27 THIS SECTION IS NOT SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR

1 OTHER THIRD PARTY FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING
2 INSTRUMENT.

3 (2) A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR THE
4 ELECTIVE-SHARE OR THAT A PETITION FOR THE ELECTIVE-SHARE HAS BEEN
5 FILED MUST BE MAILED TO THE PAYOR'S OR OTHER THIRD PARTY'S MAIN
6 OFFICE OR HOME BY REGISTERED OR CERTIFIED MAIL WITH RETURN
7 RECEIPT REQUESTED OR SERVED UPON THE PAYOR OR OTHER THIRD PARTY
8 IN THE SAME MANNER AS A SUMMONS IN A CIVIL ACTION. NOTICE TO A
9 SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY DOES NOT
10 CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY.

11 (3) UPON RECEIPT OF A WRITTEN NOTICE OF INTENTION TO FILE A
12 PETITION FOR THE ELECTIVE-SHARE OR THAT A PETITION FOR THE
13 ELECTIVE-SHARE HAS BEEN FILED, A PAYOR OR OTHER THIRD PARTY MAY
14 PAY ANY AMOUNT OWED OR TRANSFER TO OR DEPOSIT ANY ITEM OF
15 PROPERTY HELD BY IT TO OR WITH THE COURT HAVING JURISDICTION OF
16 THE PROBATE PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF
17 NO PROCEEDINGS HAVE BEEN COMMENCED, TO OR WITH THE COURT
18 HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO
19 DECEDENTS' ESTATES LOCATED IN THE COUNTY OF THE DECEDENT'S
20 RESIDENCE. THE AVAILABILITY OF SUCH ACTIONS UNDER THIS SECTION
21 DOES NOT PREVENT THE PAYOR OR OTHER THIRD PARTY FROM TAKING ANY
22 OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT.
23 THE COURT IS THE COURT HAVING JURISDICTION OF THE PROBATE
24 PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE OR, IF NO
25 PROCEEDINGS HAVE BEEN COMMENCED, THE COURT HAVING JURISDICTION
26 OF PROBATE PROCEEDINGS RELATING TO DECEDENTS' ESTATES LOCATED
27 IN THE COUNTY OF THE DECEDENT'S RESIDENCE. IF NO PROBATE

1 PROCEEDINGS HAVE BEEN COMMENCED, THE PAYOR OR OTHER THIRD
2 PARTY SHALL FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE
3 RECEIVED BY THE PAYOR OR OTHER THIRD PARTY, WITH THE PAYMENT OF
4 FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT SHALL NOT
5 CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE
6 PAYMENT TO THE COURT OF AMOUNTS OWED OR TRANSFER TO OR DEPOSIT
7 WITH THE COURT OF ANY ITEM OF PROPERTY EVEN IF NO PROBATE
8 PROCEEDINGS HAVE BEEN COMMENCED BEFORE SUCH PAYMENT,
9 TRANSFER, OR DEPOSIT. PAYMENT OF AMOUNTS TO THE COURT OR
10 TRANSFER TO OR DEPOSIT WITH THE COURT OF ANY ITEM OF PROPERTY
11 PURSUANT TO THIS SECTION BY THE PAYOR OR OTHER THIRD PARTY
12 DISCHARGES THE PAYOR OR OTHER THIRD PARTY FROM ALL CLAIMS UNDER
13 THE GOVERNING INSTRUMENT OR APPLICABLE LAW FOR THE VALUE OF
14 AMOUNTS PAID TO THE COURT OR ITEMS OF PROPERTY TRANSFERRED TO
15 OR DEPOSITED WITH THE COURT.

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

1 VALUE OF PROPERTY SO TRANSFERRED OR DEPOSITED.

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

6 **SECTION 2.** In Colorado Revised Statutes, 15-11-606, **amend**
7 (1) (f) as follows:

8 **15-11-606. Nonademption of specified devises - unpaid**
9 **proceeds of sale, condemnation, or insurance - sale by conservator or**
10 **agent.** (1) A specific devisee has a right to the specifically devised
11 property in the testator's estate at death and:

12 (f) ~~Unless the facts and circumstances indicate that ademption of~~
13 ~~the devise was intended by the testator or ademption of the devise is~~
14 ~~consistent with the testator's manifested plan of distribution, the value of~~
15 ~~the specifically devised property to the extent the specifically devised~~
16 ~~property is not in the testator's estate at death and its value or its~~
17 ~~replacement is not covered by paragraphs (a) to (e) of this subsection (1).~~

