

1975

Amending the "Colorado Probate Code" for the Purpose of Clarifying, Resolving, and Correcting Certain Ambiguities and Inconsistencies Therein, and Conforming Certain Related Provisions Concerning Fiduciaries and Financial Institutions.

Colorado General Assembly

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Recommended Citation

Colorado General Assembly, "Amending the "Colorado Probate Code" for the Purpose of Clarifying, Resolving, and Correcting Certain Ambiguities and Inconsistencies Therein, and Conforming Certain Related Provisions Concerning Fiduciaries and Financial Institutions." (1975). *Session Laws 1951-2000*. 6669.

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CHAPTER 160

PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

HOUSE BILL NO. 1701. BY REPRESENTATIVES Strahle, Burns, Gustafson, Hayes, Kopel, Munson, Neale, Quinlan, and Taylor; also SENATORS Anderson, Brown, Cisneros, DeBerard, Johnson, and Stockton.

AN ACT

AMENDING THE "COLORADO PROBATE CODE" FOR THE PURPOSE OF CLARIFYING, RESOLVING, AND CORRECTING CERTAIN AMBIGUITIES AND INCONSISTENCIES THEREIN, AND CONFORMING CERTAIN RELATED PROVISIONS CONCERNING FIDUCIARIES AND FINANCIAL INSTITUTIONS.

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

Section 1. 11-6-105, Colorado Revised Statutes 1973, is amended to read:

11-6-105. Joint deposits — right of survivor. Except as to P.O.D. AND TRUST accounts, WHICH ARE DEFINED IN AND which shall be paid as provided in article 15 of title 15, C.R.S. 1973, AND EXCEPT AS OTHERWISE PROVIDED BY ARTICLE 15 OF TITLE 15, C.R.S. 1973, FOR JOINT ACCOUNTS AS DEFINED THEREIN, when a bank deposit in any bank transacting business in this state is made in the names of two or more persons payable to them or to any of them, such deposit, or any part thereof, or any interest thereon may be paid to any one of said persons whether the other or others are living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient discharge to the paying bank from all said persons AND their heirs, executors, administrators, and assigns; such deposit shall be deemed, so far as the rights and liabilities of the bank are concerned, to be owned by said persons in joint tenancy with the right of survivorship, but the bank has the right of setoff against such deposit, to the extent thereof, to collect a debt owed to the bank by any joint depositor, which right shall not be affected by death. Such deposit shall be subject to section 39-23-139, C.R.S. 1973.

Section 2. 11-30-103 (4), Colorado Revised Statutes 1973, is amended to read:

11-30-103. Membership. (4) Except as to P.O.D. AND TRUST

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

accounts, WHICH ARE DEFINED IN AND which shall be paid as provided for in article 15 of title 15, C.R.S. 1973, AND EXCEPT AS OTHERWISE PROVIDED BY ARTICLE 15 OF TITLE 15, C.R.S. 1973, FOR JOINT ACCOUNTS AS DEFINED THEREIN, nothing in this article shall be construed to prohibit credit unions organized under this article from carrying membership accounts in the names of two or more persons in joint tenancy; and, if any credit union transacting business in this state issues shares and deposits in the names of two or more persons payable to them or to any of them, such shares and deposits, or any part thereof, or any interest or dividend thereon may be paid to any one of said persons whether the other or others are living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient discharge to the credit union from all of said persons and their heirs, executors, administrators, and assigns, and such shares and deposits shall be deemed to be owned by said persons in joint tenancy with the right of survivorship. In the event any credit union has actual knowledge that one or more owners of said shares and deposits is dead, nothing contained in this section shall be deemed to except such payment from the operation of section 39-23-132, C.R.S. 1973.

Section 3. 11-42-116, Colorado Revised Statutes 1973, is amended to read:

11-42-116. Joint accounts. Except as to P.O.D. AND TRUST accounts, WHICH ARE DEFINED IN AND which are paid as provided in article 15 of title 15, C.R.S. 1973, AND EXCEPT AS OTHERWISE PROVIDED BY ARTICLE 15 OF TITLE 15, C.R.S. 1973, FOR JOINT ACCOUNTS AS DEFINED THEREIN, where shares or stock of an association is issued in the name of two or more persons or the survivors of them, such shares or stock and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants, and the same, together with dividends, shall be held for the exclusive use of such persons and may be paid to either or any of them during their lifetimes or to the survivors of them after the death of one or more of them, and such payment and the receipt and acquittance of the persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or stock.

