

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 11-0575.01 Richard Sweetman

SENATE BILL 11-083

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

Barker,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROVISIONS RELATING TO THE COLORADO PROBATE**
102 **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 clarifies that after all right to appeal has been waived or exhausted following the entry of a judgment of conviction, a plea of guilty, or a plea of nolo contendere establishing criminal accountability for the felonious killing of the decedent, the judgment conclusively establishes the convicted individual as the decedent's killer for probate

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.

SENATE
3rd Reading Unamended
February 22, 2011

SENATE
Amended 2nd Reading
February 21, 2011

purposes.

A petition to initiate civil proceedings concerning the felonious death of a decedent may not be filed more than three years after the date of the decedent's death unless the petition is filed no later than one year after all right to appeal has been waived or exhausted following an entry of a judgment of conviction, or a dismissal, or an acquittal in a criminal proceeding against an individual for the decedent's death.

The bill clarifies the exceptions to the requirement of a probate of a will by a Colorado registrar or judge to prove the transfer of property or to nominate an executor.

The bill corrects certain provisions of the probate code to refer to a "person" rather than a "party".

The bill provides that a duly executed and unrevoked will that is not a will probated in this state may be admitted as evidence of a devise if no court proceeding concerning the succession or administration of the estate has occurred and either the devisee or his or her successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Current law requires a conservator's report to contain various items. The bill allows a court to issue an order that provides otherwise.

The bill clarifies that certain existing statutory language concerning language in a power of attorney granting general authority with respect to gifts does not apply to a power of attorney in existence on December 31, 2009, except where such applicability is provided elsewhere in statute.

Current law allows a person to include in his or her power of attorney certain specific acts that his or her agent may not do without specific authority, including the exercise of fiduciary powers that the principal has authority to delegate. The bill clarifies that these fiduciary powers include the powers to participate in the designation or changing of a fiduciary and the powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers.

The bill clarifies that a declaration may be combined with a medical power of attorney to create a single document and that such a document shall comply with all requirements of the probate code.

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

2 **SECTION 1.** Article 10 of title 15, Colorado Revised Statutes, is
3 **amended BY THE ADDITION OF A NEW PART to read:**

4 **PART 6**

1 COMPENSATION AND COST RECOVERY

2 15-10-601. Definitions. AS USED IN THIS PART 6, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "ESTATE" MEANS THE PROPERTY OF THE DECEDENT, TRUST, OR
5 OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS CODE AS THE ESTATE
6 IS ORIGINALLY CONSTITUTED AND AS THE ESTATE EXISTS FROM TIME TO
7 TIME DURING ADMINISTRATION. "ESTATE" INCLUDES CUSTODIAL
8 PROPERTY AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO
9 MINORS ACT," ARTICLE 50 OF TITLE 11, C.R.S.; CUSTODIAL TRUST
10 PROPERTY AS DESCRIBED IN THE "COLORADO UNIFORM CUSTODIAL TRUST
11 ACT," ARTICLE 1.5 OF THIS TITLE; AND THE PROPERTY OF A PRINCIPAL
12 THAT IS SUBJECT TO A POWER OF ATTORNEY.

13 (2) "FIDUCIARY" MEANS:

14 (a) A PERSONAL REPRESENTATIVE, GUARDIAN, CONSERVATOR, OR
15 TRUSTEE;

16 (b) A CUSTODIAN AS DESCRIBED IN THE "COLORADO UNIFORM
17 TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.;

18 (c) A CUSTODIAL TRUSTEE AS DESCRIBED IN THE "COLORADO
19 UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE;

20 (d) AN AGENT AS DEFINED IN SECTIONS 15-10-201 (1), 15-14-602
21 (3), AND 15-14-702 (1); AND

22 (e) A PUBLIC ADMINISTRATOR AS DESCRIBED IN SECTION
23 15-12-619.

24 (3) (a) "GOVERNING INSTRUMENT" MEANS A WILL OR A TRUST OR
25 A DONATIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF ANY OTHER
26 TYPE, INCLUDING BUT NOT LIMITED TO:

27 (I) AN INSTRUMENT THAT CREATES A CUSTODIAL TRANSFER AS

1 DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT",
2 ARTICLE 50 OF TITLE 11, C.R.S.;

3 (II) A CUSTODIAL TRUST AS DESCRIBED IN THE "COLORADO
4 UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE;

5 (III) A MEDICAL DURABLE POWER OF ATTORNEY AS DESCRIBED IN
6 SECTION 15-14-506;

7 (IV) AN AGENCY INSTRUMENT AS DEFINED IN SECTION 15-14-602
8 (2);

9 (V) A POWER OF ATTORNEY AS DEFINED IN SECTION 15-14-702 (7);

10 (VI) A COURT ORDER APPOINTING A GUARDIAN AS DESCRIBED IN
11 PARTS 2 AND 3 OF ARTICLE 14 OF THIS TITLE; AND

12 (VII) A COURT ORDER APPOINTING A CONSERVATOR AS DESCRIBED
13 IN PART 4 OF ARTICLE 14 OF THIS TITLE.

14 (b) "GOVERNING INSTRUMENT" DOES NOT INCLUDE A DEED; AN
15 INSURANCE OR ANNUITY POLICY; A MULTIPLE-PARTY ACCOUNT; A
16 SECURITY REGISTERED IN BENEFICIARY FORM; A PENSION; A
17 PROFIT-SHARING, RETIREMENT, OR SIMILAR BENEFIT PLAN; OR AN
18 INDIVIDUAL RETIREMENT ACCOUNT.

19 **15-10-602. Recovery of reasonable compensation and costs.**

20 (1) A FIDUCIARY AND HIS OR HER LAWYER ARE ENTITLED TO REASONABLE
21 COMPENSATION FOR SERVICES RENDERED ON BEHALF OF AN ESTATE.

22 (2) A LAWYER HIRED BY A RESPONDENT, WARD, OR PROTECTED
23 PERSON IS ENTITLED TO REASONABLE COMPENSATION AND COSTS
24 INCURRED FOR THE LEGAL REPRESENTATION THE LAWYER PROVIDES FOR
25 THE RESPONDENT, WARD, OR PROTECTED PERSON.

26 (3) A THIRD PARTY WHO PERFORMS SERVICES AT THE REQUEST OF
27 A COURT IS ENTITLED TO REASONABLE COMPENSATION.

1 (4) A PERSON'S ENTITLEMENT TO COMPENSATION OR COSTS SHALL
2 NOT LIMIT OR REMOVE A COURT'S INHERENT AUTHORITY, DISCRETION, AND
3 RESPONSIBILITY TO DETERMINE THE REASONABLENESS OF COMPENSATION
4 AND COSTS WHEN APPROPRIATE.

5 (5) EXCEPT AS LIMITED OR OTHERWISE RESTRICTED BY A COURT
6 ORDER, COMPENSATION AND COSTS THAT MAY BE RECOVERED PURSUANT
7 TO THIS SECTION MAY BE PAID DIRECTLY OR REIMBURSED WITHOUT A
8 COURT ORDER. A COURT SHALL ORDER A PERSON WHO RECEIVES
9 EXCESSIVE COMPENSATION OR PAYMENT FOR INAPPROPRIATE COSTS TO
10 MAKE APPROPRIATE REFUNDS.

11 (6) EXCEPT AS PROVIDED IN SECTIONS 15-10-605 (4), 15-14-318
12 (4), AND 15-14-431 (5), IF ANY FIDUCIARY OR PERSON WITH PRIORITY FOR
13 APPOINTMENT AS PERSONAL REPRESENTATIVE, CONSERVATOR, GUARDIAN,
14 AGENT, CUSTODIAN, OR TRUSTEE DEFENDS OR PROSECUTES A PROCEEDING
15 IN GOOD FAITH, WHETHER SUCCESSFUL OR NOT, THE FIDUCIARY OR PERSON
16 IS ENTITLED TO RECEIVE FROM THE ESTATE REIMBURSEMENT FOR
17 NECESSARY COSTS AND DISBURSEMENTS, INCLUDING BUT NOT LIMITED TO
18 REASONABLE ATTORNEY FEES.

19 (7) (a) EXCEPT AS OTHERWISE PROVIDED IN PART 5 OF THIS
20 ARTICLE OR IN THIS PART 6, A NONFIDUCIARY OR HIS OR HER LAWYER IS
21 NOT ENTITLED TO RECEIVE COMPENSATION FROM AN ESTATE.