18 IF NOT COVERED BY ANY OF PARAGRAPHS (a) TO (e) OF THIS SUBSECTION
19 (1), A GENERAL PECUNIARY DEVISE EQUAL TO THE VALUE AS OF ITS DATE
20 OF DISPOSITION OF OTHER SPECIFICALLY DEVISED PROPERTY DISPOSED OF
21 DURING THE TESTATOR'S LIFETIME, BUT ONLY TO THE EXTENT IT IS
22 ESTABLISHED THAT ADEMPTION WOULD BE INCONSISTENT WITH THE
23 TESTATOR'S MANIFESTED PLAN OF DISTRIBUTION OR THAT AT THE TIME
24 THE WILL WAS MADE, THE DATE OF DISPOSITION, OR OTHERWISE, THE
25 TESTATOR DID NOT INTEND ADEMPTION OF THE DEVISE.

26 **SECTION 3.** In Colorado Revised Statutes, **amend** 15-12-102 as
27 follows:

1 **15-12-102. Necessity of order of probate for will.** Except as
2 provided in sections 15-12-901, 15-12-1201, 15-13-204, and 15-13-205
3 and in part 13 of this article, to be effective to prove the transfer of any
4 property or to nominate ~~an executor~~ A PERSONAL REPRESENTATIVE, a will
5 must be declared to be valid by an order of informal probate by the
6 registrar, or an adjudication of probate by the court.

7 **SECTION 4.** In Colorado Revised Statutes, 15-12-805, **amend**
8 (1) introductory portion and (1) (g) as follows:

9 **15-12-805. Classification of claims.** (1) The PERSONAL
10 REPRESENTATIVE SHALL PAY allowed claims against the estate of a
11 decedent ~~shall be paid by the personal representative~~ in the following
12 order:

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

17 **SECTION 5.** In Colorado Revised Statutes, 15-12-1201, **amend**
18 (1) introductory portion, (1) (a), and (1) (d); and **add** (1.5), (3.5), and (4)
19 as follows:

20 **15-12-1201. Collection of personal property by affidavit.**

21 (1) At any time ten or more days after the date of death of a decedent,
22 any person indebted to the decedent or having possession of any personal
23 property, including but not limited to funds on deposit at any financial
24 institution; tangible personal property; or an instrument evidencing a debt,
25 obligation, stock, chose in action, or stock brand belonging to the
26 decedent shall pay or deliver such property to a person claiming to be ~~the~~
27 A successor OF THE DECEDENT OR ACTING ON BEHALF OF A SUCCESSOR of

1 the decedent upon being presented an affidavit made by or on behalf of
2 the successor stating: ~~that~~

3 (a) The fair market value of property owned by the decedent and
4 subject to disposition by will or intestate succession at the time of his or
5 her death, wherever that property is located, less liens and encumbrances,
6 does not exceed ~~sixty thousand dollars~~ TWICE THE AMOUNT SET FORTH IN
7 SECTION 15-11-403, AS ADJUSTED BY SECTION 15-10-112;

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

11 (1.5) AN INSTRUMENT OR OTHER PROPERTY THAT IS PAYABLE OR
12 DELIVERABLE TO A DECEDENT OR TO THE ESTATE OF A DECEDENT IS
13 CONSIDERED PROPERTY OF THE DECEDENT SUBJECT TO SUBSECTION (1) OF
14 THIS SECTION. A SUCCESSOR OR PERSON ACTING ON BEHALF OF A
15 SUCCESSOR UNDER SUBSECTION (1) OF THIS SECTION MAY ENDORSE AN
16 INSTRUMENT THAT IS SO PAYABLE AND COLLECT SUCH AMOUNT.

17 (3.5) IN THE EVENT THAT AN INSTRUMENT OR OTHER EVIDENCE OF
18 AN INDEBTEDNESS IS SECURED BY REAL PROPERTY, IN ORDER TO ACT ON
19 BEHALF OF THE HOLDER OF THE INDEBTEDNESS SECURED BY A MORTGAGE,
20 DEED OF TRUST, OR OTHER SECURITY DOCUMENT, THE PERSON MAKING
21 THE AFFIDAVIT MUST RECORD, WITH THE CLERK AND RECORDER OF THE
22 COUNTY WHERE THE REAL PROPERTY IS LOCATED, A COPY OF THE
23 AFFIDAVIT AND A COPY OF THE DECEDENT'S DEATH CERTIFICATE OR A
24 VERIFICATION OF DEATH DOCUMENT.