Section 4. 13-20-101 (2), Colorado Revised Statutes 1973, is amended to read:

13-20-101. What actions survive. (2) Any action under this section may be brought, or the court on motion may allow, the action to be continued by or against the personal representative of the deceased. Such action shall be deemed a continuing one, and to have accrued to or against such PERSONAL representative at the time it would have accrued to or against the deceased, if he had survived. If such action is continued against the personal representative of the deceased, a notice shall be served on him as in cases of original process, but no judgment shall be collectible against a deceased person's estate or personal representative unless a claim, shall have FOR THE AMOUNT OF SUCH JUDGMENT AS MAY BE RECOVERED IN SUCH CONTINUING ACTION, HAS been filed PRESENTED within the time and in the manner required for other claims against an estate.

Section 5. 13-32-102 (1) (e), Colorado Revised Statutes 1973 (numbered as 56-5-2 (1) (f), C.R.S. 1963), and the amendment thereto enacted by section 1 of chapter 59, Session Laws of Colorado 1974, is amended, and the said

13-32-102 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

13-32-102. Fees in probate proceedings. (1) (e) Docket REGISTRATION fee for registration of trust pursuant to article 16 of title 15, C.R.S. 1973.....25.00

(f) Docket fee at time of filing first papers in each action relating to a trust.....25.00

Section 6. 15-1-304, Colorado Revised Statutes 1973, is amended to read:

15-1-304. Standard for investments. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of others, fiduciaries shall be required to have in mind the responsibilities which are attached to such offices, the size, nature, and needs of the estates entrusted to their care, and shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs THE PROPERTY OF ANOTHER, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, fiduciaries are authorized to acquire and retain every kind of property, real, personal, and mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, stocks, preferred or common, securities of any open-end or closed-end management type investment company or investment trust, and participations in common trust funds, which men of prudence, discretion, and intelligence would acquire or retain for their own account. THE ACCOUNT OF ANOTHER.

Section 7. 15-1-802 (3), Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-1-802. Definitions. (3) (a) "Fiduciary" means the one or more persons, designated in a will, trust instrument, or otherwise, whether corporate or natural persons and including successors and substitutes, who are acting in any of the following capacities:

(I) Personal representatives, including executors, administrators, administrators with the will annexed (cum testamento annexo), administrators in succession acting under a will (de bonis non), ancillary administrators acting under a will, and ancillary executors;

(II) Special administrators;

(III) Conservators; and

(IV) Trustees.

(b) "Fiduciary" does not include a guardian, or special fiduciary, or public administrator except when the public administrator has been appointed a fiduciary as defined in this subsection (3).

Section 8. 15-10-111 (1), Colorado Revised Statutes 1973, is amended to read:

15-10-111. Entry into safe deposit box of decedent. (1) Whenever it appears that a decedent during his lifetime was a lessee, owner, or occupant

of a safe deposit box, which box is in the custody of a safe deposit company, trust company, bank, corporation, association, or individual, and for any reason it is deemed advisable or essential to enter said box prior to the appointment of a personal representative, the safe deposit company, trust company, bank, corporation, association, or individual having such custody shall permit said box to be entered in the presence of a representative of the executive director of the department of revenue, and of an official of the safe deposit company, trust company, bank, corporation, or association or if such custody be in an individual, then of such individual or his attorney-in-fact duly appointed for such purpose, and of a person who is reasonably believed to be an heir at law, OR devisee or legatee of the decedent OR THE TRUSTEE OF AN INTER VIVOS TRUST CREATED BY THE DECEDENT, or the agent or attorney of such person. An inventory of the contents of the box shall be made in triplicate, one copy THEREOF to be retained by said custodian, one copy thereof to be retained by the executive director or his representative to be filed in the office of the department of revenue of the state of Colorado, and one copy thereof TO BE delivered to the heir, legatee, devisee, or his agent or attorney.

Section 9. 15-10-201 (1), Colorado Revised Statutes 1973, is amended to read:

15-10-201. General definitions. (1) "Application" means a written request under oath to the registrar for an order of informal probate or appointment under part 3 of article 12 of this title.

Section 10. 15-10-401 (4), Colorado Revised Statutes 1973, is amended to read:

15-10-401. Notice — method and time of giving. (4) Publication once a week for three successive CONSECUTIVE weeks means publication once during each week of three successive CONSECUTIVE calendar weeks with at least twelve days elapsing between the first and last publications.

Section 11. 15-11-103 (1) (e), Colorado Revised Statutes 1973, is amended to read:

15-11-103. Share of heirs other than surviving spouse. (1) (e) If none of the relatives above enumerated be living, then to the nearest lineal ancestors and their descendants, the descendants collectively taking the share of their immediate ancestors, in equal parts ISSUE, THE ISSUE TAKING EQUALLY IF THEY ARE ALL OF THE SAME DEGREE OF KINSHIP TO THE DECEDENT, BUT, IF OF UNEQUAL DEGREE, THEN THOSE OF MORE REMOTE DEGREE TAKE BY REPRESENTATION.