22 (b) IF A LAWYER OR ANOTHER PERSON NOT APPOINTED BY THE
23 COURT PROVIDES SERVICES THAT RESULT IN AN ORDER BENEFICIAL TO THE
24 ESTATE, RESPONDENT, WARD, OR PROTECTED PERSON, THE LAWYER OR
25 OTHER PERSON NOT APPOINTED BY THE COURT MAY RECEIVE COSTS AND
26 REASONABLE COMPENSATION FROM THE ESTATE AS PROVIDED BELOW:

27 (I) THE LAWYER OR OTHER PERSON SHALL FILE A REQUEST FOR

1 COMPENSATION FOR SERVICES OR COSTS ALLEGED TO HAVE RESULTED IN
2 THE ORDER WITHIN FIFTEEN DAYS AFTER THE ENTRY OF THE ORDER, OR
3 WITHIN A GREATER OR LESSER TIME AS THE COURT MAY DIRECT. ANY
4 OBJECTION THERETO SHALL BE FILED WITHIN FIFTEEN DAYS AFTER THE
5 FILING OF THE REQUEST FOR COMPENSATION OR COSTS.

6 (II) AFTER A REQUEST FOR COMPENSATION OR COSTS OR AN
7 OBJECTION TO SUCH A REQUEST, IF ANY HAS BEEN FILED, THE COURT
8 SHALL DETERMINE WITHOUT A HEARING, THE BENEFIT, IF ANY, THAT THE
9 ESTATE RECEIVED FROM THE SERVICES PROVIDED.

10 (III) IF THE COURT DETERMINES THAT A COMPENSABLE BENEFIT
11 RESULTED FROM THE SERVICES, THEN THE PERSON REQUESTING
12 COMPENSATION OR COSTS SHALL SUBMIT TO THE COURT ONLY THOSE FEES
13 OR COSTS PURPORTEDLY INCURRED IN PROVIDING THE BENEFICIAL
14 SERVICES. IF NO OBJECTION TO THOSE FEES AND COSTS IS FILED, THE
15 COURT SHALL DETERMINE THE AMOUNT OF COMPENSATION OR COSTS TO
16 BE AWARDED FOR THE BENEFIT, WITHOUT A HEARING.

17 (IV) AN INTERESTED PERSON DISPUTING THE REASONABLENESS OF
18 THE AMOUNT OF COMPENSATION OR COSTS REQUESTED FOR THE
19 BENEFICIAL SERVICES MAY FILE AN OBJECTION. IF AN OBJECTION IS FILED,
20 THE PROCEEDINGS TO RESOLVE THE DISPUTE SHALL BE GOVERNED BY
21 SECTION 15-10-604.

22 (c) IN DETERMINING A REASONABLE AMOUNT OF COMPENSATION
23 OR COSTS, THE COURT MAY TAKE INTO ACCOUNT, IN ADDITION TO THE
24 FACTORS SET FORTH IN SECTION 15-10-603 (3):

25 (I) THE VALUE OF A BENEFIT TO THE ESTATE, RESPONDENT, WARD,
26 OR PROTECTED PERSON;

27 (II) THE NUMBER OF PARTIES INVOLVED IN ADDRESSING THE ISSUE;

1 (III) THE EFFORTS MADE BY THE LAWYER OR PERSON NOT
2 APPOINTED BY THE COURT TO REDUCE AND MINIMIZE ISSUES; AND

3 (IV) ANY ACTIONS BY THE LAWYER OR PERSON NOT APPOINTED BY
4 THE COURT THAT UNNECESSARILY EXPANDED ISSUES OR DELAYED OR
5 HINDERED THE EFFICIENT ADMINISTRATION OF THE ESTATE.

6 (d) FOR THE PURPOSES OF THIS SUBSECTION (7), SERVICES
7 RENDERED BY A LAWYER OR A PERSON NOT APPOINTED BY A COURT THAT
8 CONFER A BENEFIT TO AN ESTATE, RESPONDENT, WARD, OR PROTECTED
9 PERSON ARE THOSE SIGNIFICANT, DEMONSTRABLE, AND GENERALLY
10 NONCUMULATIVE SERVICES THAT ASSIST THE COURT IN RESOLVING
11 MATERIAL ISSUES IN THE ADMINISTRATION OF AN ESTATE. BY WAY OF
12 EXAMPLE AND NOT LIMITATION, SUCH BENEFITS MAY RESULT IN
13 SIGNIFICANTLY INCREASING OR PREVENTING A SIGNIFICANT DECREASE IN
14 THE SIZE OF THE ESTATE, PREVENTING OR EXPOSING MALADMINISTRATION
15 OR A MATERIAL BREACH OF FIDUCIARY DUTY, OR CLARIFYING AND
16 UPHOLDING A DECEDENT'S, SETTLORS, PRINCIPAL'S, RESPONDENT'S,
17 WARD'S, OR PROTECTED PERSON'S INTENT WITH RESPECT TO A MATERIAL
18 ISSUE IN DISPUTE.

19 (8) A FIDUCIARY WHO IS A MEMBER OF A LAW FIRM MAY USE THE
20 SERVICES OF THE LAW FIRM AND CHARGE FOR THE REASONABLE VALUE OF
21 THE SERVICES OF THE MEMBERS AND STAFF OF THE FIRM THAT ASSIST THE
22 FIDUCIARY IN PERFORMING HIS OR HER DUTIES.

23 (9) EVERY APPLICATION OR PETITION FOR APPOINTMENT OF A
24 FIDUCIARY FILED UNDER THIS CODE, INCLUDING WITHOUT LIMITATION
25 THOSE REQUIRED UNDER SECTIONS 15-12-301, 15-12-402, 15-12-614,
26 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, AND 15-14-403,
27 SHALL INCLUDE A STATEMENT BY THE APPLICANT OR PETITIONER

1 DISCLOSING THE BASIS UPON WHICH ANY COMPENSATION IS TO BE
2 CHARGED TO THE ESTATE BY THE FIDUCIARY AND HIS OR HER OR ITS
3 COUNSEL, OR SHALL STATE THAT THE BASIS HAS NOT YET BEEN
4 DETERMINED. THE DISCLOSURE STATEMENT SHALL SPECIFICALLY
5 DESCRIBE, AS IS APPLICABLE, THE HOURLY RATES TO BE CHARGED, ANY
6 AMOUNTS TO BE CHARGED PURSUANT TO A PUBLISHED FEE SCHEDULE,
7 INCLUDING THE RATES AND BASIS FOR CHARGING FEES FOR ANY
8 EXTRAORDINARY SERVICES, AND ANY OTHER BASES UPON WHICH A FEE
9 CHARGED TO THE ESTATE WILL BE CALCULATED. THIS DISCLOSURE
10 OBLIGATION SHALL BE CONTINUING IN NATURE SO AS TO REQUIRE
11 SUPPLEMENTAL DISCLOSURES IF MATERIAL CHANGES TO THE BASIS FOR
12 CHARGING FEES TAKE PLACE.

13 **15-10-603. Factors in determining the reasonableness of**
14 **compensation and costs. (1) A COURT MAY REVIEW AND DETERMINE:**

15 **(a) THE REASONABLENESS OF THE COMPENSATION OF ANY**
16 **FIDUCIARY, LAWYER, OR OTHER PERSON WHO:**

17 **(I) IS EMPLOYED ON BEHALF OF AN ESTATE, FIDUCIARY,**
18 **RESPONDENT, WARD, OR PROTECTED PERSON;**

19 **(II) IS APPOINTED BY THE COURT; OR**

20 **(III) PROVIDES BENEFICIAL SERVICES TO AN ESTATE, RESPONDENT,**
21 **WARD, OR PROTECTED PERSON; AND**

22 **(b) THE APPROPRIATENESS OF ANY COST SOUGHT TO BE PAID BY OR**
23 **RECOVERED FROM AN ESTATE.**

24 **(2) IN CONSIDERING THE REASONABLENESS OF THE**
25 **COMPENSATION, THERE SHALL BE NO PRESUMPTION THAT ANY METHOD OF**
26 **CHARGING A FEE FOR SERVICES RENDERED TO AN ESTATE, FIDUCIARY,**
27 **PRINCIPAL, RESPONDENT, WARD, OR PROTECTED PERSON IS PER SE**

1 UNREASONABLE. REGARDLESS OF THE METHOD USED FOR CHARGING A
2 FEE, IN DETERMINING APPROPRIATE COMPENSATION, THE COURT SHALL
3 APPLY THE STANDARD OF REASONABLENESS IN LIGHT OF ALL RELEVANT
4 FACTS AND CIRCUMSTANCES.