25 (4) THE DUTIES OWED TO A SUCCESSOR BY A PERSON ACTING ON
26 BEHALF OF THE SUCCESSOR IN THE MAKING, PRESENTATION, OR OTHER USE
27 OF AN AFFIDAVIT UNDER THIS SECTION ARE THE SAME AS THE DUTIES OF

1 AN AGENT TO THE AGENT'S PRINCIPAL, AND THE BREACH OF SUCH DUTY IS
2 SUBJECT TO THE SAME REMEDIES AS ARE AVAILABLE UNDER THE LAW OF
3 THIS STATE WITH RESPECT TO AN AGENT SUBJECT TO PART 7 OF ARTICLE
4 14 OF THIS TITLE, INCLUDING BUT NOT LIMITED TO THE REMEDIES
5 AVAILABLE UNDER PART 5 OF ARTICLE 10 OF THIS TITLE. A SUCCESSOR
6 WHO MAKES, PRESENTS, OR USES SUCH AN AFFIDAVIT WHERE THERE ARE
7 TWO OR MORE SUCCESSORS IS A PERSON ACTING ON BEHALF OF EACH
8 OTHER SUCCESSOR.

9 **SECTION 6.** In Colorado Revised Statutes, **amend 15-12-1202**
10 as follows:

11 **15-12-1202. Effect of affidavit.** (1) The person paying,
12 delivering, transferring, or issuing personal property or the evidence
13 thereof pursuant to affidavit is discharged and released to the same extent
14 as if he OR SHE dealt with a personal representative of the decedent. He
15 OR SHE is not required to see to the application of the personal property
16 or evidence thereof or to inquire into the truth of any statement in the
17 affidavit.

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

24 (3) IF A PROOF OF RIGHT HAS BEEN ESTABLISHED IN A PROCEEDING
25 UNDER SUBSECTION (2) OF THIS SECTION, ANY PERSON TO WHOM AN
26 AFFIDAVIT WAS DELIVERED AND WHO REFUSED, WITHOUT REASONABLE
27 CAUSE, TO PAY, DELIVER, TRANSFER, OR ISSUE ANY INDEBTEDNESS OR

1 OTHER PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO FUNDS ON
2 DEPOSIT AT ANY FINANCIAL INSTITUTION; TANGIBLE PERSONAL PROPERTY;
3 OR AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK, CHOSE IN
4 ACTION, OR STOCK BRAND BELONGING TO THE DECEDENT, SHALL BE
5 LIABLE FOR ALL COSTS, INCLUDING REASONABLE ATTORNEY FEES AND
6 COSTS, INCURRED BY OR ON BEHALF OF THE PERSONS ENTITLED THERETO.
7 THE PERSON TO WHOM AN AFFIDAVIT WAS DELIVERED BEARS THE BURDEN
8 OF PROVING REASONABLE CAUSE BY A PREPONDERANCE OF THE EVIDENCE.

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

12 **SECTION 7.** In Colorado Revised Statutes, 15-16-702, **amend**

13 (3) (b) as follows:

14 **15-16-702. Revocation or amendment of revocable trust.**

15 (3) The settlor may revoke or amend a revocable trust:

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

1 **SECTION 8.** In Colorado Revised Statutes, **add** part 8 to article
2 16 of title 15 as follows:

3 PART 8

4 DIRECTED TRUSTEES

5 **15-16-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

27 (7) "SETTLOR" INCLUDES A GRANTOR, A TRUSTOR, AND A

1 TESTATOR.

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

3 (I) ACTING IN A FIDUCIARY CAPACITY; AND

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

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

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

14 **15-16-802. Default rules for directed trusts.** EXCLUDING THE
15 REQUIREMENT THAT A TRUST ADVISOR ACT IN A FIDUCIARY CAPACITY, THE
16 PROVISIONS OF THIS PART 8 ARE DEFAULT RULES THAT APPLY TO ANY
17 TRUST FOR WHICH A TRUST ADVISOR IS THEN ACTING, AND SUCH RULES
18 MAY BE EXPANDED, RESTRICTED, ELIMINATED, OR OTHERWISE ALTERED BY
19 THE PROVISIONS OF A GOVERNING INSTRUMENT.