Section 12. 15-11-201 (1), Colorado Revised Statutes 1973, is amended to read:

15-11-201. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-half of the augmented estate under the limitations and conditions hereinafter stated or, in the alternative, one-half of the inventoried estate: IN THIS PART 2.

Section 13. The introductory portion to 15-11-202 (2) (a) and 15-11-202 (2) (a) (IV) and (2) (b), Colorado Revised Statutes 1973, are amended, and the said 15-11-202 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

15-11-202. Augmented estate. (2) (a) The value of property transferred TO ANYONE OTHER THAN A BONA FIDE PURCHASER by the decedent at any time during his present MOST RECENT marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(IV) Any transfer TO A DONEE made within two years of death of the decedent to the extent that the aggregate transfers to any one SUCH donee in either of the years exceed three thousand dollars.

(b) Any transfer is excluded if made with the written consent or joinder of the surviving spouse. IN THE ABSENCE OF OTHER EVIDENCE, JOINDER IN THE FILING OF A GIFT TAX RETURN DOES NOT CONSTITUTE CONSENT OR JOINDER FOR THE PURPOSE OF THIS PARAGRAPH (b). Property is valued as of the decedent's death; except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing in this subsection (2) shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse, OR ANY TRANSFERS MADE BY THE DECEDENT PRIOR TO JULY 1, 1974.

(c) For purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim.

(d) Any recorded instrument evidencing a transfer described in this section on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S. 1973, shall be prima facie evidence that such transfer was made to a bona fide purchaser.

Section 14. 15-11-202 (3), Colorado Revised Statutes 1973, is amended to read:

15-11-202. Augmented estate. (3) The value of property owned by the surviving spouse at the decedent's death, PLUS THE VALUE OF PROPERTY TO WHICH THE SURVIVING SPOUSE IS ENTITLED BY REASON OF THE DECEDENT'S DEATH, plus the value of property transferred by the spouse, at any time during THE MOST RECENT marriage OF THE DECEDENT AND THE SURVIVING SPOUSE, to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property, OR THE ENTITLEMENT TO PROPERTY, is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection (3):

(a) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value

of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, PROFIT SHARING, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, ANY PROPERTY HELD AT THE TIME OF THE DECEDENT'S DEATH BY THE DECEDENT AND THE SURVIVING SPOUSE WITH RIGHT OF SURVIVORSHIP, ANY PROPERTY HELD BY THE DECEDENT AND TRANSFERRED BY CONTRACT TO THE SURVIVING SPOUSE BY REASON OF THE DECEDENT'S DEATH, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent; AND THE SHARE OF THE PROCEEDS ATTRIBUTABLE TO PREMIUMS PAID BY THE DECEDENT SHALL BE DETERMINED ON A PRO RATA BASIS.

(b) Property owned by the spouse at the decedent's death AND PROPERTY TO WHICH THE SURVIVING SPOUSE IS ENTITLED BY REASON OF THE DECEDENT'S DEATH is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent. Income is to be determined as if the included property were principal subject to the provisions of part 4 of article 1 of this title.

(c) Property owned by the surviving spouse as of AT the decedent's death, or PROPERTY TO WHICH THE SURVIVING SPOUSE IS ENTITLED BY REASON OF THE DECEDENT'S DEATH, AND PROPERTY previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

Section 15. 15-11-205 (1), Colorado Revised Statutes 1973, is amended to read:

15-11-205. Proceeding for elective share — time limit. (1) The surviving spouse may elect to take his elective share in the augmented net estate or of the inventoried estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time limitation has expired, BUT NOT BEYOND TWO YEARS AFTER THE DATE OF DEATH.

Section 16. 15-11-403 (1), Colorado Revised Statutes 1973 (numbered as 153-2-403 (1), C.R.S. 1963), and the amendment thereto enacted by section 76 of chapter 102, Session Laws of Colorado 1974, is amended to read:

15-11-403. Family allowance. (1) In addition to the right to an exempt property allowance, if the decedent was domiciled in this state, the surviving

spouse and children under twenty-one years of age and dependent children are entitled to a family allowance which shall be a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and children under twenty-one years of age and dependent children, otherwise to the children, or persons having their care and custody; but in case any child under twenty-one years of age or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims (EXCEPT CLAIMS FOR PERSONAL PROPERTY HELD BY OR IN THE POSSESSION OF THE DECEASED OR MENTAL INCOMPETENT AS A FIDUCIARY OR TRUSTEE) but not over the exempt property allowance.