5 (3) THE COURT SHALL CONSIDER ALL OF THE FACTORS DESCRIBED
6 IN THIS SUBSECTION (3) IN DETERMINING THE REASONABLENESS OF ANY
7 COMPENSATION OR COST. THE COURT MAY DETERMINE THE WEIGHT TO BE
8 GIVEN TO EACH FACTOR AND TO ANY OTHER FACTOR THE COURT
9 CONSIDERS RELEVANT IN REACHING ITS DECISION:

10 (a) THE TIME AND LABOR REQUIRED, THE NOVELTY AND
11 DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUIRED TO
12 PERFORM THE SERVICE PROPERLY;

13 (b) THE LIKELIHOOD, IF APPARENT TO THE FIDUCIARY, THAT THE
14 ACCEPTANCE OF THE PARTICULAR EMPLOYMENT WILL PRECLUDE THE
15 PERSON EMPLOYED FROM OTHER EMPLOYMENT;

16 (c) (I) THE COMPENSATION CUSTOMARILY CHARGED IN THE
17 COMMUNITY FOR SIMILAR SERVICES WITH DUE CONSIDERATION AND
18 ALLOWANCE FOR THE COMPLEXITY OR UNIQUENESS OF ANY
19 ADMINISTRATIVE OR LITIGATED ISSUES, THE NEED FOR AND LOCAL
20 AVAILABILITY OF SPECIALIZED KNOWLEDGE OR EXPERTISE, AND THE NEED
21 FOR AND ADVISABILITY OF RETAINING OUTSIDE FIDUCIARIES OR LAWYERS
22 TO AVOID POTENTIAL CONFLICTS OF INTEREST;

23 (II) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT
24 OTHERWISE REQUIRES, "COMMUNITY" MEANS THE GENERAL
25 GEOGRAPHICAL AREA IN WHICH THE ESTATE IS BEING ADMINISTERED OR IN
26 WHICH THE RESPONDENT, WARD, OR PROTECTED PERSON RESIDES.

27 (d) THE NATURE AND SIZE OF THE ESTATE, THE LIQUIDITY OR

1 ILLIQUIDITY OF THE ESTATE, AND THE RESULTS AND BENEFITS OBTAINED
2 DURING THE ADMINISTRATION OF THE ESTATE;

3 (e) WHETHER AND TO WHAT EXTENT ANY LITIGATION HAS TAKEN
4 PLACE AND THE RESULTS OF SUCH LITIGATION;

5 (f) THE LIFE EXPECTANCY AND NEEDS OF THE RESPONDENT, WARD,
6 PROTECTED PERSON, DEVISEE, BENEFICIARY, OR PRINCIPAL;

7 (g) THE TIME LIMITATIONS IMPOSED ON OR BY THE FIDUCIARY OR
8 BY THE CIRCUMSTANCES OF THE ADMINISTRATION OF THE ESTATE;

9 (h) THE ADEQUACY OF ANY DETAILED BILLING STATEMENTS UPON
10 WHICH THE COMPENSATION IS BASED;

11 (i) WHETHER THE FIDUCIARY HAS CHARGED VARIABLE RATES THAT
12 REFLECT COMPARABLE PAYMENT STANDARDS IN THE COMMUNITY FOR
13 LIKE SERVICES;

14 (j) THE EXPERTISE, REPUTATION, AND ABILITY OF THE PERSON
15 PERFORMING THE SERVICES AND, IN THE CASE OF A FIDUCIARY, WHETHER
16 AND TO WHAT EXTENT THE FIDUCIARY HAS HAD ANY PRIOR EXPERIENCE
17 IN ADMINISTERING ESTATES SIMILAR TO THOSE FOR WHICH COMPENSATION
18 IS SOUGHT;

19 (k) THE TERMS OF A GOVERNING INSTRUMENT;

20 (l) THE VARIOUS COURSES OF ACTION AVAILABLE TO A FIDUCIARY
21 OR AN INDIVIDUAL SEEKING COMPENSATION FOR A PARTICULAR SERVICE
22 OR ALLEGED BENEFIT AND WHETHER THE COURSE OF ACTION TAKEN WAS
23 REASONABLE AND APPROPRIATE UNDER THE CIRCUMSTANCES EXISTING AT
24 THE TIME THE SERVICE WAS PERFORMED; AND

25 (m) THE VARIOUS COURSES OF ACTION AVAILABLE TO A FIDUCIARY
26 OR AN INDIVIDUAL SEEKING COMPENSATION FOR A PARTICULAR SERVICE
27 OR ALLEGED BENEFIT AND THE COST-EFFECTIVENESS OF THE ACTION

1 TAKEN UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE SERVICE
2 WAS PERFORMED.

3 (4) IF A GOVERNING INSTRUMENT PROVIDES THAT A FIDUCIARY IS
4 ENTITLED TO RECEIVE COMPENSATION IN ACCORDANCE WITH A PUBLISHED
5 FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE PERFORMED,
6 FEES CHARGED IN ACCORDANCE WITH THE PUBLISHED FEE SCHEDULE
7 SHALL BE PRESUMED TO BE REASONABLE. THE ABSENCE OF SUCH A
8 PROVISION IN A GOVERNING INSTRUMENT SHALL NOT PRECLUDE THE
9 FIDUCIARY FROM RECEIVING COMPENSATION IN ACCORDANCE WITH A
10 PUBLISHED FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE
11 PERFORMED.

12 (5) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PROHIBIT
13 MEMBERS OR EMPLOYEES OF A PROFESSIONAL FIDUCIARY'S ORGANIZATION
14 OR LAW FIRM, INCLUDING PARTNERS, ASSOCIATES, PARALEGALS, LAW
15 CLERKS, TRUST OFFICERS, CAREGIVERS, AND SOCIAL WORKERS, FROM
16 COLLABORATING ON THE SAME SERVICE SO LONG AS THE COLLABORATION
17 IS REASONABLE AND THE TOTAL COMPENSATION CHARGED FOR THE
18 SERVICE IN THE AGGREGATE IS REASONABLE UNDER THE CIRCUMSTANCES.

19 **15-10-604. Fee disputes - process and procedure.** (1) A
20 DISPUTE OVER THE REASONABLENESS OF A REQUEST FOR COMPENSATION
21 OR COSTS AUTHORIZED BY THIS PART 6 SHALL BE RESOLVED IN
22 ACCORDANCE WITH THE FACTORS SET FORTH IN SECTION 15-10-603 (3)
23 AND THE PROCESS AND PROCEDURE SET FORTH IN THIS SECTION.

24 (2) FOR PURPOSES OF THIS SECTION, A FEE DISPUTE SHALL BE
25 DEEMED TO HAVE ARISEN WHEN AN OBJECTION TO COMPENSATION OR
26 COSTS HAS BEEN FILED IN A PROCEEDING.

27 (3) AFTER THE OBJECTION TO COMPENSATION OR COSTS HAS BEEN

1 FILED, THE PERSON REQUESTING COMPENSATION OR COSTS SHALL HAVE
2 THIRTY DAYS, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT,
3 TO MAKE AVAILABLE TO THE OBJECTOR FOR INSPECTION AND COPYING ALL
4 DOCUMENTATION THAT THE PERSON DEEMS NECESSARY TO ESTABLISH THE
5 REASONABLENESS OF THE COMPENSATION AND COSTS IN CONSIDERATION
6 OF THE FACTORS SET FORTH IN SECTION 15-10-603 (3) AND TO CERTIFY TO
7 THE COURT THAT SUCH DOCUMENTATION WAS MADE AVAILABLE TO THE
8 OBJECTOR ON A CERTAIN DATE. THE OBJECTOR SHALL THEN HAVE FIFTEEN
9 DAYS, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT, TO FILE
10 SPECIFIC WRITTEN OBJECTIONS TO SUCH COMPENSATION AND COSTS BASED
11 ON THE FACTORS SET FORTH IN SECTION 15-10-603 (3). THE FIFTEEN DAYS
12 SHALL COMMENCE ON THE DATE THAT THE PERSON MAKES THE
13 DOCUMENTATION AVAILABLE TO THE OBJECTOR OR UPON THE FILING OF
14 THE PERSON'S CERTIFICATION, WHICHEVER IS LATER. THE COURT MAY
15 PERMIT FURTHER DISCOVERY ON THE COMPENSATION AND COST ISSUES
16 RAISED BY THE PLEADINGS ONLY UPON GOOD CAUSE SHOWN.

