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SENATE BILL 11-083

BY SENATOR(S) Roberts, Boyd, Steadman;
also REPRESENTATIVE(S) Barker, Court, Gardner B., Kerr J., Stephens,
Waller.

CONCERNING PROVISIONS RELATING TO THE COLORADO PROBATE CODE.

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

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

PART 6
COMPENSATION AND COST RECOVERY

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

(1) "ESTATE" MEANS THE PROPERTY OF THE DECEDENT, TRUST, OR OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS CODE AS THE ESTATE IS ORIGINALLY CONSTITUTED AND AS THE ESTATE EXISTS FROM TIME TO TIME DURING ADMINISTRATION. "ESTATE" INCLUDES CUSTODIAL PROPERTY AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT," ARTICLE 50 OF TITLE 11, C.R.S.; CUSTODIAL TRUST PROPERTY AS DESCRIBED

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

IN THE "COLORADO UNIFORM CUSTODIAL TRUST ACT," ARTICLE 1.5 OF THIS TITLE; AND THE PROPERTY OF A PRINCIPAL THAT IS SUBJECT TO A POWER OF ATTORNEY.

(2) "FIDUCIARY" MEANS:

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

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

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

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

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

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

(I) AN INSTRUMENT THAT CREATES A CUSTODIAL TRANSFER AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTORNEY FEES.

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

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

(I) THE LAWYER OR OTHER PERSON SHALL FILE A REQUEST FOR COMPENSATION FOR SERVICES OR COSTS ALLEGED TO HAVE RESULTED IN THE ORDER WITHIN FIFTEEN DAYS AFTER THE ENTRY OF THE ORDER, OR WITHIN A GREATER OR LESSER TIME AS THE COURT MAY DIRECT. ANY OBJECTION THERETO SHALL BE FILED WITHIN FIFTEEN DAYS AFTER THE FILING OF THE REQUEST FOR COMPENSATION OR COSTS.

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

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

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

(c) IN DETERMINING A REASONABLE AMOUNT OF COMPENSATION OR COSTS, THE COURT MAY TAKE INTO ACCOUNT, IN ADDITION TO THE FACTORS

SET FORTH IN SECTION 15-10-603 (3):

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

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

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

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

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

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

(9) EVERY APPLICATION OR PETITION FOR APPOINTMENT OF A FIDUCIARY FILED UNDER THIS CODE, INCLUDING WITHOUT LIMITATION THOSE REQUIRED UNDER SECTIONS 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, AND 15-14-403, SHALL INCLUDE A STATEMENT BY THE APPLICANT OR PETITIONER DISCLOSING THE BASIS UPON WHICH ANY COMPENSATION IS TO BE CHARGED TO THE ESTATE BY THE FIDUCIARY AND HIS OR HER OR ITS COUNSEL, OR SHALL STATE THAT THE BASIS HAS NOT YET BEEN DETERMINED. THE DISCLOSURE STATEMENT

SHALL SPECIFICALLY DESCRIBE, AS IS APPLICABLE, THE HOURLY RATES TO BE CHARGED, ANY AMOUNTS TO BE CHARGED PURSUANT TO A PUBLISHED FEE SCHEDULE, INCLUDING THE RATES AND BASIS FOR CHARGING FEES FOR ANY EXTRAORDINARY SERVICES, AND ANY OTHER BASES UPON WHICH A FEE CHARGED TO THE ESTATE WILL BE CALCULATED. THIS DISCLOSURE OBLIGATION SHALL BE CONTINUING IN NATURE SO AS TO REQUIRE SUPPLEMENTAL DISCLOSURES IF MATERIAL CHANGES TO THE BASIS FOR CHARGING FEES TAKE PLACE.

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

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

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

(II) IS APPOINTED BY THE COURT; OR

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

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

(2) IN CONSIDERING THE REASONABLENESS OF THE COMPENSATION, THERE SHALL BE NO PRESUMPTION THAT ANY METHOD OF CHARGING A FEE FOR SERVICES RENDERED TO AN ESTATE, FIDUCIARY, PRINCIPAL, RESPONDENT, WARD, OR PROTECTED PERSON IS PER SE UNREASONABLE. REGARDLESS OF THE METHOD USED FOR CHARGING A FEE, IN DETERMINING APPROPRIATE COMPENSATION, THE COURT SHALL APPLY THE STANDARD OF REASONABLENESS IN LIGHT OF ALL RELEVANT FACTS AND CIRCUMSTANCES.