Section 17. 15-11-404, Colorado Revised Statutes 1973, is amended to read:

15-11-404. Source, determination, and documentation. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or DEPENDENT children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the DEPENDENT children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. He may determine the family allowance in a lump sum not exceeding six thousand dollars or periodic installments not exceeding five hundred dollars per month for one year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

Section 18. Part 4 of article 11 of title 15, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

15-11-405. Request for payment of exempt property and family allowances. No exempt property or family allowance shall be payable unless the person entitled to payment thereof shall request such payment within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for presenting such request as it sees fit for cause shown by the person entitled to payment before the time limitation has expired; except that the time for presenting the request shall not be extended beyond two years after the date of death. The request shall be made to the personal representative, or if none is appointed, to any other person having possession of the decedent's assets.

A request on behalf of a minor or dependent child may be made by the child's guardian or other person having his care and custody.

Section 19. 15-11-504, Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-11-504. Self-proved will. (1) Any will may be simultaneously executed, attested, and made self-proved by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I,, the testator, sign my name to this instrument this day of, 19, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....
Testator

We,, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....
Witness

.....
Witness

THE STATE OF
COUNTY OF

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and, witnesses, this day of
(SEAL)

.....
(Signed)

.....
(Official capacity of officer)

The execution of the acknowledgment by the testator and the affidavits of the witnesses as provided for in this section shall be sufficient to satisfy the requirements of the signing of the will by the testator and the witnesses under section 15-11-502.

(2) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF
COUNTY OF

We,, and, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....
Testator

.....
Witness

.....
Witness

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and, witnesses, this day of

(SEAL)

.....
(Signed)

.....
(Official capacity of officer)

Section 20. 15-11-510, Colorado Revised Statutes 1973, is amended to read:

15-11-510. Incorporation by reference. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. and if that writing has been filed for record in the office of the clerk of any district court or probate court in the state of Colorado.

Section 21. 15-11-602, Colorado Revised Statutes 1973, is amended to read:

15-11-602. Choice of law as to meaning and effect of wills. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his will unless the application of that law is contrary to the PROVISIONS RELATING TO THE ELECTIVE SHARE DESCRIBED IN PART 2 OF THIS ARTICLE, THE PROVISIONS RELATING TO EXEMPT PROPERTY AND FAMILY ALLOWANCES DESCRIBED IN PART 4 OF THIS ARTICLE, OR ANY OTHER public policy of this state otherwise applicable to the disposition.

Section 22. 15-12-101, Colorado Revised Statutes 1973, is amended to read:

15-12-101. Devolution of estate at death; restrictions. The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death

of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, SUBJECT TO exempt property and family allowances, to rights of creditors, elective share of the surviving spouse, and to administration.

Section 23. 15-12-306, Colorado Revised Statutes 1973, is amended to read:

15-12-306. Informal probate — notice and information requirements. The moving party must give notice as described by section 15-10-401 of his application for informal probate to any person demanding it pursuant to section 15-12-204 and to any personal representative of the decedent whose appointment has not been terminated. If a personal representative has not been appointed, then not later than thirty days after a will has been informally probated the moving party shall give notice INFORMATION of the probate to the heirs and devisees, such notice to be personally delivered to and left with the heir or devisee or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the moving party, TO THE PERSONS AND IN THE MANNER PRESCRIBED BY SECTION 15-12-705, and shall promptly file with the court a statement that such notice INFORMATION has been given, to whom, and at what addresses if mailed. No other notice of informal probate is required.

Section 24. 15-12-502, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-12-502. Supervised administration — petition — order. (1.5) A supervised administration proceeding may also be initiated by the court upon its own motion after notice and findings as required under subsection (2) of this section.

Section 25. 15-12-504, Colorado Revised Statutes 1973, is amended to read:

15-12-504. Supervised administration — powers of personal representative. Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate TRANSFER, SURRENDER, OR RELEASE ESTATE ASSETS TO A DISTRIBUTEE without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

Section 26. 15-12-606 (1), Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15-12-606. Terms and conditions of bonds. (1) (f) Unless expressly stated in the bond to the contrary, no surety shall be liable for any actions of the personal representative taken prior to the date of such bond.

Section 27. 15-12-620, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-12-620. Estates committed to public administrator — removal. (4) In all cases arising under subsection (1) of this section, where the assets of the decedent do not exceed the sum of two thousand dollars, the public administrator may collect the same by affidavit pursuant to section 15-12-1201 with the same effect as is provided in section 15-12-1202. The public administrator may summarily make payment of such assets to the creditors and distributees entitled to such assets and shall file a statement setting forth the collection of said assets and the making of such payments with the clerk of the court upon payment of a docket fee of three dollars in each such case. The duties of the public administrator in regard to such decedent's assets shall be deemed discharged upon the filing of this statement under this subsection (4).