17 (4) SUBJECT TO THE COURT'S INHERENT AUTHORITY TO ORDER
18 ALTERNATIVE DISPUTE RESOLUTION METHODS, THE COURT SHALL
19 DETERMINE, AFTER NOTICE AND HEARING, THE AMOUNT OF
20 COMPENSATION AND COSTS IT CONSIDERS TO BE REASONABLE AND SHALL
21 ISSUE ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW REFERENCING THE
22 FACTORS SET FORTH IN SECTION 15-10-603 (3) AND ANY OTHER FACTORS
23 IT DEEMS RELEVANT TO ITS DECISION.

24 **15-10-605. Compensation and costs - assessment - limitations.**

25 (1) IF THE COURT DETERMINES THAT ANY PROCEEDINGS PURSUANT TO
26 THIS CODE OR ANY PLEADINGS FILED IN SUCH PROCEEDINGS WERE
27 BROUGHT, DEFENDED, OR FILED IN BAD FAITH, THE COURT MAY ASSESS THE

1 FEES AND THE COSTS, INCLUDING REASONABLE ATTORNEY FEES, INCURRED
2 BY THE FIDUCIARY AND OTHER AFFECTED PARTIES IN RESPONDING TO THE
3 PROCEEDINGS OR PLEADINGS, AGAINST AN ESTATE, PARTY, PERSON, OR
4 ENTITY THAT BROUGHT OR DEFENDED THE PROCEEDINGS OR FILED THE
5 PLEADINGS IN BAD FAITH. NOTHING IN THIS SECTION IS INTENDED TO LIMIT
6 ANY OTHER REMEDY, SANCTION, OR SURCHARGE PROVIDED BY LAW.

7 (2) IF ANY PERSON ENTITLED TO COMPENSATION UNDER THIS PART
8 6 IS REQUIRED TO DEFEND THE REASONABLENESS OF COMPENSATION OR
9 COSTS IN A PROCEEDING, THE COURT MAY REVIEW THE FEES AND COSTS
10 INCURRED BY THE PERSON IN DEFENDING THE COMPENSATION OR COSTS,
11 AND THE FEES INCURRED IN CHALLENGING THE COMPENSATION AND
12 COSTS, AND MAY ASSESS THE REASONABLE FEES AND COSTS INCURRED IN
13 THE PROCEEDING AS THE COURT DEEMS EQUITABLE. THE COURT MAY
14 ALLOCATE FEES OR COSTS ASSESSED PURSUANT TO THIS SUBSECTION (2)
15 IN FAVOR OF OR AGAINST THE ESTATE OR ANY PARTY, PERSON, OR ENTITY
16 INVOLVED IN THE PROCEEDING AS JUSTICE AND EQUITY MAY REQUIRE.

17 (3) A PERSON WHO IS UNSUCCESSFUL IN DEFENDING THE
18 REASONABLENESS OF COMPENSATION OR COSTS AT A HEARING SHALL NOT
19 BE ENTITLED TO RECOVER THE FEES OR COSTS OF THAT DEFENSE AS THE
20 COURT DEEMS EQUITABLE.

21 (4) A FIDUCIARY WHO IS UNSUCCESSFUL IN DEFENDING THE
22 FIDUCIARY'S CONDUCT IN A PROCEEDING PURSUANT TO THIS CODE
23 ALLEGING BREACH OF FIDUCIARY DUTY SHALL NOT RECOVER THE FEES OR
24 COSTS OF THAT DEFENSE AS THE COURT DEEMS EQUITABLE.

25 **15-10-606. Applicability. (1) THIS PART 6 APPLIES TO:**

26 (a) AN ESTATE EXISTING BEFORE, ON, OR AFTER THE EFFECTIVE
27 DATE OF THIS PART 6; AND

1 (b) PROCEEDINGS TO DETERMINE THE REASONABLENESS OF
2 COMPENSATION AND COSTS COMMENCED ON OR AFTER THE EFFECTIVE
3 DATE OF THIS PART 6.

4 (2) THIS PART 6 DOES NOT APPLY TO PROCEEDINGS TO DETERMINE
5 THE REASONABLENESS OF COMPENSATION AND COSTS COMMENCED
6 BEFORE THE EFFECTIVE DATE OF THIS PART 6 UNLESS THE COURT
7 DETERMINES THAT THE APPLICATION OF THIS PART 6 WOULD NOT
8 PREJUDICE THE RIGHTS OF ANY PARTY TO THE PROCEEDING AND THE
9 COURT DIRECTS OTHERWISE.

10 SECTION 2. 15-10-504 (2) (b), Colorado Revised Statutes, is
11 amended to read:

12 **15-10-504. Surcharge - contempt - sanctions against**
13 **fiduciaries. (2) Surcharge. (b) In awarding attorney fees and costs**
14 **pursuant to this section, a court may consider the provisions of sections**
15 **15-12-719, 15-12-720, and 15-14-417 PART 6 OF THIS ARTICLE.**

16 SECTION 3. 15-11-803 (7), Colorado Revised Statutes, is
17 amended to read:

18 **15-11-803. Effect of homicide on intestate succession, wills,**
19 **trusts, joint assets, life insurance, and beneficiary designations.**

20 **(7) Felonious killing; how determined - time limitations on civil**
21 **proceedings. (a) Criminal proceedings.** After all right to appeal has
22 been WAIVED OR exhausted FOLLOWING THE ENTRY OF a judgment of
23 conviction a ~~plea of guilty, or a plea of nolo contendere~~ establishing
24 criminal accountability for the felonious killing of the decedent, SUCH
25 JUDGMENT conclusively establishes the convicted individual as the
26 decedent's killer for purposes of this section.

27 **(b) Civil proceedings.** Notwithstanding the status or disposition

1 of a criminal proceeding, a court of competent jurisdiction, ~~at any time,~~
2 upon the petition of an interested person, shall determine whether, by a
3 preponderance of evidence standard, each of the elements of felonious
4 killing of the decedent has been established. If such elements have been
5 so established, such determination conclusively establishes that individual
6 as the decedent's killer for purposes of this section.

7 (c) **Time limitations on civil proceedings.** (I) A PETITION
8 BROUGHT UNDER PARAGRAPH (b) OF THIS SUBSECTION (7) MAY NOT BE
9 FILED MORE THAN THREE YEARS AFTER THE DATE OF THE DECEDENT'S
10 DEATH.

11 (II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF
12 THIS PARAGRAPH (c) TO THE CONTRARY, IF A CRIMINAL PROCEEDING IS
13 COMMENCED IN A COURT OF THIS STATE OR IN ANOTHER JURISDICTION
14 AGAINST AN INDIVIDUAL FOR THE FELONIOUS KILLING OF THE DECEDENT,
15 A PETITION BROUGHT UNDER PARAGRAPH (b) OF THIS SUBSECTION (7) MAY
16 BE FILED SO LONG AS THE PETITION IS FILED NO LATER THAN ONE YEAR
17 AFTER ALL RIGHT TO APPEAL HAS BEEN WAIVED OR EXHAUSTED
18 FOLLOWING AN ENTRY OF A JUDGMENT OF CONVICTION, OR A DISMISSAL,
19 OR AN ACQUITTAL IN THE CRIMINAL PROCEEDING. HOWEVER, IF THE
20 DEATH AND THE POSSIBLE CULPABILITY OF THE SLAYER FOR THE
21 FELONIOUS SLAYING OF THE DECEDENT IS NOT KNOWN TO THE PETITIONER
22 WITHIN THE THREE-YEAR PERIOD OF LIMITATIONS ESTABLISHED PURSUANT
23 TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE ACCRUAL OF THE
24 ACTION UNDER PARAGRAPH (b) OF THIS SUBSECTION (7) AND THE
25 POSSIBILITY OF THE TOLLING OF THE RUNNING OF THE THREE-YEAR PERIOD
26 OF LIMITATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) SHALL
27 BE DETERMINED ACCORDING TO THE PRINCIPLES OF ACCRUAL AND

1 TOLLING ESTABLISHED BY CASE LAW WITH RESPECT TO SIMILAR
2 LIMITATIONS ESTABLISHED UNDER SECTION 13-80-108, C.R.S.

3 (d) **Judgment of conviction.** FOR THE PURPOSES OF THIS
4 SUBSECTION (7), A "JUDGMENT OF CONVICTION" INCLUDES A JUDGMENT OF
5 CONVICTION ON A PLEA OF GUILTY OR NOLO CONTENDERE, OR A JUDGMENT
6 OF CONVICTION ON A VERDICT OF GUILTY BY THE COURT OR BY A JURY.