20 **15-16-803. Trust advisor and excluded trustee.** (1) A TRUST
21 ADVISOR WITH POWER OVER INVESTMENT DECISIONS IS SUBJECT TO THE
22 "UNIFORM PRUDENT INVESTOR ACT", ARTICLE 1.1 OF THIS TITLE. A TRUST
23 ADVISOR WHO HAS SPECIAL SKILLS OR EXPERTISE OR WHO IS NAMED A
24 TRUST ADVISOR IN RELIANCE UPON HIS OR HER REPRESENTATION THAT HE
25 OR SHE HAS SPECIAL SKILLS OR EXPERTISE HAS A DUTY TO USE THOSE
26 SPECIAL SKILLS OR EXPERTISE.

27 (2) THE POWERS AND DUTIES OF A TRUST ADVISOR, AND THE

1 EXTENT OF SUCH POWERS AND DUTIES, ARE ESTABLISHED BY THE
2 GOVERNING INSTRUMENT, AND THE EXERCISE OR NONEXERCISE OF SUCH
3 POWERS AND DUTIES IS BINDING ON ALL OTHER PERSONS.

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

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

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

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

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

19 **15-16-804. Appointment and removal of trust advisors.** IF A
20 GOVERNING INSTRUMENT DOES NOT INCLUDE EXPRESS PROVISIONS FOR
21 THE REMOVAL OF A TRUST ADVISOR BUT DOES INCLUDE PROVISIONS FOR
22 THE REMOVAL OF ONE OR MORE TRUSTEES, THE PROVISIONS FOR THE
23 REMOVAL OF TRUSTEES ALSO GOVERN THE REMOVAL OF ANY
24 THEN-SERVING TRUST ADVISOR.

25 **15-16-805. No duty to review actions of trust advisor.** AN
26 EXCLUDED TRUSTEE HAS NO DUTY TO REVIEW OR MONITOR THE ACTIONS
27 OF A TRUST ADVISOR.

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

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

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

26 (4) A TRUST ADVISOR HAS NO DUTY TO COMMUNICATE WITH OR
27 WARN ANY BENEFICIARY OR THIRD PARTY CONCERNING ANY ACTION OR

1 ACTIONS TAKEN BY ANY OTHER TRUST ADVISOR OR TRUSTEE.

2 **15-16-807. Excluded trustee not liable for action of trust**

3 **advisor.** (1) IF AN EXCLUDED TRUSTEE IS REQUIRED TO FOLLOW THE
4 DIRECTION OF A TRUST ADVISOR AND THE EXCLUDED TRUSTEE ACTS IN
5 ACCORDANCE WITH SUCH DIRECTION, THE EXCLUDED TRUSTEE IS NOT
6 LIABLE FOR ANY CAUSE OF ACTION RESULTING FROM THE ACT OF
7 COMPLYING THEREWITH, EXCEPT IN CASES OF WILLFUL MISCONDUCT ON
8 THE PART OF THE EXCLUDED TRUSTEE SO DIRECTED.

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

11 **15-16-808. Power of trust advisor to act after death or**

12 **incapacity of settlor.** THE POWER AND AUTHORITY OF A TRUST ADVISOR
13 DOES NOT LAPSE AT THE DEATH OR INCAPACITY OF THE SETTLOR.

14 **15-16-809. Trust advisor subject to district court jurisdiction.**

15 BY ACCEPTING APPOINTMENT TO SERVE AS A TRUST ADVISOR OF A TRUST
16 HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THE STATE OF
17 COLORADO, THE TRUST ADVISOR IS SUBJECT TO THE JURISDICTION OF THE
18 COURTS OF THE STATE OF COLORADO EVEN IF OTHER RELATED
19 AGREEMENTS PROVIDE OTHERWISE, AND THE TRUST ADVISOR MAY BE
20 MADE A PARTY TO ANY ACTION OR PROCEEDING IF ISSUES RELATE TO A
21 DECISION OR ACTION OF THE TRUST ADVISOR.

22 **SECTION 9.** In Colorado Revised Statutes, **repeal** 15-1-307 as
23 follows:

24 **15-1-307. Powers of investment in persons other than**

25 **fiduciary.** ~~Whenever an instrument under which a fiduciary is acting~~
26 ~~reserves to the settlor or vests in an advisory or investment committee or~~
27 ~~in any other person or persons including one or more other fiduciaries, to~~

1 ~~the exclusion of the fiduciary or to the exclusion of one or more of several~~
2 ~~fiduciaries, authority to direct the making or retention of any investment,~~
3 ~~the excluded fiduciary or fiduciaries shall not be liable, either individually~~
4 ~~or as a fiduciary, for any loss resulting from the making or retention of~~
5 ~~any investment pursuant to such direction.~~

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

8 **15-10-112. Cost of living adjustment of certain dollar**
9 **amounts.** (2) The dollar amounts stated in sections 15-11-102,
10 ~~15-11-201(2), 15-11-202(2), 15-11-403, AND 15-11-405 and 15-12-1201~~
11 apply to the estate of a decedent who died during or after 2010, but for the
12 estate of a decedent who died after 2011, these dollar amounts must be
13 increased or decreased if the CPI for the calendar year immediately
14 preceding the year of death exceeds or is less than the reference base
15 index. The amount of any increase or decrease is computed by
16 multiplying each dollar amount by the percentage by which the CPI for
17 the calendar year immediately preceding the year of death exceeds or is
18 less than the reference base index. If the amount of the increase or
19 decrease produced by the computation is not a multiple of one thousand
20 dollars, then the amount of the increase or decrease is rounded down if it
21 is an increase, or rounded up if it is a decrease, to the next multiple of one
22 thousand dollars, but for the purpose of section 15-11-405, the periodic
23 installment amount is the lump-sum amount divided by twelve. If the CPI
24 for 2010 is changed by the bureau of labor statistics, the reference base
25 index must be revised using the rebasing factor reported by the bureau of
26 labor statistics, or other comparable data if a rebasing factor is not
27 reported.

1 **SECTION 11.** In Colorado Revised Statutes, 15-12-916, **amend**
2 (2) as follows:

3 **15-12-916. Apportionment of estate taxes.** (2) Unless otherwise
4 provided in the will or other dispositive instrument, the tax shall be
5 apportioned among all persons interested in the estate, subject to the
6 exceptions specified in this section. The apportionment is to be made in
7 the proportion that the value of the interest of each person interested in
8 the estate bears to the total value of the interests of all persons interested
9 in the estate. The values used in determining the tax are to be used for tax
10 apportionment purposes. In all instances not involving a spouse
11 unprovided for in a will as provided in section 15-11-301 or an election
12 by a surviving spouse as provided in ~~section 15-11-201~~ SECTION
13 15-11-202, if the decedent's will or other dispositive instrument directs a
14 method of apportionment of tax different from the method described in
15 this code, the method described in the will or other dispositive instrument
16 controls. In instances involving such a spouse unprovided for in a will or
17 election, if the decedent's will or other dispositive instrument directs a
18 method of apportionment of tax different from the method described in
19 this code, the apportionment of tax to the spouse unprovided for in the
20 will or to the surviving spouse shall be in accordance with the method
21 described in this code, and the apportionment of tax to the remaining
22 persons interested in the estate shall be in accordance with the method
23 described in the will or other dispositive instrument.

24 **SECTION 12.** In Colorado Revised Statutes, 15-10-201, **amend**
25 (3) as follows:

26 **15-10-201. General definitions.** Subject to additional definitions
27 contained in this article and the subsequent articles that are applicable to

1 specific articles, parts, or sections, and unless the context otherwise
2 requires, in this code:

3 (3) "Augmented estate" means the estate described in ~~section~~
4 ~~15-11-202~~ SECTIONS 15-11-203, 15-11-204, 15-11-205, 15-11-206,
5 15-11-207, AND 15-11-208.

6 **SECTION 13.** In Colorado Revised Statutes, 15-15-101, **amend**
7 (5) and (6) as follows:

8 **15-15-101. Nonprobate transfers on death.** (5) Payment of the
9 benefits due or the transfer of the rights given in accordance with a
10 designation under the provisions of subsection (2) of this section shall not
11 cause such benefits or rights to be included in the property administered
12 as part of the designator's estate under this code or to be subject to the
13 claims of his or her creditors, except as provided in ~~sections 15-11-202~~
14 PART 2 OF ARTICLE 11 OF THIS TITLE and IN SECTION 15-15-103.

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

22 **SECTION 14.** In Colorado Revised Statutes, 38-33.3-316,
23 **amend** (2) (c) as follows:

24 **38-33.3-316. Lien for assessments.** (2) (c) This subsection (2)
25 does not affect the priority of mechanics' or materialmen's liens or the
26 priority of liens for other assessments made by the association. A lien
27 under this section is not subject to the provisions of part 2 of article 41 of

1 this title or to the provisions of section ~~15-11-201~~ 15-11-202, C.R.S.

2 **SECTION 15. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2014 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.