Section 28. 15-12-706 (1), Colorado Revised Statutes 1973, is amended to read:

15-12-706. Duty of personal representative — inventory and appraisal. (1) Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent AND SUBJECT TO DISPOSITION BY WILL OR INTESTATE SUCCESSION at the time of his death, listing it with reasonable detail and indicating, as to each listed item, its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to any item.

Section 29. The introductory portion to 15-12-713 (1), Colorado Revised Statutes 1973, is amended, and the said 15-12-713 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

15-12-713. Sale, encumbrance, or transaction involving conflict of interest — voidable — exceptions. (1) Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a beneficial interest, or any transaction which is affected by a conflict of interest on the part of the personal representative is void; VOIDABLE BY ANY PERSON INTERESTED IN THE ESTATE EXCEPT ONE WHO HAS CONSENTED, unless:

(2) Any transaction previously declared by subsection (1) of this section to be void shall be deemed voidable unless a petition has been filed with the court to set aside any such transaction and a lis pendens has been recorded in the county where any affected real property is located, within sixty days after the effective date of this subsection (2).

Section 30. 15-12-714, Colorado Revised Statutes 1973, is amended to read:

15-12-714. Persons dealing with personal representative — protection. (1) A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 15-12-504, no provision in any will or order of court purport-

ing to limit the power of a personal representative is effective, except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(2) FOR PURPOSES OF THIS SECTION, ANY RECORDED INSTRUMENT EVIDENCING A TRANSACTION WITH A PERSONAL REPRESENTATIVE ON WHICH A STATE DOCUMENTARY FEE IS NOTED PURSUANT TO SECTION 39-13-103, C.R.S. 1973, SHALL BE PRIMA FACIE EVIDENCE THAT SUCH TRANSACTION WAS MADE FOR VALUE.

Section 31. Part 7 of article 12 of title 15, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

15-12-722. Failure to comply with court orders — penalty. If any personal representative, guardian, or conservator fails to comply with an order of court relating to his administration, at the time and in the manner required by law, the district or probate court shall have power to attach such personal representative, guardian, or conservator for his default, and may proceed against him as for a contempt; in any such case the court may impose a fine upon such personal representative, guardian, or conservator so in default, not exceeding two thousand dollars. Whenever any such fine is imposed, it shall be a part of the judgment of the court that such personal representative, guardian, or conservator be committed to the county jail until he complies with the order of court.

15-12-723. Assets concealed or embezzled. If any personal representative, heir, legatee, creditor, guardian, or conservator or other person interested in the estate of any deceased person or protected person complains to the court, in writing, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased or protected person, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the decedent or protected person, to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said district or probate court may cite such suspected person to appear before it, and may examine him on oath upon the matter of such complaint. If the person cited refuses to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail until he complies with the order of the court. All such interrogatories and answers may be in writing and signed by the party examined and filed in the district or probate court.

Section 32. 15-12-801, Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-12-801. Notice to creditors. Promptly after his appointment, unless a

valid notice to creditors has already been published or unless one year or more has elapsed since the death of the decedent, each personal representative shall cause a notice to creditors to be published in some daily or weekly newspaper published in the county in which the estate is being administered, or if there is no such newspaper, then in some newspaper of general circulation in an adjoining county. Such notice shall be published not less than three times, at least once during each of three successive calendar weeks. The notice shall be substantially as follows:

NOTICE TO CREDITORS

Estate of(Deceased)

No.

All persons having claims against the above-named estate are required to present them to the undersigned or to the District Court ofCounty, Colorado (or Probate Court of the City and County of Denver, Colorado) on or before

(four months from date of first publication or one year

from date of death, whichever occurs first),

19 or said claims shall be forever barred.

.....
Personal Representative

Section 33. 15-12-802, Colorado Revised Statutes 1973, is amended to read:

15-12-802. Statutes of limitations. Unless an estate is insolvent, or would thereby be rendered insolvent, the personal representative, with the consent of all successors **WHOSE INTERESTS WOULD BE AFFECTED**, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and notice to creditors for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow **PROVISIONS OF THIS PART 8**. For purposes of any statute of limitations **OTHER THAN THOSE LIMITATIONS SPECIFIED IN SECTIONS 15-12-801, 15-12-803, 15-12-804, AND 15-12-806**, the proper presentation of a claim under section 15-12-804 is equivalent to commencement of a proceeding on the claim.