7 **SECTION 4.** 15-12-102, Colorado Revised Statutes, is amended
8 to read:

9 **15-12-102. Necessity of order of probate for will.** (†) Except
10 as provided in ~~section~~ SECTIONS 15-12-901, 15-12-1201, 15-13-204, AND
11 15-13-205 AND IN PART 13 OF THIS ARTICLE, to be effective to prove the
12 transfer of any property or to nominate an executor, a will must be
13 declared to be valid by an order of informal probate by the registrar, or an
14 adjudication of probate by the court. ~~except that a duly executed and~~
15 ~~unrevoked will which has not been probated may be admitted as evidence~~
16 ~~of a devise if:~~

17 (a) ~~No court proceeding concerning the succession or~~
18 ~~administration of the estate has occurred, and~~

19 (b) ~~Either the devisee or his successors and assigns possessed the~~
20 ~~property devised in accordance with the provisions of the will, or the~~
21 ~~property devised was not possessed or claimed by anyone by virtue of the~~
22 ~~decedent's title during the time period for testacy proceedings.~~

23 **SECTION 5.** 15-12-703 (3.5) (a), Colorado Revised Statutes, is
24 amended to read:

25 **15-12-703. General duties - relation and liability to persons**
26 **interested in estate - standing to sue.** (3.5) A personal representative
27 shall not be surcharged for distributions made that do not take into

1 consideration the possible birth of a posthumously conceived child unless
2 prior to such distribution:

3 (a) The personal representative has received notice or has actual
4 knowledge that ~~a party intends~~ THERE IS AN INTENTION to use an
5 individual's genetic material to create a child or has received written
6 notice that ~~a party may intend~~ THERE MAY BE AN INTENTION to use an
7 individual's genetic material to create a child; and

8 **SECTION 6.** 15-12-705 (1) (i), Colorado Revised Statutes, is
9 amended to read:

10 **15-12-705. Duty of personal representative - information to**
11 **heirs and devisees.** (1) Not later than thirty days after appointment,
12 every personal representative, except any special administrator, shall give
13 information of his or her appointment to the heirs and devisees, including,
14 if there has been no formal testacy proceeding and if the personal
15 representative was appointed on the assumption that the decedent died
16 intestate, the devisees in any will mentioned in the application for
17 appointment of a personal representative. The information shall be
18 delivered or sent by ordinary mail to each of the heirs and devisees whose
19 address is reasonably available to the personal representative. The duty
20 does not extend to require information to persons who have been
21 adjudicated in a prior formal testacy proceeding to have no interest in the
22 estate. The information shall:

23 (i) Indicate that any ~~person~~ INDIVIDUAL who has knowledge that
24 ~~a party intends or may intend~~ THERE IS OR MAY BE AN INTENTION to use
25 an individual's genetic material to create a child and that the birth of the
26 child could affect the distribution of the decedent's estate should give
27 written notice of such knowledge to the personal representative of the

1 decedent's estate.

2 SECTION 7. 15-12-805 (1) (a), Colorado Revised Statutes, is
3 amended to read:

4 15-12-805. Classification of claims. (1) The allowed claims
5 against the estate of a decedent shall be paid by the personal
6 representative in the following order:

7 (a) Property held by or in the possession of the deceased person
8 as fiduciary or trustee of a trust, which shall include a resulting trust, as
9 long as the reasonable expenses of administering such property and of
10 investigating and determining such claim, as provided by section
11 ~~15-12-720~~ SECTION 15-10-602, BUT SUBJECT TO SECTION 15-10-605, shall
12 be paid from such property as determined by the court;

13 SECTION 8. The introductory portion to 15-12-808 (5) and
14 15-12-808 (5) (a), Colorado Revised Statutes, are amended to read:

15 15-12-808. Individual liability of personal representative.

16 (5) A personal representative is not individually liable for making
17 distributions that do not take into consideration the possible birth of a
18 posthumously conceived child if the personal representative made the
19 distribution prior to: ~~receiving notice or acquiring actual knowledge that:~~

20 (a) ~~A party intends or may intend~~ RECEIVING NOTICE OR
21 ACQUIRING ACTUAL KNOWLEDGE OF THE EXISTENCE OF AN INTENTION to
22 use an individual's genetic material to create a child; and

23 SECTION 9. 15-12-901, Colorado Revised Statutes, is amended
24 to read:

25 15-12-901. Successors' rights if no administration. (1) (a) AS
26 USED IN THIS SUBSECTION (1), "WILL PROBATED IN THIS STATE" MEANS A
27 WILL THAT IS DECLARED TO BE VALID BY AN ORDER OF INFORMAL PROBATE

1 BY THE REGISTRAR, OR AN ADJUDICATION OF PROBATE BY THE COURT.

2 (b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (c) OF THIS
3 SUBSECTION (1) AND IN PART 13 OF THIS ARTICLE:

4 (I) In the absence of administration, the heirs and devisees are
5 entitled to the estate in accordance with the terms of a ~~probated~~ will
6 PROBATED IN THIS STATE or the laws of intestate succession.

7 (II) Devisees may establish title by the ~~probated~~ will PROBATED
8 IN THIS STATE to devised property.

9 (c) A DULY EXECUTED AND UNREVOKED WILL THAT IS NOT A WILL
10 PROBATED IN THIS STATE MAY BE ADMITTED AS EVIDENCE OF A DEVISE IF:

11 (I) A COURT PROCEEDING CONCERNING THE SUCCESSION OR
12 ADMINISTRATION OF THE ESTATE HAS NOT OCCURRED; AND

13 (II) EITHER THE DEVISEE OR HIS OR HER SUCCESSORS AND ASSIGNS
14 POSSESSED THE PROPERTY DEVISED IN ACCORDANCE WITH THE PROVISIONS
15 OF THE WILL, OR THE PROPERTY DEVISED WAS NOT POSSESSED OR CLAIMED
16 BY ANYONE BY VIRTUE OF THE DECEDENT'S TITLE DURING THE TIME
17 PERIOD FOR TESTACY PROCEEDINGS.

18 (2) Persons entitled to property by exemption or intestacy may
19 establish title thereto by proof of the decedent's ownership, his OR HER
20 death, and their relationship to the decedent.

21 (3) Successors take subject to all charges incident to
22 administration, including the claims of creditors and allowances of
23 surviving spouse and dependent children, and subject to the rights of
24 others resulting from abatement, retainer, advancement, and ademption.

25 **SECTION 10. 15-14-318, Colorado Revised Statutes, is amended**
26 **BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to**
27 **read:**

1 **15-14-318. Termination or modification of guardianship -**
2 **resignation or removal of guardian. (3.5) THE FOLLOWING PROVISIONS**
3 **APPLY IN A TERMINATION PROCEEDING THAT IS INITIATED BY THE WARD:**
4 **(a) THE GUARDIAN MAY FILE A WRITTEN REPORT TO THE COURT**
5 **REGARDING ANY MATTER RELEVANT TO THE TERMINATION PROCEEDING,**
6 **AND THE GUARDIAN MAY FILE A MOTION FOR INSTRUCTIONS REGARDING**
7 **ANY RELEVANT MATTER INCLUDING, BUT NOT LIMITED TO, THE**
8 **FOLLOWING:**
9 **(I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR**
10 **SHOULD BE APPOINTED FOR THE WARD;**
11 **(II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL**
12 **EVALUATION OF THE WARD SHOULD BE CONDUCTED, THE SCOPE OF THE**
13 **INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN THE**
14 **INVESTIGATION OR PROFESSIONAL EVALUATION SHOULD BE COMPLETED;**
15 **AND**
16 **(III) WHETHER THE GUARDIAN IS TO BE INVOLVED IN THE**
17 **TERMINATION PROCEEDINGS AND, IF SO, TO WHAT EXTENT;**
18 **(b) IF THE GUARDIAN ELECTS TO FILE A WRITTEN REPORT OR A**
19 **MOTION FOR INSTRUCTIONS, THE GUARDIAN SHALL FILE SUCH INITIAL**
20 **PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO TERMINATE HAS**
21 **BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE TEN DAYS TO**
22 **FILE A RESPONSE. IF A RESPONSE IS FILED, THE GUARDIAN SHALL HAVE**
23 **SEVEN DAYS TO FILE A REPLY. IF A MOTION FOR INSTRUCTIONS IS FILED BY**
24 **THE GUARDIAN AS HIS OR HER INITIAL PLEADING, THE COURT SHALL RULE**
25 **ON THE MOTION BEFORE THE PETITION FOR TERMINATION OF THE**
26 **GUARDIANSHIP IS SET FOR HEARING. UNLESS A HEARING ON THE MOTION**
27 **FOR INSTRUCTIONS IS REQUESTED BY THE COURT, THE COURT MAY RULE**

1 ON THE PLEADINGS WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE
2 FILING OF THE LAST RESPONSIVE PLEADING HAS EXPIRED. AFTER THE
3 FILING OF THE GUARDIAN'S INITIAL MOTION FOR INSTRUCTIONS, THE
4 GUARDIAN MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS
5 APPROPRIATE.