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

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

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

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

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

(d) THE NATURE AND SIZE OF THE ESTATE, THE LIQUIDITY OR ILLIQUIDITY OF THE ESTATE, AND THE RESULTS AND BENEFITS OBTAINED DURING THE ADMINISTRATION OF THE ESTATE;

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

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

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

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

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

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

(k) THE TERMS OF A GOVERNING INSTRUMENT;

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

(m) THE VARIOUS COURSES OF ACTION AVAILABLE TO A FIDUCIARY OR AN INDIVIDUAL SEEKING COMPENSATION FOR A PARTICULAR SERVICE OR ALLEGED BENEFIT AND THE COST-EFFECTIVENESS OF THE ACTION TAKEN UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE SERVICE WAS PERFORMED.

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

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

15-10-604. Fee disputes - process and procedure. (1) A DISPUTE OVER THE REASONABLENESS OF A REQUEST FOR COMPENSATION OR COSTS AUTHORIZED BY THIS PART 6 SHALL BE RESOLVED IN ACCORDANCE WITH THE

FACTORS SET FORTH IN SECTION 15-10-603 (3) AND THE PROCESS AND PROCEDURE SET FORTH IN THIS SECTION.

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

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

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

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

(1) IF THE COURT DETERMINES THAT ANY PROCEEDINGS PURSUANT TO THIS CODE OR ANY PLEADINGS FILED IN SUCH PROCEEDINGS WERE BROUGHT, DEFENDED, OR FILED IN BAD FAITH, THE COURT MAY ASSESS THE FEES AND THE COSTS, INCLUDING REASONABLE ATTORNEY FEES, INCURRED BY THE FIDUCIARY AND OTHER AFFECTED PARTIES IN RESPONDING TO THE PROCEEDINGS OR PLEADINGS, AGAINST AN ESTATE, PARTY, PERSON, OR

ENTITY THAT BROUGHT OR DEFENDED THE PROCEEDINGS OR FILED THE PLEADINGS IN BAD FAITH. NOTHING IN THIS SECTION IS INTENDED TO LIMIT ANY OTHER REMEDY, SANCTION, OR SURCHARGE PROVIDED BY LAW.

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

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

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

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

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

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

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

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

15-10-504. Surcharge - contempt - sanctions against fiduciaries.

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

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

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

(7) **Felonious killing; how determined - time limitations on civil proceedings.** (a) **Criminal proceedings.** 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, SUCH JUDGMENT conclusively establishes the convicted individual as the decedent's killer for purposes of this section.

(b) **Civil proceedings.** Notwithstanding the status or disposition of a criminal proceeding, a court of competent jurisdiction, ~~at any time,~~ upon the petition of an interested person, shall determine whether, by a preponderance of evidence standard, each of the elements of felonious killing of the decedent has been established. If such elements have been so established, such determination conclusively establishes that individual as the decedent's killer for purposes of this section.

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

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) TO THE CONTRARY, IF A CRIMINAL PROCEEDING IS COMMENCED IN A COURT OF THIS STATE OR IN ANOTHER JURISDICTION AGAINST AN INDIVIDUAL FOR THE FELONIOUS KILLING OF THE DECEDENT, A PETITION BROUGHT UNDER PARAGRAPH (b) OF THIS SUBSECTION (7) MAY BE FILED SO LONG AS 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 THE CRIMINAL PROCEEDING. HOWEVER, IF THE DEATH AND THE POSSIBLE CULPABILITY OF THE SLAYER FOR THE FELONIOUS SLAYING OF THE DECEDENT IS NOT KNOWN TO THE PETITIONER WITHIN THE THREE-YEAR PERIOD OF LIMITATIONS ESTABLISHED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE ACCRUAL OF THE ACTION UNDER PARAGRAPH (b) OF THIS SUBSECTION (7) AND THE POSSIBILITY OF THE TOLLING OF THE RUNNING OF THE THREE-YEAR PERIOD OF LIMITATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) SHALL BE DETERMINED ACCORDING TO THE PRINCIPLES OF ACCRUAL AND TOLLING ESTABLISHED BY CASE LAW WITH RESPECT TO SIMILAR LIMITATIONS ESTABLISHED UNDER SECTION 13-80-108, C.R.S.

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

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

15-12-102. Necessity of order of probate for will. ~~(1)~~ Except as provided in ~~section~~ SECTIONS 15-12-901, 15-12-1201, 15-13-204, AND 15-13-205 AND IN PART 13 OF THIS ARTICLE, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court. ~~except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

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

~~(b) Either the devisee or his 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.~~

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

15-12-703. General duties - relation and liability to persons interested in estate - standing to sue. (3.5) A personal representative shall not be surcharged for distributions made that do not take into consideration the possible birth of a posthumously conceived child unless prior to such distribution:

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

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

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

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

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

15-12-805. Classification of claims. (1) The allowed claims

against the estate of a decedent shall be paid by the personal representative in the following order:

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

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

15-12-808. Individual liability of personal representative. (5) A personal representative is not individually liable for making distributions that do not take into consideration the possible birth of a posthumously conceived child if the personal representative made the distribution prior to: ~~receiving notice or acquiring actual knowledge that:~~

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

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

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

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

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

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

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

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

(II) 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.