Section 34. 15-12-803 (3), Colorado Revised Statutes 1973, is amended BY **THE ADDITION OF A NEW PARAGRAPH** to read:

15-12-803. Limitation on presentation of claims. (3) (c) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

Section 35. 15-12-804 (2), Colorado Revised Statutes 1973, is amended to read:

15-12-804. Manner of presentation of claims. (2) A claimant having a claim described in section 15-12-803 (1) may commence a proceeding against

the personal representative in the court where the personal representative was appointed to obtain payment of his claim. A claimant having a claim described in section 15-12-803 (2) may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction under the rules of civil procedure or statutes of this state to obtain payment of his claim against the estate. ~~but The commencement of the ANY proceeding ON ANY CLAIM, HOWEVER, must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.~~ THE PERSONAL REPRESENTATIVE SHALL INFORM ANY INTERESTED PERSON, UPON REQUEST, AS TO THE EXISTENCE, AMOUNTS, AND NATURE OF ALL CLAIMS AGAINST THE ESTATE WHICH ARE KNOWN TO HIM, BUT SHALL NOT BE REQUIRED TO EXPRESS ANY OPINION AS TO THE PROBABLE OUTCOME THEREOF.

Section 36. 15-12-814, Colorado Revised Statutes 1973, is amended to read:

15-12-814. Encumbered assets. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed PRESENTED a claim, if it appears to be in the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Section 37. 15-12-910, Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

15-12-910. Purchasers from distributees protected. If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated prior to execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated prior to the distribution. For purposes of this section, any recorded instrument evidencing a transfer to a purchaser from or lender to a distributee on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S. 1973, shall be prima facie evidence that such transfer was made for value.

Section 38. Part 9 of article 12 of title 15, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

15-12-912. Private agreements among successors to decedent binding on personal representative. Subject to the rights of creditors, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

Section 39. 15-12-916 (2), Colorado Revised Statutes 1973, is amended to read:

15-12-916. Apportionment of estate taxes. (2) Unless the will otherwise provides OTHERWISE PROVIDED IN THE WILL OR OTHER DISPOSITIVE INSTRUMENT, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will OR OTHER DISPOSITIVE INSTRUMENT directs a method of apportionment of tax different from the method described in this code, the method described in the will OR OTHER DISPOSITIVE INSTRUMENT controls.

Section 40. 15-12-1201 (1) (d), Colorado Revised Statutes 1973, is amended to read:

15-12-1201. Collection of personal property by affidavit. (1) (d) The EACH claiming successor is entitled to payment or delivery of the property IN THE RESPECTIVE PROPORTION SET FORTH IN SUCH AFFIDAVIT.

Section 41. 15-12-1203, Colorado Revised Statutes 1973, is amended to read:

15-12-1203. Small estates — summary administrative procedure. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed the value of personal property held by or in the possession of the person DECEDENT as fiduciary or trustee, exempt property allowance, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 15-12-1204.

Section 42. 15-12-1204 (1) (a), Colorado Revised Statutes 1973, is amended to read:

15-12-1204. Small estates — closing by sworn statement of personal representative. (1) (a) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed THE VALUE OF PERSONAL PROPERTY HELD BY OR IN THE POSSESSION OF THE DECEDENT AS FIDUCIARY OR TRUSTEE, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent;

Section 43. Part 12 of article 12 of title 15, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

15-12-1205. Time of taking effect — provisions for transition. The provisions of sections 15-12-1201 and 15-12-1202 became effective on July 1, 1974, regardless of the date of the death of the decedent.

Section 44. The introductory portion to 15-13-301 (1), Colorado Revised Statutes 1973, is amended to read:

15-13-301. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits himself PERSONALLY to the jurisdiction of the courts of this state IN ANY PROCEEDING RELATING TO THE ESTATE by:

Section 45. 15-14-206, Colorado Revised Statutes 1973 (numbered as 153-5-206, C.R.S. 1963), and the amendment thereto enacted by section 78 of chapter 102, Session Laws of Colorado 1974, is amended to read:

15-14-206. Court appointment of guardian of minor — qualifications - priority of minor's nominee. (1) The court may appoint as guardian any person twenty-one years of age or older, resident or nonresident, whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older; or a person nominated by a will or other writing signed by a parent of the minor. Unless the court finds the PROSPECTIVE appointment contrary to the best interests of the minor, QUALIFIED PERSONS HAVE PRIORITY FOR APPOINTMENT IN THE FOLLOWING ORDER:

(a) A PERSON NOMINATED BY THE MINOR, IF THE MINOR IS FOURTEEN YEARS OF AGE OR OLDER;

(b) A PERSON APPOINTED BY A WILL OF A PARENT OF THE MINOR;

(c) A PERSON NOMINATED BY A WRITING SIGNED BY A PARENT OF THE MINOR;

(d) ANY OTHER INTERESTED PERSON.

Section 46. 15-14-212 (2), Colorado Revised Statutes 1973, is amended to read:

15-14-212. Resignation or removal proceedings. (2) After notice TO THE GUARDIAN AND TO THOSE PERSONS ENTITLED TO NOTICE UNDER SUBSECTION 15-14-207 (1), and AFTER hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

Section 47. 15-14-303 (2), Colorado Revised Statutes 1973, is amended to read:

15-14-303. Procedure for court appointment of a guardian of an incapacitated person. (2) Upon the filing of a petition, the court shall, except as provided in subsection (3) of this section, set a date for a hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall MAY appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall MAY be examined by a physician appointed by the court who shall submit his report in writing to the court and MAY be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

Section 48. 15-14-405 (1), Colorado Revised Statutes 1973, is amended to read:

15-14-405. Notice. (1) Except in cases under section 15-14-407 (5), on a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen TEN days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 15-10-401. Waiver by the person to be protected is not effective unless he attends the hearing. ~~or, except when minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.~~

Section 49. 15-14-407 (2), Colorado Revised Statutes 1973, is amended to read:

15-14-407. Procedure concerning hearing and order on original petition. (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must MAY appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

Section 50. 15-14-412 (1), Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15-14-412. Terms and requirements of bonds. (1) (e) Unless expressly stated in the bond to the contrary, no surety shall be liable for any actions of the conservator taken prior to the date of such bond.

Section 51. 15-14-423, Colorado Revised Statutes 1973, is amended to read:

15-14-423. Persons dealing with conservators — protection. (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 15-14-408 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 15-14-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(2) ANY RECORDED INSTRUMENT EVIDENCING A TRANSACTION DESCRIBED IN THIS SECTION ON WHICH A STATE DOCUMENTARY FEE IS NOTED PURSUANT TO SECTION 39-13-103, C.R.S. 1973, SHALL BE PRIMA FACIE EVIDENCE THAT SUCH TRANSACTION WAS MADE FOR VALUE.

Section 52. 15-14-502 (1) and (2), Colorado Revised Statutes 1973, are amended to read:

15-14-502. Other powers of attorney not revoked until notice of death or disability. (1) The DEATH, disability, or incompetence of any principal who has executed a power of attorney in writing, other than a power as described by section 15-14-501, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the DEATH, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney-in-fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by DEATH, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

Section 53. 15-15-103 (1), Colorado Revised Statutes 1973, is amended to read:

15-15-103. Ownership during lifetime. (1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net con-

tributions by each to the sums on deposit, unless there is clear and convincing A PREPONDERANCE OF evidence of a different intent.

Section 54. 15-15-104 (2) and (3), Colorado Revised Statutes 1973, are amended to read:

15-15-104. Right of survivorship. (2) If the account is a P.O.D. account:

(a) ON DEATH OF ONE OF TWO OR MORE ORIGINAL PAYEES, THE RIGHTS TO ANY SUMS REMAINING ON DEPOSIT ARE GOVERNED BY SUBSECTION (1) OF THIS SECTION;

(b) On death of the SOLE original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account:

(a) ON DEATH OF ONE OF TWO OR MORE TRUSTEES, THE RIGHTS TO ANY SUMS REMAINING ON DEPOSIT ARE GOVERNED BY SUBSECTION (1) OF THIS SECTION;

(b) On death of the SOLE trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

Section 55. 15-15-106, Colorado Revised Statutes 1973, is amended to read:

15-15-106. Accounts and transfers nontestamentary. Any transfers resulting from the application of section 15-15-104 are, SUBJECT TO SECTION 15-15-107, effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to articles 10 to 13 of this title EXCEPT AS PROVIDED IN PART 2 OF ARTICLE 11 OF THIS TITLE.

Section 56. 15-15-201 (2), Colorado Revised Statutes 1973, is amended to read:

15-15-201. Provisions for payment or transfer at death. (2) Under the provisions of subsection (1) of this section, it is permissible to designate as a beneficiary, payee, or owner a trustee named in an inter vivos or testamentary trust in existence at the date of such designation. It is not necessary to the validity of any such trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation. It is also permissible to designate as a beneficiary, payee, or owner a trustee named in, or ascertainable under, the will of the designator. The benefits or rights resulting from such a designation shall be payable or transferable to the trustee upon admission of the will to probate

if a testamentary trustee is the designated payee or transferee, subject to the right of the payor to impose requirements and take actions as may a personal representative acting under section 15-12-913. A TRUSTEE SHALL NOT BE DISQUALIFIED TO RECEIVE SUCH BENEFITS OR RIGHTS MERELY BECAUSE THE TRUST UNDER WHICH HE WAS TO ACT OR IS ACTING FAILS TO COME INTO EXISTENCE OR HAS BEEN DISTRIBUTED IN PART OR WHOLE, BUT SUCH A TRUSTEE SHALL RECEIVE AND DISTRIBUTE THE PROCEEDS IN ACCORD WITH THE TERMS OF SUCH TRUST.

Section 57. 15-16-101 (1), Colorado Revised Statutes 1973, is amended, and the said 15-16-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

15-16-101. Duty to register trusts. (1) SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION, the trustee of a trust having its principal place of administration in this state shall within thirty days after his acceptance of the trust register the trust in the court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is the usual place of business of the corporate trustee if there is but one corporate cotrustee, or the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise the usual place of business or residence of any of the cotrustees as agreed upon by them. The duty to register does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

(3) Registration of a fully and presently revocable inter vivos trust shall not be required until such time as the grantor's power to revoke such trust has terminated.

Section 58. 15-16-104, Colorado Revised Statutes 1973, is amended to read:

15-16-104. Effect of failure to register. A trustee who fails to register a trust in a proper place, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered, AND OTHERWISE AS PROVIDED BY THE COLORADO RULES OF CIVIL PROCEDURE. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required is subject to removal and denial of compensation or to surcharge as the court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective. IF ANY TRUSTEE WRONGFULLY AND WILLFULLY FAILS TO REGISTER PRIOR TO DECEMBER 31, 1975, A TRUST WHICH IS IN EXISTENCE ON JULY 1, 1975, AND WHICH IS REQUIRED TO BE REGISTERED, OR WRONGFULLY AND WILLFULLY FAILS TO REGISTER WITHIN THIRTY DAYS OF HIS ACCEPTANCE OF A

TRUST WHICH COMES INTO EXISTENCE THEREAFTER AND WHICH IS REQUIRED TO BE REGISTERED, THE COURT IN WHICH THE TRUST SHOULD HAVE BEEN REGISTERED SHALL IMPOSE ON THE TRUSTEE A CIVIL PENALTY OF ONE HUNDRED DOLLARS PER DAY FOR EACH DAY THE TRUSTEE FAILS TO REGISTER THE TRUST, BUT NOT MORE THAN ONE THOUSAND DOLLARS. SUCH CIVIL PENALTY SHALL NOT BE PAID FROM THE CORPUS OR INCOME OF THE TRUST.

Section 59. 15-16-202, Colorado Revised Statutes 1973, is amended to read:

15-16-202. Trust proceedings — venue. Venue for proceedings under section 15-16-201 OR UNDER SECTION 15-16-205 involving registered trusts is in the place of registration. Venue for proceedings under section 15-16-201 OR UNDER SECTION 15-16-205 involving trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise as provided by the Colorado rules of civil procedure.

Section 60. 15-16-303 (2), Colorado Revised Statutes 1973, is amended to read:

15-16-303. Duty to inform and account to beneficiaries. (2) Within thirty days after his acceptance of the trust, REGISTRATION IN ACCORDANCE WITH THE PROVISIONS OF PART 1 OF THIS ARTICLE, OF A TRUST CREATED ON OR AFTER JULY 1, 1975, the trustee shall inform in writing the current beneficiaries and, if possible, one or more persons who, under section 15-10-403 represent beneficiaries with future interests, of the court in which the trust is registered and of his name and address.

Section 61. 15-17-101 (2) (b) and (2) (c), Colorado Revised Statutes 1973, are amended to read:

15-17-101. Time of taking effect — provisions for transition. (2) (b) The code applies to any ESTATES OR proceedings, WHETHER in court OR NOT, WHETHER then pending or thereafter commenced, regardless of the time of the death of decedent OR THE TIME OF CREATION OF ANY TRUST, except to the extent that in the opinion of the court IN A COURT PROCEEDING the former LAW AND procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) Every personal representative, including a person administering an estate of a minor or AN incompetent, holding an appointment on that date continues to hold the appointment but has only the powers conferred by this code and is subject to the duties AND LIABILITIES imposed with respect to any act OR OMISSION occurring or done thereafter; EVERY TRUSTEE OF A TRUST EXISTING ON JULY 1, 1975, IS SUBJECT TO THE DUTIES AND LIABILITIES IMPOSED BY THIS CODE WITH RESPECT TO ANY ACT OR OMISSION OCCURRING OR DONE THEREAFTER;

Section 62. **Repeals.** 15-12-703 (3), 15-12-713 (1) (c), and 15-12-721 (2) (f), Colorado Revised Statutes 1973, are repealed.

Section 63. **Effective date.** This act shall take effect July 1, 1975.

Section 64. **Safety clause.** The general assembly hereby finds, deter-

mines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: July 16, 1975