6 (c) EXCEPT FOR THE ACTIONS AUTHORIZED IN PARAGRAPHS (a),
7 (b), AND (e) OF THIS SUBSECTION (3.5), OR AS OTHERWISE ORDERED BY
8 THE COURT, THE GUARDIAN MAY NOT TAKE ANY ACTION TO OPPOSE OR
9 INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF THE INITIAL
10 OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE GUARDIAN SHALL
11 NOT, IN AND OF ITSELF, BE DEEMED OPPOSITION OR INTERFERENCE.

12 (d) UNLESS ORDERED BY THE COURT, THE GUARDIAN SHALL HAVE
13 NO DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING, AND THE
14 GUARDIAN SHALL INCUR NO LIABILITY FOR FILING THE REPORT OR MOTION
15 FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN THE PROCEEDING;

16 (e) NOTHING IN THIS SUBSECTION (3.5) SHALL PREVENT:

17 (I) THE COURT, ON ITS OWN MOTION AND REGARDLESS OF
18 WHETHER THE GUARDIAN HAS FILED A REPORT OR REQUEST FOR
19 INSTRUCTIONS, FROM ORDERING THE GUARDIAN TO TAKE ANY ACTION
20 THAT THE COURT DEEMS APPROPRIATE OR FROM APPOINTING AN
21 ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;

22 (II) THE COURT FROM ORDERING THE GUARDIAN TO APPEAR AT THE
23 TERMINATION PROCEEDING AND GIVE TESTIMONY; OR

24 (III) ANY INTERESTED PERSON FROM CALLING THE GUARDIAN AS
25 A WITNESS IN THE TERMINATION PROCEEDING;

26 (f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A GUARDIAN,
27 AND IS AN INTERESTED PERSON IN HIS OR HER INDIVIDUAL CAPACITY, AND

1 WANTS TO PARTICIPATE IN THE TERMINATION PROCEEDING IN HIS OR HER
2 INDIVIDUAL CAPACITY AND NOT IN HIS OR HER FIDUCIARY CAPACITY MAY
3 DO SO WITHOUT RESTRICTION OR LIMITATION. THE PAYMENT OF ANY FEES
4 AND COSTS TO THAT INDIVIDUAL, RELATED TO HIS OR HER DECISION TO
5 PARTICIPATE IN THE TERMINATION PROCEEDING, SHALL BE GOVERNED BY
6 SECTION 15-10-602 (7) AND NOT BY SECTION 15-10-602 (1).

7 (6) WHEN A WARD DIES, ALL FEES, COSTS, AND EXPENSES OF THE
8 ADMINISTRATION OF THE GUARDIANSHIP, INCLUDING ANY UNPAID
9 GUARDIAN FEES AND COSTS AND THOSE OF HIS OR HER COUNSEL, MAY BE
10 SUBMITTED TO THE COURT FOR COURT APPROVAL IN CONJUNCTION WITH
11 THE TERMINATION OF THE GUARDIANSHIP. THEREAFTER, ALL
12 COURT-APPROVED FEES, COSTS, AND EXPENSES OF ADMINISTRATION
13 ARISING FROM THE GUARDIANSHIP SHALL BE PAID AS COURT-APPROVED
14 CLAIMS FOR COSTS AND EXPENSES OF ADMINISTRATION IN THE
15 DECEDENT'S ESTATE. IN THE EVENT THAT THERE ARE INSUFFICIENT
16 MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE IN FULL, THE
17 FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE
18 GUARDIANSHIP SHALL RETAIN THEIR CLASSIFICATION AS "COSTS AND
19 EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE AND SHALL BE
20 PAID PURSUANT TO SECTION 15-12-805.

21 **SECTION 11.** 15-14-413 (6), Colorado Revised Statutes, is
22 amended to read:

23 **15-14-413. Who may be conservator - priorities - prohibition**
24 **of dual roles.** (6) (a) Unless the court makes specific findings for good
25 cause shown OR THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN
26 SECTION 27-10.5-102 (15.5), C.R.S., the same professional may not act as
27 an incapacitated person's or a protected person's:

- 1 (I) Guardian and conservator; or
- 2 (II) Guardian and direct service provider; or
- 3 (III) Conservator and direct service provider.
- 4 (b) In addition, a guardian or conservator may not employ the
- 5 same person to act as both care manager and direct service provider for
- 6 the incapacitated person or protected person UNLESS THE PERSON IS A
- 7 FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S.

8 **SECTION 12.** The introductory portion to 15-14-420 (2),
9 Colorado Revised Statutes, is amended to read:

10 **15-14-420. Reports - appointment of monitor - monitoring -**
11 **records.** (2) UNLESS THE COURT ORDERS OTHERWISE, a report must:

12 **SECTION 13.** 15-14-428, Colorado Revised Statutes, is amended
13 **BY THE ADDITION OF A NEW SUBSECTION** to read:

14 **15-14-428. Death of protected person.** (3) **WHEN A PROTECTED**
15 **PERSON DIES, ALL FEES, COSTS, AND EXPENSES OF ADMINISTRATION OF THE**
16 **CONSERVATORSHIP, INCLUDING ANY UNPAID CONSERVATOR FEES AND**
17 **COSTS AND THOSE OF HIS OR HER COUNSEL, MAY BE SUBMITTED TO THE**
18 **COURT FOR APPROVAL IN CONJUNCTION WITH THE TERMINATION OF THE**
19 **CONSERVATORSHIP. THEREAFTER, ALL COURT-APPROVED FEES, COSTS,**
20 **AND EXPENSES OF ADMINISTRATION ARISING FROM THE CONSERVATORSHIP**
21 **SHALL BE PAID AS COURT-APPROVED CLAIMS FOR COSTS AND EXPENSES OF**
22 **ADMINISTRATION IN THE DECEDENT'S ESTATE. IN THE EVENT THAT THERE**
23 **ARE INSUFFICIENT MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE**
24 **IN FULL, THE FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING**
25 **FROM THE CONSERVATORSHIP SHALL RETAIN THEIR CLASSIFICATION AS**
26 **"COSTS AND EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE**
27 **AND SHALL BE PAID PURSUANT TO SECTION 15-12-805.**

1 **SECTION 14. 15-14-431, Colorado Revised Statutes, is amended**
2 **BY THE ADDITION OF A NEW SUBSECTION to read:**

3 **15-14-431. Termination of proceedings. (4.5) THE FOLLOWING**
4 **PROVISIONS APPLY IN A TERMINATION PROCEEDING THAT IS INITIATED BY**
5 **THE PROTECTED PERSON:**

6 (a) THE CONSERVATOR MAY FILE A WRITTEN REPORT TO THE
7 COURT REGARDING ANY MATTER RELEVANT TO THE TERMINATION
8 PROCEEDING, AND THE CONSERVATOR MAY FILE A MOTION FOR
9 INSTRUCTIONS CONCERNING ANY RELEVANT MATTER INCLUDING, BUT NOT
10 LIMITED TO, THE FOLLOWING:

11 (I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR
12 SHOULD BE APPOINTED FOR THE PROTECTED PERSON;

13 (II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL
14 EVALUATION OF THE PROTECTED PERSON SHOULD BE CONDUCTED, THE
15 SCOPE OF THE INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN
16 THE INVESTIGATION OR PROFESSIONAL EVALUATION SHOULD BE
17 COMPLETED; AND

18 (III) WHETHER THE CONSERVATOR IS TO BE INVOLVED IN THE
19 TERMINATION PROCEEDINGS, AND IF SO, TO WHAT EXTENT.

20 (b) IF THE CONSERVATOR ELECTS TO FILE A WRITTEN REPORT OR
21 A MOTION FOR INSTRUCTIONS, THE CONSERVATOR SHALL FILE SUCH
22 INITIAL PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO
23 TERMINATE HAS BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE
24 TEN DAYS TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE
25 CONSERVATOR SHALL HAVE SEVEN DAYS TO FILE A REPLY. IF A MOTION
26 FOR INSTRUCTIONS IS FILED BY THE CONSERVATOR AS HIS OR HER INITIAL
27 PLEADING, THE COURT SHALL RULE ON THAT MOTION BEFORE THE

1 PETITION FOR TERMINATION OF THE CONSERVATORSHIP IS SET FOR
2 HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS
3 REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS
4 WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST
5 RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE
6 CONSERVATOR'S INITIAL MOTION FOR INSTRUCTIONS, THE CONSERVATOR
7 MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS APPROPRIATE.

8 (c) EXCEPT FOR THE ACTIONS AUTHORIZED IN PARAGRAPHS (a),
9 (b), AND (e) OF THIS SUBSECTION (4.5) OR AS OTHERWISE ORDERED BY THE
10 COURT, THE CONSERVATOR MAY NOT TAKE ANY ACTION TO OPPOSE OR
11 INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF THE INITIAL
12 OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE CONSERVATOR SHALL
13 NOT, IN AND OF ITSELF, BE DEEMED OPPOSITION OR INTERFERENCE.

14 (d) UNLESS ORDERED BY THE COURT, THE CONSERVATOR SHALL
15 HAVE NO DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING AND
16 THE CONSERVATOR SHALL INCUR NO LIABILITY FOR FILING THE REPORT OR
17 MOTION FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN THE
18 PROCEEDING.

19 (e) NOTHING IN THIS SUBSECTION (4.5) SHALL PREVENT:

20 (I) THE COURT, ON ITS OWN MOTION AND REGARDLESS OF
21 WHETHER THE CONSERVATOR HAS FILED A REPORT OR REQUEST FOR
22 INSTRUCTIONS, FROM ORDERING THE CONSERVATOR TO TAKE ANY ACTION
23 THAT THE COURT DEEMS APPROPRIATE, OR FROM APPOINTING AN
24 ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;

25 (II) THE COURT FROM ORDERING THE CONSERVATOR TO APPEAR AT
26 THE TERMINATION PROCEEDING AND GIVE TESTIMONY; OR

27 (III) ANY INTERESTED PERSON FROM CALLING THE CONSERVATOR

1 AS A WITNESS IN THE TERMINATION PROCEEDING.

2 (f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A
3 CONSERVATOR, IS AN INTERESTED PERSON IN HIS OR HER INDIVIDUAL
4 CAPACITY, AND WANTS TO PARTICIPATE IN THE TERMINATION PROCEEDING
5 IN HIS OR HER INDIVIDUAL CAPACITY AND NOT IN HIS OR HER FIDUCIARY
6 CAPACITY, MAY DO SO WITHOUT RESTRICTION OR LIMITATION. THE
7 PAYMENT OF ANY FEES AND COSTS TO THE INDIVIDUAL THAT ARE RELATED
8 TO HIS OR HER DECISION TO PARTICIPATE IN THE TERMINATION
9 PROCEEDING SHALL BE GOVERNED BY SECTION 15-10-602 (7) AND NOT
10 SECTION 15-10-602 (1).

11 **SECTION 15.** The introductory portion to 15-14-702, Colorado
12 Revised Statutes, is amended to read:

13 **15-14-702. Definitions.** Except as otherwise provided UNDER
14 THIS PART 7, AND EXCEPT AS THE CONTEXT MAY OTHERWISE REQUIRE, in
15 this part 7:

16 **SECTION 16.** 15-14-716 (1) (g), Colorado Revised Statutes, is
17 amended to read:

18 **15-14-716. Judicial relief.** (1) The following persons may
19 petition a court to construe a power of attorney or review the agent's
20 conduct and grant appropriate relief:

21 (g) A governmental agency having ~~regulatory~~ authority to protect
22 the welfare of the principal;

23 **SECTION 17.** 15-14-720 (2) (f), Colorado Revised Statutes, is
24 amended to read:

25 **15-14-720. Liability for refusal to accept acknowledged power**
26 **of attorney.** (2) A person is not required to accept an acknowledged
27 power of attorney if:

1 (f) The person makes, or has actual knowledge that another person
2 has made, a report to ~~the local adult protective services office~~ A
3 GOVERNMENTAL AGENCY HAVING AUTHORITY TO PROTECT THE WELFARE
4 OF THE PRINCIPAL stating a good faith belief that the principal may be
5 subject to physical or financial abuse, neglect, exploitation, or
6 abandonment by the agent or a person acting for or with the agent; or

7 **SECTION 18.** 15-14-740 (2), Colorado Revised Statutes, is
8 amended to read:

9 **15-14-740. Gifts.** (2) (a) Unless the power of attorney otherwise
10 provides, language in a power of attorney granting general authority with
11 respect to gifts authorizes the agent only to:

12 (a) (I) Make outright to, or for the benefit of, a person, a gift of
13 any of the principal's property, including by the exercise of a presently
14 exercisable general power of appointment held by the principal, in an
15 amount per donee not to exceed the annual dollar limits of the federal gift
16 tax exclusion under Internal Revenue Code section 2503 (b), 26 U.S.C.
17 sec. 2503 (b), as amended, without regard to whether the federal gift tax
18 exclusion applies to the gift, or if the principal's spouse agrees to consent
19 to a split gift pursuant to Internal Revenue Code section 2513, 26 U.S.C.
20 sec. 2513, as amended, in an amount per donee not to exceed twice the
21 annual federal gift tax exclusion limit; and

22 (b) (II) Consent, pursuant to Internal Revenue Code section 2513,
23 26 U.S.C. sec. 2513, as amended, to the splitting of a gift made by the
24 principal's spouse in an amount per donee not to exceed the aggregate
25 annual gift tax exclusions for both spouses.

26 (b) PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY TO,
27 OR AFFECT BY INFERENCE OR OTHERWISE, A POWER OF ATTORNEY IN

1 EXISTENCE ON DECEMBER 31, 2009, UNLESS, ON THAT DATE, THIS PART 7
2 APPLIES TO THE POWER OF ATTORNEY AS PROVIDED IN SECTION 15-14-745
3 (2).

4 **SECTION 19.** 15-14-741, Colorado Revised Statutes, is amended
5 to read:

6 **15-14-741. Statutory form - power of attorney.** A document
7 substantially in the following form may be used to create a statutory form
8 power of attorney that has the meaning and effect prescribed by this part
9 7.

10 **STATE OF COLORADO STATUTORY FORM**

11 **POWER OF ATTORNEY**

12 **IMPORTANT INFORMATION**

13 This power of attorney authorizes another person (your agent) to make
14 decisions concerning your property for you (the principal). Your agent
15 will be able to make decisions and act with respect to your property
16 (including your money) whether or not you are able to act for yourself.

17 The meaning of authority over subjects listed on this form is explained in
18 the "Uniform Power of Attorney Act", part 7 of article 14 of title 15,
19 Colorado Revised Statutes.

20 This power of attorney does not authorize the agent to make health care
21 decisions for you.

22 You should select someone you trust to serve as your agent. Unless you
23 specify otherwise, generally the agent's authority will continue until you
24 die or revoke the power of attorney or the agent resigns or is unable to act
25 for you.

26 Your agent is entitled to reasonable compensation unless you state
27 otherwise in the special instructions.

1 This form provides for designation of one agent. If you wish to name
2 more than one agent you may name a coagent in the special instructions.
3 Coagents are not required to act together unless you include that
4 requirement in the special instructions.

5 If your agent is unable or unwilling to act for you, your power of attorney
6 will end unless you have named a successor agent. You may also name
7 a second successor agent.

8 This power of attorney becomes effective immediately unless you state
9 otherwise in the special instructions.

10 **If you have questions about the power of attorney or the authority**
11 **you are granting to your agent, you should seek legal advice before**
12 **signing this form.**

13 **DESIGNATION OF AGENT**

14 I _____ (name of principal) name the
15 following person as my agent:

16 Name of agent: _____

17 Agent's address: _____

18 Agent's telephone number: _____

19 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

20 If my agent is unable or unwilling to act for me, I name as my successor
21 agent:

22 Name of successor agent: _____

23 Successor agent's address: _____

24 Successor agent's telephone number: _____

25 If my successor agent is unable or unwilling to act for me, I name as my
26 second successor agent:

27 Name of second successor agent: _____

1 Second successor agent's address: _____

2 Second successor agent's telephone number: _____

3 **GRANT OF GENERAL AUTHORITY**

4 I grant my agent and any successor agent general authority to act for me
5 with respect to the following subjects as defined in the "Uniform Power
6 of Attorney Act", part 7 of article 14 of title 15, Colorado Revised
7 Statutes:

8 (INITIAL each subject you want to include in the agent's general
9 authority. If you wish to grant general authority over all of the subjects
10 you may initial "All preceding subjects" instead of initialing each
11 subject.)

- 12 Real property
- 13 Tangible personal property
- 14 Stocks and bonds
- 15 Commodities and options
- 16 Banks and other financial institutions
- 17 Operation of entity or business
- 18 Insurance and annuities
- 19 Estates, trusts, and other beneficial interests
- 20 Claims and litigation
- 21 Personal and family maintenance
- 22 Benefits from governmental programs or civil or military service
- 23 Retirement plans
- 24 Taxes
- 25 All preceding subjects

26 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

27 My agent MAY NOT do any of the following specific acts for me

1 UNLESS I have INITIALED the specific authority listed below:
2 (CAUTION: Granting any of the following will give your agent the
3 authority to take actions that could significantly reduce your property or
4 change how your property is distributed at your death. INITIAL ONLY
5 the specific authority you WANT to give your agent.)
6 Create, amend, revoke, or terminate an inter vivos trust
7 Make a gift, subject to the limitations of the "Uniform Power of
8 Attorney Act" set forth in section 15-14-740, Colorado Revised Statutes,
9 and any special instructions in this power of attorney
10 Create or change rights of survivorship
11 Create or change a beneficiary designation
12 Authorize another person to exercise the authority granted under this
13 power of attorney
14 Waive the principal's right to be a beneficiary of a joint and survivor
15 annuity, including a survivor benefit under a retirement plan
16 Exercise fiduciary powers that the principal has authority to delegate,
17 INCLUDING POWERS TO PARTICIPATE IN THE DESIGNATION OR CHANGING
18 OF A FIDUCIARY AND POWERS TO PARTICIPATE IN THE DIRECTION OF A
19 FIDUCIARY IN THE EXERCISE OF THE FIDUCIARY'S POWERS
20 Disclaim, refuse, or release an interest in property or a power of
21 appointment
22 Exercise a power of appointment other than: (1) The exercise of a
23 general power of appointment for the benefit of the principal which may,
24 if the subject of estates, trusts, and other beneficial interests is authorized
25 above, be exercised as provided under the subject of estates, trusts, and
26 other beneficial interests; or (2) the exercise of a general power of
27 appointment for the benefit of persons other than the principal which

1 may, if the making of a gift is specifically authorized above, be exercised
2 under the specific authorization to make gifts

3 (___) Exercise powers, rights, or authority as a partner, member, or
4 manager of a partnership, limited liability company, or other entity that
5 the principal may exercise on behalf of the entity and has authority to
6 delegate excluding the exercise of such powers, rights, and authority with
7 respect to an entity owned solely by the principal which may, if operation
8 of entity or business is authorized above, be exercised as provided under
9 the subject of operation of the entity or business

10 **LIMITATION ON AGENT'S AUTHORITY**

11 An agent that is not my ancestor, spouse, or descendant MAY NOT use
12 my property to benefit the agent or a person to whom the agent owes an
13 obligation of support unless I have included that authority in the special
14 instructions.

15 **SPECIAL INSTRUCTIONS (OPTIONAL)**

16 You may give special instructions on the following lines:

17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____

24 **EFFECTIVE DATE**

25 This power of attorney is effective immediately unless I have stated
26 otherwise in the special instructions.

27 **NOMINATION OF CONSERVATOR**

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OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for conservator of my estate: _____

Nominee's address: _____

Nominee's telephone number: _____

Name of nominee for guardian of my person: _____

Nominee's address: _____

Nominee's telephone number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your signature

_____ Date

Your name printed

Your address

Your telephone number

State of _____

[County] of _____

This document was acknowledged before me on _____,

1 (Date)

2 by _____.

3 (Name of principal)

4 _____ (Seal, if any)

5 Signature of notary

6 My commission expires: _____

7 This document prepared by:

8 _____

9 _____

10 **IMPORTANT INFORMATION FOR AGENT**

11 **Agent's duties**

12 When you accept the authority granted under this power of attorney, a
13 special legal relationship is created between you and the principal. This
14 relationship imposes upon you legal duties that continue until you resign
15 or the power of attorney is terminated or revoked. You must:

16 (1) Do what you know the principal reasonably expects you to do with
17 the principal's property or, if you do not know the principal's expectations,
18 act in the principal's best interest;

19 (2) Act in good faith;

20 (3) Do nothing beyond the authority granted in this power of attorney;
21 and

22 (4) Disclose your identity as an agent whenever you act for the principal
23 by writing or printing the name of the principal and signing your own
24 name as "agent" in the following manner:

25 (Principal's name) by (Your signature) as agent

26 Unless the special instructions in this power of attorney state otherwise,
27 you must also:

- 1 (1) Act loyally for the principal's benefit;
- 2 (2) Avoid conflicts that would impair your ability to act in the principal's
- 3 best interest;
- 4 (3) Act with care, competence, and diligence;
- 5 (4) Keep a record of all receipts, disbursements, and transactions made
- 6 on behalf of the principal;
- 7 (5) Cooperate with any person that has authority to make health care
- 8 decisions for the principal to do what you know the principal reasonably
- 9 expects or, if you do not know the principal's expectations, to act in the
- 10 principal's best interest; and
- 11 (6) Attempt to preserve the principal's estate plan if you know the plan
- 12 and preserving the plan is consistent with the principal's best interest.

13 **Termination of agent's authority**

14 You must stop acting on behalf of the principal if you learn of any event
15 that terminates this power of attorney or your authority under this power
16 of attorney. Events that terminate a power of attorney or your authority
17 to act under a power of attorney include:

- 18 (1) Death of the principal;
- 19 (2) The principal's revocation of the power of attorney or your authority;
- 20 (3) The occurrence of a termination event stated in the power of attorney;
- 21 (4) The purpose of the power of attorney is fully accomplished; or
- 22 (5) If you are married to the principal, a legal action is filed with a court
- 23 to end your marriage, or for your legal separation, unless the special
- 24 instructions in this power of attorney state that such an action will not
- 25 terminate your authority.

26 **Liability of agent**

27 The meaning of the authority granted to you is defined in the "Uniform

1 Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised
2 Statutes. If you violate the "Uniform Power of Attorney Act", part 7 of
3 article 14 of title 15, Colorado Revised Statutes, or act outside the
4 authority granted, you may be liable for any damages caused by your
5 violation.

6 If there is anything about this document or your duties that you do not
7 understand, you should seek legal advice.

8 **SECTION 20.** The introductory portion to 15-16-306 (7) and
9 15-16-306 (7) (a), Colorado Revised Statutes, are amended to read:

10 **15-16-306. Personal liability of trustee to third parties.** (7) A
11 trustee is not personally liable for making ~~distributions~~ A DISTRIBUTION
12 of property that ~~do~~ DOES not take into consideration the possible birth of
13 a posthumously conceived child unless, prior to the distribution, the
14 ~~personal representative~~ TRUSTEE received notice or acquired actual
15 knowledge that:

16 (a) ~~A party intends or may intend~~ THERE IS OR MAY BE AN
17 INTENTION to use an individual's genetic material to create a child; and

18 **SECTION 21.** 15-18-104 (7), Colorado Revised Statutes, is
19 amended to read:

20 **15-18-104. Declaration as to medical treatment.** (7) A
21 declaration executed pursuant to this article may ~~include a document or~~
22 ~~written statement designating an agent under a medical power of attorney~~
23 BE COMBINED WITH A MEDICAL POWER OF ATTORNEY TO CREATE A SINGLE
24 DOCUMENT. Such a document shall ~~be executed in accordance with the~~
25 ~~provisions of part 5 of article 14~~ COMPLY WITH ALL REQUIREMENTS of this
26 title. ~~and in accordance with the provisions of the "Colorado Patient~~
27 ~~Autonomy Act", sections 15-14-503 to 15-14-509.~~

1 **SECTION 22. Repeal.** 15-12-719, 15-12-720, 15-12-721, and
2 15-14-417, Colorado Revised Statutes, are repealed.

3 **SECTION 23. Act subject to petition - effective date.** This act
4 shall take effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part shall not take effect
10 unless approved by the people at the general election to be held in
11 November 2012 and shall take effect on the date of the official
12 declaration of the vote thereon by the governor.