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

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

SECTION 10. 15-14-310 (5), Colorado Revised Statutes, is amended to read:

15-14-310. Who may be guardian - priorities - prohibition of dual roles. (5) (a) Unless the court makes specific findings for good cause shown OR THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person UNLESS THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S.

SECTION 11. 15-12-1201 (1) (a), Colorado Revised Statutes, is amended to read:

15-12-1201. Collection of personal property by affidavit. (1) At any time ten or more days after the date of death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) The fair market value of property owned by the decedent and subject to disposition by will or intestate succession at the time of his or her death, wherever that property is located, less liens and encumbrances, does not exceed ~~fifty~~ SIXTY thousand dollars;

SECTION 12. 15-14-420 (5), Colorado Revised Statutes, is amended to read:

15-14-420. Reports - appointment of monitor - monitoring - records. (5) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person WITHIN THIRTY DAYS UNLESS THE COURT OTHERWISE DIRECTS.

SECTION 13. 15-16-303, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-16-303. Duty to inform and account to beneficiaries. (5) NOT MORE THAN THIRTY DAYS AFTER RECEIVING A REQUEST PURSUANT TO THIS SECTION, THE TRUSTEE SHALL COMPLY WITH THE REQUEST OR RESPOND IN WRITING AS TO WHY ADDITIONAL TIME IS NEEDED TO RESPOND OR WHY THE REQUESTED INFORMATION WILL NOT BE PROVIDED.

SECTION 14. 15-14-734 (2) (f), (2) (g), and (2) (h), Colorado Revised Statutes, are amended to read:

15-14-734. Estates, trusts, and other beneficial interests.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(f) Conserve, invest, disburse, or use anything received for an authorized purpose; AND

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor. ~~and~~

~~(h) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.~~

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

15-14-318. Termination or modification of guardianship - resignation or removal of guardian. (3.5) THE FOLLOWING PROVISIONS APPLY IN A TERMINATION PROCEEDING THAT IS INITIATED BY THE WARD:

(a) THE GUARDIAN MAY FILE A WRITTEN REPORT TO THE COURT REGARDING ANY MATTER RELEVANT TO THE TERMINATION PROCEEDING, AND THE GUARDIAN MAY FILE A MOTION FOR INSTRUCTIONS REGARDING ANY RELEVANT MATTER INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR SHOULD BE APPOINTED FOR THE WARD;

(II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL EVALUATION OF THE WARD SHOULD BE CONDUCTED, THE SCOPE OF THE INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN THE INVESTIGATION OR PROFESSIONAL EVALUATION SHOULD BE COMPLETED; AND

(III) WHETHER THE GUARDIAN IS TO BE INVOLVED IN THE TERMINATION PROCEEDINGS AND, IF SO, TO WHAT EXTENT;

(b) IF THE GUARDIAN ELECTS TO FILE A WRITTEN REPORT OR A MOTION FOR INSTRUCTIONS, THE GUARDIAN SHALL FILE SUCH INITIAL PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO TERMINATE HAS BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE TEN DAYS TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE GUARDIAN SHALL HAVE SEVEN DAYS TO FILE A REPLY. IF A MOTION FOR INSTRUCTIONS IS FILED BY THE GUARDIAN AS HIS OR HER INITIAL PLEADING, THE COURT SHALL RULE ON THE MOTION BEFORE THE PETITION FOR TERMINATION OF THE GUARDIANSHIP IS SET FOR HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE GUARDIAN'S INITIAL MOTION FOR INSTRUCTIONS, THE GUARDIAN MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS APPROPRIATE.

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

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

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

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

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

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

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

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

SECTION 16. 15-14-413 (6), Colorado Revised Statutes, is amended to read:

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

- (I) Guardian and conservator; or
- (II) Guardian and direct service provider; or
- (III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the

incapacitated person or protected person UNLESS THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S.

SECTION 17. The introductory portion to 15-14-420 (2), Colorado Revised Statutes, is amended to read:

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

SECTION 18. 15-14-428, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

SECTION 19. 15-14-431, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

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

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

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

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

(b) IF THE CONSERVATOR ELECTS TO FILE A WRITTEN REPORT OR A MOTION FOR INSTRUCTIONS, THE CONSERVATOR SHALL FILE SUCH INITIAL PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO TERMINATE HAS BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE TEN DAYS TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE CONSERVATOR SHALL HAVE SEVEN DAYS TO FILE A REPLY. IF A MOTION FOR INSTRUCTIONS IS FILED BY THE CONSERVATOR AS HIS OR HER INITIAL PLEADING, THE COURT SHALL RULE ON THAT MOTION BEFORE THE PETITION FOR TERMINATION OF THE CONSERVATORSHIP IS SET FOR HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE CONSERVATOR'S INITIAL MOTION FOR INSTRUCTIONS, THE CONSERVATOR MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS APPROPRIATE.

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

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

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

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

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

(III) ANY INTERESTED PERSON FROM CALLING THE CONSERVATOR AS A WITNESS IN THE TERMINATION PROCEEDING.

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

SECTION 20. The introductory portion to 15-14-702, Colorado Revised Statutes, is amended to read:

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

SECTION 21. 15-14-716 (1) (g), Colorado Revised Statutes, is amended to read:

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

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

SECTION 22. 15-14-720 (2) (f), Colorado Revised Statutes, is amended to read:

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

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

SECTION 23. 15-14-740 (2), Colorado Revised Statutes, is amended to read:

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

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

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

(b) PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY TO, OR AFFECT BY INFERENCE OR OTHERWISE, A POWER OF ATTORNEY IN EXISTENCE ON DECEMBER 31, 2009, UNLESS, ON THAT DATE, THIS PART 7 APPLIES TO

THE POWER OF ATTORNEY AS PROVIDED IN SECTION 15-14-745 (2).

SECTION 24. 15-14-741, Colorado Revised Statutes, is amended to read:

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

**STATE OF COLORADO STATUTORY FORM
POWER OF ATTORNEY
IMPORTANT INFORMATION**

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes.

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

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

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

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

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

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

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

DESIGNATION OF AGENT

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

Name of agent: _____

Agent's address: _____

Agent's telephone number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of successor agent: _____

Successor agent's address: _____

Successor agent's telephone number: _____

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

Name of second successor agent: _____

Second successor agent's address: _____

Second successor agent's telephone number: _____

GRANT OF GENERAL AUTHORITY

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

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

- Real property
- Tangible personal property
- Stocks and bonds
- Commodities and options
- Banks and other financial institutions
- Operation of entity or business
- Insurance and annuities
- Estates, trusts, and other beneficial interests
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes
- All preceding subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of the "Uniform Power of Attorney Act" set forth in section 15-14-740, Colorado Revised Statutes, and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this

- power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate, INCLUDING POWERS TO PARTICIPATE IN THE DESIGNATION OR CHANGING OF A FIDUCIARY AND POWERS TO PARTICIPATE IN THE DIRECTION OF A FIDUCIARY IN THE EXERCISE OF THE FIDUCIARY'S POWERS
- Disclaim, refuse, or release an interest in property or a power of appointment
- Exercise a power of appointment other than: (1) The exercise of a general power of appointment for the benefit of the principal which may, if the subject of estates, trusts, and other beneficial interests is authorized above, be exercised as provided under the subject of estates, trusts, and other beneficial interests; or (2) the exercise of a general power of appointment for the benefit of persons other than the principal which may, if the making of a gift is specifically authorized above, be exercised under the specific authorization to make gifts
- Exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the entity and has authority to delegate excluding the exercise of such powers, rights, and authority with respect to an entity owned solely by the principal which may, if operation of entity or business is authorized above, be exercised as provided under the subject of operation of the entity or business

LIMITATION ON AGENT'S AUTHORITY

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

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

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

**NOMINATION OF CONSERVATOR
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 _____,
(Date)

by _____.
(Name of principal)

Signature of notary (Seal, if any)

My commission expires: _____

This document prepared by:

IMPORTANT INFORMATION FOR AGENT

Agent's duties

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

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney;

and

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

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

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

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

Termination of agent's authority

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

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

Liability of agent

The meaning of the authority granted to you is defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes. If you violate the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

SECTION 25. The introductory portion to 15-16-306 (7) and 15-16-306 (7) (a), Colorado Revised Statutes, are amended to read:

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

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

SECTION 26. 15-18-104 (7), Colorado Revised Statutes, is amended to read:

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

SECTION 27. Repeal. 15-12-719, 15-12-720, 15-12-721, and 15-14-417, Colorado Revised Statutes, are repealed.

SECTION 28. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO