Report to the Colorado General Assembly:

COLORADO PROBATE CODE

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 194

December, 1972

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THE COLORADO PROBATE CODE

Legislative Council

Report to the

Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL
ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

December 11, 1972

To Members of the Forty-ninth Colorado General Assembly:

Under direction of Senate Joint Resolution No. 7, second regular session of the Forty-eighth General Assembly (1972), the Legislative Council appointed the Committee on the Probate Code to undertake a study relating to the adoption of the Uniform Probate Code in Colorado. The report of this committee, which contains the committee's recommendations and a draft of proposed legislation to adopt the Uniform Probate Code in Colorado, is submitted herewith.

The report and recommendations of the committee were adopted, with favorable recommendation, by the Legislative Council at its December 11, 1972, meeting for transmission to the members of the First Regular Session of the Forty-ninth Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/pm

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL
ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
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December 11, 1972

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Your Committee on the Probate Code, appointed to study the laws in Colorado concerning the probate of wills and the administration of estates, submits the accompanying report and recommendations, containing a draft of suggested legislation to enact the Uniform Probate Code.

Senate Joint Resolution No. 7 of the 1972 Session directed the Legislative Council to study the Uniform Probate Code and the effect that passage of the Code would have on present Colorado law. In carrying out this responsibility, the Committee has carefully reviewed and analyzed the Code and the alternatives submitted by interested parties to various sections of the Code. The Committee believes that the Uniform Probate Code, as revised by the Committee, will offer an affirmative, well-balanced and long-range solution to the problems posed by the present probate system, provide safeguards for all interested parties, and meet the legitimate demands of the public.

Respectfully submitted,

/s/ Representative Ron Strahle
Chairman
Committee on the Probate Code

RS/pm

FOREWORD

The Legislative Council Committee on Probate Code was created pursuant to a directive in Senate Joint Resolution No. 7, 1972 Session. The resolution directed that a study be made of the laws of Colorado regarding wills, estates, descent and distribution, probate, functions of executors, administrators, conservators, and guardians, and every other aspect of the transfer of ownership, possession, and use of property upon death. The directive also stated that the study was to include, but not be limited to, an examination of the Uniform Probate Code. Members of the Committee appointed to conduct the study were:

Rep. Ron Strahle
Chairman
Sen. John Bermingham
Vice-Chairman
Sen. Fred Anderson
Sen. Roger Cisneros
Rep. Ralph Cole
Rep. Don Horst
Rep. Robert Johnson
Rep. Gerald Kopel

In formulating the Committee recommendations, nine meetings were held during the study. Committee procedure was to review the Uniform Probate Code section by section, comparing it with present Colorado law, and determining whether to adopt the UPC language and/or concept. A section-by-section analysis of the UPC and a comparison with Colorado law was prepared by the Legislative Council staff and was utilized by the Committee in its detailed consideration of the UPC.

The Committee gives special recognition to Mr. Norman Markman and Mr. Vic Grandy, Co-chairman and Reporter of the Colorado Bar Association Study Committee on the Uniform Probate Code, who gave valuable assistance to the Committee. The Committee also met with other representatives of the Colorado Bar Association, the Court Clerk's Association, Juvenile Judges Association, Colorado Press Association, American Society of Appraisers, Public Administrators, and Judge David Brofman of the Denver Probate Court.

Vincent Hogan of the Legislative Drafting Office had responsibility for preparing the legislation to enact the UPC in Colorado. Earl Thaxton, Research Associate for the Legislative Council, had primary responsibility for the staff work on this study, assisted by Bart Bevins, Research Assistant.

December, 1972

Lyle C. Kyle
Director

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COMMITTEE FINDINGS AND CONCLUSIONS

1. The law on the transfer of property at death affects all citizens at some time since the inevitability of death is well known. The inevitability of death is matched by the inevitability of the bereaved family's concern about the disposition of decedent's property. For these reasons, the Committee finds that the main purpose of probate law should be to see that transfers of property are made, creditors are paid, and distribution is had to those persons legally entitled thereto as speedily and inexpensively as possible with full protection to all.

2. The Committee finds that the laws of Colorado on wills, estates, probate, and heirship have not been significantly altered since the time that Colorado became a state. Times and customs have changed since the early years of our state. The early probate laws were first enacted to deal with estates consisting primarily of land. These early laws have gradually been adapted piecemeal to handling estates consisting mainly of personalty, such as securities and more recently to estates where the major portion of the assets may consist of what has come to be known as non-probate assets, such as jointly owned property, life insurance, pension and profit-sharing plans. The Committee concludes that changes in the economy, times and attitudes, call for reforming, updating and revising these old laws and adapting them to contemporary conditions.

3. The Committee finds that many people no longer are born, live and die in the same location. The Committee recognizes that many people will live and reside in several locations within the state or in several different states during their lives, depending upon where the breadwinner may choose to work and in many cases, in states selected by the breadwinner's employer. Typical illustrations include moving corporate executives from offices in one state to those in another, and ministers and college professors who are called from service in a church or college in one state to service in another state. In many instances well-conceived estate plans may be defeated by a change of residence unless followed by a revision of the plan. The Committee also finds that many people may own property in more than a single state. The Committee concludes that, in these situations, it is desirable that steps be taken to provide that estate plans which may have been drawn with reference to the law of domicile should not be defeated by differing laws of another state where both real and personal property are located, and that uniformity of law among the several states should be attempted in order to avoid multi-state estate conflicts.

4. Most states, including Colorado, provide for mandatory probate in most cases, requiring the will to be proved by notice and hearing, as if the will had been under contest. In addition, present law provides for strict court supervision of the process of estate administration, requiring court decrees for practically every administrative step the personal representative takes, regardless of the size or complexity of the estate. The Committee finds that a wide variety of fact situations are encountered. These extend from small, single beneficiary, no debt cases through large, multiple beneficiary, complex estates to problems of insolvency. Current law and procedure is adapted to the most difficult of these with varients dependent upon the presence of given conditions and will language, and is designed to deal with estates of substantial size and estates involving controversies and risks. Small estates and estates involving little or no controversy are required to follow the same procedure. The Committee finds that, for these estates, the system of probate and administration is often unnecessary, inordinately cumbersome, expensive and time-consuming. The costs involved, the complexity of the procedure, and the consumption of time, in passing a decedent's estate properly through probate thereby defeats the purpose of the law.

5. The present probate system has led to public criticism, in many cases justifiable, and serves to irritate citizens with what may properly offend them as meaningless complexity and costs. This system has supplied the critics with much ammunition, as evidenced by numerous newspaper and magazine articles, and has often led to misleading solutions on how to avoid the probate system, such as by the use of will substitutes.

6. The public outcry over antiquated and expensive probate laws is not unique to Colorado. Other states are experiencing a similar situation and in some states, notably Wisconsin, a citizen's campaign group is circulating petitions for an initiative for probate reform. The states of Maryland, Idaho, and Alaska have adopted the Uniform Probate Code, with some modifications and, in addition to Colorado, the states of Arizona, North Dakota, Michigan, South Carolina, and Washington will be submitting the Code, or major portions thereof, to their respective legislatures. The states of Tennessee and Kentucky have funded study committees to report their findings and proposals for reform to the legislature. Thus, the Committee finds that the effort to reform probate laws is widespread.

7. For the above reasons, the Committee concludes that the Colorado General Assembly should take the necessary steps to meet public criticism, to revise and update, and

provide for uniformity, by reforming and codifying the laws concerning the disposition of property at death and adopting a modern system which will benefit all citizens and advance the effort of the law to simplify and clarify. The Committee finds that such a system should give a choice of approach to the parties involved in the transfer of property at death, rather than being dictated by statute. A system which does not entirely abrogate existing strictures that are necessary for the protection of parties, including creditors, beneficiaries, and taxing authorities, but at the same time offers alternative procedures which will simplify, reduce costs, and shorten the time it takes for passage of property on death, and be as uniform with other states as possible, is required.

8. To achieve this end, the Committee concludes that the Colorado General Assembly should consider and enact the Uniform Probate Code, a proposal promulgated and sponsored jointly by the National Conference of Commissioners on Uniform State Laws and the American Bar Association, after eight years of intensive study and deliberation. The Committee concludes that the Uniform Probate Code will achieve the purposes, stated above, of probate law and restore public confidence in the probate system. Adoption of the Code should remedy many of the criticisms leveled at the present probate system, meet the legitimate demands of the public, relieve a large number of persons who would be adversely affected by present probate procedure, and solve other problems of law that have given probate a bad image. The Committee concludes that the Code offers an affirmative, balanced and long-range solution to the problems posed by the present probate law. The enactment of the Code by the General Assembly, accompanied and followed by a period of public education, should go far toward restoring public confidence in the probate system and the personnel closely related to it.

COMMITTEE RECOMMENDATIONS

The Committee recommends favorable consideration of the "Colorado Probate Code" included in this report, and hereinafter referred to as the Code. The recommended Code is adapted from and patterned after the Uniform Probate Code, hereinafter referred to as UPC. The UPC served as a starting point for Committee consideration of revision of Colorado probate laws. In many cases, the original language of the UPC has been changed and/or refined to comply with specific recommendations as received from Committee members and other interested persons, and to reflect unique Colorado circumstances as revealed by Committee discussion. In some cases actual language as suggested by Committee members was incorporated into the Code.

Specific comments to each Code section, indicating whether the language of the section has been changed by the Committee or adopted and approved intact, are included with the Code in this report. In addition, comments indicating the extent to which the Code would alter present Colorado law, if any, are included in this report to aid the General Assembly in its consideration of this proposal.

Because the length and scope of the Code make a detailed analysis impractical, and since specific comments to each Code section are set forth, a brief summary of the major provisions of the Code is contained in this portion of the report. For those persons interested in a more detailed analysis of the UPC with comparable Colorado law, reference should be made to the comparative analysis prepared by the Legislative Council staff and on file in the Legislative Council office.

SUMMARY OF COLORADO PROBATE CODE

I. Inheritance Under the Code

Intestate Succession

The purpose of the intestate succession laws under the Code is to provide an acceptable estate plan for persons of modest means who fail to plan for themselves. The principal features are:

(1) Any distinction between the descent of real property and distribution of personal property is abolished.

(2) The share of the surviving spouse is enlarged. The surviving spouse takes the entire estate if there are no issue. If there are issue, the surviving spouse takes a lump sum of $50,000, plus one-half of the balance. Fifty thousand dollars off the top to the surviving spouse should, in many small estates, prevent title to land from passing to minor children and avoid expensive and time consuming judicial proceedings to obtain court orders to sell the minors' interest in such land. If there are one or more issue of the intestate who are not issue of the surviving spouse, the surviving spouse takes one-half, but not the lump sum. A detailed definition of who is a surviving spouse is set forth in the Code.

(3) Inheritance by collateral relatives is restricted to descendants of grandparents, thus eliminating from the class of possible heirs great-grandparents, great-uncles, and great-aunts, first cousins once removed, second cousins, and more remote relatives. This limitation is intended to simplify proof of heirship and eliminate will contests by remote relatives.

(4) An heir must survive the decedent for five days in order to take under the Code. This is an extension of the reasoning behind the Uniform Simultaneous Death Act and is similar to provisions found in many wills.

(5) Adopted children are treated as children of the adopting parents for all inheritance purposes and cease to be children of natural parents.

(6) Inter vivos gifts are not treated as advancements unless declared or acknowledged in writing. This should reduce litigation founded on oral testimony as to whether an inter vivos gift was or was not an advancement. The doctrine of advancements under the Code is applicable to all heirs including collaterals.

(7) Inheritance by representation under the Code is determined by dividing the intestate estate into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive decedent, each surviving heir in the nearest degree receiving one share, and the share of each deceased person in the same degree is divided among his issue in the same manner. The pattern of intestate succession through the representation principle is on a mixed "per capita" and "per stirpes" basis and is not a "per stirpes" distribution now present in Colorado.

(8) The Colorado provisions on escheat are continued in the Code.

(9) The Colorado provisions on renunciation are continued in the Code.

(10) The effect of homocide on intestate succession is altered. Under the Code, the concept that a wrongdoer may not profit from his own wrong is a civil concept and the probate court is a proper forum to determine the effect of a felonious and intentional killing on succession to property of the decedent. Conviction in a criminal prosecution is conclusive for the matter of succession to the murdered person's property, but acquittal does not have the same consequences. In the absence of conviction, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of the Code.

Wills

Execution and proof requirements relating to wills have been simplified. Signature in the presence of two witnesses is all that is required. It will no longer be necessary to "publish and declare" the instrument to be a will. The witnesses need no longer sign in the presence of each other. It will only be necessary that they sign in the presence of the testator. In addition, the Code will provide for a self-proved will whereby the testator and the witnesses execute an affidavit that the formalities prescribed by the Code have been complied with. Wills, in addition to being revoked in the historic manner, may also be revoked by annulment and divorce as to the provisions contained therein for the former spouse. The Code specifically authorizes partial revocation. The sometimes troublesome question of whether the revocation of a subsequent will revives an earlier will is resolved by the Code, which contains detailed provisions designed to achieve the probable intention in this kind of situation. The renunciation provisions specifically allow for partial renunciation for interest passing by will.

The Code does away with the old rules disqualifying an interested witness, and any person generally competent to witness may act as a witness. The Code authorizes the draftsmen of a will to incorporate by reference any existing writing. It also permits reference in the will to a separate written statement or a list disposing of items of tangible personal property if the writing is in the handwriting of the testator or signed by him and the items and devisees are described with reasonable certainty. The list may be prepared either before or after execution of the will, and it may be altered by the testator after its preparation, and it may be a writing having no significance apart from its effect upon the dispositions made by the will. The common law doctrine of events of independent significance is recognized. Holographic wills are specifically approved, whether or not they are witnessed, if the signature and the material provisions are in the handwriting of the testator. The Code also provides a broad choice of law provisions.

The Code continues the Uniform Testamentary Additions to Trusts Act, which allows a devise to be "poured" into an inter vivos trust even though the settlor reserves the right to amend or revoke and even if the trust was actually amended after the will was executed.

Rules of construction pertaining to wills are set forth in the Code and include the following:

(1) A devisee must survive for five days to take under the will.

(2) The anti-lapse provision is broadened to include any devise to a deceased person who is a grandparent or a lineal descendant of a grandparent of the testator.

(3) A lapsed non-residuary devise falls into the residue, whereas a lapsed residuary devise does not fall out of the residue but passes to the other residuary devisees, if any.

(4) The rule of non-exoneration is adopted.

(5) A general residuary clause in a will does not exercise a testamentary power of appointment unless it makes specific reference to the power.

(6) The rules as to the proof of contracts to make wills have been tightened. The effect is that such contracts cannot be proved unless: (1) the will sets forth the material provisions of the contract; (2) the will refers to the contract and the terms are proven by extrinsic evidence; or

(3) the contract is evidenced by an instrument signed by the deceased. Mutual or reciprocal wills will not give rise to a presumption of a contractual arrangement.

(7) The rules on the effect of homocide on inheritance are applicable to wills.

Family Protective Provisions

The Code contains provisions to protect the immediate family. These provisions are of three different kinds. One deals with exempt property allowances, rights which the surviving spouse and certain children have. These rights not only take preference over unsecured creditors but also may not be defeated by the decedent's will. Other provisions protect against unintentional disinheritance by providing a share for the surviving spouse and children if the testator marries after executing his will (omitted spouse) or has children born or adopted after the willis executed (pretermitted children), unless the omission was intentional or the testator made other provision for the disinherited spouse or child. The Code also contains provisions assuring the surviving spouse of a share in both the probate estate and in certain non-probate assets which the decedent cannot defeat.

Elective Share of Surviving Spouse. One of the most significant changes the Code would bring to Colorado, if adopted, concerns the elective share of the surviving spouse, which gives the surviving spouse the power to take a share of the decedent's estate upon election rejecting the provisions of the decedent's will. The Code gives the surviving spouse a one-half forced share in the decedents "augmented estate", and is designed to protect a spouse of a decedent against donative transfers by will or will substitutes which would deprive the survivor of a "fair share" of the decedent's estate.

Augmented Estate. The "augmented estate" is defined to include not only the probate estate but also certain specified transfers by the decedent during marriage with respect to which the decedent retained substantial interests or powers -- such as transfers in trust with income, powers of revocation, or beneficial enjoyment retained, and transfers in joint tenancy between decedent and others. The augmented estate also includes any transfer by the decedent made within two years of death, whether or not in contemplation of death, to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000. The spouse must add to the augmented estate everything that she owns, plus everything that she transferred at any time during the marriage,

which was derived from the decedent by any means other than purchase at full value. Then the spouse has six months to elect to receive one-half of the augmented estate; and the elective share is satisfied, first, with any property of the estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced.

The concept of the augmented estate has two purposes. The first is an attempt to prevent the owner of wealth from making arrangements which transmit his property to others by means other than probate deliberately to defeat the right of the surviving spouse to a share. As long as the transfers are not illusory, the decedent may deplete his estate by inter vivos gifts and transfers and thereby considerably defeat the spouse's right to a forced share. Under the Code any recipient of a transfer that is part of the augmented estate must contribute his proportionate share when the estate is not sufficient to satisfy the spouse's one-half elective share. The spouse may recover only from the original transferees and their donees if they still have the property or its proceeds but they have the option to give up the property or pay its value at the time the augmented estate is computed. The second purpose of the augmented estate is to insure that the spouse is adequately provided for. When this has been done by joint tenancy, life insurance, lifetime gifts, living trusts and other non-probate arrangements, the spouse will not need to take the elective share.

The augmented estate under the Code is arrived at by adding together the following: (1) the probate estate minus funeral and administration expenses, allowances and exemptions, and enforceable claims; plus (2) the value of property transferred gratuitous during marriage to persons other than the surviving spouse; plus (3) the value of property owned by the surviving spouse at decedent's death traceable to gratuitous transfers from the decedent. If the surviving spouse has derived property from decedent and in turn transferred it gratuitously to others this would also be included. The principal difference between property transferred to others under (2) above, and the property chargeable to the spouse under (3) above, is as follows: a transfer to a third person is not included if made before marriage whereas property given to the spouse is; irrevocable transfers as to which decedent retained neither a life estate nor power to revoke or invade, made more than two years before death, are not included if in favor of third persons but all gifts to the surviving spouse must be accounted for. The surviving spouse has the burden of proof as to source of his or her wealth. Election does not affect the share the surviving spouse takes under the will or by intestate succession, but this has to be

credited against the elective share. However, the spouse may renounce the will provision if desired. The surviving spouse also receives the exempt property and family allowance in addition to the elective share.

Exempt Property and Family Allowance. A surviving spouse of a decedent who was domiciled in this state is entitled to an exempt property allowance of $10,000. If there is no surviving spouse, each minor child and each dependent child is entitled to the allowance. The exempt property allowance is exempt from and has priority over all claims against the estate. The allowance is in addition to any share passing to the spouse or minor or dependent child by the will of decedent unless otherwise provided, by intestate succession or by way of elective share.

In addition to the right to an exempt property allowance, the surviving spouse and minor and dependent children are entitled to a family allowance which shall be a reasonable allowance for maintenance during the period of administration. The allowance may be paid as a lump sum or in periodic installments. Amounts over $6,000, in a lump sum, or $500 a month must be approved by the court. The court may not continue the allowance for longer than one year if the estate is inadequate to discharge allowed claims. The family allowance is not charged against the share passing to the spouse and children by intestate succession, or to the elective share of the surviving spouse. Similarly, it is not charged against any provision in the will of decedent, unless expressly provided otherwise.

Omitted Spouse and Children. Under certain circumstances a testator may execute a will and unintentionally omit certain persons for whom he would normally provide at the time of his death. The Code specifically covers three of these areas:

(1) Where the surviving spouse married the testator after execution of the will;

(2) Where children are born or adopted after execution of the will; and

(3) Where the testator believes one of his children to be dead at the time he executes the will.

The Code gives these persons an intestate share in the estate, unless it is shown that the omission was intentional or that they were intentionally provided for by non-probate transfers.

Multi-state Estates - Ancillary Administration

The Code attempts to simplify and unify administration where decedent left property in a state other than his domicile. Specifically, the Code will make ancillary administration unnecessary in most cases. The Code provides that the payment or distribution of tangible or intangible personal property in good faith to a domiciliary foreign personal representative more than sixty days after decedent's death discharges the debtor. Furthermore, the foreign representative may file with the appropriate court a certificate of his appointment and a copy of his bond, if any. Upon such filing he has all the powers that he would have had if he had been appointed by the local court.

The Code does not prevent, but merely discourages proceedings for administration in a state other than decedent's domicile. For example, administration based on assets situated in a state other than decedent's domicile is delayed until at least thirty days from the date of decedent's death, unless the domiciliary representative is the applicant in such other state or unless the will has specified that the law of the non-domiciliary state shall govern. If administration in a state other than the domicile is requested, priority for the appointment is given to the personal representative appointed in the state of the decedent's domicile. The reason is that if ancillary administration is necessary, it is usually desirable that the domiciliary representative and the ancillary representative be the same person. This also explains the Code's provision that permits the removal of a representative in a state other than the domicile of decedent who happens to get appointed before a representative is appointed in the domicile and permits the appointment of the domiciliary representative in his place.

Appropriate provisions are spelled out for the protection of local creditors. If the local property has been distributed to the foreign representative, the local creditor may still file his claim with the foreign representative. In marshalling assets of an insolvent estate, the amount which a local creditor will receive is the same under the Code whether he files his claim with an ancillary representative appointed by the local court or with the foreign representative.

Small Estates

The Code facilitates the transfer and settlement of small estates denominated as those not exceeding ten thousand dollars ($10,000) without the use of a personal representative, and is designed to simplify the duties of the personal

representative who is appointed to handle an estate whose net value does not exceed exempt property and family allowance, costs of administration, funeral expenses, and medical and hospital costs of last illness of the decedent.

Any devisee or heir where the total estate is less than ten thousand dollars may prepare an affidavit stating that:

(a) The value of the entire estate wherever located is less than $10,000;

(b) Ten (10) days have elapsed since the death of the decedent;

(c) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) The claiming successor is entitled to payment or delivery of the property owned by the decedent but in the possession of a third party.

Upon delivery of this affidavit to any party indebted to the decedent, or having possession of tangible personal property or an instrument evidencing debt, stock certificates, or any other type of property, such party shall deliver such property to the successor.

The successor who has prepared such an affidavit, which he has delivered timely, may enforce the payment, delivery or transfer of any personal property of the decedent in possession of the recipient of the affidavit, and the person paying, delivering, transferring or issuing personal property or the evidence thereof, pursuant to the affidavit, to the successor, is fully discharged and released to the same extent as if he dealt with a personal representative; and he is not required to see to the application of the property or inquire into the truth of the affidavit. The recipient of the property based on the delivery of the affidavit is answerable to any personal representative of the estate or to any other person having a superior right.

Where there is a personal representative, and where it appears from the inventory and appraisal that the value of the entire net estate does not exceed allowances, exempt property, family allowance, costs of administration and reasonable funeral expenses and medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled and file a closing statement.

The personal representative of an estate whose net value does not exceed allowances, exemptions, costs, and reasonable funeral and medical expenses may close the estate at any time after disbursement and distribution thereof by filing with the court a verified statement that:

(a) To the best of his knowledge the value of the entire net estate does not exceed allowances, exemptions, costs of administration, funeral expenses and reasonable medical costs;

(b) He has fully administered the estate by disbursing and distributing it to the persons entitled; and

(c) He has sent a copy of the closing statement to all distributees of the estate, and to all creditors or other claimants of whom he is aware, whose claims were neither paid nor barred, and has furnished a full account in writing of his administration to the distributees whose interests are affected.

If no proceeding involving the personal representative is pending in court one (1) year after such closing statement is filed with the court, the appointment of the personal representative terminates.

Flexible System for Administration of Decedents' Estates

Perhaps the major reform introduced by the Code is to permit, where desirable, an informal administration of an estate without any resort to the probate court after the will has been admitted to probate or letters of administration granted, but in other cases to make judicial proceedings freely available to settle disputed matters or to protect the fiduciary where protection is desired. Formal probate and supervised administration under the Code are similar to present Colorado procedures. However, informal proceedings and unsupervised administration as permitted by the Code would be new to Colorado law.

Formal and Informal Probate; Supervised and Unsupervised Administration. The Code would permit informal probate or probate in common form. The personal representative or other interested party has the option, however, to apply for formal probate or probate in solemn form on notice to the interested distributees and others who may be adversely affected by the instrument offered for probate. Formal probate may be applied for either at the time the instrument is offered for probate or at the time the personal representative accounts. Furthermore, on petition the probate court may

order supervised administration if the court finds judicial supervision to be necessary. However, if supervised administration is ordered, the personal representative has broad power under the Code to perform any step, other than distribution, necessary to collect, liquidate and manage the estate. If the administration is supervised, the personal representative, when the administration is complete, must also obtain an order allowing his account directing distribution and closing the administration of the estate.

Thus, wills may be probated in common form (without notice) or in solemn form (with notice). Likewise, a personal representative may be appointed with or without notice. A personal representative, once appointed, may administer and distribute the estate without judicial supervision unless supervised administration is directed. The informal administration permitted by the Code is a marked departure from judicial supervised administration under present law. The Code contemplates that the court will be available to aid the parties in disputed matters, but in the absence of dispute, the fiduciary will administer the estate without judicial supervision.

The Code recognizes that in some instances judicial supervision may be desirable. The Code, therefore, provides for supervised administration on petition (1) if the will so directs, or (2) if the court finds that such administration is necessary. In the case of supervised administration the personal representative must obtain a court order prior to making any distribution, and the accounts of the personal representative must be judicially settled. Subect to these restrictions, the personal representative may administer the estate without obtaining other court orders, unless the court further restricts the powers of the fiduciary and the restrictions are stamped on the letters issued to the personal representative.

Formal and Informal Appointment, Duties and Liabilities of Personal Representative, Distribution, Claims, and Closing. Formal or informal probate may be accompanied by proceedings, formal or informal, for the appointment of a personal representative. Formal appointment requires service and publication of notice and is of a higher order (the court, as opposed to the clerk, appoints and this can supercede informal appointment) but imposes the same powers, duties and liabilities upon the personal representative as does an informal appointment. Informal appointment does not require any published or general notice and is executed by the clerk. If bond is required, this is set by the clerk.

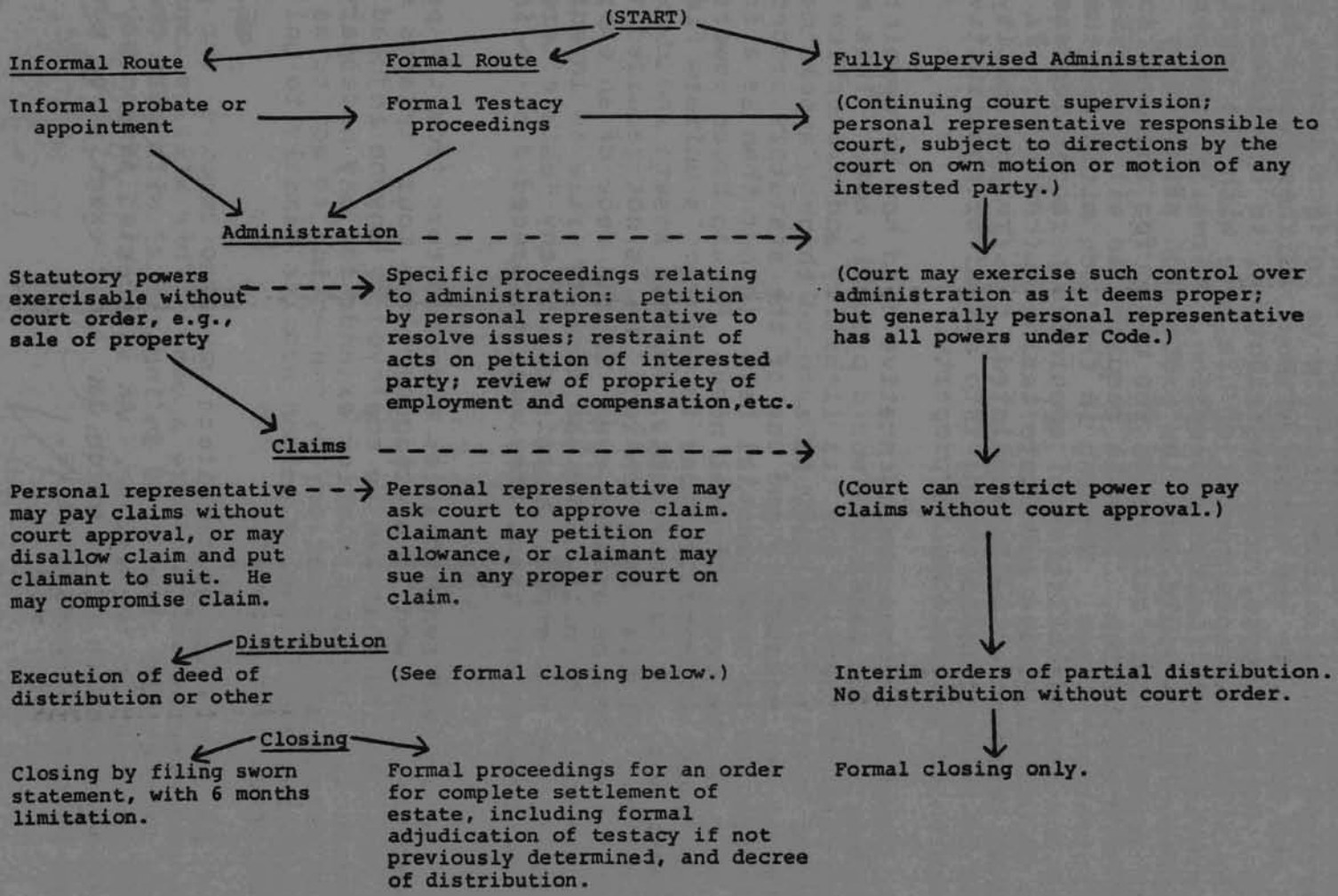
A personal representative, however appointed, is required to advise heirs and divisees of his appointment and location within 30 days. He may take possession of the entire estate or so much of it as is necessary for orderly administration; he may also confirm possession in the heirs or beneficiaries. It is possible (in estates not involving "supervised administration") for him to collect assets, pay debts and distribute the estate without further resort to the courts. He may choose, upon distribution, to terminate his task by filing a simple report of his acts with the court. This provides very limited protection. Normally, the personal representative would want the protection afforded by a formal report of his actions to the court for approval and an order of distribution. This is required in all "supervised administration" cases. Nothing in the Code mitigates the duties and responsibilities of appointed personal representatives to United States and State taxing authorities. If no personal representative is appointed, this responsibility is shared by those persons coming into actual or constructive possession of the decedent's property.

Though a personal representative need not be appointed in all cases, in most cases one would probably act. This would be the case if there is any tax liability and protection from claims of creditors can only be secured through appointment of a personal representative and use of the statutory procedure. He is directed to seek judicial help (other than as a final act) only in the event of real need. He has broad powers, the same as those accorded trustees in Colorado's Uniform Fiduciaries' Powers Act. He can pay debts, collect assets and distribute them without judicial intervention. He is not required to be bonded; this may be avoided even in the face of an express requirement in the will. He can mail or file an inventory though he need not employ appraisers; if any "estate termination" procedures are used, they must be preceded by an inventory.

To protect beneficiaries and creditors from the personal representative who is a wrongdoer, the court retains extensive jurisdiction that can be employed by anyone injured by his conduct. This jurisdiction extends for any necessary period beyond administration; by consenting to act to as a personal representative, a person submits himself to unlimited jurisdiction of the court.

Beneficiaries or creditors may also require the personal representative to secure a bond. This will be imposed in any case at the request of an individual with more than a $5,000 interest in the estate. An interested person may also secure a protective order which can limit exercise of powers by the personal representative.

FLOW CHART OF FLEXIBLE ADMINISTRATION UNDER CODE



A personal representative, for his own protection, may petition for resolution of any conflicting assertions and insulate himself from attack by making an accounting to the court and securing a decree of distribution. Note that (except in "supervised administration") each of these will be an independent proceeding. In most cases, it should not be necessary to resort to the court for assistance until it is time to make a final accounting and seek a decree of distribution. There would usually be two separate proceedings, the initial joint petition for probate and appointment and the final accounting and decree of distribution.

Agreement upon property division is encouraged. Beneficiaries may agree upon separate assets, they or the personal representative may seek partition and the personal representative may pose a plan for distribution which, if not challenged in 30 days, will be executed. Distribution may be achieved by decree or by a conveyance or other instrument from the personal representative.

If a personal representative is appointed, he would normally publish notice to creditors. At the expiration of four months from the date of first publication, all unsecured claims that have not been presented are barred. The procedure for presenting claims is somewhat less formal than it now is. A disallowed claim must be denied by the personal representative and the creditor must institute proceedings within 60 days after receiving notice of disallowance. Alternatively, the creditor may, if he anticipates disallowance, institute action against the personal representative in the first instance, if this is done within four months of first publication. Secured claims are not affection by the non-claim section.

The personal representative is permitted to take advantage of the running of any statute of limitations that would have benefited the decedent; however, the statute is tolled during the four months following the decedent's date of death. The personal representative may assert this as a defense or, with the consent of all successors, waive it.

If no personal representative is appointed or notice to creditors is not published, those who succeed to the estate of the decedent have the advantage of the same statutes of limitation (subject to the four month toll period) as the decedent. In addition to this, those who succeed to the estate of the decedent are protected from unsecured claims by an absolute bar at the expiration of three years from the date of death of the decedent.

Protection from competing claimants (intestate or testate) may be obtained by "formal testacy" proceedings. The determination on admission to probate or of intestacy and heirship will bind all those named and properly served. Once time for appeal from the order has expired, the designated beneficiaries or heirs will be protected. If an heir is not named or served or if a competing will turns up with beneficiaries not previously recognized (and therefore named and served), the admission or heirship order may be upset at any time prior to expiration of the time for appeal from the final decree settling the estate and ordering distribution. The competing beneficiary, as an interested person, can force the issue by a petition for an order of complete settlement of the estate.

If there has been an informal probate, the will may be upset by competing claimants, heirs or other will beneficiaries, at any time within three years from death or twelve (12) months from the date of informal probate whichever is the later. If a personal representative has been appointed, taken possession of the property and has not obtained judicial approval of his action by receiving a decree settling the estate and ordering distribution, this period is extended to three years from death or distribution whichever is the later.

Shares of distributees abate without any reference to distinctions between real and personal property, unless the will manifests a contrary intention. Purchasers for value from distributees are protected irrespective of whether the distribution was proper. The personal representative may discharge his obligation to distribute to a person under disability by distributing to his conservator or other person authorized to give a valid receipt for the distribution. This will permit a distribution with or without a court accounting to the conservator, and if there is such an accounting, without the appointment of a guardian ad litem to protect the interest of the person under disability.

A personal representative may require the trustee, as conditions to distributions, to register the trust and to notify the beneficiaries. If the will does not excuse the trustee from giving bond, the executor may petition the court to direct the trustees to post bond. Under the Code the trustee represents the persons interested in the trust. He may pass on the executor's account and receive distributions, subject to his own accountability to the trust beneficiaries. The personal representative may, however, for his own protection, seek a court order when called upon to distribute to himself as trustee.

The Code also provides for the equitable apportionment of estate and inheritance taxes unless the will otherwise directs.

Inventory and Appraisement. Under the Code, court appointed appraisers are no longer required. The personal representative may employ appraisers where the value of assets are in doubt. The personal representative (other than a special administrator or successor to another personal representative) shall, within three months after appointment, send a copy of the inventory to interested persons who request it, or file the original in court. Thus, the Code: (1) eliminates court appointed appraisers; (2) avoids employment of appraisers except as to property, the value of which is in doubt; (3) enables personal representatives to select qualified expert appraisers to appraise particular assets; and (4) permits personal representatives to avoid publicity by not filing an inventory with the court.

Guardians ad litem. In probate matters, interested parties often include parent and minor children, guardian and ward, trustee and beneficiaries, executor and distributees of the estate. Usually the group of interested parties include minor and sometimes disabled persons. In such cases, the court's order will only bind a minor or disabled person if a guardian ad litem has been appointed. This system has often caused problems and is solved by the Code which reduces the cases where the court must appoint a guardian ad litem by adopting a broad virtual representation rule. This rule, Section 153-1-403 of the Code, defines the persons bound by the court order and requires that a person capable of binding a minor or disabled person be named as a party so as to bind the minor or disabled person.

Under the Code virtual representation rule an order binding on: (1) the donee of a general power of appointment binds all takers in default; (2) the conservator or, if none, the guardian binds the minor or disabled person; (3) a parent binds his minor child; (4) a trustee binds the beneficiary; (5) a personal representative binds persons interested in the undistributed assets of the estate; and (6) a party having a substantially identical interest binds unborn or unascertained persons. Notice must be given to every interested person or to one who can bind an interested person or may be given to both. The court may appoint a guardian ad litem in conflict of interest cases and in cases in which there is no one to represent a minor or disabled person or unborn or unascertained person. The court's authority to appoint a guardian ad litem in such cases is subject to: (1) a determination by the court that representation of the interest appears necessary, and (2) the court must set out its reasons for appointment as part of the record.

Thus, the Code: (1) permits the court by its order to bind minors and disabled persons, as well as unborn and unascertained persons, in most cases without appointment of a guardian

ad litem; (2) assures protection by the appointment of a guardian ad litem in cases where a conflict of interest arises or the minor or disabled person is not otherwise protected; and (3) prevents abuse of discretion by requiring the court to determine that representation by a guardian ad litem is necessary and to state its reasons as a part of the record.

Bonds. The Code departs from the rule that bonds should always be required and grants interested parties remedies to coerce the personal representative to perform his duty. The Code recognizes that in many cases the interested parties are satisfied to have the personal representative act without bond. The basic rule, 153-3-603, is that no bond is required of a person representative, except: (1) Upon appointment of a special administrator; (3) where the will requires bond; and (3) where bond is required upon demand of an interested party.

If the requirement of bond is dispensed with, interested parties may be protected by a variety of Code provisions. An interested party may demand notice of informal proceeding -- 153-3-204. Upon filing of a demand for notice, the clerk of the court must mail a copy to the personal representative. Thereafter, the personal representative may be liable for damages for action taken without notice to the interested party. An interested party may apply to the Registrar for orders demanding how the estate shall be administered, expended and distributed -- 153-3-605. Thus an informal administration may be blocked by a formal petition. An interested party may demand bond, 153-3-605, whereupon bond is required, but the requirement ceases if the demanding party ceases to be interested in the estate, or if bond is excused or reduced by 153-3-603 or 153-604. The interested party may apply for an order restraining the personal representative -- 153-3-607. This remedy is available if it appears that the personal representative may take some action that will jeopardize unreasonably the interest of the interested party. Rights of interested parties with respect to values cannot be terminated without court order after notice or before three years from decedent's death -- 153-3-1006. Under 153-3-705, the notice to heirs within 30 days after appointment must state whether bond has been filed.

The Code thus avoids the filing of bond where not necessary or not requested by an interested party; affords a variety of remedies, including filing of bond; and provides more real protection than a blanket requirement of bond.

Compensation of Personal Representatives

Personal representatives are entitled to reasonable compensation. They may fix not only their own fees but the fees of their attorneys and other agents. However, on petition of any interested person, the reasonableness of the compensation of the personal representative and the reasonableness of the compensation of the attorney or other agent may be reviewed by the court. Any person who has received excessive compensation may be directed to refund. The Code theory that personal representatives may fix their own fees and the fees of estate attorneys marks an important departure from existing practice under which commissions are fixed by statute as a percentage of gross asset values.

If the will provides for compensation but does not make serving for that fee a condition of nomination and if there is no contract with the decedent as to fee, the person nominated may renounce the provision and be entitled to reasonable compensation. Also, a personal representative shall be reimbursed for his necessary expenses including reasonable attorneys' fees in defending or prosecuting any proceeding in good faith, whether successful or not.

II. Protection of Persons Under Disability and Their Property

The Code makes many changes and vastly improves present law concerning the appointment of guardians and conservators for the protection of persons under disability and their property. Basically, the Code establishes (1) systems of guardianship of the persons of minors and incapacitated persons; (2) a system of protective proceedings for management of the property of minors and persons under disability; and (3) devices designed to eliminate the necessity for guardianship and protective proceedings in some situations.

The more important changes proposed include:

(1) A facility of payment provision. Under this provision, any person owing a minor up to $1,000 a year may be discharged from his obligation by payment to the minor, if over eighteen, the parent or grandparent, or other adult, with whom the minor resides, a guardian, or depositing the money in an account in the minor's name. It is designed to apply to funds payable to a minor from any source and for any reason and to eliminate the necessity for protective proceedings as to the estates of minors when the only need for protection is to give receipts for such payments.

(2) The surviving parent may, by will, appoint a testamentary guardian of the person of a minor. A parent or spouse has a similar power to appoint a guardian of the person of an incompetent adult. Both types of power are provided with appropriate safeguards.

(3) A guardian has very limited authority over the estate of a minor or incompetent person. The term guardian is employed by the Code to designate a person who is commonly known under existing law as a guardian of the person. Periodic accounts of guardians are not required. If the ward has an estate which requires more management than the guardian can provide, the guardian or other interested party may apply for a conservator. A conservator is the term employed by the Code to designate a person who, under existing laws, is commonly known as guardian of the property of a minor or incompetent person.

(4) The guardian may expend funds for the support and maintenance of his ward without court order, but may not pay himself without such an order. He is under a duty to deposit excess funds for the account of the ward, where the fund is small, or seek a property protection order if other management is needed. For example, in cases where large sums requiring investment management or where it may be necessary to manage a business or real estate, the appointment of a conservator would be desirable.

(5) A parent or guardian may delegate his authority over the person of the ward for short periods necessitated by absence or temporary incapacity.

(6) Substantial property interests of minors or other protected persons may be controlled by the court or managed by a conservator appointed by the court, subject to procedural safeguards designed to protect against unwise use of these proceedings.

(7) The court, by its order, or acting through a court-appointed conservator, has the broad power to do anything that the protected person might do if he were not disabled.

(8) If a conservator is appointed, he may exercise, without court order, broad management powers similar to those found in the Uniform Fiduciaries' Powers Act and may also make payments without court order for support and maintenance of the protected person and certain payments for dependents of the protected person, also without court order.

(9) The necessity for ancillary administration where the protected person has property in more than one state is minimized, as in the case of decedents' estates.

(10) The court, by its order and on notice may exercise a wide variety of power which the conservator may not exercise without such an order, including power to make gifts, exercise or renounce an elective share, release or renounce powers of appointment, create trusts, and change the beneficiaries of insurance policies. In such situations the court acts for the protected person as such person would have acted for himself if not disabled. As pointed out, other powers of management and maintenance may be exercised by the guardian or conservator without court order.

(11) In guardianship proceedings venue is where the ward resides even though the guardian may reside in another state. In conservatorship proceedings venue is where the minor or protected person resides or where he has property. Unified administration is obtained by permitting the removal of property of the minor or protected person to the state where the ward resides. These provisions, instead of placing the jurisdiction over the guardian and the conservator in the state making the initial appointment, contemplate that judicial proceedings be conducted in the county and state where the ward resides, even though the appointments were initially made by another state and even though the ward's property may have been located in another state. Here again the code breaks with traditional concepts prevailing in at least some states and adopts a rule of convenience that should be in the public interest.

(12) The affairs of many disabled persons are presently managed by powers of attorney. The technical weakness is that the attorney in fact's power terminates upon disability of the donor of the power. The result is that the attorney in fact assumes a risk in managing the affairs of a person who has become disabled which he may not wish to assume if the amounts are large or the transactions speculative or venturesome. The Code solves this problem by permitting the donor to include in the power words such as "This power of attorney shall not be affected by disability of the principal" or "This power of attorney shall become effective upon disability of the principal." If the code is adopted, conservatorship proceedings for disabled persons would usually become unnecessary in those cases where the disabled person had executed such a power of attorney. A power of attorney which provides that it shall survive the disability, or become effective upon the disability, of the principal may be revoked, however, by a conservator if a conservator is appointed. The conservator here has the same right to revoke the power that the principal would have had if not disabled.

III. Non-testamentary Transfers

Multiple-Party Accounts

Article 6 of the Code deals with multiple-party accounts in financial institutions and specifically recognizes three types of such accounts: (1) the joint-account; (2) the totten trust account; and (3) an account payable on death to a named beneficiary; a pay-on-death (P.O.D.) account. The Code not only authorizes these kinds of accounts and spells out the beneficial interests in these accounts as between the named persons on the account during lifetime and after death of any such person but also provides protection for the financial institutions when payment is made in accordance with the deposit contracts.

The sections of Article 6 dealing with the relationship between persons named on the account sometimes base ownership rights on presumptions. It is possible, however, to overcome or rebut these presumptions by evidence of intent outside of the formal arrangements with the financial institution. Thus the Code presumes that a joint account belongs during the lifetime of the parties to them in proportion to their net contributions to the sums on deposit; a P.O.D. account belongs to the original payee during his lifetime; and a trust account is presumed to belong to the trustee during his lifetime. In the event of death a joint account is presumed to belong to the survivor; a P.O.D. account belongs to the person named to take in the event of death of the original payee; and a trust account belongs to the beneficiary on death of the trustee. If there is a right of survivorship, it cannot be defeated by a will executed by the depositor.

During the lifetime of all parties to a multiple-party account, the creditor of any party would have the right to reach the ownership interest of that party. The creditor also has the right to reach any part of the account owned by the decedent as against the normal rights of the survivors. For purposes of multiple-party accounts, the surviving spouse, minor and dependent children are treated as creditors for statutory allowances and the surviving spouse could also proceed to claim an elective share if deposits come within the "augmented estate".

The financial institution is protected if it makes payment, after proper request for withdrawal, to any one of the parties on a joint account. On death of the original party, or if there are several original payees then on death of the survivor, the financial institution may pay to the P.O.D. payee, if it is presented with proper proof. In a

trust account, if the trustee or all parties named as trustees die, payment may be made to the beneficiary upon presentation of proof of death. If the P.O.D. payee or the beneficiary to a trust account predecease the original party or trustee, the financial institution may make payment to the personal representative or heirs of the deceased original payee or trustee, upon proof of death of the P.O.D. payee and the original party or that the decedent survived all other persons named on the account either as trustee or as beneficiary. When the financial institution makes payment according to the rules set forth in the Code, it is given complete protection and is discharged from all liability. If a party to a multiple-party account has a present right of withdrawal and is indebted to the financial institution, it has a right to set-off against the indebtedness the beneficial interest of the debtor in the account.

Contractual Provisions

The Code permits a variety of provisions in contracts and other written instruments which have in the past been invalidated by some courts on the grounds that such provisions are testamentary and hence the instrument must comply with the statute of wills and be probated. Under the Code such provisions are non-testamentary. This means that the instrument does not have to be executed as a will; the instrument does not have to be probated. Provisions treated as non-testamentary by reason of the Code are provisions that money due or to become due would cease to be payable in the event of the death of the promisee or promisor before payment or demand, and provisions that property which is the subject of the instrument should pass to a designated person. Such provisions usually occur in family arrangements.

The Code covers a wide variety of written instruments: insurance policies, contracts of employment, bonds, mortgages, promissory notes, deposit agreements, pension plans, trust agreements, conveyances, or any other written instruments effective as a contract, gift, conveyance, or trust. The Code also permits the written instrument to empower a person to designate by a separate writing the person to whom money should be paid in the event of death or to whom property should pass. This is a form of the familiar power of appointment concept. Thus the Code section would validate against testamentary attack beneficiary designations under pension plans and similar arrangements.

IV. Administration of Trusts

The Code eliminates all distinctions between testamentary and inter vivos trusts and provides for registration of both. This differs significantly from present methods of supervisory jurisdiction over testamentary trusts. The provisions of the Code are intended to provide a simple direct procedure without the requirements of detailed supervision or routine accounting.

The Code provides for the registration of the trust in the county and state of the principal place of administration of the trust, that is, the trustee's principal place of business. In the case of multiple trustees, registration would be in the state where the corporate trustee does business or, if there are individual trustees, the state of one of such individual co-trustees. If the place of administration is changed, the initial registration may be released and the trust registered in the newly acquired state of administration if that is not inconsistent with the expressed or implied terms of the trust or the efficient administration of the trust or the best interests of the beneficiaries. Registration is accomplished by filing a simple statement of acceptance of the trust with the appropriate court. Neither the terms of the trust nor the identity of the beneficiary or the assets of the trust need be revealed for the registration will be under the decedent's name or the name of the settlor. Beneficiaries become subject to the jurisdiction of the court provided notice of registration is given to them.

Periodic trustees' accounts in court are not required. Instead, the trustee has certain duties, including the duty to notify the beneficiaries of the registration of the trust and upon request to furnish the beneficiaries with a copy of the trust instrument and a description of the trust assets and particulars relating to the administration. Likewise upon request, the trustee is under a duty to furnish the beneficiaries with an annual account, as well as an account at termination or in the event of a change of trustee. Appropriate remedies are also available to the beneficiaries.

Trustees' final accounts may be settled informally or judicially, accounting proceedings may be initiated by petition of any trustee or beneficiary; informal accounts may be settled by consent (release). An account also may become binding on the beneficiary if the account is submitted to the beneficiary unless a proceeding is commenced by the beneficiary within three years after the receipt of the account.

COLORADO PROBATE CODE

BY REPRESENTATIVES Strahle, Johnson, and Kopel;
also SENATORS Anderson, Bermingham, and Cisneros.

A BILL FOR AN ACT

ENACTING A PROBATE CODE, AND PROVIDING FOR METHODS OF ADMINISTRATION AND DISPOSITION OF TRUSTS AND OF THE AFFAIRS AND PROPERTY OF PERSONS DECEASED, MISSING, OR REQUIRING PROTECTION BECAUSE OF INCAPACITY OR OTHER LEGAL DISABILITY, AND AMENDING LAWS WITH RESPECT THERETO.

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

SECTION 1. Chapter 153, Colorado Revised Statutes 1963, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

CHAPTER 153
COLORADO PROBATE CODE
ARTICLE I
General Provisions, Definitions,
and Probate Jurisdiction of Court
(SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS)

153-1-101. Short title. This chapter, as from time to time amended, may be cited as the "Colorado Probate Code", and is referred to in this chapter as "this code" or "code".

153-1-102. Purposes - rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

EXPLANATION

Colorado's law on wills and estates, the affairs of decedents, missing persons, protected persons, minors and incapacitated persons, are combined, simplified, and coordinated under the Code. This act would repeal and reenact Chapter 153.

The first part of Article I sets general rules of construction and severability and includes some overriding principals concerning the effect of fraud and the evidence required to establish death. It also clarifies the authority of a holder of a general power of appointment to bind the persons who take subject to the power.

The title of the Code was changed by the Committee from the "Uniform Probate Code" to the "Colorado Probate Code".

Section 153-1-102 states that the Code's purpose is to simplify and clarify probate law, to promote a speedy and efficient system for settling estates and making distribution, and to achieve uniformity. Subsection (1) establishes a rule of liberal construction. The Committee adopted this section intact.

COLORADO PROBATE CODE

(2) (a) The underlying purposes and policies of this code are:

(b) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(c) To discover and make effective the intent of a decedent in distribution of his property;

(d) To promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors;

(e) To facilitate use and enforcement of certain trusts;

(f) To make uniform the law among the various jurisdictions.

153-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

153-1-104. Severability. If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

153-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

153-1-106. Effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any

EXPLANATION

Existing laws would continue unless specifically changed by Code. The general rules of civil procedure will apply unless specifically provided to the contrary in the Code or unless inconsistent with its provisions.

Severability clause of Code is similar to that used by Legislative Drafting Office under Section 135-1-5, C.R.S. 1963.

Provides that repeal by implication of part of this act, as the result of later legislation, should not be decreed if it is possible to fit the later legislation into the spirit and intent of the Code. Similar to provision in UCC and UCCC.

Section 153-1-106 provides an explicit rule on the effect of fraud, to which all rights, procedures, and limitations under the Code are subject. Anyone injured by fraud may obtain "appropriate relief" against the perpetrator of the fraud, or restitution from an innocent party - other than a bona fide purchaser - benefitting from the fraud. An action for fraud must be commenced within two years of discovery of the fraud, but the injured party may not sue a non-perpetrator for restitution more than five years after the fraudulent act, even

proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

153-1-107. Evidence as to death or status. (1) (a) In proceedings under this code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths under section 153-2-613, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent;

(c) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report;

(d) A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(2) In the event that the fact of death of an absentee is contested in any action brought before a finding of death is entered in accordance with the rules of this section, the trier of fact in such action shall determine, as separate issues, the

though the act is not discovered until the five year period has expired. The Committee adopted this section intact.

Section 153-1-107 states that a death certificate is prima facie proof of the facts of death. See Sections 66-8-6, 24 and 26, C.R.S. 1963, which pertain to death certificates and certified copies thereof. Subsection (1) (c) states that a certified record or report of a governmental agency is required in order to constitute prima facie evidence that a person is "missing, detained, dead, or alive." Sections 52-1-22, 23, and 24, C.R.S. 1963, pertain to reports of death, or that a person is missing, interned, captured, etc., by officials or employees of the United States, and their effect in court. Subsection (1) (d) changes present law by reducing the time period necessary for a presumption of death from seven to five years. The Committee continued the Uniform Simultaneous Death Act in Section 153-2-613 of the Code. Other rules of evidence as to death are contained in Section 153-2-601 and Section 153-2-104 of the Code, concerning survival for 120 hours.

question of death and the time of death, and the statute of limitations shall be taken to have begun running on the action at the time of death so determined. The finding relating to death of the absentee in such action shall in no way affect any finding to be made in any other proceeding under this code.

153-1-108. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

153-1-109. Remarriage of absentee's spouse. (1) (a) At any time after a finding of death of an absentee in accordance with section 153-1-107, the spouse of an absentee may remarry, and:

(b) Such subsequent marriage shall not constitute the offense of bigamy or any other criminal offense under the laws of this state, even though the absentee shall later be determined to be alive; and

(c) Upon such subsequent marriage, the marriage between the absentee and his said spouse shall be deemed to have been dissolved as of the date of the absentee's death as determined in accordance with section 153-1;107.

153-1-110. Insurance and other contracts - surrender value - effect of contract provisions - suit on claim of death. (1) A finding of death under section 153-1-107 shall be fully effective as to rights under insurance, annuity, and endowment

Section 153-1-108 clarifies the authority of the holder of a presently exercisable general power of appointment to act on behalf of all beneficiaries who take subject to the power in approving the accounts or waiving liability of a fiduciary or in consenting to modification, termination, or deviation from the terms of a trust. The counterpart of this section is Section 153-1-403 (3) (b) which states that, in code litigation, orders which bind the holder of a "presently exercisable general power of appointment" bind all persons whose interests are subject to the power. The Committee adopted this section intact.

Section 153-1-109 is adapted from Section 153-20-8, C.R.S. 1963, and sets forth the applicable rules concerning the remarriage of an absentee's spouse, which rules were not present in the UPC.

Section 153-1-110 is adpated from Section 153-20-9, C.R.S. 1963, and sets forth the applicable rules pertaining to rights under insurance, annuity, and endowment contracts dependent upon the life of an absentee, which rules were not present in the UPC.

contracts dependent upon the life of an absentee, and the receipts of beneficiaries for payments made under any such contracts shall be a release to the contract issuer of all claims under such contracts.

(2) If, in any proceeding under this code, the absentee is not found to be deceased and any policy of insurance or any annuity or endowment contract owned by the absentee provides for a surrender value, the conservator, acting for the the insured, with court approval and a finding of necessity, may demand the payment of surrender value to the estate of the absentee. The receipt of the conservator for such payment shall be a release to the contract issuer of all claims under the contract.

(3) Notwithstanding the provisions in any annuity or endowment contract or policy of life or accident insurance, or in the charter or by-laws of any mutual or fraternal insurance association hereafter executed or adopted, the provisions of this section shall govern the effect to be given to evidence of absence or of death.

(4) When any annuity or endowment contract, policy of life or accident insurance or the charter or by-laws of any mutual or fraternal insurance association hereafter executed or adopted, contains a provision requiring a beneficiary to bring suit upon a claim of death within a stated period after the death of the insured, and the fact of the absence of the insured is relied upon by the beneficiary as evidence of the death, the action may be begun, notwithstanding such provision in the contract, policy, charter or by-laws, at any time within the statutory period of limitation for actions on contracts in writing dating from the date of death of the absentee, as determined in accordance with section 153-1-107.

153-1-111. Entry into safe deposit box of decedent. (1) Whenever it appears that a decedent during his lifetime was a lessee, owner, or occupant of a safe deposit box which box is in the custody of a

Section 153-1-111 is a new section added by the Committee and is adopted from 153-5-19, C.R.S. 1963.

safe deposit company, trust company, bank, corporation, association, or individual, and for any reason it is deemed advisable or essential to enter said box prior to the appointment of a personal representative, the safe deposit company, trust company, bank, corporation, association, or individual having such custody shall permit said box to be entered in the presence of a representative of the inheritance tax commissioner of the state of Colorado, and of an official of the safe deposit company, trust company, bank, corporation, or association or if such custody be in an individual, then of such individual or his attorney in fact duly appointed for such purpose, and of a person who is reasonably believed to be an heir at law, devisee, or legatee of the decedent, or the agent or attorney of such person. An inventory of the contents of the box shall be made in triplicate, one copy to be retained by said custodian, one copy thereof to be retained by the inheritance tax commissioner or his representative to be filed in the office of the inheritance tax commissioner of the state of Colorado, and one copy thereof delivered to the heir, legatee, devisee, or his agent or attorney.

(2) If a paper purporting to be a will of the decedent be found in such box, such paper shall be removed therefrom by the official of the said safe deposit company, trust company, bank, corporation, association or custodial individual, and by him shall be mailed by registered mail or delivered in person to the clerk of the district or probate court of the county wherein the decedent was resident. If there be doubt as to the county of residence of such decedent, said paper purporting to be the will of the decedent shall be lodged in the office of the clerk of the proper court of the county wherein the safe deposit box is located.

(3) (a) In addition to a will, the following may be delivered or transferred from a safety deposit box without a release from the attorney general:

(b) An abstract of title to property;

(c) A deed to a burial plot and papers giving burial instructions;

(d) An insurance policy on the life of the decedent payable to a named beneficiary other than decedent's estate;

(e) All other documents and papers having no apparent asset value in themselves.

(4) Except as provided in this section, all contents of such safe deposit box shall be held subject to the provisions of section 138-3-43, C.R.S. 1963.

(Omitted section numbers reserved for expansion)

(DEFINITIONS)

153-1-201. General definitions. (1) Subject to additional definitions contained in the subsequent articles which are applicable to specific articles, and unless the context otherwise requires, in this code:

Additional definitions are found in Sections 153-4-101 and 153-5-101 of this Code.

(2) "Augmented estate" means the estate described in section 153-2-202 of this code.

"Augmented estate" definition was added by the Committee to provide a ready means to locate the subject matter.

(3) ""Authenticated" means certified, when used in reference to copies of official documents, and only certification by the official having custody is required.

"Authenticated" definition was added by the Committee. This eliminates the need for repeating "or certified" throughout the Code.

(4) "Application" means a written request to the registrar for an order of informal probate or appointment under sections 153-3-301 to 153-3-311.

Notice distinction between "application" and "petition".

(5) "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(6) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a

Compare with definition of "parent".

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stepchild, a foster child, a grandchild, or any more remote descendant.

(7) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(8) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents. This court in this state is the district court except in the city and county of Denver it is the probate court.

(9) "Conservator" means a person who is appointed by a Court to manage the estate of a protected person.

(10) "Devise", when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by section 153-5-401.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed

EXPLANATION

UPC definition of "court" was altered by Committee to conform to Colorado situation.

property received from a personal representative is a distributee of the personal representative. For the purposes of this provision the term testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the divised assets.

(14) "Divorce" includes a dissolution of marriage, and "annulment" includes a declaration of invalidity, as such terms are used in the "Uniform Dissolution of Marriage Act", chapter 46, C.R.S. 1963.

"Divorce" was added to the definitions section by the Committee to insure that "divorce" as used in the Code also includes "dissolution of marriage" and "annulment" includes "declaration of invalidity" as those terms are used in the "Dissolution of Marriage Act".

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate which is described in section 153-2-402.

(17) "Fiduciary" includes personal representative, guardian, conservator, and trustee.

The definition of "fiduciary" expands present law by including guardian and conservator.

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

(19) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person having the care, custody, or control of an incapacitated person, or minor, whether by court order or otherwise, but excludes one who is merely a guardian ad litem.

The UPC definition of "guardian" was enlarged by the Committee to include persons having the care, custody, or control of incapacitated persons and minors in order that such persons could receive funds under the facility of payment provisions of the Code.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as defined in section 153-5-101.

(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim

against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.

(26) "Lease" includes an oil, gas, or other mineral lease.

(27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) "Minor" means a person who is under twenty-one years of age.

(29) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(31) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(33) "Person" means an individual, a corporation, an organization, or other legal entity.

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(34) "Personal representative" includes executor, administrator, successor personal representative, special administrator, public administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(35) "Petition" means a written request to the court for an order after notice.

(36) "Proceeding" includes action at law and suit in equity.

(37) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(38) "Protected person" is as defined in section 153-5-101.

(39) "Protective proceeding" is as defined in section 153-5-101.

(40) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in section 153-1-307.

(41) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(42) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(43) "Special administrator" means a personal representative as described by sections 153-3-614 to 153-3-618.

EXPLANATION

The UPC definition of "personal representative" was changed by the Committee to include "public administrator" which the Committee determined to continue.

(44) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(44) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed representative.

(46) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(47) "Supervised administration" refers to the proceedings described in sections 153-3-501 to 153-3-505.

(48) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(49) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, estates administrated by personal representatives, trust accounts as defined in section 153-6-101 (14), custodial arrangements pursuant to the "Colcrado Uniform Gifts to Minors Act", business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(50) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(51) "Ward" is as defined in section 153-5-101.

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(52) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(Omitted section numbers reserved for expansion)

(SCOPE, JURISDICTION, AND COURTS)

153-1-301. Territorial application. (1) (a) Except as otherwise provided in this code, this code applies to:

(b) The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;

(c) The property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state;

(d) Incapacitated persons and minors in this state;

(e) Survivorship and related accounts in this state; and

(f) Trusts subject to administration in this state.

153-1-302. Subject matter jurisdiction. (1) The court has jurisdiction over all subject matter vested by article VI of the state constitution and by chapter 37, C.R.S. 1963.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

153-1-303. Venue - multiple proceedings - transfer. (1) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided,

EXPLANATION

Section 153-1-301 makes the code apply to the estates of all domiciliaries of this state, to the property of nonresidents located in this state, and to any property coming into the control of a fiduciary who is subject to the laws of this state. The code application to the local property of non-resident decedents is further clarified by Section 153-3-201. This section was adopted by the Committee intact.

Section 153-1-302 was changed by the Committee to meet with the jurisdictional provisions in Colorado by reference to the Constitution and Chapter 37, C.R.S.

Section 153-1-303 gives the court of the county in which a proceeding is first commenced the exclusive right to proceed, even though venue might also be found in another county. The court of the first county is also given the exclusive right to determine the question of venue in case of dispute. The court can transfer the proceeding to another court when required in the interests of justice. This section is similar to present Sections 153-1-3 and 4, C.R.S. 1963 and the Committee adopted the section intact.

and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

153-1-304. Practice in court. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the Colorado rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this code.

153-1-305. Records and certified copies. (1) The clerk of each court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

(2) All instruments purporting to be the original wills, upon presentation for probate thereof, shall be recorded by the clerk of the court, in a well bound book, to be provided by him for that purpose, or photographed, microphotographed, or reproduced on film as a permanent record, and shall remain and be

Sections 153-1-304 and 153-1-308 make the general rules of civil procedure and appellate rules applicable to code proceedings and appeals. The reference to rules of civil procedure was made definite to Colorado rules by the Committee.

Section 153-1-305 provides that the court clerk shall establish and maintain a system for recording, indexing, and filing court records filed under the code and shall issue certified copies thereof upon request and payment of the necessary fee. Subsection (2) was adapted from Section 153-5-21, C.R.S. 1963, and was included herein by the Committee. Subsection (1) of this section was adopted intact.

preserved in the office of the clerk of the court. Upon admission of such will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.

153-1-306. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(2) If there is no right to trial by jury under subsection (1) of this section or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

Section 153-1-306 is similar to rules 38, 39, and 439 of the Colorado Rules of Civil Procedure and was adopted intact.

153-1-307. Registrar - powers. The acts and orders which this code specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the clerk of the court.

The Committee added the words "the clerk of" to conform to the Colorado court makeup and the section was otherwise adopted intact. See also Rule 471, C.R.C.P.

153-1-308. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the Colorado appellate rules.

Section 153-1-308 was amended by the Committee to tie appellate review to the Colorado Appellate Rules.

153-1-309. (Reserved.)

Section 153-1-309 which pertained to the qualification of judges was deleted in its entirety by the Committee, as the subject matter is covered elsewhere in the statutes and the Colorado Constitution.

153-1-310. Oath or affirmation on filed document. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

Section 153-1-310 eliminates the need for verification of documents. To take the place of verifications, it provides that every document filed shall be deemed to include an oath, bringing into play the penalties for perjury in the event of deliberate falsification.

(Omitted section numbers reserved for expansion)

(NOTICE, PARTIES AND REPRESENTATION IN ESTATE

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LITIGATION AND OTHER MATTERS)

153-1-401. Notice - method and time of giving. (1) (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(b) By mailing a copy thereof by certified or registered mail, return receipt requested to be signed by addressee only, addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known. the return receipt to show delivery at least ten days before the time set for the hearing; or

(c) By delivering a copy thereof to the person being notified personally at least ten days before the time set for the hearing; or

(d) If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation published in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing. In case there is no newspaper of general circulation published in the county of appointment, said publication shall be made in such a newspaper in an adjoining county.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

(4) Publication once a week for three successive weeks means publication once during each week of three

EXPLANATION

Section 153-1-401, concerning the requirements of notice, will supercede the present provisions in Section 153-1-11, C.R.S. 1963. The section was adopted intact except for several changes made by the Committee. First, the UPC provided for mailing or delivering a copy of the notice at least 14 days prior to the time set for hearing. This was changed to 10 days by the Committee as a compromise between the present procedure (5 days) and the UPC provision. Second, the Committee added subsection (4) to the section to specify the meaning of publication once a week for three consecutive weeks as is required by the publication laws of Colorado. Third, the Committee added the last sentence to subsection (1) (d) to clarify the situation when there is no newspaper of general circulation in the county of appointment, as has been the case in Colorado. In subsection (1) (b), the Committee deleted the ordinary mail provision of the UPC and added language providing for certified or registered mail with a requested return receipt from the addressee only required to insure that the requirements of due process are met. Present Colorado law provides for four publications of notice whereas the code provides for three publications.

successive calendar weeks, three times, with at least twelve days elapsing between the first and last publications.

153-1-402. Notice - waiver. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

Section 153-1-402 was adopted intact by the Committee.

153-1-403. Pleadings - when parties bound by others - notice. (1) In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the provisions of this section are applicable.

(2) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(3) (a) Persons are bound by orders binding others in the following cases:

(b) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(c) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's

Section 153-1-403 adopts a broad virtual representation rule which reduces the cases where the court must appoint a guardian ad litem. This section defines the persons bound by the court order and requires that a person capable of binding a minor or disabled person be named as a party so as to bind the minor or disabled person. Under this section an order binding on: (1) the donee of a general power of appointment binds all takers in default; (2) the conservator or, if none, the guardian binds the minor or disabled person; (3) a parent binds his minor child; (4) a trustee binds the beneficiary; (5) a personal representative binds persons interested in the undistributed assets of the estate; and (6) a party having a substantially identical interest bonds unborn or unascertained persons. Notice must be given to every interested person or to one who can bind an interested person or may be given to both. The court may appoint a guardian ad litem in conflict of interest cases and in cases in which there is no one to represent a minor or disabled person or unborn or unascertained person. The court's authority to appoint a guardian ad litem in such cases is subject to: (1) a determination by the court that representation of the interest appears necessary, and (2) the court must set out its reasons for appointment as part of the record.

Thus, this section permits the court by its order to bind minors and disabled persons, as well as unborn and unascertained persons, in most cases without appointment of a guardian ad litem; assures protection by the appointment of a guardian ad litem in cases where a conflict of interest arises or the minor or disabled person in not otherwise protected; and prevents abuse of discretion by requiring the court to determine that representation by a guardian ad

estate in actions or proceedings by or against the estate.

(d) If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child, and where there is such representation orders binding the parent bind the minor child.

(e) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(4) (a) Notice is required as follows:

(b) Notice as prescribed by section 153-1-401 shall be given to each interested person or to one who can bind an interested person as described in subsection (3) of this section. Notice may be given both to a person and to another who may bind him.

(c) Notice is given to unborn or unascertained persons, who are not represented under subsection (3) of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the need for such representation appears. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

ARTICLE 2

Intestate Succession and Wills

(INTESTATE SUCCESSION)

153-2-101. Intestate estate. Any part of the estate of a decedent not effectively disposed of by

litem is necessary and to state its reasons as a part of the record.

The Committee made several changes to the section. Language was added to clarify that a parent's representation of his minor child would cause the child to be bound by any court order entered in such proceeding. Also, the court's power to appoint a guardian ad litem was broadened by eliminating the need for a determination that representation is inadequate, which could have been a possible deterrent to the court's taking a necessary precaution.

This part of Article 2 of the code deals with intestate succession and the basic pattern of descent and distribution. The combination of Sections 155-2-102, 153-2-103 and 153-2-106 are the heart of the code's intestate succession provisions and would make significant changes to existing Colorado law. Section 153-2-102 would give the surviving spouse $50,000 off the top before the estate is divided one-half to the spouse and one-half to the issue. Section 153-2-103 cuts out all heirs more remote than grandparents and their descendants, thus eliminating from the class of possible heirs great-grandparents, great-uncles, and great-aunts, first cousins once removed, second cousins, and more remote relatives. The other major departure from existing Colorado law is the definition of taking "by representation" under Section 153-2-106.

his will or otherwise passes to his heirs as prescribed in the following sections of this code.

153-2-102. Share of the spouse. (1) (a) The intestate share of the surviving spouse is:

(b) If there is no surviving issue of the decedent, the entire intestate estate;

(c) If there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars, plus one-half of the balance of the intestate estate;

(d) If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

153-2-103. Share of heirs other than surviving spouse. (1) (a) The part of the intestate estate not passing to the surviving spouse under section 153-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(b) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(c) If there is no surviving issue, to his parent or parents equally;

(d) If there is no surviving issue or parent, to

Section 153-2-101 was amended by the Committee by adding the words "or otherwise" after the word "will" to eliminate the possibility of construction that joint tenancy and other property passing by operation of law would be governed under the intestacy sections.

Section 153-2-102 defines the intestate share of the surviving spouse, giving the spouse the first $50,000 of the estate, to the exclusion of the surviving issue, if all of the issue are issue of the spouse also. If one or more surviving issue is not the issue of the surviving spouse also, the spouse and issue each take one-half. If no issue survive, the spouse takes the entire estate. The idea behind Section 153-2-102 is to give the spouse all of a small estate to the exclusion of issue, because this is what most people want.

Provisions in the UPC for the sharing of the estate by parents, in cases where there are no surviving children but a spouse survives, were eliminated by the Committee as being contrary to Colorado's present provisions and, in the Committee's opinion, not in conformance with the desires of most people.

See Section 153-2-802 for the definition of spouse which controls for purposes of intestate succession.

Section 153-2-103 is similar to present law in that the entire estate goes to the parents, if the decedent leaves neither spouse nor issue surviving, to the exclusion of brothers and sisters and their issue. This section does, however, modify present Colorado law regarding more remote relatives in two major ways. The first is that collaterals are limited to those related through the decedent's grandparents, but not great-grandparents as provided under present law. The Committee believes that this rule will simplify proof of heirship and will eliminate will contests by remote relatives. Secondly, a substantial change from present law is made in the familiar "per stirpes" mode of succession.

the issue of the parents or either of them; if they are all of the same degree of kinship to the decedent they take equally but if of unequal degree, then those of more remote degree take by representation.

(e) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

This section provides for a mixed "per stirpes" and "per capita" mode of succession; where decedent's issue take, if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation. The meaning of representation is set out in Section 153-2-106. The Committee adopted this section intact.

153-2-104. Requirement that heir survive decedent for one hundred twenty hours. Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 153-2-105, nor when the provisions of section 153-2-613 relating to simultaneous death are applicable.

Section 153-2-104 requires an heir to survive the decedent by 120 hours (5 days) or else he will be deemed to have predeceased the intestate. This rule does not apply if it would cause the estate to escheat, nor when provisions of the simultaneous death act (Section 153-2-613) are applicable. The simultaneous death act is only a partial solution, since it applies only if there is no proof that the parties died otherwise than simultaneously. This section extends the application of that act. It is also consistent with the provisions of Section 153-2-601, relating to wills.

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153-2-105. No taker. If there is no taker under the provisions of this Article, the intestate estate passes to the state of Colorado, subject to the provisions of section 153-3-914.

153-2-106. Representation. If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

153-2-107. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

EXPLANATION

Section 153-2-105 provides for escheat to the state if there are no takers. The Committee amended the section by adding the cross-reference to Section 153-3-914, which incorporates Colorado's present escheat law (Section 153-14-14, C.R.S. 1963), and to make the state a taker by escheat instead of what appeared to be a quasi-heir under the UPC provision.

Section 153-2-106 provides that the estate passing by representation will be divided, first, into as many equal shares as there are (1) living persons in the nearest degree of kinship to decedent, and (2) deceased persons in the same degree who left issue surviving decedent. Each living person in the nearest degree gets one share and each share of a deceased person in the same degree is divided between his, the secondary decedents's issue, in the same manner as though the secondary decedent were substituted for the primary decedent for purposes of applying the language of Section 153-2-106.

Thus, if there are two children of the decedent who have two and four children of their own, respectively, there will be two primary shares under the code if one or both children of the decedent survive. But there will be six primary shares if neither of the decedent's two children survive. Under present Colorado law, there are two primary shares in either event, based on the roots or "stirpes" proceeding from the decedent; and the distribution of the estate by family lines is not altered by a fate which causes both children to die before the decedent, instead of just one, or neither, of them. The same rules, mixing "per capita" and "per stirpes" modes of succession, apply under Section 153-2-103 with respect to the issue of parents and their issue and with respect to the issue of grandparents.

The Committee agreed with the UPC draftsmen that this change in the mode of succession represents the pattern which most decedents would prefer and represents an improvement over the present straight "per stirpes" basis, and the Committee adopted the section intact.

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153-2-108. Afterborn heirs. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

153-2-109. Meaning of child and related terms. (1) (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(b) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(c) (i) In cases not covered by paragraph (b) of this subsection (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(ii) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(iii) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity so established is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

153-2-110. Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the intestate estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails

EXPLANATION

Section 153-2-107 treats relatives of the half blood as though they were of the whole blood and changes the present rule in Colorado (153-2-1 (4), C.R.S. 1963). The Committee agreed with this change and adopted the section intact.

Section 153-2-108 is similar to present law (153-2-3, C.R.S. 1963), except it extends the protection from issue to all relatives of the decedent conceived before the decedents death but born thereafter, and was adopted intact by the Committee.

Section 153-2-109, dealing with the inheritance rights of adopted children, specifies that an adopted child will generally not be permitted to inherit as an heir from his natural parents. This is similar to present law (153-2-4 (2), C.R.S. 1963). The rules of intestate succession for persons born out of wedlock are also similar to present law (153-2-8, C.R.S. 1963). An illegitimate may always inherit from his mother. This section permits the illegitimate to inherit from his father if his natural parents participate in a marriage ceremony even though it is void or later annulled, or the paternity is established by adjudication prior to the father's death or by clear and convincing proof after death. The Committee adopted this section intact.

Section 153-2-110 requires an advancement to be expressed in writing before it will reduce an intestate share (or before it will reduce a devise, under Section 153-2-612). This changes present Colorado law which permits parole evidence to show that the transfers by decedent were advancements rather than gifts (153-2-5, C.R.S. 1963). If the transfer is a gift the donee would not be in danger of having it reduce his shape of the estate unless a writing is produced. Where a recipient of an advancement fails to survive the decedent, the section disregards the advancement in computing the intestate share of the recipients' issue. The section applies to an advancement to any collateral heirs as well as to lineal descendants, which also changes present Colorado law. The Committee made some changes to the section to

to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. An heir who has received from the intestate more than his share shall in no case be required to refund, except as otherwise provided by section 153-2-202.

153-2-111. Debts to Decedent. A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

153-2-112. Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

153-2-113. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

(Omitted section numbers reserved for expansion)

(ELECTIVE SHARE OF SURVIVNG SPOUSE)

153-2-201. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-half of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

153-2-202. Augmented estate. (1) The augmented estate means the estate reduced by funeral and administration expenses, exempt property allowance, family allowances, and enforceable claims, to which is added the sum of the amounts specified in subsections (2) and (3) of this section.

(2) (a) (i) The value of property transferred by the decedent at any time during his marriage to the

broaden its applicability to cover cases of partial intestacy, and incorporated language from Section 153-14-7, C.R.S. 1963, which relates to refunds.

The Committee adopted Section 153-2-111 intact.

Section 153-2-112 is similar to present law (153-2-12, C.R.S. 1963) and was adopted intact.

Section 153-2-113 is similar to present law (153-2-1 (2), C.R.S. 1963) and was adopted intact.

This part of Article 2 defines the elective share of the surviving spouse and appears to be one of the most significant, single changes the code would bring to Colorado. The code gives the spouse a one-half forced share in the decedents "augmented estate." Colorado presently gives the spouse an elective share of one-half of the testator's estate (153-5-4 and 153-14-10, C.R.S. 1963). Other features of the right to an elective share under the code provide that the spouse may waive the right to an elective share (153-2-204), the right of election is personal to the surviving spouse (153-2-203), and it must be exercised within six months after the first publication of notice to creditors (153-2-205).

Section 153-2-201 provides that the surviving spouse has the right of election to take one-half of the augmented estate. The UPC provided that the surviving spouse was entitled to a one-third forced share. The Committee changed this to one-half of the augmented estate as being more in conformity

surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(ii) Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(iii) Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iv) Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

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

(b) Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing in this paragraph (b) shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) (a) (i) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or

with Colorado's present law and the provisions of the code as to the surviving spouse's intestate share.

The "augmented estate" under Section 153-2-202 is defined to include not only the probate estate but also certain specified nonsale transfers by the decedent during "his marriage to the surviving spouse" with respect to which the decedent retained substantial interests or powers. The augmented estate also includes any transfer by the decedent made within two years of death, whether or not in contemplation of death, to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000. The spouse must add to the augmented estate everything that she owns, plus everything that she transferred at any time during the marriage, which was derived from the decedent by any means other than purchase at full value. Then the spouse has six months to elect to receive one-half of the augmented estate; and the elective share is satisfied, first with any property of the estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced.

The concept of the augmented estate has two purposes. The first is an attempt to prevent the owner of wealth from making arrangements which transmit his property to others by means other than probate deliberately to defeat the right of the surviving spouse to a share. As long as the transfers are not illusory, the decedent may deplete his estate by inter vivos gifts and transfers and thereby considerably defeat the spouse's right to a forced share. Under the code any recipient of a transfer that is part of the augmented estate must contribute his proportionate share when the estate is not sufficient to satisfy the spouse's one-half elective share. The spouse may recover only from the original transferees and their donees if they still have the property or its proceeds but they have the option to give up the property or pay its value at the time the augmented estate is computed. The second purpose of the augmented estate is to insure that the spouse is adequately provided for.

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transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection (3):

(ii) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent;

(iii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent. Income is to be determined as if the included property were principal subject to the provisions of article 4 of chapter 57, C.R.S. 1963.

EXPLANATION

When this has been done by joint tenancy, life insurance, lifetime gifts, living trusts and other nonprobate arrangements, the spouse will not need to take the elective share.

The augmented estate under this section is arrived at by adding together the following: (1) the probate estate minus funeral and administration expenses, allowances and exemptions, and enforceable claims; plus (2) the value of property transferred gratuitous during marriage to persons other than the surviving spouse by transfers of the type specified in Section 153-2-202 (2); plus (3) the value of property owned by the surviving spouse at decedent's death traceable to gratuitous transfers from the decedent. If the surviving spouse has derived property from decedent and in turn transferred it gratuitously to others by a transfer of the type specified in Section 153-2-202 (2) this would also be included. The principal difference between property transferred to others under (2) above, and the property chargeable to the spouse under (3) above, is as follows: a transfer to a third person is not included if made before marriage whereas property given to the spouse is; irrevocable transfers as to which decedent retained neither a life estate nor power to revoke or invade, made more than two years before death, are not included if in favor of third persons but all gifts to the surviving spouse must be accounted for. The surviving spouse has the burden of proof as to source of his or her wealth. Election does not affect the share the surviving spouse takes under the will or by intestate succession, but this has to be credited against the elective share. However, the spouse may renounce the will provision if desired. The surviving spouse also receives the exempt property, and any family allowance in addition to the elective share.

The Committee eliminated all reference to homestead allowance because the Committee recommendation is to delete that allowance from the code. The language of subsection (2) (a) (i) was made more definite to eliminate problems where the decedent was married more than once. In subsection (3) (a)

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(iv) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

153-2-203. Right of election personal to surviving spouse. The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

153-2-204. Waiver of right to elect and of other rights. The rights of election of a surviving spouse and the rights of the surviving spouse to exempt property and family allowance, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

153-2-205. Proceeding for elective share - time limit. (1) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six months after the first

EXPLANATION

(iii) a provision was added so that the Uniform Principal and Income Act would be the applicable law in determining income.

Section 153-2-203 provides that the election is personal to the surviving spouse and that the court makes the election for an incapacitated spouse. This is similar to present law and was adopted by the Committee intact.

Section 153-2-204 provides for a waiver of the right of election, either before or after marriage, by written agreement after fair disclosure. This section was adopted intact.

In Section 153-2-205 (1) the six month period for filing a petition for the elective share was changed by the Committee and made to start with the "first" publication of notice to creditors, thus eliminating possible confusion about when the time limitation period begins to run. Where no notice is published as in the case of the small estate, and where

publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time limitation has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before the court's determination becomes final.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 153-2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

153-2-206. Effect of election on allowances. A surviving spouse is entitled to an exempt property

no probate is sought, a time limitation of "one year from date of death" was inserted by the Committee to eliminate the uncertainty as to when the limitation period expires. In subsection (3) language was clarified as to the time for withdrawing a demand for an elective share.

Section 153-2-206 permits the surviving spouse to take the exempt property allowance and family allowance whether or not he elects to take an elective share. The UPC provision permitted the surviving spouse to renounce any items that would otherwise be taken under the decedents will or by intestate succession and thus avoid having to accept property specifically devised or bequeathed or taken by operation of law. These provisions were contrary to present law (153-14-10, C.R.S. 1963), on the subject, and in the Committee's opinion the existing law is preferable. Therefore, the major provisions of the UPC section were deleted by the Committee.

allowance and a family allowance whether or not he elects to take an elective share.

153-2-207. Charging spouse with gifts received - liability of others for balance of elective share. (1) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means, including that described in section 153-2-202 (3), but excluding any beneficial interest of the surviving spouse in a trust created by the decedent unless the surviving spouse chooses otherewise, is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the other recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. Where it is determined by the court to be equitable, such contribution may be satisfied by payment in cash, return of all or part of the property transferred, or any combination thereof.

(Omitted section numbers reserved for expansion)

(SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS)

153-2-301. Omitted spouse. (1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent

Section 153-2-207 deals with the marshalling of assets which may be necessary to make up the spouse's elective share. After applying property which the surviving spouse has received from the decedent, subsection (2) provides that the liability for the balance is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interest therein. No preference or priority is made between real and personal property. The person liable for contribution may elect to give up property or pay its value.

The Committee deleted language in subsection (1) relating to renunciation to conform to the change in 153-2-206 and added language giving the spouse the option as to whether his interest in a trust created by the decedent would be included as part of the elective share. The last sentence of subsection (3) in the UPC, relating to the return of property transferred by a donee was replaced with a more definite provision and made subject to the court's determination as to fairness.

Section 153-2-301 changes present law in that a subsequent marriage of a testator does not revoke a will. The section provides for an "omitted spouse" rather than revoking the entire will. The spouse is given an intestate share unless the will shows that the omission was intentional or the testtator has provided for the spouse outside the will. The correlative provision is Section 153-2-508, which states that a will is not revoked by marriage or any other change of circumstance, except that divorce or annulment of a marriage after execution of the will revokes every devise and appointment to the spouse, including her nomination as personal representative, unless the will expressly provides otherwise. The Committee adopted the section intact.

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that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in section 153-3-902.

153-2-302. Pretermitted children. (1) (a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(b) It appears from the will that the omission was intentional;

(c) When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(d) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in section 153-3-902.

(Omitted section numbers reserved for expansion)

(EXEMPT PROPERTY AND FAMILY ALLOWANCES)

153-2-401. (Reserved.)

153-2-402. Exempt property allowance. A surviving spouse of a decedent who was domiciled in this state is entitled to an exempt property allowance of ten thousand dollars. If there is no surviving spouse, each minor child and each dependent child of

EXPLANATION

Section 153-2-302 gives an intestate share to any child born or adopted after the execution of the will, unless the will shows that the omission was intentional or the testator has provided for the child outside the will. Under both Section 153-2-301 and 153-2-302, the fact that nontestamentary transfers were intended to be in lieu of testamentary provision, thereby barring the right to an intestate share, may be shown by "statements of the testator or from the amount of the transfer or other evidence." Thus, the will may be varied by proof of the decedent's intent through introduction of extrinsic evidence. This is an extension of present Colorado law (153-5-6, C.R.S. 1963) and was adopted intact by the Committee.

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the decedent is entitled to an exempt property allowance amounting to ten thousand dollars divided by the number of minor and dependent children of the decedent. The exempt property allowance is exempt from and has priority over all claims against the estate. The exempt property allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. As used in sections 153-2-401 to 153-2-404 the term "dependent child" is defined as a child who was in fact being supported, or was legally entitled to support, by the decedent.

153-2-403. Family allowance. (1) In addition to the right to an exempt property allowance, if the decedent was domiciled in this state, the surviving spouse and minor and dependent children are entitled to a family allowance which shall be a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the exempt property allowance.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled

EXPLANATION

This part of Article 2 of the UPC dealt with exempt property and allowances, and set up a three-tier system, starting with a homestead allowance of $5,000, then a $3,500 exempt property allowance which is related to tangible personal property, and finally a family allowance which is not in any set sum but is a reasonable allowance, although a court order is necessary if the amount exceeds $500 per month or $6,000 a year. The Committee combined the sections of the UPC relating to homestead and exempt property allowances and replaced them with Section 153-2-402, which provides for an exempt property allowance of $10,000. The Committee felt that this figure would correspond to the amount set in the present Small Estate Transfer Act (153-7-4, C.R.S. 1963), and the section was designed to be the equivalent of Colorado's present surviving spouse's allowance, currently set at $7,500 (153-12-16 to 21, C.R.S. 1963). All references to "homestead" allowances throughout the code were deleted upon the Committee's adoption of this change. A definition of "dependent child" was added to Section 153-2-402 to cover use of the term in succeeding sections.

The family allowance under Section 153-2-403 is a reasonable amount of money for the maintenance of the spouse, minor children, and dependent children during the period of administration; but the allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. Payment of the family allowance is subordinated to the payment of the exempt property allowance and rights to exempt property and the family allowance have priority over all claims, including funeral and administration expenses. Under the code, the surviving spouse may waive any of these rights (153-2-204). Except for a few changes for clarification, the Committee adopted the section intact.

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to family allowance terminates his right to allowances not yet paid.

153-2-404. Source, determination and documentation. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. He may determine the family allowance in a lump sum not exceeding six thousand dollars or periodic installments not exceeding five hundred dollars per month for one year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

(Omitted section numbers reserved for expansion)

(WILLS)

153-2-501. Who may make a will. Any person eighteen years of age or older who is of sound mind may make a will.

153-2-502. Execution. Except as provided for holographic wills, writings within section 153-2-513, and wills within section 153-2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's

EXPLANATION

The family allowance under Section 153-2-403 is not a set sum, but is merely a reasonable allowance. However, the provisions of Section 153-2-404 require consideration by a court if the amount of the allowance exceeds $500 per month or $6,000 per year, and as a further limitation, the allowance may be paid for no longer than one year if the estate is inadequate to discharge allowed claims. The Committee adopted this section intact except for deleted reference to homestead allowance.

Section 153-2-501 is similar to present law and was adopted intact.

Section 153-2-502 differs from present law (153-5-2, C.R.S. 1963) in that witnesses need not sign in the testator's presence. Two witnesses are required and witness either the signing or the testator's acknowledgement of the signature or his acknowledgement that the document is his will. The

presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

153-2-503. Holographic will. A will which does not comply with section 153-2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

153-2-504. Self-proved will. An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

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

_____
Testator

testator need not publish or declare the document as his will or request the witnesses to sign, and the witnesses do not have to sign in the presence of the testator or of each other. The Committee adopted this section intact.

Section 153-2-503 changes present law by recognizing holographic wills. Only the signature and material provisions are required to be in the testator's handwriting. The holographic will does not have to be witnessed.

Section 153-2-504 will add a new provision to Colorado law. The section allows a will to be admitted to probate without the testimony of the witnesses to the will. This is accomplished by the testator and the witnesses acknowledging before a notary public, at the time of the execution of the will or later on, that the testator was eighteen years old, of sound mind, under no undue influence, that the testator signed the document as his last will and that each of the witnesses signed in the presence and hearing of the testator. This certificate is then attached to the will and would eliminate any testimony on the part of the subscribing witnesses in order to admit the will to probate. The use of the self-proved will is limited to formal proceedings because Section 153-3-303 dealing with informal probate dispenses with the necessity of testimony of witnesses even though the instrument is not self-proved.

_____
Witness

_____
Witness

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

(SEAL) (Signed) _____

_____
(Official capacity of officer)

153-2-505. Who may witness. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will or any provision thereof is not invalid because the will is signed by an interested witness.

Under Section 153-2-505, no provision in a will is invalid because the will is signed by an interested witness. In other words, the witness does not forfeit a gift under the will because he is a witness. This differs from present law (153-5-7, C.R.S. 1963) but was adopted intact by the Committee.

153-2-506. Choice of law as to execution. A written will is valid if executed in compliance with section 153-2-502 or 153-2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

Section 153-2-506 differs from present law (153-5-42, C.R.S. 1963) in that it looks into the law of the domicile or the state of nationality. The section was adopted intact.

153-2-507. Revocation by writing or by act. (1) (a) A will or any part thereof is revoked:

(b) By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(c) By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

Section 153-2-507 is similar to present law (153-5-3, C.R.S. 1963) except that it specifically authorizes partial revocation and revocation by inconsistency, which the present law does not authorize. The Committee adopted the section intact.

153-2-508. Revocation by divorce - no revocation by other changes of circumstances. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any

The circumstances in Colorado in which a will is revoked by operation of law (divorce, annulment) is not changed by Section 153-2-508, except that it does not provide for revocation of a will by subsequent marriage of the testator as

disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 153-2-802 (2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Colorado does (153-5-3, C.R.S. 1963). The code protects the new spouse by operation of the omitted spouse section (153-2-301) or by an elective share under Section 153-2-201. The section also provides that if the will provisions are revoked by divorce or annulment, they are revised by testator's remarriage to the former spouse. The section also covers the effect of divorce not recognized as valid by the laws of Colorado. The meaning and effect of divorce and annulment are set forth in Section 153-2-802. The Committee adopted the section intact.

153-2-509. Revival of revoked will. (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 153-2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Under Section 153-2-509 the revival of a revoked will is permitted if it can be established that the testator intended revival. Also, when a second will is revoked by a third will, a first will is revived by terms in the third will showing an intents that the first will be effective. These provisions will be new to Colorado and the section was adopted intact.

153-2-510. Incorporation by reference. Any

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writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

153-2-511. Testamentary additions to trusts. (1) A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (including a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, or in the valid last will of a person who has died within six months after the death of the testator, said will having been executed before or concurrently with the execution of the testator's will, (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator.

(2) (a) Unless the testator's will provides otherwise, the property so devised:

(b) Is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given; and

(c) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments

EXPLANATION

Section 153-2-510 permits incorporation by reference when the will manifests this intent and describes the writing sufficiently to identify it. This provision will be new to Colorado and the section was adopted intact.

Section 153-2-511 is similar to present law (153-5-44, C.R.S. 1963), and allows a devise or bequest to be "poured" into an inter vivos trust even though the settlor reserves the right to amend or revoke and even if the trust was actually amended after the will was executed. Both the Colorado provision and this section were taken from the Uniform Testamentary Addition's to Trusts Act, and the Committee rewrote the UPC section to conform to the Colorado provision.

to the trust made after the death of the testator.

(3) A revocation or termination of the trust before the death of the testator causes the devise to lapse, but exhaustion of trust corpus between the time of execution of testator's will and testator's death shall not constitute a revocation or termination of the trust causing the devise or bequest to lapse; a revocation or termination of the trust before the death of the testator shall not cause the devise or bequest to lapse, if the testator provides that, in such event, the devise or bequest to the trustee of the trust identified in the testator's will, and on the terms thereof, as they existed at the time of the execution of testator's will, or as they existed at the time of the revocation or termination of the trust, as the testator's will shall provide. This section shall not be construed as providing an exclusive method for making devises or bequests to trustees of trusts created otherwise than by the will of the testator making such devise or bequest.

153-2-512. Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

Section 153-2-512 provides that a will may dispose of property by reference to acts and events having independent meaning. This section enacts the common law rule in Colorado was adopted intact by the Committee.

153-2-513. Separate writing identifying bequest of tangible property. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him

Section 153-2-513 attempts to solve the problem of the testator who is constantly changing his mind as to who should receive certain items of his personal property. All personal property, other than the exceptions stated, may be disposed of by a written list either in the handwriting of the testator or signed by him. It will be upheld if the will simply refers to the list which may be prepared prior to or after the will is executed. The code states that this is an exception to the doctrine of independent significance established in Section 153-2-512 and the list will be permitted despite of the fact that it "has no significance apart from

and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

(Omitted section numbers reserved for expansion)

(RULES OF CONSTRUCTION)

153-2-601. Requirement that devisee survive testator by one hundred twenty hours. Except in cases which would be subject to the simultaneous death provisons of section 153-2-613, a devisee who does not survive the testator by one hundred twenty hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

153-2-602. Choice of law as to meaning and effect of wills. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his will unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

153-2-603. Rules of construction and intention. The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in sections 153-2-604 to 153-2-612 apply unless a contrary intention is indicated by the will.

153-2-604. Construction that will passes all property - after-acquired property. A will is to be construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

its effect upon the dispositions made by the will". The practical effect of this provision would enable the testator to change his mind and the list many times as to who should receive his personal effects and he need never bother his attorney. This provision will be new to Colorado and the section was adopted intact.

Section 153-2-601 requires that a devisee must survive 120 hours to take unless the will of decedent provides otherwise in the case of simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator for a stated period in order to take under the will, except in cases which would be subject to the simultaneous death provisions of 153-2-613. This section parallels section 153-2-104 dealing with intestate succession. Except for adding the cross-reference to the simultaneous death section, the Committee adopted the section intact.

Section 153-2-602 gives the testator the right to choose the law of any state specified in the will to govern the meaning and legal effect of the will. On related points Section 153-2-506, in effect, permits choice of law as to the rules governing formal validity and the execution requirements for wills. Section 153-3-202 provides that, where there are conflicting claims as to the domicile of decedent, the determination of domicile in the proceeding first commenced must be accepted as determinative by the courts of this state if that determination was made in a formal testacy or appointment proceeding after notice. Under Section 153-3-408, a final order of a court of another state determining whether decedent left a valid will or construing the will must be determinative by the courts of this state if the foreign proceeding involved notice to all interested persons and was based on a finding that decedent was domiciled at his death in the state where the order was made. The Committee adopted this section intact.

Section 153-2-603 is a statement of general law and was adopted intact.

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153-2-605. Anti-lapse - deceased devisee - class gifts. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occured before or after the execution of the will.

153-2-606. Failure of testamentary provision. (1) Except as provided in section 153-2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in section 153-2-605 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

153-2-607. Change in securities - accessions - nonademption. (1) (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(b) As much of the devised securities as is a part of the estate at time of the testator's death;

(c) Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(d) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by

EXPLANATION

The after-acquired property provision in Section 153-2-604 was adopted intact.

The anti-lapse rule of Section 153-2-605 applies to any devise to a deceased person who is a grandparent or a lineal descendant of a grandparent thereby substantially broadening present law (153-5-10, C.R.S. 1963), which is limited to a deceased descendant of the testator. If a beneficiary in the protected group dies before the testator, whether before or after the will is signed, or is deemed to have predeceased the testator under the 120-hour survivorship requirement, the deceased beneficiary's share passes to his issue by representation. This anti-lapse rule also applies to one who would have been a devisee under a class gift if he had survived. The Committee adopted this section intact.

Under Section 153-2-606 a lapsed non-residuary devise falls into the residue, whereas a lapsed residuary devise does not fall out of the residue, but passes to the other residuary devisees, if any. This is somewhat similar to present law (153-5-11, C.R.S. 1963), and the section was adopted intact.

Section 153-2-607 codifies construction rules in the area of accessions to and changes in the form of specifically devised securities between the time the will is signed and the testator's death. The section is intended to codify the law to the effect that cash dividends declared and payable as of a record date occurring before the testator's death do not pass as a part of the specific devise even though paid after death. The Committee adopted the section intact.

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the entity; and

(e) Any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) of this section are not part of the specific devise.

153-2-608. Nonademption of specific devises in certain cases - sale by conservator - unpaid proceeds of sale, condemnation or insurance. (1) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. The right of the specific devisee unier this subsection is reduced by any right he has under subsection (2) of this section.

(2) (a) A specific devisee has the right to the remaining specifically devised property and:

(b) Any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(c) Any amount of a condemnation award for the taking of the property unpaid at death;

(d) Any proceeds unpaid at death on fire or casualty insurance on the propery; and

(e) Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

153-2-609. Non-exoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration regardless of a general directive in the will to pay debts.

EXPLANATION

Section 153-2-608 provides for ademption of specific devises where the form of property is changed through sale, casualty loss, condemnation, or foreclosure prior to the testator's death, whether the act is done by the testator, by a conservator acting for him, or by others. Subsection (1) provides for nonademption when specifically devised property is sold by a conservator and when a condemnation award or casualty insurance proceeds are paid to a conservator for the decedent prior to death. In such event, the devisee is entitled to a "general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds." Under subsections (2) (b), (c), and (d) a specific devisee takes the remaining specifically devised property plus any balance of the purchase price owing from a purchaser in the event of sale of the property or any balance of a condemnation award or casualty insurance on the property remaining unpaid at death. However, under subsection (2) (e), the devisee takes property owned by the testator at his death as a result of foreclosure...of the security for a specifically devised obligation. The Committee adopted this section intact, except for deleting a sentence which provided that if the testator is restored to competency after the sale, condemnation, or casualty and survives for one year, the nondemption presumption does not apply, and therefore, by implication, the devise will be considered to be adeemed. This was deleted as unfair and because it reversed the general rule.

Section 153-2-609 abolishes the common law rule of exoneration of specific devises and adopts the rule of non-exoneration. This section was adopted intact.

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153-2-610. Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

153-2-611. Construction of generic terms to accord with relationships as defined for intestate succession. Relatives of the half blood, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

153-2-612. Ademption by satisfaction. Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

153-2-613. Simultaneous death - disposition of property. (1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

(2) (a) If property is so disposed of that the

EXPLANATION

Section 153-2-610 creates a construction presumption that a residuary clause does not exercise a power of appointment. This is similar to present law (107-3-3, C.R.S. 1963) and the section was adopted intact.

Section 153-2-611 extends to the construction of wills certain of the rules in Article 1 defining relationships of intestacy and was adopted intact.

Section 153-2-612, paralleling Section 153-2-110 on intestate succession, requires a written statement of intent by the testator or donee before a lifetime gift will be considered to be in satisfaction of the devise. The section was adopted intact.

Section 153-2-613 reenacts the Simultaneous Death Act, and is adapted from Article 18 of Chapter 153, C.R.S. 1963.

right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived.

(b) If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their deaths each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

(3) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. For the purposes of this section, the term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

(4) Where a husband and wife have died, leaving community property and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived, and as if said one-half were his separate property, and the other one-half thereof shall pass as if the wife had survived, and as if said other one-half were her separate property.

(5) Where the insured and the beneficiary in a policy of life or accident insurance have died and

there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, except if the policy is community property of the insured and his spouse, and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representative of the insured, the proceeds shall be distributed as community property.

(6) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance or any other situation where provision is made for distribution of property different from the provisions of this section, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

(Omitted section numbers reserved for expansion)

(CONTRACTUAL ARRANGEMENTS RELATING TO DEATH)

153-2-701. Contracts concerning succession. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this chapter, can be established only by provisions of a will stating material provisions of the contract, an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual or reciprocal wills does not create a presumption of a contract not to revoke the will or wills and the fact that a will or wills executed at or about the same time contain mutual or reciprocal provisions shall not be any evidence that such will or wills are made in consideration of each other.

(Omitted section numbers reserved for expansion)

(GENERAL PROVISIONS)

153-2-801. Renunciation of succession. (1) A person (or his personal representative) who is an

EXPLANATION

Section 153-2-701 deals with contracts to make or revoke a will or to die intestate. It provides that a contract to make a will or devise, or not to revoke a will or devise, or to die intestate, can only be established by the will which sets forth the material provisions of the contract, a reference in a will to a contract and extrinsic evidence proving the terms of the contract, or an instrument signed by the decedent evidencing the terms of the contract. Mutual or reciprocal wills will not give rise to a presumption of a contractual arrangement. This is similar to present law (153-5-41, C.R.S. 1963) and part of the present law was added to the end of the section for clarification.

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heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place provided in this section. The instrument shall describe the property or part thereof or interest therein renounced, be signed by the person renouncing, and declare the renunciation and the extent thereof.

(2) The writing specified in subsection (1) of this section must be filed within six months after the death of the decedent or the donee of the power, or, if the taker of the property is not then finally ascertained, not later than six months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(3) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) Any assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, written waiver of the right to renounce or

EXPLANATION

Section 153-2-801 covers the renunciation or disclaimer of devises and intestate shares. It requires the disclaimer to be filed within six months after death or six months after the event by which the taker or the interest is finally ascertained. The renounced property passes as if the renouncing person had failed to survive the decedent. The section is very similar to present law (153-21-1 et seq, C.R.S. 1963) and was adopted intact.

any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary, or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(7) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided in this section. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

153-2-802. Effect of divorce, annulment, and decree of separation. (1) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2)(a) For purposes of sections 153-2-101 to 153-2-404 and of section 153-3-203, a surviving spouse does not include:

(b) A person who obtains or consents to a final

Section 153-2-802 is a general definition of who is not a surviving spouse, distinquishing between the effects of decrees of divorce and separation. It clarifies the effect of invalid or incomplete divorce proceedings. It also establishes a principle of estoppel against persons claiming as a surviving spouse in certain circumstances involving foreign divorce decrees and invalid proceedings. Cross-reference should be made to the definitions of "divorce" and "annulment" in the definitions section. This will be a new provision for Colorado and the section was adopted intact.

decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(c) A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

153-2-803. Effect of homocide on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies (and tenancies by the entirety) in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it

Section 153-2-803, on the effect of homicide, would extend the application of present Section 153-2-13, C.R.S. 1963, which requires conviction of murder in the first or second degree before a murderer is disinherited. Under Section 153-2-803 one who "feloniously and intentionally kills the decedent" cannot succeed to the decedent's property by will or intestate succession, or as a joint tenant, insurance beneficiary, or beneficiary of a power of appointment. A significant change made by the section is that in the absence of a criminal conviction, the probate court "may determine by a preponderance of evidence, whether the killing was felonious and intentional for purposes of this section," as distinquished from the criminal law rule which requires proof beyond a reasonable doubt. Thus, if a killer is acquitted by the criminal court or not brought to trial because of suicide, insanity, or other cause; or if the criminal trial is not concluded for some reason; or if a criminal conviction is appealed and reversed, the probate court can try the case itself, applying civil action standards of proof; and it can find the murderer guilty for purposes of disinheriting him. The Committee adopted the section intact.

becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in acccrdance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(Omitted section numbers reserved for expansion)

(CUSTODY AND DEPOSIT OF WILLS)

153-2-901. Deposit of will with court in testator's lifetime. A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the

Section 153-2-901 authorizes the deposit of a will with the court during the testator's lifetime. It gives the testator's conservator the right to examine the will "under procedures designed to maintain the confidential character of the document to the extent possible." All administrative matters pertaining to the deposit of a will are left to court rule and are not spelled out in the statute. Section 153-2-902 sets forth the duty of a custodian of a will to deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. The custodian who willfully fails to deliver the will is liable for any damages resulting from his failure.

testator's death, the court shall notify any person named as executor therein and shall lodge the same in its records. Upon the filing of a verified petition showing the residence of the testator to be in another county or state the court may order the will transferred to the appropriate court.

153-2-902. Duty of custodian of will - liability. Within ten days after the death of a testator or as soon thereafter as the death of the testator becomes known to him any person having custody of an instrument purporting to be the testator's will shall deliver it to the appropriate court. Any person who wilfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

These two sections are somewhat similar to present law (153-5-13, 14, 16, and 20, C.R.S. 1963). The Committee changed some of the language in Section 153-2-901 to conform to the present practice in Colorado as to after death disposition of deposited wills, which the Committee felt was a preferable procedure. Language was also added to Section 153-2-902 to conform to the provisions of present law (153-5-16 and 20, C.R.S. 1963) requiring delivery of the will to the court within ten days after death.

ARTICLE 3

Probate of Wills and Administration

(GENERAL PROVISIONS)

Article 3 of the code will give to interested persons the right to choose either formal or informal procedures for each step in the probate of an estate (Sections 153-3-102, 153-3-105). Informal proceedings are held before a registrar (Section 153-3-301) and generally do not require notice be given to interested persons (Sections 153-3-306, 153-3-310). Formal proceedings are conducted before a court and do require notice to be given to all interested persons (Section 153-3-401). Proceedings for probate and/or appointment of a personal representative of the estate may be informal (Section 153-3-301) if the registrar determines that informal proceedings are proper (Sections 153-3-303, 153-3-308) or they may be formal proceedings held before a court on proper petition by an interested person (Sections 153-3-401, 153-3-402, 153-3-414). An application for informal probate will not prohibit formal appointment proceedings or formal proceedings for any matter concerning administration of the estate. This is the flexible system of administration of decedents' estates. Informal probate would only be used where the representative believes that the will is not

153-3-101. Devolution of estate at death; restrictions. The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, exempt property and family allowances, to rights of

complicated or where the possibility of controversy is remote. In any estate of substantial size or involving some risks, formal procedure would probably be used.

After the personal representative qualifies under the code, he is required to notify all heirs and devisees by mail. (Section 153-3-705) and must publish a notice to creditors in a newspaper (Section 153-3-801). Within three months he must also send a copy of the inventory and appraised valuation of the estate to all interested persons who request a copy, or if he prefers, he may file the original with the court (Section 153-3-706).

The representative is given broad powers which include the right to deliver a deed pursuant to enforceable contracts by the decedent to convey land, satisfy charitable pledges, sell land and personal property, and repair or demolish buildings. In addition, he is allowed to insure the assets of the estate, compromise claims, borrow money giving estate assets as security, employ agents to perform any act of administration and he may operate any unincorporated business for four months and for any additional time the court approves (Section 153-3-715), and all other powers set forth in the Colorado Fiduciaries Powers Act.

Upon proper qualification, the personal representative may proceed with an informal or unsupervised administration of the estate and need not return to the probate court (Section 153-3-704). If he desires the protection or guidance of a court order, he may invoke its jurisdiction to resolve any uncertain matter concerning his administration. An interested party may petition the court for supervised administration which will then place the representative under the continuing authority of the court until there has been a complete administration and settlement of the decedent's estate (Sections 153-3-501, 153-3-502). If any interested party desires a ruling only on one particular issue or controversy, the court will resolve the matter and allow the

representative to continue to administer the estate under his broad powers, free from court orders and hearings (Section 153-3-105).

When unsupervised administration of the estate is completed the representative may petition the court for formal proceedings to approve his accounts and adjudicate final settlement and distribution of the estate (Section 153-3-1002). If he prefers, he may continue to use informal proceedings and close the estate by filing a sworn statement asserting that he has published notice to creditors, fully administered the estate and that a copy of this statement has been sent to all interested parties (Section 153-3-1003). If supervised administration is used, the estate will be closed by the usual formal proceedings with notice and hearing (Section 153-3-1001). The personal representative is immediately discharged in formal proceedings and is discharged in informal proceedings six months after filing the closing statement (Sections 153-3-1002, 153-3-1005).

Section 153-3-101 expresses the scope of administration under the code and together with Section 153-3-901 declares that heirs and devisees are entitled to the decendent's property, and such property devolves to them, in accordance with the terms of the will or intestate laws, as the case may be. Title to a decedent's property passes to his heirs and devisees at the time of his death. The power to leave property by will and the rights of creditors, heirs and devisees are all subject to the restrictions and limitations set out in the code. The Committee adopted the section intact.

creditors, elective share of the surviving spouse, and to administration.

153-3-102. Necessity of order of probate for will. (1) (a) Except as provided in section 153-3-1201, 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:

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

(c) 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.

153-3-103. Necessity of appointment for administration. Except as otherwise provided in article 4 of this chapter, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

153-3-104. Claims against decedent - necessity of administration. No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 153-3-1004 or from a former personal

Section 153-3-102 is essentially a rule of evidence. This section states that "a will must be declared to be valid" in formal or informal probate proceedings if it is to be "effective to prove the transfer of any property or to nominate an executor".

Wills not found to be valid may not be offered as proof of title except in two situations: If the devisee or his successors were in possession of devised property and did nothing about probate or in which the property was neither possessed nor claimed as property devised by the decedent during the three year period. If all property was possessed or claimed as intestate property during this period the will could not be admitted as proof of title without probate. The Committee adopted this section intact.

Section 153-3-103 provides that a personal representative must be appointed formally or informally, if there is to be administration under the code, and that administration commences only on the issuance of letters. The personal representative has very limited powers prior to appointment (Section 153-3-701). This section was adopted intact.

Section 153-3-104 describes the general nature of claims procedure and states that a personal representative must be appointed before claims can be enforced against the estate. Creditors may be voluntarily paid by heirs but must secure appointment of a personal representative in order to commence a proceeding against the estate for recovery of their debt obligation. If notice has not been served and the estate is distributed before the three-year period expires, the creditor may recover from distributees who are obligated to contribute just as if the assets had been subjected to creditor's claims in the process of administration. In addition, if the personal representative has breached any

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representative individually liable as provided in section 153-3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

153-3-105. Proceedings affecting devolution and administration - jurisdiction of subject matter. Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiciton. The court has jurisdiction as provided in section 153-1-302 of this code.

153-3-106. Proceedings within the exclusive jurisdiction of court - service - jurisdiction over persons. In proceedings where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 153-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

153-3-107. Scope of proceedings - proceedings independent - exception. (1) (a) Unless supervised administration as described in sections 153-3-501 to 153-3-505, is involved:

(b) Each proceeding before the court or registrar is independent of any other proceeding involving the same estate;

(c) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(d) Proceedings for probate of wills or

EXPLANATION

rights the creditor might have, he is responsible for a period of six months after approval of his final accounting. The section makes it clear that it has no application to secured claims as such. The Committee adopted the section intact.

Section 153-3-105 draws the distinction between informal and formal proceedings. The registrar has jurisdiction to make determinations in informal proceedings and the court in formal proceedings. The Committee deleted most of the jurisdictional language in the UPC section and substituted a cross-reference to Section 153-1-302, the jurisdiction section, to eliminate conflict with jurisdictional language of the Colorado Constitution and statutes.

Persons receiving proper notice are bound by the order to which it pertains insofar as it extends to property within the jurisdiction of the court. The section relates to Section 153-1-401 on service. The Committee omitted the redundant and inconsistent jurisdictional reference in the section, and it was otherwise adopted intact.

Section 153-3-107 states general procedural rules. Except in cases of "supervised administration", the court will be approached only when specific problems are raised. Each of these proceedings, whether part of an informal or formal probate, is a separate proceeding. Thus, the personal representative and interested persons can adopt an "in and out" approach to the administration, going into court only as their interests seem to require. Each petition represents a separate action which is concluded by a final order, and the scope of each such action is defined by the pleadings. There are flexible rules for the content of petitions. Various requests for relief may be combined if this does not produce delay and the petition is not rendered defective for failure to embrace all matters which might then be the subject of a final order. Proceedings for probate and appointment of a personal representative may be com-

adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(e) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

153-3-108. Probate, testacy, and appointment proceedings - ultimate time limit. (1) (a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(b) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings;

(c) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and

(d) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

bined. The petition for appointment of a personal representative is made an independent proceeding with a final order. This section was adopted intact.

Section 153-3-108 is one of the key provisions of the code. It denies probate to any will that is not offered within a period of three years from the testator's death. If a will is not probated formally or informally within three years from death, a conclusive presumption arises that the decedent died intestate. Further, if a personal representative is not appointed formally or informally within three years, none may ever be appointed. However, an informally probated will may be contested for a full year after the informal probate, if that year extends beyond the basic three-year period. In addition, there are two other exceptions to the three year limitation: (1) If doubt was raised about the death of an alleged decedent and probate proceedings dismissed erroneously, these may be recommenced without regard to time. (2) Probate of the estate of a missing person may be commenced at any time within three years of the date upon which the conservator becomes able to establish death.

The section specifically states that the limitation does not run to bar actions to construe wills or to determine heirship. In addition, a will previously probated in the state of domicile may be probated at any time; and a prior appointment of a personal representative for the estate in any other jurisdiction, whether domiciliary or not, permits appointment of a personal representative locally at any time. This section was adopted intact.

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(3) In cases under subsection (1) of this section, the date on which a testacy or appointment proceedings is properly commenced shall be deemed to be the date of the decedent's death for purpose of other limitation provisions of this code which relate to the date of death.

153-3-109. Statutes of limitation on decednt's cause of action. No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

(Omitted section numbers reserved for expansion)

(VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE)

153-3-201. Venue for first and subsequent estate proceedings -- location of property. (1) (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(b) In the county where the decedent had his domicile at the time of his death; or

(c) If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 153-1-303 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations

EXPLANATION

Section 153-3-109 deals with the statute of limitations on claims belonging to the decedent. If the decedent possesses a cause of action at death which is not then barred, his personal representative may enforce it for four months after death, even though the basic statute of limitations would have expired sooner. The section was adopted intact.

Section 153-3-201, together with Section 153-1-303, cover the subject of venue for estate proceedings. Basically, venue for the first informal or formal proceeding after death lies in the county of the decedent's domicile or, if the decedent was a nonresident, in any county where his property was located at the time of death. Venue for all subsequent proceedings in the same estate is in the place where the initial proceeding occurs. Provision is also made for settling disputes over venue and for transfer of the cause to another county on order of the court in the county where the first proceeding was commenced. The section also identifies the situs of intangible property, debts are located at the residence of the debtor or principal office for persons other than individuals, commercial paper and other written instruments are located at the site of the instrument, trust property at the situs of the trustee or the location where he can be sued. The Committee adopted the section intact.

concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

153-3-202. Appointment or testacy proceedings - conflicting claim of domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

Section 153-3-202 states that if there is a dispute over domicile between different states, the determination of domicile in the first formal proceeding to be commenced will govern; and the local court must stay any local proceedings on the subject unless the local proceeding was the first to commence. This section is closely related to Section 153-3-408 which deals with the effect of a final order in a formal proceeding in another jurisdiction on questions of intestacy and the validity or construction of a will. The Committee adopted the section intact.

153-3-203. Priority among persons seeking appointment as personal representative. (1) (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(b) The person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(c) The surviving spouse of the decedent who is a devisee of the decedent;

(d) Other devisees of the decedent;

(e) The surviving spouse of the decedent;

(f) Other heirs of the decedent;

(g) Forty-five days after the death of the decedent, any creditor.

(2) (a) An objection to an appointment can be

Priority for appointment as personal representative and qualifications for personal representatives are covered by Section 153-3-203, which applies both to testate and intestate situations and to formal and informal appointments. Note that if the will does not provide for a personal representative, any devisee has priority to administer over the decedent's spouse and over any of decedent's children if they are not named as beneficiaries under the will, which differs from present law (153-7-1, C.R.S. 1963). Creditors are the final category but they have no standing to administer until 45 days after death. This also differs from present law (153-7-1 and 2, C.R.S. 1963).

If an appointment is improperly made, anyone raising an objection is first required to institute a petition for formal probate. In case of objection the priorities still apply,

made only in formal proceedings. In case of objection the priorities stated in subsection (1) of this section apply, except that:

(b) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(c) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(3) A person entitled to letters under paragraphs (c) through (f) of subsection (1) of this section, and a person between the ages of eighteen and twenty-one who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person eighteen years of age or older may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(4) Appointment of one who does not have priority, including priority resulting from

except in the case of insolvent estate. In this case, the court, on petition of creditors, is permitted to appoint any qualified person, which may include a creditor after 45 days. Also, an heir or devisee appearing to have a substantial interest in the estate may object in formal proceedings to the appointment of anyone not named in the will and the court is required to appoint a person acceptable to the heirs and devisees whose interests are worth more than half of the probable distributive value of the estate; or, absent such agreement, it may appoint any suitable person.

The section permits one with priority to appoint another to act in his place and states that, if two or more share a priority, all must concur in nominating the personal representative. Furthermore, the conservator or guardian of a protected person or ward can represent the one under disability in nominating or objecting to personal representative and in determining the preference of a majority in interest of heirs and devisees. In the multistate estate, an overriding right is given to the domiciliary personal representative to act in all other jurisdictions, except where the will designates different people to act in the several jurisdictions involved.

Only persons over 21 are permitted to serve as personal representatives and any person may be disqualified upon a finding by the court of unsuitability. The priorities do not apply to the selection of a special administration.

This section was adopted intact, except that the Committee added subsection (9), which was taken from 153-10-8 (4), C.R.S. 1963. This permits the court the right to appoint a successor co-fiduciary where the will is silent as to a successor co-fiduciary and gives the court more latitude in cases where a co-fiduciary dies, resigns or is removed.

renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) (a) No person is qualified to serve as a personal representative who is:

(b) Under the age of twenty-one;

(c) A person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary perscnal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

(9) If there be more than one fiduciary of an estate, and one of such fiduciaries shall die, resign, or be removed, the court may in its discretion appoint a successor fiduciary to act in place and instead of the former fiduciary, together with the remaining fiduciary or fiduciaries, or the court may permit the remaining fiduciary or fiduciaries to serve without any new or additional fiduciary; provided that if there be a will providing for the fiduciaries, the provisions of the will shall control when applicable.

153-3-204. Demand for notice of order or filing concerning decednt's estate. Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with

Section 153-3-204 permits demand for notice. This can be made by any person who has a financial or property interest in the estate which may be affected by the proceeding. It is filed with the court by the interested person and the demandant is then entitled to receive notice of all orders and filings in the estate. The clerk mails the demand to the personal representative; and, after such a demand, no order can be entered or a filing accepted until 10 days' prior notice has been given the demandant under Section 153-1-401. The penalty for failure to comply with the demand is damages, it does not affect the validity of the proceeding. The section was adopted intact.

the court at any time after the death of the decedent stating the name of the decelent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 153-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

(Omitted section numbers reserved for expansion)

(INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS)

153-3-301. Informal probate or appointment proceedings - application - contents. (1) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information required by this section.

(2) (a) Every application for informal probate of a will or for informal appointment ot a personal representative, other than a special or successor representative, shall contain the following:

(b) A statement of the interest of the applicant;

(c) The name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees, and the ages of any who are minors so far as known or ascertainable

This part of Article 3 deals with the subject of informal probate of wills and informal appointment of personal representatives. The subject of informal probate of wills would be new to Colorado in that it relaxes considerably the notice requirements and the proof requirements of present law. The informatl probate proceeding is designed to handle those cases in which the parties only need proof of title to property or simple estates in which no controversy exists. A great deal of responsibility is imposed upon the "registrar", to whom "applications," as opposed to "petitions," are presented. Each application involves a verified statement subject to the penalties of perjury, as provided in Section 153-1-310.

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with reasonable diligence by the applicant;

(d) If the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(e) A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(f) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(3) (a) An application for informal probate of a will shall state the following in addition to the statements required by subsection (2) of this section:

(b) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(c) That the applicant, to the best of his knowledge, believes the will to have been validly executed;

(d) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(e) That the time limit for informal probate as provided in this article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by section 153-3-108 authorizing tardy probate have occurred.

(4) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution

EXPLANATION

The registrar has absolute authority to deny the application and force the parties to formal proceedings. His determination is not appealable. The application must be denied if it is for probate of a series of documents other than wills and codicils, for instance, a series of letters offered as a holographic will. Appointment as a personal representative without probate of the will must also be denied if there is any reason for the registrar to think that an unrevoked will, which has not been offered for probate, exists.

Informal proceedings are always subject to stay or reversal by formal proceedings initiated on the petition of any interested person at any time, with one exception: The informally probated will, which may be filed without notice to anyone (Section 153-3-306), becomes final and incontestable three years after death in the absence of fraud (Section 153-3-108).

Section 153-3-301 sets forth the contents of applications for informal probate and informal appointment. If informal probate is sought, subsection (3) provides that the applicant must state that he is filing the will (or an authenticated copy proved in another jurisdiction); that he believes the will to have been validly executed; that he is unaware of any revoking instrument; that he believes the instrument is the decedent's last will; and that he believes the limitation period for proof of a will has not expired. If informal appointment is sought, under subsections (4) and (5), the application must show the applicant's priority to administer, and, in cases of intestacy, must state the he is unaware of any unrevoked testamentary instrument relating to property having a situs in this state. The Committee adopted the section intact.

and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

(5) (a) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subsection (2) of this section:

(b) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked will relating to property having a situs in this state under section 153-1-301, or, a statement why any such will of which he may be aware is not being probated;

(c) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 153-3-203.

(6) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application if granted, and describe the priority of the applicant.

(7) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 153-3-610 (3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

153-3-302. Informal probate - duty of registrar - effect of informal probate. Upon receipt of an

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application requesting informal probate of a will, the registrar, upon making the findings required by section 153-3-303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

153-3-303. Informal probate - proof and findings required. (1) (a) In an informal proceeding for original probate of a will, the registrar shall determine that:

(b) The application is complete;

(c) The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(d) The applicant appears from the application to be an interested person as defined in section 153-1-201 (24);

(e) On the basis of the statements in the application, venue is proper;

(f) An original, duly executed and apparently unrevoked will is in the registrar's possession;

(g) Any notice required by section 153-3-204 has been given and that the application is not within section 153-3-304; and

(h) It appears from the application that the time limit for original probate has not expired.

(i) One hundred twenty hours have elapsed since decedent's death.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (4) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause

EXPLANATION

Section 153-3-302 provides that the registrar, upon making the findings required by Section 153-3-303, shall issue a written statement of informal probate. This section is a departure from existing law and procedure in that no notice is given to heirs, devisees or other persons in interest (except in special cases - Section 153-3-306), no hearing is held, no testimony taken and no order entered admitting the will to probate. If administration during the 5 day period is necessary, a special administrator may be appointed (153-3-614). The Committee adopted the section intact, except that the provision relating to the 5 day wait after death was moved to Section 153-3-303 as an item to be determined by the registrar.

Section 153-3-303 sets forth the findings which the registrar must make before accepting a will for informal probate. He must find the facts that are required to be established for admission of the will or issuance of letters. Proof of the validity of the will is sufficient if it bears the signature of the testator and two witnesses and contains an attestation clause showing that the requirements of execution have been met. In other cases the registrar may assume execution if the will appears to have been properly executed or he may require and accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not that person was a witness. Informal probate of a will previously probated elsewhere could be probated in Colorado upon written application of an interested person and deposit of an authenticated copy of the will and statement probating it from the office or court where first probated. Provision is made for the probate of a will which is not otherwise eligible for probate under this section. The application for probate is to be denied if it indicates that a personal representative has been appointed in another county of this state or if this or another will of the decedent has been subject to a previous probate order. It should also be pointed out that there are systems set up elsewhere in the code for proof of a will prior to death

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showing that requirements of execution under section 153-2-502, 153-2-503 or 153-2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) of this section, may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

153-3-304. Informal probate - unavailable in certain cases. Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

153-3-305. Informal probate - registrar not satisfied. If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 153-3-303 and 153-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

153-3-306. Informal probate - notice requirements. The moving party must give notice as

EXPLANATION

(153-2-504) and for custody after execution (153-2-901 and 153-2-902). This section caries out the concept expressed in the earlier venue provisions (153-1-303) and permits probate of any will that appears to have been validly executed and witnessed without formal proof of due execution. The Committee adopted the section intact, except for moving the 5 day provision of 153-3-302 to this section.

Section 153-3-304 prohibits informal probate of a will which is one of a series and does not expressly revoke an earlier will. This situation is left to the court in formal probate proceedings. The Committee adopted the section intact.

Section 153-3-305 allows rejection of the application by the registrar for failure to meet the requirements of Sections 153-3-303 and 153-3-304, or for any other reason. The section states that declination is not an adjudication, thus the registrar's action is not appealable. This forces the party to formal probate proceedings. The Committee adopted the section intact.

Normally, there will be no notice given to anyone on application for informal probate. However, Section 153-3-306 re-

described by section 153-1-401 of his application for informal probate to any person demanding it pursuant to section 153-3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

153-3-307. Informal appointment proceedings - delay in order - duty of registrar - effect of appointment. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 153-3-614, the registrar, after making the findings required by section 153-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the registrar shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 153-3-608 to 153-3-612, but is not subject to retroactive vacation.

153-3-308. Informal appointment proceedings - proof and findings required. (1) (a) In informal appointment proceedings, the registrar must determine that:

(b) The application for informal appointment of a personal representative is complete;

(c) The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(d) The applicant appears from the application to be an interested person as defined in section

EXPLANATION

quires notice to any person who has demanded it pursuant to Section 153-3-204 by filing a demand for notice with the court prior to the filing of the application and notice is also given to any personal representative of the decedent whose appointment has not been terminated. The Committee adopted the section intact.

Section 153-3-307 provides for the appointment of a personal representative by the informal procedure if the registrar makes the findings required by Section 153-3-308. If the decedent is a non-resident, an additional 30 day delay is interposed before issuance of letters without regard to when the application is filed, unless the applicant is the personal representative appointed at the decedent's domicile or unless the will directs that his estate be subject to the laws of this state. Upon informal appointment the status of the personal representative and his powers and duties are fully established, although they are subject to termination. Even though appointment be terminated, the acts of the personal representative in the period prior to termination will be valid by utilization of the device of prohibition of retroactive vacation of the appointment order. The Committee deleted the provision relating to the 5 day waiting period and moved it to Section 153-3-308 as a more logical place for the language.

Section 153-3-308 sets forth the findings that the registrar must make before permitting informal appointment. These findings are the same as or comparable to those required by Section 153-3-303. The application must be denied in circumstances where another has previously been appointed personal representative in another county of this state or in the decedent's domicile in another state, or if other requirements of the section have not been met. This again carries out the theory that the domiciliary representative will be entitled to priority in all cases by requiring denial of the application if the decedent was a non-resident and another

153-1-201 (24);

(e) On the basis of the statements in the application, venue is proper;

(f) Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(g) Any notice required by section 153-3-204 has been given;

(h) From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment;

(i) One hundred twenty hours have elapsed since the decedent's death.

(2) Unless section 153-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 153-3-610(3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

153-3-309. Informal appointment proceedings - registrar not satisfied. If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 153-3-307 and 153-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

153-3-310. Informal appointment proceedings - notice requirements. (1) (a) The moving party must give notice as described by section 153-1-401 of his intention to seek an appointment informally:

person has been appointed by the court of domicile. An exception to this rule is found in Section 153-3-612 where a personal representative previously appointed is terminated as such on the appointment of another person entitled to appointment under a later will. If delay jeopardizes the estate and the domiciliary representative does not apply for letters, a special administrator may be appointed (153-3-614). The Committee added the provision relating to the 5 day waiting period which was deleted from 153-3-307.

Section 153-3-309 provides that the registrar may refuse to appoint for failure to meet the requirements or for any other reason. This section permits the registrar to be the sole judge as to whether informal appointment shall be allowed. If the applicant is dissatisfied, his remedy is to invoke formal proceedings. The Committee adopted the section intact.

Section 153-3-310 requires notice of intention to seek informal appointment only to a person who has demanded it pursuant to Section 153-3-204 and to any person having a prior or equal right to appointment not waived in writing and filed with the court. Notice that the informally appointed

(b) To any person demanding it pursuant to section 153-3-204; and

(c) To any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

153-3-311. Informal appointment unavailable in certain cases. If an application for informal appointment indicates the existence of a possible unrevoked will which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

(Omitted section numbers reserved for expansion)

(FORMAL TESTACY AND APPOINTMENT PROCEEDINGS)

153-3-401. Formal testacy proceedings - nature - when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 153-3-402(1) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate or a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 153-3-402(3) for an order that the decedent died intestate.

(2) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

personal representative must give notice after the fact to heirs and devisees pursuant to Section 153-3-705. The Committee adopted the section intact.

Section 153-3-311 requires the registrar to decline an application for informal appointment if the application indicates the existence of a possible unrevoked testamentary instrument relating to property in Colorado and not filed for probate in the court. This would appear to require the applicant to produce the testamentary instrument or give satisfactory explanation of its absence and proceed formally. This puts the registrar on notice of inquiry into this possibility. The Committee adopted the section intact.

This part of Article 3 covers formal testacy and appointment proceedings before the court, with notice, concerning proof of will or intestacy, and proof of heirship. As used herein, "testacy" refers to whether a decedent left one or more wills, died testate or intestate, or partly testate and partly intestate. A "testacy" order may determine heirship. It may find that an alleged will is valid or invalid, that the decedent died intestate for part or all of his estate, or that one instrument is the will and others are to be rejected. A testacy proceeding covers both the initial proof and admission of a will to probate and any will contests; and the code combines both in one formal proceeding.

A petition to the court begins these proceedings. Regarding testacy, the proceeding may have one or more of the following purposes: secure formal probate regardless of whether there has been a previous informal probate; block application for informal probate; secure a determination of testacy and heirs. Requirements are made as to the contents of the petition. A court hearing and notice are required and any party opposing probate must plead his objections thereto. In an uncontested probate case, probate or intestacy may be ordered on the basis of the pleading alone. The proof required in contested cases depends upon whether the will is self-proved. If

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(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

153-3-402. Formal testacy or appointment proceedings - petition - contents. (1) (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will shall:

(b) Request an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(c) Contain the statements required for informal applications as stated in section 153-3-301(2), the statements required by section 153-3-301(3); and

(d) State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

(2) If the original will is neither in the possession of the court not accompanies the petition

EXPLANATION

the will is self-proved, its compliance with signature requirements is presumed, but the issues of undue influence, testamentary capacity, revocation or awareness of the contents of the will may still be raised. Proof of execution of a non self-proved will requires the testimony of at least one attesting witness, if available, and if not, by other evidence.

Under Section 153-3-412, the order in a formal testacy proceeding is final as to all persons with respect to all issues concerning the decedent's state that the court considered or might have considered incident to its rendition relevant to the question whether the decedent left a valid will, and to the determination of heirs, with certain exceptions. The only remedy from a testacy order is appeal within the normal appeal period. This part also permits, but does not require, a determination by the court concerning the priority or qualification of one applying for appointment as a personal representative, and termination by the court of a previously appointed representative.

Section 153-3-401 sets out the nature of formal testacy (probate or intestacy) proceedings. The proceeding is commenced by petition under Section 153-3-402. The right to petition for formal proceedings exists regardless of whether the same or a conflicting will has been informally probated. Initiation of formal testacy proceedings stays the hand of the registrar in acting on any pending application for informal probate or appointment of a personal representative. But if a formal or informal personal representative is already acting, he may continue to exercise all powers, except the power to distribute, unless the formal testacy petitioner requests an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. The right to ask for limitations on the powers of a personal representative during the formal testacy proceeding is confined to cases where the formal petition asks for appointment of a different personal representative.

and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(3) If a will has been lost or destroyed, or for any other reason is unavailable the fact of the execution thereof is established, as herein provided, and the contents thereof are likewise established to the satisfaction of the court, the court may admit the same to probate and record, as in other cases. In every such case the order admitting such will to probate shall set forth the contents of the will at length, and the names of the witnesses by whom the same was proved, and such order shall be recorded in the record of will. No will shall be admitted to probate upon proof of the contents thereof unless it shall be proved that the same was in existence at the time of the death of the testator.

(4) A petition for adjudication of intestacy and appointment of a personal representative in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 153-3-301(2) and (5), and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case the statements required by section 153-3-301(5)(c) may be omitted.

153-3-403. Formal testacy proceeding — notice of hearing on petition. (1) (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 153-3-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 153-3-204 of this code.

(b) Notice shall be given to the following

Section 153-3-402 establishes the requirement for a petition for formal probate of a will, which must contain most of the allegations required for informal probate applications under Section 153-3-301; and the petition must ask for probate of a particular instrument or for an order determining heirs. The original will must accompany the petition or the facts showing the loss, destruction, or unavailability of the will must be stated. If an adjudication of intestacy is requested, a determination of heirship must also be sought and an indication appear as to whether or not "supervised administration" is sought.

Subsection (3) was added by the Committee to clarify the proof required in admitting a lost will to probate. The language was adapted from 153-5-28, C.R.S. 1963. The Committee also substituted the word "personal administrative" for the word "administrator" in subsection (4).

Section 153-3-403 establishes notice requirements for formal proceedings. Notice is required to be given the spouse, heirs, devisees, executors named in the will that is being or has been probated or offered for probate and any personal representative with a nonterminated appointment. Notice may be given by mail pursuant to Section 153-1-401. In addition, the executor has the right to give notice to other persons that he may feel should receive it, for instance, devisees under an earlier will revoked by the one offered for probate. Notice by publication is also required to be given to all unknown persons and to all known persons whose addresses are unknown, who have an interest.

Subsection (2) details certain investigative procedures to determine the fact of decedent's death, if that is in doubt. This lays the groundwork for later provisions on the distribution of estates. If a search and report have occurred, the consequences are different than if they have not. The Committee adopted this section intact.

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persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) (a) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(b) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(c) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(d) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

153-3-404. Formal testacy proceedings -- written objections to probate. Any party to a formal

EXPLANATION

Section 153-3-404 establishes the requirement that any party to a formal proceeding opposing probate state his objections in a pleading. The Committee adopted this section intact.

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proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

153-3-405. Formal testacy proceedings - uncontested cases - hearings and proof. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 153-3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

153-3-406. Formal testacy proceedings - contested cases - testimony of attesting witnesses. (1) If evidence conerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

153-3-407. Formal testacy proceedings - burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all

EXPLANATION

Section 153-3-405 permits rather informal proof of an uncontested will in formal proceedings. If the court, from the pleadings and observing the will itself, is satisfied that the requisite conditions exist, probate may be granted without a hearing. If the court so desires, a hearing will be required. If evidence is required, the affidavit or testimony of any attesting witness is sufficient. If this is not available, execution may be proved by any other evidence or by affidavit. The Committee adopted the section intact.

Section 153-3-406 requires the testimony of at least one of the attesting witnesses, if within the state, competent and able to testify, contested cases, unless the will is self-proved. If the will is self-proved, formalities of execution and other requirements are presumed. The will may still be attacked as a forgery or as executied under undue influence, etc. If the will is neither self-proved or if neither of the attesting witnesses is available, execution may be proved by other evidence. The UPC provision called for a conclusive presumption as to signature requirements of a self-proved will. This provision was seleted by the Committee because reliance on the official act of a notary public should not be substituted for the court's judgment.

Section 153-3-407 establishes rules on burden of proof. If a will is opposed, its proponents have the burden of making out a prima facie case. Contestants have the burden of establishing lack of testamentary capacity or whatever other factual basis exists to lay a foundation. The sectionalso deals with the problem of competing wills. The Committee adopted the section intact.

cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

153-3-408. Formal testacy proceedings - will construction - effect of final order in another jurisdiction. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

153-3-409. Formal testacy proceedings - order - foreign will. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 153-3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 153-3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will

EXPLANATION

Section 153-3-408 establishes jurisdictional rules. A determination by another state with notice to interested parties must be accepted as determinative by the courts of this state, if the first court makes a determination that the decedent was domiciled at his death in the state where the order was made. This will be the case in all formal testacy proceedings. Other sections abate proceedings involving the issue of domicile until a determination is made by the court in which a formal testacy proceeding is first commenced (Section 153-3-202). The section was adopted by the Committee intact.

Section 153-3-409 describes the basic findings which the court must make concerning venue, heirship, domicile, etc., in issuing a testacy order in formal proceedings. The finding of domicile lays the groundwork for proceedings in other jurisdictions and is determinative, though uncontested. Determination of heirship in intestate cases will establish the chain of title. Appointment of a personal representative may or may not occur. If previous appointment in an informal proceeding has been made, that appointment is not necessarily terminated. The two proceedings, probate or determination of testacy on the one hand and appointment of a personal representative on the other, are independent of each other. The prior appointment may be terminated, it may be reaffirmed and the individual reappointed or his status may be unaltered (Section 153-3-612). The last sentence of

from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

153-3-410. Formal testacy proceedings - probate of more than one instrument. If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 153-3-412.

153-3-411. Formal testacy proceedings - partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

153-3-412. Formal testacy proceedings - effect of order - vacation. (1) (a) Subject to appeal and subject to vacation as provided herein and in section 3-413, a formal testacy order under sections 153-3-409 to 153-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition

the section states that a will which is effective under the law of the place which does not provide for probate may be proved locally by introduction of an authenticated copy and a certificate by its custodian of its effectiveness. The section was adopted intact.

Section 153-3-410 establishes the procedure to be followed when more than one instrument is offered for probate. Normally, one will will revoke another expressly. If it does not, it may do this by implication. If the latter situation is present, all or only part of the earlier will may be affected. If only part is affected, both instruments must be probated; some property will pass pursuant to the provisions of each of them. In this situation, it will be necessary to determine which named executor will administer the estate together with application of administrative provisions of each of the two or several wills. The section vests the power to make those determinations in the court and contemplates the possibility of judicial determination of the extent of implied revocation by the court in its original order admitting the instruments to probate. This is not required and may be left for resolution through negotiation or by a final distribution order. The section was adopted intact.

Section 153-3-411 requires an order of partial testacy if there is one. This will permit judicial delineation of a pattern that can be followed with or without supervised administration. This is similar to present law (153-5-33 (4), C.R.S. 1963) and the section was adopted intact.

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relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(b) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication;

(c) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication;

(d) (i) A petition for vacation under either paragraph (b) or (c) of this subsection (1) must be filed prior to the earlier of the following time limits:

(ii) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;

(iii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 153-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(iv) Twelve months after the entry of the order sought to be vacated.

(e) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

EXPLANATION

Section 153-3-412 makes a testacy order final but subject to modification or vacation within a period of twelve months from the date of entry of the decree of final distribution or, in the event the estate is closed by a statement to the court as opposed to a "noticed" decree of distribution, six months after filing of the closing statement or three years from the date of death whichever is the shorter of these periods. This means that during this period, another will may be probated and the earlier will set aside, the intestacy order or determination of heirship challenged. However, in order to establish a right to challenge, the contestant must be able to show either: (1) that he was unaware of the will or his heirship at the time of the original hearing or (2) that, though aware of it, he had no notice other than by publication. Another problem is covered by this section -- erroneous finding of death. In this situation, the decedent retains the right to recover all property still remaining in the hands of the administrator and the distributees. In the event that property has been disposed of by them and its proceeds cannot be traced, the section leaves resolution to rules of equity. The Committee adopted the section intact.

(f) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 153-3-403(2) was made.

(2) If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

153-3-413. Formal testacy proceedings - vacation of order for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

153-3-414. Formal proceedings concerning appointment of personal representative. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 153-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 153-3-301(2) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced

Section 153-3-413 establishes another period during which attack may be launched upon any order; the period during which an appeal may be taken. Section 153-3-412 admits of this exception by commencing "Subject to appeal". Section 153-1-308 establishes the time period for appeals to the Court of Appeals in equity matters as the period for review of these orders. That period is thirty days. Rule 4 (a), C.A.R. This section was adopted intact.

Section 153-3-414 deals with disputes before the court about the appointment of a personal representative. As with petitions for formal testacy orders, a petition commencing formal appointment proceedings stays any informal appointment proceedings then pending. Restrictions are imposed on an acting personal representative. If the proceedings do not also involve the question of testacy, the petition for formal appointment shall describe the question relating to priority or qualification of the personal representative which is to be resolved. After notice and hearing, the court determines who has priority and makes the appointment. The appointment order may also involve termination of any prior appointment found to have been improper, in which event the order shall direct the disposition of the assets in the hands of the personal representative, in the manner provided for cases of removal of the personal representative for cause under Section 153-3-611. This section was adopted intact.

thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 153-3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 153-3-611.

(Omitted section numbers reserved for expansion)

(SUPERVISED ADMINISTRATION)

153-3-501. Supervised administration - nature of proceedings. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in sections 153-3-502 to 153-3-505, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

153-3-502. Supervised administration - petition - order. (1) A petition for supervised administration

This part deals with supervised administration. It is an in rem proceeding under the continuing authority of the court and involves court adjudication approving distribution of the estate and discharge of the personal representative. The power of the personal representative is restricted or more limited than it is in non-supervised probate in the sense that he cannpt make distribution without prior approval of the court, and his authority may be restricted in any way if the restriction is endorsed upon his letters. However, the personal representative here has the protection that is afforded by judicial action and approval of his acts. Personal representatives can obtain the protection of judicial action in formal or informal probate proceedings. A proceeding may be filed by an interested party or requested by the personal representative and any action reviewed by the court. Under unsupervised administration each proceeding is separate; in supervised administration there is a single continuous proceeding.

may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(2) (a) After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(b) If the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(c) If the decedent's will directs unsupervised administration such provision shall continue unless the personal representative petitions for supervised administration, in which case such petition shall be granted; or

(d) In other cases if the court finds that supervised administration is necessary under the circumstances.

153-3-503. Supervised administration - effect on other proceedings. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

Section 153-3-501 describes the nature of the proceeding as an in rem proceeding under the continuing jurisdiction of the court until terminated. The personal representative is responsible to the court as well as interested parties and is subject to control by the court on its own motion or on the motion of any interested party. This section and Section 153-3-504 make it clear that a supervised personal representative has the same powers and duties as an unsupervised personal representative, except that he cannot distribute without court order.

Section 153-3-502 describes the conditions giving rise to a petition for supervised administration and the function of the court in passing upon a petition. Any interested person or the personal representative may ask for supervised administration at any time during the administration or in conjunction with the initial proceedings for a formal testacy or appointment order. If combined, the petition is required to comply with the applicable sections of the code, and testacy must be adjudicated whether supervised administration is or is not granted. Notice to interested persons is required. The court will order supervised administration if the court thinks it is necessary for the protection of interested persons, even if the decedent's will directs unsupervised administration. Conversely, if the decedent's will directs supervised administration, the court may deny it if the court finds a change of conditions and that it is not necessary. In the other cases, it is up to the court to determine whether supervised administration is necessary.

Section 153-3-503 describes the effect of a petition for supervised administration upon informal proceedings. The filing of a petition for supervised administration has the same effect on pending informal proceedings, and on the powers of an acting personal representative, as the filing

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(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 153-3-401.	of a petition for a formal testacy order under Section 153-3-401. The powers and duties of an acting personal representative, other than the power to distribute, continue unless restricted by the court pending the hearing. The section was adopted intact.
(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.	
153-3-504. Supervised administration - powers of personal representative. Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.	Section 153-3-504 states that, once appointed, a supervised personal representative has all the powers granted to every other personal representative by the code and can exercise all such powers without order of the court. However, he is not permitted to distribute the estate without prior order of the court and any of his powers may be restricted and the restriction endorsed on his letters. Unless so endorsed, restrictions are ineffective as to persons dealing in good faith with him. The section was adopted intact.
153-3-505. Supervised administration - interim orders - distribution and closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 153-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.	Section 153-3-505 permits partial distributions on orders of the court at any time during supervised administration. No special notice provisions are included. This section was adopted intact.
(Omitted section numbers reserved for expansion)	
(PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY)	

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153-3-601. Qualification. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

153-3-602. Acceptance of appointment - consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

153-3-603. Bond not required without court order - exceptions. No bond is required of a personal representative appointed in informal proceedings, except upon the appointment of a special administrator, when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond, or when bond is required under section 153-3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

153-3-604. Bond amount - security - procedure - reduction. If bond is required and the provisions of

EXPLANATION

This part covers the qualification for, and acceptance of office by, the personal representative; bond requirements; termination of appointment; successor personal representatives; and special administrators. The same rules apply to all personal representatives, whether appointed formally or informally, and whether supervised or not. Section 153-3-601 requires filing of a bond and a statement of acceptance of duties prior to issuance of letters. The section was adopted intact.

Section 153-3-602 establishes consent jurisdiction. By accepting appointment, the personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Jurisdiction continues for an indefinite period. The section was adopted intact.

Sections 153-3-603 through 153-3-606 detail the bond requirements under the Code in decedents' estates. In general, no bond is required in informal proceedings, unless (a) a special administrator is being appointed; (b) the will under which the letters are issued expressly requires a bond, or (c) upon request of an interested person, the court imposes a bond. In formal proceedings, even as to the exceptions in (b) and (c) above, the court can dispense with bond if the court decides that a bond is not necessary or desirable. Thus, if a will requires a bond, the court may dispense with it if unnecessary. If the will does not require a bond, the court, upon application of an interested person, may require one. The court has no power to require a bond of personal representative if they are required to deposit cash or collateral with the state to secure performance and have done so. The most significant change from present bond practice in Colorado is that the personal representative, whether acting in a testate or intestate estate, and whether appointed formally or informally, will not have to give a bond unless an interested person demands it, or unless informal appointment is used and the will requires a bond, in which situation the bond may be waived by the court in formal proceedings.

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the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registrar, or give other suitable security, in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. If the person representative be a company or association with capital and surplus at least equal to that required by law of a corporate surety, the registrar may excuse a requirement of bond. The registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 153-6-101) whose deposits are insured to the satisfaction of the court in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

153-3-605. Demand for bond by interested person. Subject to the provisions of sections 153-3-603 and 153-3-604, and to a determination by the court that bond is desirable, any person apparently having an interest worth in excess of five thousand dollars, or any creditor having a claim in excess of five thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, the court may require bond in

EXPLANATION

Section 153-3-604 sets forth the rules and procedures for determining the amount of the bond and handling pledged assets. The duty of determining the amount of a bond and accepting either a bond or other suitable security is imposed upon the registrar. The amount of the bond is prefaced upon a statement filed by the personal representative under oath setting forth his estimate of the value of the personal estate of the decedent and the income expected from it during the succeeding year. The amount of the bond is the combined amount demonstrated by the value of the personal property and the annual income from all property. Security may be provided by a surety company or one or more individual sureties whose promise are secured. Reduction in bond amount is permitted measured by the value of assets deposited with a local bank or other financial institution subject to restricted withdrawal. Any interested person or the personal representative may petition the court for a reduction, increase, absolution or substitution of bonds at any time.

In informal probate, if a bond is required, the registrar will make this determination at the time letters are issued. This will depend upon whether or not the will requires one. If none is required by the will, no statement will be necessary, unless, upon petition, the court orders a bond. If the registrar determines that bond is required, the amount will be fixed upon sworn statement of the personal representative. If anyone questions the amount set, a challenge can be made by petition to the court.

This section varies from the present bond provisions in that (1) provisions of the will can specify the amount of bond; (2) unless specified by provisions of the will or court order the bond is to be in an amount equal to the value of the personal estate and expected income for one year from both personal and real estate; and (3) there is no provision making it mandatory that bond be increased in case of sale of real estate. The Committee added language to the section to eliminate the requirement of surety bond for certain financial institutions serving as fiduciaries. The provisions for

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such amount as it may determine and notify the personal representative to file the same, is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

153-3-606. Terms and conditions of bonds. (1) (a) The following requirements and provisions apply to any bond required by sections 153-3-604 and 153-3-605:

(b) Bonds shall name the people of the state of Colorado as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law;

(c) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond;

(d) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligator in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any such proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(e) On petition of a successor personal representative, any other personal representative of

EXPLANATION

deposit of assets with financial institutions in lieu of bond were made dependent on such deposits being insured to the satisfaction of the court.

Section 153-3-605 extends to any person having a substantial interest in the estate, the right to make written demand for bond. Imposition of the bond is mandatory until the individual demanding it ceases to be interested in the estate or, upon petition of the personal representative, it is excused. Until the bond is filed, the personal representative must cease exercising any of his powers other than those required for estate preservation. The personal representative may be removed from office if he fails to file bond within a 30 day period.

The committee amended the section to provide that the right of persons in interest and creditors to demand the filing of bond was made dependent on the value of their interest being $5,000 instead of $1,000 and the court is given the final discretion in the matter. This was to eliminate the possibility of harassment by persons having small interests in the estate which would not be chargeable with the expense of bonds.

Section 153-3-606 sets forth the terms and conditions of the bond and its obligations. The state is named as obligee (or the people of the State of Colorado), sureties are jointly and severally liable, and must consent to jurisdiction of the court. The surety may be sued directly. Notice of any proceeding must be mailed to them by registered or certified mail and they may be sued by any interested person, including personal representatives or successor personal representatives of the decedent, and may be reached until the penalty may be exhaused. They are assured of the same protection of the statute of limitations and res adjudicata as the principle obligor. The section was adopte intact, with a few minor changes.

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the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative;

(f) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

153-3-607. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within ten days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

153-3-608. Termination of appointment - general. Termination of appointment of a personal representative occurs as indicated in sections 153-3-609 to 153-3-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined

EXPLANATION

Section 153-3-607 allows the court, on petition of any interested person in formal or informal proceedings, to issue temporary restraining orders to restrain performance of specific acts, the exercise of any powers or duty or specifically order the performance of a duty. Upon petition, the matter is heard expeditiously and notice of the hearing is given as the court directs. Persons with whom the personal representative is transacting business may be named as defendants. In view of the latitude permitted personal representatives who are not subject to supervised administration, this section appears to permit some control. The personal representative consents to unlimited jurisdiction over his person under Section 153-3-602 and must therefore respond to any process. If the notice requirements are met, any determination by the court would be the equivalent of a judgment against him. The section was adopted intact.

Sections 153-3-608 through 153-3-612 covers termination of the appointment of a personal representative, both voluntary and involuntary. Termination occurs on the death of the personal representative or on appointment of a conservator of the estate of the personal representative (Section 153-3-609). Termination also occurs, (1) voluntarily, on closing of the estate, or on resignation of the personal representative (153-3-610); (2) involuntarily, on removal for cause (153-3-611); and (3) on appointment of a different person as personal representative in formal or informal appointment proceedings (153-3-612). Termination revokes the powers and duties of the personal representative, except as necessary to protect the estate and to turn assets over to a successor personal representative; but termination does not discharge the personal representative from liability for his acts prior to termination and does not affect the jurisdiction of the court over the personal representative. After termination, the personal representative has no authority to represent the estate in any pending or future proceeding. The section was adopted intact.

by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

153-3-609. Termination of appointment - death or disability. The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until a duly appointed and qualified successor, personal representative, or co-representative has taken possession of the estate possessed and being administered by a deceased or protected personal representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification, or to any remaining co-representative.

153-3-610. Termination of appointment - voluntary. (1) An appointment of a personal representative terminates as provided in section 153-3-1003, one year after the filing of a closing statement.

(2) An order closing an estate as provided in sections 153-3-1001 or 153-3-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his

Section 153-3-609 establishes the order of succession upon death or incompetency of the personal representative. Appointment is terminated immediately; however, the guardian or personal representative of the deceased or incompetent personal representative must protect property subject to the power of the former personal representative and is required to deliver and account for the assets to the successor representative. The section was changed by the Committee to provide for situations involving multiple personal representatives.

Section 153-3-610 outlines the timing of appointment termination. Whether probate is formal or informal, a personal representative may submit or an interested person may request a formal accounting and decree of distribution (153-3-1001). If this happens, as it will in all cases of supervised administration, signing of the order approving the accounting and distribution terminates appointment of a personal representative. If, instead, the personal representative simply files a closing statement, his appointment is

position by filing a written statement of resignation with the registrar after he has given at least fifteen days written notice to the persons known to be interested in the estate. If the person resigning is a sale representative and if no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. If the person resigning is a co-representative, such resignation is effective only upon delivery of the assets in his possession to any remaining co-representatives.

153-3-611. Termination of appointment by removal - cause - procedure. (1) The court shall have the power to remove a personal representative for cause at any time. Removal proceedings may be commenced by the court upon its own motion, or upon petition of any interested person. Upon filing of such a petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner or by the court if the proceeding is on the court's own motion, to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in section 153-3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or to preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his

terminated one year after filing the statement subject to qualification by Section 153-3-1003, which continues the appointment beyond this period if any proceedings involving the personal representative are then pending.

A system for voluntary resignation and substitution is also established. The personal representative gives notice and 15 days later files his resignation with the registrar. If, in the meantime, someone else has applied for letters, the registrar can issue them and the appointment thereupon is terminated. If no successor representative files, a formal proceeding becomes necessary. The Committee changed the section to provide for situations involving multiple personal representatives.

Section 153-3-611 sets up a procedure for involuntary removal. Any interested person may petition to remove a personal representative for cause. A formal proceeding is required. The court fixes the time and place for hearing on the petition and prescribes the notice that is required. Upon receiving notice, the ability of the personal representative to act ceases, except for the purposes of accounting and preservation. Cause specifically includes misrepresentation in securing appointment, disregard of an order of the court, incapacity to discharge the office, mismanagement and failure to perform any duty of the office, and when removal would be in the best interests of the estate. Entitlement to priority is not one of the causes for removal. The Committee added language to the section to give the court the power to initiate removal proceedings against personal representatives as is the case under present law (153-10-8 (2), C.R.S. 1963).

appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

153-3-612. Termination of appointment -- change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 153-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

153-3-613. Successor personal representative. Sections 153-3-301 to 153-3-414 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and

Section 153-3-612 deals with the problems raised by probate of a second will or vacation of an informal probate. If a personal representative is appointed and then, at a later date, the will under which he is acting is invalidated (or if a will is later proved, changing an assumption of intestacy under which he is acting), his office is not automatically terminated. The office terminates only on appointment of a new personal representative. If no new personal representative is sought, the old one can continue to act under the new testacy status. Thus, if the formal probate or testacy proceeding which vacates an earlier probate is unaccompanied by a petition for appointment of a personal representative, the previously appointed personal representative continues to function. He has no power to make distribution pending conclusion of the formal proceeding. If this is not accompanied by appointment of a successor personal representative he continues to exercise the power of his office. Distribution would have to be in accord with the subsequent determination. If within 30 days of the time set for appeal of the order in the formal testacy proceeding, no application for letters is made, the prior appointee may request appointment under the subsequently probated will or determination of intestacy. Appointment is not necessary, however, i.e., the prior appointment would continue. The section was adopted intact.

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proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

153-3-614. Special administrator - appointment. (1) (a) A special administrator may be appointed:

(b) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative, or if a prior appointment has been terminated as provided in section 153-3-609;

(c) In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

153-3-615. Special Administrator - who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(2) In other cases, any proper person may be appointed special administrator.

153-3-616. Special administrator - appointed

EXPLANATION

Section 153-3-613 establishes the rule that the successor representative steps into the shoes of the earlier personal representative and is substituted for him in all actions or proceedings to which he was a party. The rights of anyone against or in any way dealing with the earlier personal representative are preserved without any additional notice, process or claim. Unless some restriction is imposed by the court, the successor representative has all the powers and duties of the earlier representative. The section was adopted intact.

Sections 153-3-614 through 153-3-618 cover the appointment, powers, and duties of special administrators. Section 153-3-614 sets out the conditions for appointment of a special administrator and provides for two different types under the code: one appointed informally by the registrar, and the other appointed formally by the court after notice. The powers and duties of one appointed informally are described in Section 153-3-616, and those of one appointed formally are described in Section 153-3-617. The registrar may appoint him informally, without notice, whenever this is necessary to preserve and protect the estate of a decedent in a period during which no general personal representative holds office. Generally, this would be prior to the time, 5 days after death, when a general personal representative could be appointed. In a formal proceeding, the court may appoint a special administrator when this is necessary to preserve the estate or secure proper administration. Normally, this would be done on notice, but, if an emergency exists, appointment may be ordered without notice. The section was adopted intact.

Section 153-3-615 requires the appointment of the nominated executor should a special administrator be necessary pending probate; in other cases the court is given discretion to appoint "any proper person", presumably individuals entitled to priority would be appointed absent designation in the will. The section was adopted intact.

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informally powers and duties. A special administrator appointed by the registrar in informal proceedings pursuant to section 153-3-614 (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

153-3-617. Special administrator - formal proceedings power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

153-3-618. Termination of appointment - special administrator. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 153-3-608 to 153-3-611.

153-3-619. Appointment of Public administrator - oath - bond. (1) The district or probate court in each county or city and county having a population of more than twenty thousand inhabitants may appoint an inhabitant of such county who shall be known as public administrator and who shall hold office during the pleasure of such court; such inhabitant so appointed shall have resided in the county wherein he is to act for not less than five years previous to his appointment. He shall act as personal representative in the estate matters specified in section 153-3-620.

(2) Before entering upon the duties of his office, a public administrator shall take and

EXPLANATION

Section 153-3-616 limits the power of the special administrator appointed by the registrar in informal proceedings to collection, management, and preservation of the estate assets pending delivery to the general personal representative and accounting to him. The section was adopted intact.

Section 153-3-617 extends to the special administrator appointed by the court in a formal proceeding the same powers as the general administrator unless his powers are limited in the appointment order. The court may appoint a special administrator for particular acts, for a specific period of time or with any restrictions the court may impose. This is similar to present law (153-10-8, C.R.S. 1963), and the section was adopted intact.

Section 153-3-618 limits the term of appointment to the period pending appointment of a general personal representative or the period specified in the order. In the event something comes up requiring removal, these proceedings can be commenced against the special administrator and he has the right to voluntarily terminate his own appointment. This is similar to present law (153-7-6, 153-10-8, C.R.S. 1963) and the section was adopted intact.

Section 153-3-619 is a new section added to the code by the Committee. It is adapted from present law (Article 11 of Chapter 153), since the code does not provide for public administrators and the Committee concluded that provisions for public administrators should be continued.

subscribe an oath, before a district or probate judge of the proper county, reduced to writing, signed by the administrator, and filed in the office of the secretary of state, in the following form:

I, A.B., public administrator in and for the city and county of_____, or county of _____, in the state of Colorado, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and faithfully perform the duties of the office of public administrator as may be required of me by law.

(3) Every public administrator shall give a general bond in the sum of ten thousand dollars unto the people of the state of Colorado, conditioned that he shall faithfully discharge the duties of his office. Such bond shall be filed in the office of the secretary of state. The attorney general, at the instance of any person aggrieved by reason of the default of a public administrator in the handling of any case by him without letters of administration, or handled by him previous to the issuance to him of letters of administration, may in the name of the people of the state of Colorado sue upon said bond for the benefit of such person. In all cases where an administration is committed to the public administrator he shall be required to give the same bonds as are now required of other personal representatives.

153-3-620. Estates committed to public administrator - removal. (1) In all cases where any person dies seized or possessed of any estate within the state or having any right or interest therein and who has no relative within the state who will administer such deceased person's estate, the court may, upon application of the public administrator or any other person interested in said estate, commit the administration of such estate to the public administrator of such county or to some other discreet person as personal representative. If within sixty

Section 153-3-620. Same comment as above.

days after the death of said deceased, his heirs at law nominate any other qualified person as administrator, then such other person shall be appointed if he gives such bond as may be required, and if letters of administration have theretofore issued upon said estate to the public administrator or to some other discreet person, they shall be revoked.

(2) If any public administrator neglects or refuses to take out letters of administration, his expenses incident thereto being tendered, within twenty days after it becomes his duty to do so, he may, after hearing before the judge, be removed from office. In such case he may, in the court's discretion, be permitted to continue as personal representative to the closing of any estate in which he has previously been appointed.

153-3-621. Decedents without relatives - temporary charge of estate - duty of persons holding property. (1) Upon the death of any person intestate, not leaving a known relative within any county in this state, it shall be the duty of the public administrator of the county wherein such person may have died, or wherein the goods and chattels, rights, and credits of said decedent are, in case such person was a nonresident, as soon as the same shall be brought to his attention, to take possession of such property, and to take such measures as he may deem proper upon order of the court for protecting and securing the property and effects of such intestate from loss, waste, and embezzlement until administration thereon shall be granted to the person entitled thereto or to the public administrator of the proper county, the expenses whereof shall be paid to such public administrator so taking possession, as well as compensation for his services, upon the allowance of the court, as are other expenses of administration.

(2) Whenever a person without known heirs dies intestate in a house or on the premises of another,

Section 153-3-621. Same comment as above.

leaving therein property belonging to such deceased, the person in possession of such house or premises must give immediate notice thereof to the public administrator of the proper county, and in default of so doing, he shall be liable for any damage that may be sustained through his neglect, to be recovered by the public administrator or any party interested.

153-3-622. Funeral expenses - sale of property - fees - statement. Whenever a public administrator takes possession of the estate of a deceased person, and the method of defrayal of the expense of the burial of said deceased is not otherwise provided for by law, or by the rules, agreement or death benefits of any order or lodge to which the deceased may at the time of his death belong, or with which he may have been affiliated, the public administrator, in order to defray the proper expenses of the burial of the deceased, may apply to the court of the county in which said public administrator is acting, for an order permitting him to summarily sell any personal property belonging to the deceased; and to withdraw any money that the deceased may have on deposit with any bank, and to collect any indebtedness or claim that may be owing to or due the deceased. If upon such application it appears to the court by competent evidence that the total value of the estate of the deceased, so far as known, is not in excess of one hundred dollars, the judge shall make an order granting the application, and there shall be no administration upon the estate of deceased unless additional estate be found or discovered. In such cases the fees for the clerk and judge of the court shall be one dollar each and for the public administrator ten dollars. No fees shall be charged for attorneys' services in connection with such estates. Upon the sale of the personal property of the deceased or the collection of any money, claim or indebtedness by the public administrator under said order, the public administrator shall use the same,

Section 153-3-622. Same comment as above.

less the fees above mentioned, for the expenses of the burial of the deceased. The public administrator shall make a statement showing the property of the deceased that came into his hands, and file the same with the clerk of the court, together with vouchers showing what disposition was made of the said property or the proceeds thereof.

(Omitted section numbers reserved for expansion)

(DUTIES AND POWERS OF PERSONAL REPRESENTATIVES)

153-3-701. Time of accrual of duties and powers. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Section 153-3-701 provides that the duties and powers of a personal representative commence upon his appointment, and his power relates back to confirm acts beneficial to the estate. Prior to appointment, he has limited power to make funeral arrangements and to dispose of the body as per written instructions of the decedent. It also provides that the personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative. This ratification authority applies to acts done before appointment. The section was adopted intact.

153-3-702. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

The code's informal appointment procedures may result in the innocent issuance of letters to two or more personal representatives of the same estate at the same time by two or more courts. The matter of priority between such letters is covered by Section 153-3-702, which provides that the personal representative first appointed can oust the latter appointee and force him to account and turn over. However, the acts of the latter appointee "done in good faith before notice of the first letters" are validated. Anyone dealing with him in good faith without notice is protected. The section was adopted intact.

153-3-703. General duties -- relation and liability to persons interested in estate -- standing to sue. (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 153-7-302. A

Section 153-3-703, together with Section 153-3-704, state the basic independent administration theory of the code as follows: the personal representative, whether appointed formally or informally, is a fiduciary who shall observe the

personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

153-3-704. Personal representative to proceed without court order — exception. A personal

standards of care applicable to trustees; he is to use the powers in the will, the code, and any applicable orders to settle and distribute the estate as expeditiously and efficiently as is consistent with the best interests of the estate; and he may act without adjudication, order, or direction of the court. The unsupervised personal representative is not considered to be before the court until he or an interested person brings a particular subject to the court on a petition in formal proceedings with notice.

Section 153-3-703 (1) states that a personal representative is a fiduciary who shall observe the standards of care applicable to trustees. The standard of care capplicable to trustees is set forth in Section 153-7-302 which states that a trustee shall observe "the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another...". This "prudent man" rule differs from the standard set forth in Sections 57-3-1 and 57-8-4 (1), C.R.S. 1963, as amended, which requires a fiduciary to "...exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital...". Thus, a major change is made in Colorado law by this section, a change which is further emphasized by Sections 153-3-711, 153-3-712, and 153-3-715. The personal representative is turned into the equivalent of a statutory trustee whose powers and duties are no longer limited to the protection of preservation of the estate, but are subject to a broad prudent-man standard which substantially enlarges not only the powers of a personal representative but his duties and liabilities as well. This section also provides that the personal representative is to settle and distribute the estate "...as expeditiously and efficiently as is consistent with the best interests of the estate."

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EXPLANATION

Section 153-3-703 stresses that informal probate and appointment are just as valid as formal, that an informally probated will is authority to administer and distribute the estate according to its terms, and that either a formal or informal appointment grants authority to distribute "apparently intestate assets" if, at the time of distribution, the personal representative is not aware of any pending formal proceedings which might affect his authority. This section also provides that a personal representative is not to be surcharged for acts of administration or distribution if the conduct was authorized at the time of the act. Consequently, a personal representative might make distribution of assets on an intestate basis without being aware of a pending testacy proceeding. The personal representative would not be surchargeable. However, it should be noted that under Sections 153-3-909 and 153-3-1004, the distributees might be liable to restore the property distributed to them. Section 153-3-703 (3) deals with the standing of the personal representative to sue. The Committee adopted the section intact.

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representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

153-3-705. Duty of personal representative - information to heirs and devisees. Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his 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 include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or otaer duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

153-3-706. Duty of personal representative -

EXPLANATION

Section 153-3-704 again emphasizes the personal representative's power to administer the estate without resort to court. The personal representative shall settle and distribute without order or direction of the court except as otherwise directed when a supervised personal representative is involved. However, the personal representative may initiate a proceeding to resolve any questions relating to administration. The section was adopted intact.

Section 153-3-705 requires a notice of appointment as personal representative to be served upon all heirs and devisees, including devisees named in a will claimed to be revoked, not later than 30 days after appointment as personal representative. Notice is by ordinary mail and must be sent to those whose addresses are reasonably available to the personal representative and may be sent to anyone interested. This does not impose a duty of inquiry upon him. Notice does not have to be served upon persons determined in prior formal proceedings to have no interest in the estate. The notice is required to contain pertinent information relating to the appointment. Breach of this duty does not affect jurisdiction but does give rise to an action for damages on the part of the overlooked parties.

This section appears to be very important because it provides for the only notice that a decedent's successors may receive in completely informal proceedings. All the personal representative is required to do is to send a letter to each heir and devisee whose address is reasonably available. Furthermore, as noted earlier, if no personal representative is appointed and the will is merely filed informally, no notice need be sent to anyone at any time. The section was adopted intact.

inventory and appraisement. (1) Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

(2) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court.

(3) If it appears that the heirs of an intestate or the devisees of a testator are unknown, or if known and there is no person qualified to receive the distributive share of such heirs or devisees, the personal representative shall also, within said three months, deliver or mail to the attorney general a copy of the inventory.

153-3-707. Employment of appraisers. The personal representative may employ qualified and disinterested appraisers to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

153-3-708. Duty of personal representative - supplementary inventory. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary

Section 153-3-706 provides for the filing of an inventory within three months after appointment as a personal representative. The personal representative must list the property with reasonable detail, together with fair market value of each listed item and any encumbrances that might exist. He is required to send copies of the inventory to persons who request them or to file a copy with the court. The inventory informs interested persons about the nature and value of the estate assets. It apparently serves no other purpose since Section 153-3-803 provides that all claims not properly filed within four months after publication of notice to creditors are barred as to all estate assets, without regard to the property which may be included in or omitted from the inventory.

The Committee added language to the end of the section to require that a copy of the inventory be delivered to the Attorney General where there are unknown heirs or devisees. This is in accord with present requirements (153-10-31, C.R.S. 1963).

Section 153-3-707 provides that the personal representative may employ "qualified and disinterested appraisers" to assist in ascertaining estate valuations. This in effect makes the personal representative the appraiser of the estate except to the extent that he seeks qualified assistance. Note that the personal representative has ample authority under Section 153-3-715 to employ agents and experts to assist him in the administration. The section was adopted intact.

Section 153-3-708 provides that the personal representative make a supplementary inventory if he learns of property not included in the original inventory or learns that the value or description in the original inventory for any item is erroneous or misleading. This is similar to present law (153-10-32, C.R.S.) and was adopted intact except for a change in the last sentence which made the language parallel

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inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to interested persons who request the inventory.

153-3-709. Duty of personal representative - possession of estate. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

153-3-710. Power to avoid transfers. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and, subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

153-3-711. Powers of personal representatives - in general. Until termination of his appointment a

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with that in 153-3-706 regarding furnishing copies of inventories to interested persons who request it.

The "title versus possession" issue is dealt with in the code by Section 153-3-709 and 153-3-711, plus Sections 153-3-101 and 153-3-901. The code gives the personal representative only the power of "an absolute owner" over the title (153-3-711) and the right to "possession or control" of decedent's property (153-3-709). The corollary is that title to all assets, both real and personal, descends immediately to the heirs and devisees, subject to the right of the personal representative to possession and control. (153-3-101 and 153-3-901). This amounts to a basic change in the law of Colorado.

This section directs the personal representative to take possession of the decedent's property, except that he may leave with or surrender to the person presumptively entitled thereto, any real property or tangible personal property unless or until the personal representative determines that possession of the property will be necessary for purposes of administration. A request by a personal representative for the delivery of any such property to him is conclusive evidence that its possession is necessary for purposes of administration in any action by the personal representative against the devisee. This section also requires the personal representative to pay taxes on the estate in his possession, and to maintain an action to recover possession of property or to determine title thereto. The Committee adopted this section intact.

Section 153-3-710 extends to the personal representative the right and duty to acquire from transferees property which has been transferred by the decedent by any means which is void or voidable as against his creditors and subject to prior liens. Essentially, the personal representative is made a trustee for the benefit of the successors and the creditors. The section was adopted intact.

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personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

153-3-712. Improper exercise of power - breach of fiduciary duty. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 153-3-713 and 153-3-714.

153-3-713. Sale, encumbrance or transaction involving conflict of interest - voidable - exceptions. (1) (a) Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

(b) The will or a contract entered into by the decedent expressly authorized the transaction; or

(c) The transaction is approved by the court after notice to interested persons.

153-3-714. Persons dealing with personal representative protection. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of

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The general powers of the personal representative over the title to decedent's property are characterized by Section 153-3-711 as those of an "absolute owner," exercisable without notice, hearing, or order of court, but only as a trustee for the benefit of interested persons. The personal representative has this power until the termination of his appointment. This section was adopted intact.

Section 153-3-712 is another provision which characterizes the personal representative's duties and liabilities as those of a trustee. It makes the personal representative liable "as a trustee of an express trust" if he causes loss to interested persons due to an improper exercise of his powers. Control over the personal representative is obtained by proceedings for removal (153-3-611) or petition for a restraining order if he is attempting to perform any unwarranted or unjustified act, and damages for breach of duty. This section was adopted intact.

As a limitation on the broad administrative powers granted to the personal representative by the code, Section 153-3-713 renders voidable any sale or encumbrance to the personal representative or any transaction which is affected by a substantial conflict of interest on the part of the personal representative. The section permits an interested person to void the deal so long as he has not consented after fair disclosure, unless the will or contract of decedent expressly authorized the transaction or the transaction was approved by the court in formal proceedings after notice. The section was adopted intact.

Section 153-3-714 protects a bona fide purchaser in general dealings with the personal representative. This section provides that no limitation on the personal representative's powers in the will or in any court order will be binding on third parties with whom the personal representative deals, except where restrictions are endorsed on his letters in supervised administration. Further, no one need inquire about the personal representative's powers or look at the will or court file just because he knows he is dealing with

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supervised personal representatives which are endorsed on letters as provided in section 153-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

153-3-715. Transactions authorized for personal representatives - exceptions. (1) (a) Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 153-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(b) Exercise any of the powers enumerated in the "Colorado Fiduciaries' Powers Act", at the time of such exercise;

(c) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

153-3-716. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise

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a personal representative. Similarly, no one is bound to see to the application of estate assets paid to a personal representative. The section also clarifies the law in relation to the title of persons dealing with the estate of a person presumed dead but actually alive. Their title would be good, as against the person whose estate was erroneously administered. The section was adopted intact.

Administrative powers are granted to Section 153-3-715 to all personal representatives acting under the code. All such powers may be exercised without court order. However, they may be restricted by the will or by an order in a formal proceeding, and the personal representative must always act "reasonably for the benefit of interested person." Considerable confidence is reposed in him and reliance placed upon action for breach as a protective device. Also, the personal representative may be enjoined from taking steps that disadvantage the estate (153-3-606).

The UPC provision enumerated in detail the administrative powers of the fiduciary. The Committee eliminated all these enumerated powers from the section and cross-referred to the "Uniform Fiduciaries' Powers Act", Section 57-8-1 et seq, C.R.S. 1963 (1969 Supp.) which is similar to the UPC provisions. Thus, the powers provided for in the Powers Act were substituted for the UPC powers.

Section 153-3-716 gives a successor personal representative all the powers and duties of his predecessor, except any power expressly made personal to the executor named in the will. This is similar to present law (57-8-4 (2) (aa) and 153-10-12, C.R.S. 1963, and was adopted intact.

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any power expressly made personal to the executor named in the will.

153-3-717. Co-representatives - when joint action required. If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

153-3-718. Powers of surviving personal representative. Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as personal co-representatives is not appointed, those appointed may exercise all the powers incident to the office.

153-3-719. Compensation of personal representative. A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the

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Section 153-3-717 deals with the rules governing co-representatives. Unless the will provides to the contrary, concurrence of all personal representatives is required. Property or monies due the estate may be received or emergency action to preserve the estate taken without joint action. The section also permits delegation of any of his powers and duties to another co-representative. This section does not permit a co-representative to abdicate his responsibility by blanket delegation. Third parties dealing with one of the several co-representatives are fully protected if actually unaware of the co-fiduciary status, or if the personal representative with whom they deal tells them that he has authority to act alone. The section was adopted intact.

Section 153-3-718 gives to the remaining co-representatives full authority to carry on after the office of one of their number has been terminated, or on failure of a nominated co-representative to act. This is similar to present law (153-10-8 (4) and 57-8-4 (2), C.R.S. 1963) and was adopted intact.

Section 153-3-719 provides that a personal representative is entitled to reasonable compensation for his services. If the will provides for compensation but does not make serving for that fee a condition of nomination and if there is no contract with the decedent as to fee, the person nominated may renounce the provision and be entitled to reasonable compensation. No schedule of fees is provided, as in present law (153-14-16, C.R.S. 1963). The Committee adopted the section intact.

compensation. A written renunciation of fee may be filed with the court.

153-3-720. Expenses in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

153-3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate. (1) After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(2) (a) Factors to be considered as guides in determining the reasonableness of a fee include the following:

(b) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;

(c) The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment;

(d) The fee customarily charged in the locality for similar services;

(e) The amount involved and the results obtained;

(f) The time limitations imposed by the personal

Section 153-3-720 provides that a personal representative or a person nominated as such shall be reimbursed for his necessary expenses including reasonable attorneys' fees in defending or prosecuting any proceeding in good faith.

Section 153-3-721 provides that the reasonableness of the fee of the personal representative or the attorney or other advisor of the personal representative may be reviewed by the court. This may be at the instance of the court or upon petition of an interested person or on motion if the administration is supervised. Anyone who has received excessive compensation may be ordered to make refunds. The Committee added subsection (2) to establish guidelines for the court in determining the reasonableness of the fee. These guidelines were adapted from D.R. 2-106 of the Code of Professional Responsibility.

representative or by the circumstances;

(g) The nature and length of the relationship between the personal representative and the person performing the services;

(h) The experience, reputation, and ability of the person performing the services.

(Omitted section numbers reserved for expansion)

(CREDITORS' CLAIMS)

153-3-801. Notice to creditors. Upon the appointment of a personal representative, the court shall order three publications of the notice of appointment in a consolidated notice to creditors in a newspaper published or having general circulation in the county. A consolidated notice to creditors shall be published by the clerk once each week except in weeks when no such appointments have been made and when all publication of prior appointments have been completed. Each such consolidated notice as to each estate proceeding, its assigned number, the names of the decedent and the personal representative, and the date of the first publication with respect to each estate, and notifying all creditors having claims against any of the estates to present their claims within four months of the date of the first publication of the notice with respect to the particular estate against which the claim exists or be forever barred. Proof of publication of the consolidated notice shall be by placing in each estate file a copy of the affidavit of publication.

153-3-802. Statutes of limitations. Unless an estate is insolvent, or would thereby be rendered insolvent, the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and notice to creditors for claims against

Sections 153-3-801 to 153-3-816 deal with creditor's claims and their purpose is to facilitate, as much as possible, collection of claims against decedents. Claims may be paid without the appointment of a personal representative. If a personal representative is appointed, he may or may not give notice to creditors. If he does give notice to creditors, the estate is protected by a non-claim statute which operates to bar claims not presented within a four-month period. If he does not give notice in this fashion, the claims of creditors will be barred by the one-year period as they are when no personal representative is apppointed. He could be personally liable to estate beneficiaries for failure to publish. Benefits from general statute of limitations extend to the estate; these are applicable in addition to the non-claim provisions though tolled during a four-month period following the decedents death.

The formalities involved in presentation, allowance and disallowance are reduced. The non-claim procedure which requires presentation of the claim, allowance or disallowance and presentation, either to the court administering the estate or some other court in which the estate may be sued within a 60-day period after disallowance, is maintained. No execution is permitted against the estate; however, the personal representative may be ordered to pay a claim which is recognized to the extent of estate assets which must be marshalled if they are inadequate. The devisee and encumbered property bears the debt to the extent of the value of the property. A system is devised for settling estates prior to maturity of contingent or unliquidated claims and a solution to the problem of insolvent multi-state estate is presented.

Section 153-3-801 provides for notice to creditors. The Committee redrafted the entire section to provide for a consolidated notice, similar to that now required in the "Uniform Dissolution of Marriage Act" (H.B. 1090, 1972 Session). Notice is to be given by the clerk once each week for three successive weeks, and the non-claim period begins to run from the date of first publication.

Section 153-3-802 deals with general statutes of limitations running against a creditor of the estate. The section permits waiver of the defense of any statute of limitations (not the non-claim statute) with consent of all successors to property unless the estate is insolvent, or would thereby be rendered insolvent. Absent this consent, all claims barred at the date of decedent's death must be disallowed. The limitation is suspended during the four months period after death, that is, it is tolled and commences running again at the end of the period to give decedent's creditors opportunity to pursue their rights. The effect of this section is to add four months to the normal period of limitations by reason of a debtor's death before a debt is barred. The limitation period resumes after four months as to claims not barred under the short non-claim period of Section 153-3-803. Also, presenting a claim to the personal representative is equivalent to commencing an action and stops the running of the statute of limitations. Thus, a claim will be barred by the first to expire of: (1) the basic limitations period plus four months; (2) the code non-claim period, that is, four months after the first publication to creditors; or (3) one year after death if publication for claims is not begun within the three-year period. The Committee expanded the first sentence of the section to prevent waivers of defenses of limitations by personal representatives when to do so would make the estate insolvent.

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a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 153-3-804 is equivalent to commencement of a proceeding on the claim.

153-3-803. Limitations on presentation of claims. (1) (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state of Colorado and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(b) Within four months after the date of the first publication of notice to creditors if notice is given in compliance with section 153-3-801; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state;

(c) Within one year after the decedent's death, if notice to creditors has not been published.

(2) (a) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(b) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(c) Any other claim, within four months after it

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Section 153-3-803 provides that all claims against the decedent's estate arising before the death of the decedent, not barred earlier by another stature, are barred if not presented within four months after date of first publication of notice to creditors, or if notice is not published, within one year after decedent's death. The bar applies to claims of the state, liquidated or unliquidated, absolue or contingent, and claims founded on contract, tort, or other legal basis. All claims against the decedent's estate arising at or after death are barred unless presented within four months after due date if based upon a claim on a contract with the personal representative or within four months after arising if based on any other matter. Therefore, creditors of the estate face a special four-month limitation after performance is due by the personal representative. Under subsection (3), however, the non-claim period does not affect rights to enforce any security interest or any proceeding to establish the liability of the decedent or the personal representative to the extent he is protected by liability insurance. The time for presenting claims if no notice to creditors is published was reduced from three years to one year by the Committee making it essentially the same as in present law.

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arises.

(3) (a) Nothing in this section affects or prevents:

(b) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(c) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

153-3-804. Manner of presentation of claims. (1) A claimant against a decedent's estate may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) A claimant having a claim described in subsection (1) of section 153-3-803 may commence a proceeding against the personal representative in the court where the personal representative was appointed to obtain payment of his claim. A claimant having a claim described in subsection (2) of section 153-3-803 may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction under the rules of civil procedure or statutes of this state, to obtain payment of his claim against the estate, but the commencement of the proceeding must

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Section 153-3-804 establishes requirements for presentation of claims. Claims may be filed either by delivery or mailing to the personal representative, or by filing with the clerk of the court; there is no requirement that notice be given to the personal representative if the creditor elects court filing alone. The claim is not deemed presented so as to preserve the creditor's rights until the first to occur of receipt of the written statement of claim by the personal representative or court filing. The claim is also deemed presented if court action is commenced within the claim period in any court having jurisdiction over the personal representative. However, the filing in court merely prevents the bar under the four-month non-claim period. Filing does not constitute commencement of court action by the creditor; and since the basic statute of limitations is running under Section 153-3-802, the creditor may be barred by the basic limitations period if he does not also commence court proceedings on the claim in time.

After a claim is presented, if the personal representative objects to it, he must disallow the claim by notice mailed to the claimant within 60 days after the end of the four-month non-claim period, or the claim will be deemed allowed (153-3-806). Conversely, if the claim is disallowed by the personal representative in time, the creditor must commence an action in court within 60 days after the notice of disallowance is mailed by the personal representative, or the creditor is barred. Section 153-3-806 implies that failure of the creditor to proceed within the 60 day period will not bar him unless the notice of disallowance contains a warning

occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1) of this section, no proceeding thereon may be commenced more than sixty days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or to avoid injustice the court, on petition, may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

153-3-805. Classification of claims. (1) (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(b) Costs and expenses of administration;

(c) Reasonable funeral expenses;

(d) Debts and taxes with preference under federal law;

(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(f) Debts and taxes with preference under other laws of this state;

(g) All other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

153-3-806. Allowance of claims. (1) As to claims presented in the manner described in section 153-3-804 within the time limit prescribed in section 153-3-803, the personal representative may mail a notice to any claimant stating that the claim has been

that the creditor must act within 60 days. If the claim is contingent or unliquidated, the personal representative is given the option of consenting to an extension of this period of time or, upon petition, it may be extended by the court. Claims already pending need not be presented.

The Committee changed language in subsection (2) to eliminate the difficulties a personal representative would face were he to defend against pre-date of death claims in any number of counties throughout the state.

Section 153-3-805 covers the classification of claims. There are only five classes under the code: administration expenses; expenses of the decedent's funeral and last illness; debts and taxes with preference under federal or local law; and all other claims. It should be recalled that Sections 153-2-402 and 153-3-403 give priority to the exempt property, and family allowance over all claims. The section was adopted intact.

Under Section 153-3-806 the personal representative may mail a notice to any claimant stating that the claim has been disallowed. Failure to mail such a notice to a claimant within 60 days after the time for original presentation of the claim has expired, has the effect of a notice of allow-

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disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after

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ance of a claim. Any claim disallowed by the personal representative is barred unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after mailing the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar. A judgment in a proceeding in another court against the personal representative to enforce the claim is an allowance of the claim. Allowed claims based on contract bear interest at the contract rate; other claims bear interest at the legal rate. Judgment interest runs from 60 days after the end of the four-month claim period, not from the date of entry of the judgment. The section was adopted intact.

the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

153-3-807. Payment of claims. (1) Upon the expiration of four months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for family and exempt property allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) (a) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(b) The payment was made before the expiration of the time limit stated in subsection (1) of this section and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(c) The payment was made, due to the negligence or wilfull fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

153-3-808. Individual liability of personal representative. (1) Unless otherwise provided in the contract, a personal representative is not

Section 153-3-807 directs payment of allowed claims after the expiration of four months from the first publication to creditors, requiring the personal representative to observe the statutory priorities. Subsection (2) authorizes the personal representative to pay any unbarred just claim without formal presentation, but it makes him personally liable to any creditor whose rights are prejudiced thereby. The section was adopted intact.

Personal liability of the personal representative in connection with estate contracts and torts is covered by 153-3-808. The section insulates the personal representative from

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individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

153-3-809. Secured claims. (1) (a) Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(b) If the creditor exhausts his security before receiving payment, (unless precluded by other law) upon the amount of the claim allowed less the fair value of the security; or

(c) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

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liability on any contract he executes on behalf of the estate unless rules of undisclosed principle apply because of his failure to reveal his representative capacity. Issues of primary liability can be determined in a proceeding on behalf of the estate seeking an accounting, surcharge or indemnification. Liability for tort may be asserted against him only if he is personally at fault. Persons with actions against the estate may proceed directly, suing the personal representative in his fiduciary capacity. The section was adopted intact.

Section 153-3-809 deals with the payment of secured claims. Secured claims are to be paid in the amount allowed, less the fair market value at the time of payment of any security retained by the creditor, or less the amount the creditor may have realized on the security. In other words, if the claim is secured, the creditor is required to exhaust or set-off the value of security before presenting any claim to the estate. The section was adopted intact.

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153-3-810. Claims not due and contingent or unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) (a) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(b) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(c) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

153-3-811. Counterclaims. In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

153-3-812. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real

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Payment of contingent claims and claims not due are dealt with by 153-3-810. Claims not due are paid "in the same manner as presently due and absolute claims of the same class." Under Subsection (2), the personal representative or the court may provide for payment of contingent claims in an amount agreed to by the claimant taking any uncertainty into account. Or arrangements for possible future payments may be made "by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise." The section was adopted intact.

Section 153-3-811 permits the personal representative in paying claims to deduct the amount of any counterclaim which the estate has against the claimant, and to try the issues before the court. This permits application of the doctrine of set-off through counterclaim. This is similar to present law (153-12-9, C.R.S. 1963) and the section was adopted intact.

Section 153-3-812 prohibits execution against property of the estate. The claimant must proceed by normal claims procedure. However, secured creditors are permitted to rely upon normal procedures to enforce claims. This is somewhat similar to present law (153-12-5, C.R.S. 196) and the section was adopted intact.

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or personal property in an appropriate proceeding.

153-3-813. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative may, if it appears to be in the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

153-3-814. Encumbered assets. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be in the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

153-3-815. Administration in more than one state - duty of personal representative. (1) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after

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Section 153-3-813 specifically grants to the personal representative authority to compromise claims, if it appears for the best interest of the estate. The section was adopted intact.

Section 153-3-814 permits the personal representative to discharge any lien on estate assets, to extend the obligation, or to transfer the security to the creditor in discharge of the lien, whether or not the claim has been filed, if it appears to be in the best interest of the estate. Discharge of the lien by the personal representative will not, however, increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration. It should be recalled that Section 153-2-609 precludes exoneration of the specific devise unless the will provides to the contrary. This section was adopted intact.

Section 153-3-815 establishes methods of handling assets at jurisdictions other than the domicile of the decedent in cases of insolvency. Initially, if the entire estate at the domicile and elsewhere is insufficient to cover family exemptions and allowances, these are set aside and creditors receive nothing. If assets exceed this amount, all claimants duly presenting their claims in this jurisdiction, whether local or foreign, are entitled to receive a proportionate share of local assets. In determining the proportion of local assets to which they are entitled, the amount of their claim will be reduced by any preference or security given them in another jurisdiction; only the balance in excess of the security will be used in establishing the proportion to which a particular creditor is entitled. If all claimants filing in this jurisdiction can be paid from local assets they will be and any surplus transferred to the domiciliary personal representative. If local assets are not sufficient, local assets will be marshalled and each claim presented and allowed in this state paid a proportionate

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deducting the amount of the benefit.

(3) In case the exempt property and family allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

153-3-816. Final distribution to domiciliary representative. (1) (a) The estate of a non-resident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(b) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(c) The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(d) The court orders otherwise in a proceeding for a closing order under section 153-3-1001 or incident to the closing of a supervised administration.

(2) In other cases distribution of the estate of

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amount of the whole, taking into consideration any dividends received on that claim in other jurisdictions. The theory is that a creditor can present his claim at the domicile and in all other jurisdictions. If it is secured any place, the amount of the claim will be reduced by the value of the security whatever that may be. In making a local payment, the personal representative must determine or estimate the amount of the dividend that each creditor will receive from other jurisdictions in which his claim has been filed. The amount of the local claim must then be reduced proportionately and the net figure included in determining the portion of local assets to which the particular creditor can lay claim. The section was adopted intact.

Section 153-3-816 requires the personal representative of a nonresident decedent to distribute the estate in his hands to the domiciliary representative for distribution unless: the decedent's will provides otherwise; or the personal representative of the nonresident decedent is unaware of the domiciliary personal representative; or the court orders otherwise. This section was adopted intact.

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a decedent shall be made in accordance with the applicable provisions of this article.

(Omitted section numbers reserved for expansion)

(SPECIAL PROVISIONS RELATING TO DISTRIBUTION)

153-3-901. Successors' rights if no administration. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. 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.

153-3-902. Distribution - order in which assets appropriated - abatement. (1) (a) (i) Except as provided in subsection (2) of this section and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(ii) Property not disposed of by the will;

(iii) Residuary devises;

(iv) General devises;

(b) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full

EXPLANATION

Section 153-3-901 confirms the basic rule found in 153-3-101 that title passes to the heirs and devisees at death, subject to all the rights and procedures established by the code. The section also makes it clear that, in the absense of administration, successors may establish their title by a probated will or by proof of their relationship to the decedent, where rights to take as heir or as a family member are involved. This means that title could be established after the three-year period by a certificate of death and an affidavit of relationship. The section was adopted intact.

Section 153-3-902 covers the order of abatement of the interests of distributees and establishes the order of priority for payment of estate obligations. There is no preference between real and personal property and an abatement provision in the will controls. The express terms of the will and the express purpose of the devise will control over the statutory order of abatement. The Committee eliminated some language from subsection (2) as being too speculative of meaning.

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distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or the express purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

153-3-903. Right of retainer. Unless a contrary intent is indicated by the will, the amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

153-3-904. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

153-3-905. Penalty clause for contest. A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

153-3-906. Distribution in kind - valuation - method. (1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 153-2-402 shall receive the items selected.

(2) (a) (i) Any exempt property or family

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Section 153-3-903 provides for a set-off of a beneficiary's indebtedness to the estate against his interest in the estate. The Committee clarified the language to provide that an expression to the contrary in the will would prevail. The successors' obligation to the estate is subject to any defenses that he might have had in an action by the decedent for direct recovery of the indebtedness, including one of limitations.

Section 153-3-904 was adopted intact.

The in terrorem clause is effectively invalidated by 153-3-905. This section renders every will provision unenforceable which penalizes a person for instituting estate litigation, if probable cause exists for the suit. The policy involved balances the right of a decedent to do what he wishes with property against the possibility of fraud if punitive will clauses are permitted to be enforced. Note that this is about the only place in the code where the legislature is asked to say that the testator may not will as he chooses. However, this appears to be the common law in Colorado at the present time and the section was adopted intact.

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allowance or devise payable in money may be satisfied by value in kind, if:

(ii) The person entitled to the payment has requested distribution in kind;

(iii) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(iv) No residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(b) For the purpose of valuation under paragraph (a) of this subsection (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(c) The residuary estate may be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution, subject to all applicable fiduciary duties.

(3) After the probable charges against the estate are known, the personal representative may mail

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Section 153-3-906 establishes rules for distribution and for valuation of assets. The rule that all estate distributions are to be made "in kind to the extent possible" unless the will provides otherwise, was eliminated from the section by the Committee as being contrary to present rules. The residuary distributions shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. Allowances and devises payable in money may be satisfied in kind at market value at the time of distribution of the property, but only if the recipient requested distribution in kind and no residuary devisee has requested that the asset remain a part of the residue. Subsection (2) (b) deals specifically with the valuation of listed securities and debt obligations for purposes of in kind distribution. Subsection (3) permits the personal representative to mail a proposed distribution schedule to the successors for approval. If the successor fails to object to the kind or value of asset he is to receive, by written instrument mailed to the personal representative within 30 days after the date the schedule was mailed to the successor, the successor's right to object will terminate. The Committee added a new subsection (4) which was adapted from 153-10-49 (4), C.R.S. 1963.

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or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

(4) If, in any instrument which provides for a bequest or transfer intended to qualify for a federal estate tax marital deduction, the personal representative or trustee is required, or expressly authorized, by the terms of the instrument, to satisfy such bequest or transfer by a distribution of property in kind at values as finally determined for federal estate tax purposes or at values which are the same as the federal income tax bases of such property to the estate or trust, then, unless the instrument expressly requires that such bequest or transfer be satisfied with property having an aggregate fair market value at the date, or dates, of distribution amounting to no less than the amount of such bequest or transfer as finally determined for federal estate tax purposes, the distributee of such bequest or transfer shall be entitled to a distribution of property which will have an aggregate fair market value fairly representative of the distributee's proportionate share of the appreciation or depreciation in the value to the date, or dates, of distribution of all property then available for distribution, and the personal representative or trustee shall satisfy such bequest or transfer accordingly.

153-3-907. Distribution in kind - evidence. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

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When distribution in kind is made, 153-3-907 requires the personal representative to execute and deliver an instrument assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title. Such an instrument may actually transfer title, as where the asset was devised to or purchased by the personal representative; or it may merely confirm title in the devisee and evidence release of the personal representative's power to control the title under 153-3-711.

Section 153-3-907 should also be read in conjunction with Sections 153-3-908, 153-3-910, and 153-3-714. The code's purpose in these sections is to make the instrument of distribution the "usual muniment of title" in place of the will or heirship order. No third party is charged with knowledge of the terms of the will under 153-3-714, even though the will is probated. Section 153-3-908 makes receipt of an instrument of distribution from a personal representative "conclusive evidence" that the distributee has succeeded to the interest of the estate...as against all persons interested in the estate." However, the personal representative may recover the assets or their value if the distribution was improper. This section was adopted intact.

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153-3-908. Distribution - right or title of distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

153-3-909. Improper distribution - liability of distributee. (1) Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable for return of the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable for return of the value as of the date of disposition or the property improperly received and its income and gain received by him.

(2) If, within three years after the distribution of the absentee's estate or devolution of any property interest or contractual right in accordance with this section, the absentee is determined to be alive, the person receiving such distributive share or the person to whom such property interest or contractual right devolved shall be accountable to the absentee for the return of such property, property interest, or reinstatement of any such right, and the court may direct that the property be delivered or any interest or right be reinstated to the absentee, and the absentee may maintain an action for the recovery or reinstatement thereof.

(3) If the property cannot be returned in the same state and condition as it was at the time of distribution, or if the rights or interests cannot be reinstated, the absentee may recover from the distributee or the person upon whom such interest or

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Section 153-3-908 establishes the right to assets set aside to the distributee against all persons interested in the estate, other than the personal representative. This would not insulate the distributees from creditors. It does, however, require action by the personal representative to acquire assets improperly or erroneously distributed as opposed to action by other persons claiming to be entitled to distribution. Section 3-1006 sets a limitation on actions and proceedings against distributees. The effect of improper distributions is further dealt with in 153-3-909. It imposes upon the distributee of property improperly distributed and upon a claimant who is improperly paid the duty of returning property together with its income from the time of distribution or, if the property has been consumed or transferred, its value as of the date of disposition. The distributee may be protected by the statute of limitations in 153-3-1006. If there has been an adjudicated distribution, the only remedy would be appeal from the decree. The usual remedy for fraud would exist, together with the remedy provided in 153-1-106. The Committee added subsection (2) and (3) to 153-3-909 to provide rules for improper distribution of the estate of an absentee who is later determined to be alive. These were adapted from 153-20-6 (4) (a) and (b), C.R.S. 1963.

rights devolved such sum of money or such other property as shall be equitable, not in excess of any loss suffered by the absentee and not in excess of any gain accruing to the original distributee or person to whom such interest or rights devolved.

153-3-910. Purchasers from distributees protected. (1) If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

(2) In no event shall any recovery be made against any person who, in accordance with law and in good faith and for adequate value, purchased or acquired a lien upon property of the absentee, either prior or subsequent to a finding according to section 153-1-107 that the absentee was dead. No action shall be brought by an absentee or any person claiming through an absentee to recover all or any part of the absentee's estate which has been distributed in accordance with this article, or to recover any property interests or under any contractual rights of the absentee which have devolved in accordance with this article, after three years from the date of such distribution or devolution.

153-3-911. Partition for purpose of distribution. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court

Section 153-3-910 extends the application of 153-3-907 and 153-3-908 and protects a purchaser or lender for value who deals with a distributee on the basis of an instrument of distribution from the personal representative. This section confirms the controlling effect of such an instrument, even though the distribution was improper; and it makes it clear that third persons need not look behind the instrument of distribution nor inquire whether a personal representative acted properly in making the distribution. This section was adopted intact, except that subsection (2) was added by the Committee. This subsection is adapted from 153-20-6 (4) (c), C.R.S. 1963.

Section 153-3-911 provides for court proceedings to partition property between the successors or to sell property which cannot be partitioned, in order to facilitate distribution if the successors do not agree on a division. The procedure established is that applied in civil actions for partition. This procedure is described in Article 1 of Chapter 103, C.R.S. 1963. The section was adopted intact.

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shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

153-3-912. Private agreements among successors to decedent binding on personal representative. Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

153-3-913. Distributions to trustee. (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 153-7-303.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution

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Section 153-3-912 permits the successors in interest to agree among themselves to alter their interests as provided by law or the governing instrument and this agreement is binding on the personal representative. The agreement must be in the form of a written instrument signed by all persons affected by its provisions. It is not the equivalent of renunciation under 153-2-801; an agreement allocating a portion of the property going to one of the distributees to someone else may have gift consequences as opposed to a renunciation which does not. This section is designed to confirm the power of parties to make any agreement they want on distribution of property despite the terms of a will. The agreement would have to be recorded and should probably be in the form of deeds by one to the other. If it is not, the instrument of disposition executed by the personal representative would probably be adequate evidence of title. The section was adopted intact.

Where a personal representative is distributing to a trustee, 153-3-913 permits the personal representative to require the trust to be registered with the court, pursuant to article 7 of the code, and it permits him to petition the court to require the trustee to post bond to protect the trust beneficiaries. The personal representative may withhold distribution until the bond issue has been decided or the trust has been registered. Therefore, although the personal representative may rely on the trustee to represent the trust beneficiaries for all purposes in the estate administration, this section permits the personal representative, at the point of distribution, to require trust registration and ask for bond - unless the trust excuses bond. The section insulates the personal representative from suit for failing to comply with this section which does not demand that he do these things, by specifying that no inference of negligence can be drawn from failure to comply with the permissive option. The section was adopted intact.

might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2) of this section.

153-3-914. Disposition of unclaimed assets. (1) If any heirs or devisees of any intestate or testator are unknown, or if known and there is no person qualified to receive devises or distributive shares of such heirs or devisees at the time of making final settlement of the estate, or if such heirs or devisees refuse to receive and receipt for such devises or distributive shares, or in the event there is no taker under the provisions of article 2 of this code, the personal representative shall be ordered by the court to pay any balances remaining in his hands to the state treasurer; and the state shall be answerable for the same, without interest, any time within twenty-one years after the same shall have been paid into the treasury, to such person or persons as shall appear to be legally entitled to the same, upon order of the court having administration of the estate.

(2) Except as provided in subsection (1) of this section, any person, corporation, association, or other entity in possession of moneys paid to him or it or in his or its possession in any fiduciary capacity, and the said moneys are unclaimed, or the person to whom the person in possession may lawfully pay the same, or the person who may be entitled thereto is unknown or absent or fails to receive and properly receipt therefor, may pay said moneys to the state treasurer; and the state shall be answerable for the same, without interest, any time within twenty-one years after the same shall have been paid to the state treasurer; such payment to the state treasurer shall discharge the person making the same from any further liability or responsibility for such moneys.

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Section 153-3-914 deals with the disposition of unclaimed assets of a decedent's estate. The Committee deleted the entire UPC section and substituted therefor the present law on escheat (153-14-14, C.R.S. 1963, as amended).

(3) After the lapse of twenty-one years from the time any such moneys shall be paid into the state treasury, and no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state, and shall be transferred to the public school fund thereof, and the state shall not be liable therefor. Prior to said lapse of twenty-one years, such moneys may be invested by the state treasurer, and all interest or increment therefrom shall be credited to the general fund.

(4) At the time any personal representative or other fiduciary pays into the state treasury any moneys, he shall make a written report thereof to the attorney general of the state, giving him such information as he may have, under oath or affirmation, touching the identity and antecedents of the deceased, as well as of any person supposed to be entitled to said moneys, to the end that fictitious claims thereto may be forestalled. The attorney general shall file such reports in his office and keep the index thereof, and no order shall be made by a court for the repayment of any moneys so paid into the state treasury without the attorney general having first been served with written notice thirty days before the time of making application therefor. Upon the serving of such notice, the attorney general may appear and take all steps for and on behalf of the state that any person who might be a defendant to such action might take. The reasonable expense of any such action taken by the attorney general shall be initially paid out the attorney general's contingent fund; but, with the approval, order, and direction of the court having jurisdiction of the estate, any such reasonable expense incurred by the attorney general in conserving the estate, and in investigating and litigating the claim of any alleged heir, devisee, distributer, or creditor shall be repaid to said contingent fund, out of the moneys in the estate or fund in controversy

before final settlement thereof.

(5) No estate or trust shall be permitted to remain open for the reason that an heir or devisee or beneficiary is unknown or cannot be located or refuses to receive and receipt for his share. All property subject to the provisions of subsection (1) of this section shall be paid to the state treasurer no later than three months after the entry of the order of final settlement and all property subject to the provisions of subsection (2) of this section shall be paid to the state treasurer no later than three months after such property becomes eligible for distribution.

153-3-915. Distribution to person under disability. A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or the court may authorize a personal representative of any estate, or the trustee of any testamentary trust, to distribute any property distributable to a beneficiary of any estate or trust who is a minor or who is under any other legal disability by distributing the property for the use or benefit of the beneficiary to a parent or relative of the beneficiary, or to any person having the custody and being responsible for the care of the beneficiary. The authority to so distribute shall be subject to such terms and conditions as the court shall direct and approve. Where a power is contained in the will or the trust instrument, the personal representative of an estate, or the trustee of a trust, testamentary or created during lifetime, may distribute any property distributable to a beneficiary of any estate or trust who is a minor or who is under any other legal disability without court authorization, by distributing the property to the beneficiary, or by distributing the property for the use or benefit of the beneficiary to a parent or relative of the beneficiary, or to any person having the custody and being responsible for the care of the beneficiary, or

Section 153-3-915 sets up procedures for distribution to persons under disability by payment to the conservator or any other person capable of giving a valid receipt and discharge. Most of this section was deleted by the Committee and the section was revised to incorporate the provisions of 153-10-50, C.R.S. 1963, which are more detailed than the UPC provisions.

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in any other way authorized by the terms of the will or trust instrument. In making any such distribution to or for the use or benefit of a beneficiary, the personal representative or trustee has a duty to act as a prudent man and to act with due regard to the obligations of a fiduciary.

153-3-916. Apportionment of estate taxes. (1) (a) For purposes of this section:

(b) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(d) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(e) "State means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(f) "Tax" means the federal estate tax and the additional inheritance tax imposed by Colorado and interest and penalties imposed in addition to the tax;

(g) "Fiduciary" means personal representative or trustee.

(2) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the

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Section 153-3-916 incorporates the Uniform Estate Tax Apportionment Act. This section will be new to Colorado and the Committee adopted the section intact.

method described in the will controls.

(3) (a) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (2) of this section, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(d) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.

(4) (a) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in

accordance with this section.

(b) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(5) (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (2) of this section, and to that extent no

apportionment is made against the property. The provisions of this paragraph (e) do not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the state was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of

this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

(Omitted section numbers reserved for expansion)

(CLOSING ESTATES)

153-3-1001. Formal proceedings terminating administration - testate or intestate - order of general protection. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on

Sections 153-3-1001 to 153-3-1003 are keyed to the formal and informal administration under the code. They provide much the same range of options to the personal representative and other interested persons on closing estates as is available when the estate is opened. That is, closing proceedings can be as formal and protective, or as informal and indeterminate, as the parties wish. Closing under 153-3-1001 provides the maximum protection and finality to all persons. It involves full notice, hearing, and entry of a court order of settlement. In contrast, a 153-3-1002 closing involves notice, hearing, and order; but only the devisees of an informally probated will and the personal representatives are parties, and only they are bound. Informal closing pursuant to 153-3-1003 involves a private accounting between the personal representative and the beneficiaries and the filing of a sworn statement by the personal representative with the court announcing completion of the administration. Interested persons are not bound by such informal closing procedures until special limitation periods expire. Finally, there is the option of no closing proceedings whatever, in which event the parties are bound only when the overall limitation periods have expired.

Thus, the personal representative has a choice of four procedures to follow in closing estates. These are:

proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

153-3-1002. Formal proceedings terminating testate administration - order construing will without adjudicating testacy. A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and

(1) Adjudicated - Full Discharge (3-1001). This procedure provides for notice to all interested parties and would result in full discharge of the personal representative from all further claims or demands of all interested persons. It can be used in any estate proceeding, whether to establish a will or determine intestacy, and regardless of whether initiated in a formal or informal proceeding. This procedure must be followed as to a supervised administration, unless otherwise ordered by the court.

(2) Adjudicated - Partial Discharge (3-1002). This procedure would be used only in connection with an informally probated will and provides for notice to all devisees only. It would result in a discharge of the personal representative from further claims or demands of devisees. Thus, as to devisees, it would resolve all questions of construction of the will, and all questions of mismanagement which could result in surcharge. It would not foreclose rights of creditors or heirs at law.

(3) Non-Adjudicated - Filing Closing Statement (3-1003). This involves filing with the court a verified statement in which certain representations are made concerning the status of the administration and sending copies to all distributees and unpaid creditors. This procedure could be used for all forms of administration except supervised administration. If the personal representative has made full disclosure and has not engaged in fraud, the rights of successors and creditors are barred after the expiration of six months from the filing of the closing statement. The powers of the personal representative are terminated one year after the closing statement is filed.

(4) Non-Adjudication - Receipts and Releases. There is no specific provision dealing with receipt and release procedure but the fact that it is a procedure to which resort may be made is indicated by the Comment following Section 3-1003 in the UPC. As to persons from whom no receipts and releases were obtained the only protection given

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directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 153-3-1001.

153-3-1003. Closing estates - by sworn statement of personal representative. (1) (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that notice to creditors has been published as provided by section 153-3-801 and that the first publication occurred more than six months prior to the date of the statement, and that he, or a prior personal representative whom he has succeeded, has or have:

(b) Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(c) Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests

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the personal representative would be from general statutes of limitations.

The ultimate in informal proceedings under the code would involve informal, no-notice filing of the will with the registrar under 153-3-301 and 153-3-302, but without appointment of a personal representative and without any other acts of administration. After the expiration of three years from death, the will becomes final as to all persons (153-3-108); all creditors are barred (153-3-803 (a) (2)); no personal representative may be appointed (153-3-108); and the title of devisees is incontestable.

The 153-3-1001 closing requires notice to all interested persons, a term which includes unpaid creditors, and permits the court, after hearing, to determine testacy and heirship, if not previously determined. The court may also order or approve an accounting, construe the will, direct or approve distribution, discharge the personal representative and close the estate. A final order under this section not only terminates the office of the personal representative but also discharges him from any further liability to any person. Such an order is styled "an order of complete settlement of the estate." Either the personal representative or any other interested person may petition for an order after the claim period has expired, but an heir or devisee may not seek an order until a year has elapsed after issuance of letters.

Section 153-3-1002 provides for an "order of settlement... which will not adjudicate the testacy status of decedent." Thus, the heirs are not notified of the petition and are not bound by the proceedings. The order apparently means that if the informally probated will is, in fact, the valid last will of decedent, then the administration and distribution to the devisees named in the will was proper, and the devisees are bound between themselves and in relation to the personal representative. The personal representative may be discharged, but only with respect to the devisees.

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are affected thereby.

(2) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

3-1004. Liability of distributees to claimants. After assets of an estate have been distributed and subject to section 153-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficent time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

153-3-1005. Limitations on proceedings against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

153-3-1006. Limitations on actions and proceedings against distributees. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any

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The subject of the liability of distributees to creditors and to heirs and devisees is covered by 153-3-1004 and 153-3-1006. After distribution, and in the absence of formal closing or other adjudication, claims not barred or paid can be pursued against distributees.

The unpaid creditor cannot recover from a distributee more than the value of the property distributed to him. But within this limitation, the creditor can force one distributee to pay the whole claim, leaving the distributee with a right of contribution from his fellow distributees. The right to contribution can be lost by the distributee if he fails to notify his fellow distributees when a claim is pressed against him. The section was adopted intact.

Section 153-3-1005 insulates the personal representative from suit six months after filing of a closing statement. Note that the appointment of a personal representative is not terminated until one year after the closing statement is filed. The bar is limited to rights which are not affected by fraud, misrepresentation or inadequate disclosure. The section was adopted intact.

Section 153-3-1006 cuts off the rights of claimants and other distributees, or a successor personal representative acting on their behalf, to the recovery of property improperly distributed or its value at three years from the decedent's death or one year after distribution, whichever occurs later. This section ties in with 153-3-1004, limiting the time for pursuing creditor's claims. The section was adopted intact.

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claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of three years after the decedent's death, or one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

153-3-1007. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

Section 153-3-1007 permits release of property subject to bond upon termination of appointment. The certificate evidencing release has no effect on the liability of the personal representative or his sureties. The section was adopted intact.

153-3-1008. Subsequent administration. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court, upon petition of any interested person, and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

Section 153-3-1008 relates to the administration of subsequently discovered estate and provides that no claim previously barred may be asserted in the subsequent administration. The section was adopted intact.

(Omitted section numbers reserved for expansion)

(COMPROMISE OF CONTROVERSIES)

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153-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

153-3-1102. Procedure for securing court approval of compromise. (1) (a) The procedure for securing court approval of a compromise is as follows:

(b) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(c) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(d) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of

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Sections 153-3-1101 and 153-3-1102 provide a procedure under which persons having beneficial interests in an estate may resolve by compromise a controversy concerning the estate to avoid dissipation of estate assets by litigation. The procedure set forth requires: a written agreement setting forth the compromise be submitted to the court by an interested person; notice be given all interested persons or their representatives; a finding that the controversy is bona fide and that the effect of the compromise agreement is just and reasonable. Execution of the compromise agreement is not required by any person whose identity is unascertainable or whose whereabouts is unknown and cannot be reasonably ascertained. Approval of executors and trustees affected thereby is not required and their execution of the compromise agreement may be ordered by the court.

Section 153-3-1101 establishes the effect of a compromise agreement. It can apparently be used only in formal probate proceedings. It is also effective even though it may alter the terms of a spendthrift trust or affect an inalienable interest in some way. However, it cannot be used to impair the rights of creditors or taxing authorities. The government is not made a party to it and they are not bound.

Section 153-3-1102 establishes the procedure for obtaining court approval of compromises. They must be in writing, executed by all competent persons and by parents acting on behalf of minor children who will be affected by the compromise. Those persons who cannot be identified, found, ascertained, or are unborn are not required to sign and are bound by the agreement. After execution by competent parties, the personal representative or fiduciary may submit it to the court for approval. Notice must be given to all interested persons or their representatives and the court must make specific findings to the effect that the controversy is a good faith one and the effect upon persons represented by fiduciaries and agents is just and reasonable. Minors may be represented by parents as opposed to a guardian ad litem. If represented by parents, they can be bound only if other

the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. A minor child represented only by his parents may be bound only if his parents join with other competent persons in execution of the compromise, and if there is no conflict of interest between parent and child. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

(Omitted section numbers reserved for expansion)

(COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY PROCEDURE FOR SMALL ESTATES)

153-3-1201. Collection of personal property by affidavit. (1)(a) 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 or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action 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:

(b) The fair market value of the entire estate, wherever located, less liens and encumbrances, does not exceed ten thousand dollars;

(c) At least ten days have elapsed since the death of the decedent;

(d) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(e) The claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall

competent persons join with their parents in execution of the compromise. Essentially, this should mean that parents can't compromise with the children. In other words, they can't be on one side and the children on the other and represented by them. A guardian ad litem would probably be appointed in this situation to represent their interests. The Committee added language to the section to clarify that a parent can't represent his minor if there is a conflict of interest.

This part is designed to facilitate transfers of small estates and consists of four sections, the first two dealing with the transfer of property of a small estate on the basis of an affidavit, in lieu of administration, and the last two providing for a summary administration procedure where the estate does not exceed statutory allowances, expenses of administration, reasonable funeral expenses, and medical expenses of last illness. Section 153-3-1201 establishes a procedure for collection of personal estate of a decendent without resort to any formal proceedings. It applies only to the transfer of tangible or intangible property; the affidavit may not be used to perfect title to real estate. Any person indebted to the decedent or holding personal property belonging to him or subject to transfer is permitted to deliver or pay the property to a successor in interest of the decedent upon receiving from him an affidavit which sets forth the following jurisdictional facts: the existence of property with a value reduced by liens and encumbrances which is no more than $10,000, the lapse of 10 days from death, the absense of an application or petition for formal or informal probate and the absence of knowledge of the pendency of one, and the claim of the individual to the property. The debtor, possessor, or transfer agent is permitted to transfer property to the claimant. The Committee re-

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change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1) of this section.

153-3-1202. Effect of affidavit. The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

153-3-1203. Small estates - summary administrative procedure. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed exempt property allowance, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 153-3-1204.

153-3-1204. Small estates - closing by sworn statement of personal representative. (1) (a) Unless prohibited by order of the court, and except for estates being administered by supervised personal

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duced the waiting period after death from 30 to 10 days and the amount transferable was increased from $5.000 to $10,000 to make the section similar to the present Small Estate Transfer Act.

Under Section 153-3-1202, any person paying money or delivering personal property, upon receipt of the affidavit provided for in 153-3-1201, has the same protection he would enjoy by having paid or delivered to a personal representative. Failure to pay or deliver gives the affiant the right to bring a proceeding to compel the same. An affiant receiving such payment or delivery is answerable to a personal representative or someone else who has a superior right to the money or property in question. The section was adopted intact.

Sections 153-3-1203 and 153-3-1204 provide a summary administration procedure for the estate which is over $10,000 but is less than the amount necessary to pay the family allowances, funeral and medical expenses, and costs of administration. In summary administration, the personal representative must first be appointed; but he is authorized upon appointment to immediately pay the first and second class claims and distribute the estate without giving notice to creditors. Thereafter, the personal representative files a verified statement with the court that the value of the estate permits summary administration, that the estate has been fully distributed, that he has sent a copy of the closing statement to all distributees and unpaid creditors, and that he has rendered a written account to the distributees. The appointment of the personal representative terminates one year after the closing statement is filed if there are no actions then pending in court involving the personal representative; and the closing statement has the same effect as an informal closing statement filed under 153-3-1003. The section was adopted intact.

representatives, a personal representative may close an estate administered under the summary procedures of section 153-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(b) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent;

(c) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(d) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under section 153-3-1003.

ARTICLE 4

Foreign Personal Representatives;
Ancillary Administration

(DEFINITIONS)

153-4-101. Definitions. (1) In this article, unless the context indicates otherwise:

(2) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article 3.

Many provisions concerning local appointment of personal representatives for non-residents, claims against non-residents, and final distribution to the domiciliary representative are contained in Article 3. Article 4 deals with the powers of foreign personal representatives and ancillary administration. The foreign personal representative is allowed to receive payment of debts in this state or to accept delivery of property belonging to decedent. He can do this upon presentation of an affidavit. Local creditors may be protected by notifying local debtors of the fact that they

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(3) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in article 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 153-4-205.

(4) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a non-resident decedent.

(POWERS OF FOREIGN PERSONAL REPRESENTATIVES)

153-4-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration. (1) (a) At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment, a written consent of the attorney general if required under section 138-3-43, and an affidavit made by or on behalf of the representative stating:

(b) The date of the death of the nonresident decedent;

(c) That no local administration, or application or petition therefor, is pending in this state;

(d) That the domiciliary foreign personal representative is entitled to payment or delivery.

153-4-202. Payment or delivery discharges. Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal

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intend to apply for local administration and do apply. A time period is imposed before the foreign domiciliary representative may begin his collection procedures. He is also permitted to file with the appropriate court copies of his appointment and bond and, upon filing, succeeds to all the powers of a local representative. He is also entitled to priority in appointment in the event local administration of an extensive nature is necessary. The local court has jurisdiction over him to the same extent that it had jurisdiction over the decedent. In addition, he is liable as any other person would be under the long arm statute. By filing, he submits himself to the jurisdiction of the court in all matters.

Section 153-4-101 simply sets forth definitions of local administration, local personal representative, and resident creditor. Any local or foreign personal representative who is actually appointed locally pursuant to Article 3 is a "local personal representative," and the administration of the estate by him is a "local administration." A local personal representative is to be distinguished from a foreign personal representative who, although not appointed locally, may acquire certain powers to act locally by filing proof of his foreign appointment with the local court pursuant to 153-4-204. This section was adopted intact.

Section 153-4-201 permits payment of debts or transfer of tangible or intangible personal property to the domiciliary personal representative of a non-resident decedent upon proof of appointment by affidavit showing the date of death of the non-resident decedent, that there is no local administration and that he is entitled to payment. Payment or delivery in good faith pursuant to the affidavit protects the debtor or person in possession to the same extent as if payment or delivery had been made to a local personal representative. However, the local debtor may not pay on the basis of the affidavit if a resident creditor has notified him that the debt should not be paid nor the property de-

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property to the same extent as if payment or delivery had been made to a local personal representative.

153-4-203. Resident creditor notice. Payment or delivery under section 153-4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

153-4-204. Proof of authority - bond. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

153-4-205. Powers. A domiciliary foreign personal representative who has complied with section 153-4-204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

153-4-206. Power of representatives in transition. The power of a domiciliary foreign personal representative under sections 153-4-201 or 153-4-205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 153-4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or

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livered to the domiciliary foreign personal representative. The Committee inserted language requiring a written consent of the attorney general if consent is required under 138-3-43, C.R.S. 1963. This is consistent with present law (153-6-9, C.R.S. 1963) and merely reinforces the requirement of a Release for Transfer.

Section 153-4-204 permits the filing of a copy of letters and a bond with the local court, if no local administration or application or petition is pending. In the absence of local administration, this permits exercise of the powers described in subsequent sections. This is similar to present law (153-6-8, C.R.S. 1963) and the section was adopted intact.

Section 153-4-205 extends to the foreign domiciliary personal representative all the powers of a local representative to maintain actions and proceedings in this state subject to any restrictions placed upon non-residents generally, if a copy of his letters and bond have been filed as required by 153-4-204. The section was adopted intact.

Section 153-4-206 covers the mechanics of transition of powers when a local administration is commenced after a foreign personal representative has started to remove local assets under 153-4-201 or to act locally under 153-4-205. It also prevents prejudice to persons who may have dealt with the foreign personal representative under 153-4-201 and 153-4-205 prior to notice of an application for local administration. The section was adopted intact.

petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

153-4-207. Ancillary and other local administrations - provisions governing. (1) (a) In respect to a non-resident decedent, the provisions of article 3 of this code govern:

(b) Proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(c) The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

(Omitted section numbers reserved for expansion)

(JURISDICTION OVER FOREIGN REPRESENTATIVES)

153-4-301. Jurisdiction by act of foreign personal representative. (1) (a) A foreign personal representative submits himself to the jurisdiction of the courts of this state by:

(b) Filing authenticated copies of his appointment as provided in section 153-4-204;

(c) Receiving payment of money or taking delivery of personal property under section 153-4-201; or

(d) Doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual.

(2) Jurisdiction conferred by this section shall not include jurisdiction over the personal representative for matters unrelated to the estate for which he was acting when he submitted himself to the jurisdiction of the courts of this state by performing any of the acts enumerated in this section and, under

Section 153-4-207 merely applies the provisions of Article 3 to any proceeding for ancillary administration. It is a general statement of application of the article. It was adopted intact.

Section 153-4-301 requires the foreign personal representative to submit himself to the jurisdiction of the local courts when he files his foreign letters under 153-4-204, takes delivery of property by affidavit under 153-4-201, or does any local act as a personal representative which would have given the local courts jurisdiction over him as an individual. However, jurisdiction based on the removal of assets is limited to the money or value of personal property collected. The Committee added language to the section to make it clear that the foreign personal representative submits himself to jurisdiction only in his capacity as a foreign personal representative of that estate and not otherwise.

paragraph (c) of subsection (1) of this section, is limited to the money or value of personal property collected.

153-4-302. Jurisdiction by act of decedent. In addition to jurisdiction conferred by section 153-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Section 153-4-302 confers local jurisdiction over the foreign personal representative to the same extent that his decedent was subject to jurisdiction immediate prior to death. The section was adopted intact.

153-4-303. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting and receiving a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1) of this section he shall be allowed at least thirty days within which to appear or respond.

Section 153-4-303 establishes the means of serving a foreign personal representative. This can be accomplished by registered or certified mail, unless this is unavailable, in which event ordinary first class mail will be sufficient. In addition, the service provided by Rule 4, C.R.C.P. would be available. The period of time for allowing his answer in this case is 30 days. The section was adopted intact.

(Omitted section numbers reserved for expansion)

(JUDGMENTS AND PERSONAL REPRESENTATIVE)

153-4-401. Effect of adjudication for or against personal representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

Section 153-4-401 provides that all representatives of a decedent's estate in all jurisdictions are bound by each and every order which binds any one of their number. The section was adopted intact.

ARTICLE 5

Protection of Persons Under Disability and Their Property

(GENERAL PROVISIONS)

Under the code, a conservator deals with the estate of both a minor and a person under disability, whereas a guardian has power over the person of both minors and incapacitated persons. A minor is anyone under age twenty-one. A ward is anyone, minor or incompetent, for whom a guardian of the

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153-5-101. Definitions and use of terms. (1) Unless otherwise apparent from the context, in this article:

(2) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

(3) A "protective proceeding" is a proceeding under the provisions of section 153-5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(4) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(5) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

153-5-102. Jurisdiction of subject matter - consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings. Such jurisdiction is subject to the provisions of section 22-1-4 (5) and (6) with respect to guardianships for children under the "Colorado Children's Code".

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

153-5-103. Facility of payment or delivery. Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in

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person has been appointed. A protected person is one who is a minor or person under disability - including one who is confined, has disappeared or is detained - for whom a conservator has been appointed or other protective order has been entered. Under 153-1-201 (9), "disability" means "cause for a protective order"; and the condition defined in 153-5-401 as cause for a protective order is the inability "to manage property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance." In contrast, an "incapacitated person", as distinguished from a person under disability, is one "who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

A code guardian has power over the person of a ward, that is, an incapacitated person or minor. A code conservator has power over the property of a protected person, that is, a person under disability or a minor. A "protective proceeding" relates only to the estate of a minor or person under disability and denotes judicial action to have a conservator appointed or to enter other protective orders in connection with the administration of a protected person's property.

Section 153-5-102 sets forth the subject matter jurisdiction of the court and permits consolidation of "guardianship" and "protective proceedings". The Committee added a provision to this section to the effect that jurisdiction is subject to the provisions of Section 22-1-4 (5) and (6) with respect to guardianships for children under the "Colorado Children's Code".

amounts not exceeding one thousand dollars per annum, by paying or delivering the money or property to the minor, if he has attained the age of eighteen years or is married, any person having the care and custody of the minor with whom the minor resides, a guardian of the minor, or a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

(2) When the amount of money or property payable to the minor is in excess of one thousand dollars per annum and does not exceed five thousand dollars per annum, the provisions of subsection (1) of this section will apply, if the person under the duty of making payment obtains an order from the court authorizing the payments or deliveries.

153-5-104. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding nine months, any of his powers regarding care, custody, or property of the minor child or ward,

Section 153-5-103 permits payment or delivery of property or money to a minor and discharge upon payment or delivery to: the minor if over 18 or emancipated; the person having current custody if the minor resides with that person; a proper guardian; or deposit in an insured savings account in the name of the minor with notice of the deposit to the minor. Persons in the last two categories are obligated to apply it for the support and education of the minor. In the process, they are not permitted to pay themselves for services rendered. Any excess must be accumulated. In addition, knowledge of the pendency of a conservatorship proceeding terminates action under this section. Distributions to persons under disability, other than minors, is covered by 153-3-915. Guardians duties pursuant to this section are set forth in 153-5-209 and 153-5-312.

The UPC provision stated that amounts could be distributed in amounts not exceeding $5,000 per annum. The Committee reduced this amount to $1,000 on the ground that the former was excessive when there is no court supervision. The Committee also added subsection (2) to allow payment of such funds between $1,000 to $5,000 if a court order is obtained, thus permitting whatever safeguards a court might impose.

Section 153-5-104 permits delegation of powers regarding care, custody, or property of the minor child or ward by the parent or guardian. Delegation may not extend to consent to marriage or adoption and must not exceed nine months. This section permits consent to operations to relieve problems encountered by the reluctance of medical institutions to proceed absent consent of a person exercising proper power. The Committee extended the time period from six months to nine months, and the remainder of the section was adopted intact.

except his power to consent to marriage or adoption of a minor ward.

153-5-105. Uniform veterans' guardianship act not affected. If any of the provisions of this article are inconsistent with the provisions of article 3 of chapter 144, C.R.S. 1963, known as "The Uniform Veterans' Guardianship Act", the provisions of that act shall prevail with respect to funds or proceedings subject thereto.

153-5-106. Notice to public institutions on appointment of guardian or conservator. When any court shall appoint a conservator of the estate of a protected person or a guardian of an incapacitated person committed to or residing in any public institution of this state, the court shall notify the superintendent or chief administrative officer of said public institution, or if unknown, the executive director of the department of institutions in writing of the fact of such appointment, giving the name and address of the conservator or guardian.

153-5-107. Small estate - ward - no personal representative. (1) Any interested person may file a verified petition for the distribution without administration of the estate of a ward under the provisions of this section.

(2) (a) As to a ward, such petition shall state so far as known to petitioner:

(b) The name, date of birth, county and state of residence of the ward;

(c) If the ward is a nonresident of the state, that he has a chose in action or other personal property within the county which must be conserved and has no guardian, conservator, or committee appointed by any court;

(d) If mentally ill or mentally deficient, the date upon which, and the court by which the ward was adjudged mentally ill or mentally deficient;

(e) The description and value of each chose in action or other personal property owned by the ward

EXPLANATION

Section 153-5-105 is a new section added by the Committee to clarify the situation where the code might conflict with the Uniform Veterans Guardianship Act in regard to funds or proceedings subject to the Act.

Section 153-5-106 is a new section added by the Committee to provide for notice to public institutions on appointment of a guardian or conservator. The section was adopted from 153-14-3, C.R.S. 1963.

Section 153-5-107 is another new section added by the Committee to provide for distribution without administration of the estate of a ward which is under $10,000. This section was adapted from present law (153-7-4, C.R.S. 1963, as amended).

and subject to administration as a part of his estate;

(f) The name, address, relationship, and date of birth if a minor, of each person who would inherit the estate of a ward if the ward were then deceased;

(g) The name and address of each person who would have a claim against the estate if the estate were to be administered and the amount of any such claim;

(h) The name and address of any person or institution having the care and custody of the ward and the ward's post office address.

(3) The court may hear such petition without notice or upon such notice as the court may direct.

(4) If the court finds that the total personal estate of the ward subject to administration is ten thousand dollars, or less, that no personal representative for the estate has been appointed, and that no useful purpose would be served by the appointment of a personal representative, the court may order the personal estate be distributed without the appointment of a personal representative as provided in this section.

(5) The court shall direct the distribution of said personal estate as the court finds the estate would be distributed in case of administration, the claimants being first paid in the order of the class of their claims. The court may order the distribution of any surplus to the ward, to the guardian or conservator of such ward, if such there be, or to the next friend appointed by the court, or as otherwise provided by law for the distribution of property to persons under legal disability. If distribution to a next friend is ordered, the court, in its order, may attach such conditions regarding bond, reports to the court, and otherwise, as it may deem proper.

(6) The order of court shall constitute sufficient legal authority to any person owing any money, having custody of any property, or acting as a registrar or transfer agent of any evidence of

interest, indebtedness, property or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration.

(7) Any time within one month after the making of an order pursuant to this section, any person interested in the estate may file a petition to revoke the same, alleging that other personal property was not included in the petition or that the property described in the petition was improperly valued, and that if said property were added, included, or properly valued as the case may be, the total value of the personal property would exceed ten thousand dollars, or that the ordered money paid or property distributed to a person not entitled thereto. Upon proof of any such grounds, the court shall revcke the order and enter a more appropriate order, but the revocation or modification of such order shall not impose any liability upon any person who, in reliance upon such order, in good faith, for value, and without notice, paid money or delivered property, or impair the rights of any person who, in reliance on such order, in good faith, for value, and without notice, purchased property or acquired a lien on property.

(8) If a next friend shall be named to enter into the settlement of a claim of a ward against another person for personal injury to the ward or for injury to his property and the entire net value of the ward's personal estate, including the proposed settlement, after providing for expenses of settlement, is ten thousand dollars or less, such proceeding for approval of the settlement by the court may be had in connection with the petition for the disposition of the ward's estate, including the proceeds of the settlement, under this section, and the court may proceed with the settlement as though a legal guardian or conservator had been appointed and may distribute the net proceeds of the settlement

under the provisions of this section. The next friend named may execute releases with the same effect as though they had been executed by a duly appointed legal guardian or conservator.

(Omitted section numbers reserved for expansion)

(GUARDIANS OF MINORS)

153-5-201. Status of guardian of minor - general. A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

Section 153-5-201 defines the status of guardian and its point of commencement. This is acceptance of a testamentary or judicial appointment. The status continues until it is terminated without regard to the location of the guardian or ward. In other words, the status continues across state lines. The section was adopted intact.

153-5-202. Testamentary appointment of guardian of minor. The parent of a minor may appoint by will, or other writing acceptable to the court, a guardian of an unmarried minor. Subject to the right of the minor under section 153-5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. An appointment made by will takes precedence over one made by any other writing.

Section 153-5-202 permits testamentary appointment of a guardian for a non-emancipated minor. The appointment becomes effective upon death of both parents or adjudication of incapacity of the survivor. The appointment of the last parent to die takes priority. The Committee amended the section to provide that appointment could be made by other writings acceptable to the court, and that an appointment made by will takes precedence over one made by any other writing.

153-5-203. Objection by minor of fourteen or older to testamentary appointment. A minor of fourteen or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court

Section 153-5-203 permits minors of 14 or more years to prevent appointment of a testamentary guardian by filing a written objection either before acceptance or within 30 days after acceptance. The court is still permitted to appoint the testamentary nominee, however, the objection of the minor must be considered.

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in a proper proceeding of the testamentary nominee, or any other suitable person.

153-5-204. Court appointment of guardian of minor conditions for appointment. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 153-5-202 whose appointment has not been prevented or nullified under section 153-5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

153-5-205. Court appointment of guardian of minor - venue. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

153-5-206. Court appointment of guardian of minor - qualifications - priority of minor's nominee. The court may appoint as guardian any person, resident or nonresident, whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

153-5-207. Court appointment of guardian of minor - procedure. (1) (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 153-1-401 to:

(b) The minor, if he is fourteen or more years of age;

(c) The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and

(d) Any living parent of the minor.

EXPLANATION

Section 153-5-204 permits appointment of a guardian for an unmarried minor whose parents have had their rights of custody terminated or suspended either due to circumstances or court order. A testamentary guardian is extended priority. If such a guardian already exists and has consented to act, no action would be necessary under this section. The section was adopted intact.

Section 153-5-205 establishes venue in the place of residence or presence. The section was adopted intact.

Section 153-5-206 permits appointment as guardian any person whose appointment would be in the best interest of the minor. The minor can nominate if he is 14 years or over. The person can be a resident or nonresident, as provided by Committee amendment to the section.

Section 153-5-207 sets forth the procedure for appointment. Notice is required and must be given a minor if 14 years or over, the person with whom he is living and any living parent. The court is required to find that the welfare and best interest of the minor must be served by the appointment. If it cannot make the necessary findings, the proceedings may be dismissed or handled in any other way that may best serve the interest of the minor. The court is also permitted to appoint a temporary guardian for a period of nine months. The court can also appoint an attorney to represent the minor's interest if the court finds this necessary, giving consideration to the minor's preference if

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(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 153-5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than nine months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

(5) If an appointed guardian is not effectively performing his duties and the court finds that the welfare of the minor requires immediate action, the court may, with or without notice, appoint a temporary guardian for such minor for a period of not to exceed six months. During such period the powers of the original appointee are suspended.

153-5-208. Consent to service by acceptance of appointment - notice. By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

153-5-209. Powers and duties of guardian of

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he is over 14 years of age. The Committee added subsection (5) to provide that a temporary guardian can be appointed in an emergency and that the powers of the original appointee are suspended during this time. The appointment cannot exceed six months.

Section 153-5-208 provides that the guardian, by accepting appointment, submits personally to the jurisdiction of the court on any matter pertaining to guardianship. He is entitled to notice of any proceedings. The section was adopted intact.

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minor. (1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and, except as specifically provided by law, is not liable to third persons by reason of the parental relationship for acts of the ward.

(2) A guardian shall take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(3) A guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 153-5-103. Any sums so received shall be applied to the ward's current needs for support, care and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(4) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have

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Section 153-5-209 states that a guardian has the powers and responsibilities of a parent, but he is not obligated to provide for the ward from his own funds. It also states that a guardian is not liable for acts of a ward, however, the Committee added a provision that he would not be liable "except as otherwise provided by law", since there are specific liabilities imposed on parents and guardians by other statutory provisions.

The guardian must take care of the ward's personal effects and commence protective proceedings to protect other property. The guardian may also receive money payable for support, and may receive other money or property under the facility of payment provision. The guardian is empowered to facilitate education, social and other activities and authorize medical and professional care. A guardian may also consent to marriage or adoption.

consented. A guardian may consent to the marriage or adoption of his ward.

(5) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare, or as required by court rule.

153-5-210. Termination of appointment of guardian - general. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

153-5-211. Proceedings subsequent to appointment - venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

153-5-212. Resignation or removal proceedings.

EXPLANATION

Section 153-5-210 sets forth the effect of termination of appointment and the time when it occurs. If a condition occurs which removes the need for guardianship, authority and responsibility terminate. This would be the guardian's death, the minor's death, adoption, marriage or reaching majority. Authority and responsibility terminate on resignation only after approval by the court. If he is removed, the order of removal effects termination unless authority has been enjoined prior to the order. If there is a testamentary appointment and a will is denied probate, authority terminates upon entrance of the order denying probate. Jurisdiction continues to determine liability for prior acts and to account for funds and assets of the ward. The section was adopted intact.

Section 153-5-211 establishes concurrent jurisdiction in the court of current residence and the court of appointment in the event action subsequent to appointment occurs. The section is keyed to "acceptance of appointment" rather than the appointing court. The section was adopted intact.

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(1) Any person interested in the welfare of a ward, or the ward, if fourteen years of age or more, may petition for removal of a guardian, including a temporary guardian, on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or more.

(Omitted section numbers reserved for expansion)

(GUARDIAN OF INCAPACITATED PERSONS)

153-5-301. Testamentary appointment of guardian for incapacitated person. (1) The parent of an incapacitated person may by will or other writing acceptable to the court, appoint a guardian or the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(2) The spouse of a married incapacitated person

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Section 153-5-212 establishes the procedures for resignation or removal. Any person interested in the welfare of a ward may petition for removal of a guardian. This applies to persons 14 or more years of age and permits them to act for themselves. The section also permits resignation by the guardian. Removal or resignation is permitted if in the best interests of the ward. The court is permitted to appoint a guardian ad litem to represent the minor if his interest are inadequately represented in the proceeding. The Committee added language to the section to include a temporary guardian in the removal proceedings.

Section 153-5-301 provides for testamentary appointment of a guardian for an incapacitated person. The procedure for the exercise of the power is somewhat different than in the case of minors, that is, acceptance must be filed upon seven days notice. No notice is required in 153-5-202 which deals with the appointment of guardians for minors. Notice has to be given to the person with whom the incapacitated person is residing or his nearest relative. Appointment may also be made by the spouse. In the event there is a conflict between appointment by spouse and parent, appointment by the spouse controls. Colorado would recognize a testamentary appointment made in another state by virtue of this section. If written objection is filed by the incapacitated person, appointment is terminated. However, the court does have jurisdiction to appoint the testamentary nominee in adjudicated proceedings. This would apparently be required upon filing of an objection if an appointment is to be valid. Unless objection is filed, appointment will

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may by will, or other writing acceptable to the court, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under sections 153-5-303 to 153-5-313.

153-5-302. Venue. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

153-5-303. Procedure for court appointment of a guardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall, except as provided in subsection (3) of this section, set a date for hearing on the issues of incapacity and unless the allegedly incapacitated

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give the guardian power to act without regard to the actual state of incapacity and without any adjudication of that status. The Committee also amended this section to provide appointment may be made by another writing acceptable to the court.

Section 153-5-302 states that venue is in the place where the party resides or is present. This section was adopted intact.

Section 153-5-303 permits initiation of guardianship proceedings by petition from the incapacitated person or any person interested in his welfare. The section also requires the appointment of counsel. Examination by a physician appointed by the court is required together with an interview by a visitor. Qualifications of a visitor are set out in 153-5-308. The visitor is required to attend at the place of residence of the guardian of the alleged incapacitated person and the place where he will be de-

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person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

(3) In cases where the incapacitated person has been adjudicated as a mentally ill or mentally deficient person pursuant to article 1 of chapter 71, C.R.S. 1963, the provisions of subsection (2) of this section shall not apply, and the court may proceed with the appointment of a guardian for the incapacitated person upon the filing of a copy of the order of adjudication certified to be in full force and effect.

153-5-304. Findings - order of appointment. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated, or has previously been adjudicated as mentally ill or mentally deficient, and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person.

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tained or reside if the appointment is made. A report from the visitor is required in every case. The alleged incapacitated person has the right to be present at the hearing and see and hear all evidence bearing on his condition, and has the right to a jury trial. A specific provision is included for a consenual closed hearing upon request of the incapacitated person or his counsel. The Committee also added a provision which states that where an adjudication of mental incapacity has been had, the court may appoint a guardian upon filing of the order of adjudication.

Section 153-5-304 is similar to present law and was adopted intact.

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Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

153-5-305. Acceptance of appointment - consent to jurisdiction. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

153-5-306. Termination of guardianship for incapacitated person. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 153-5-307. Testamentary appointment under an informally probated will also terminates if the will is later denied probate in a formal proceeding.

153-5-307. Removal or resignation of guardian - termination of incapacity. (1) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

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Section 153-5-305 submits the guardian to personal jurisdiction of a continuing nature upon acceptance of appointment. He is entitled to notice of any proceedings. The section was adopted intact.

Section 153-5-306 deals with termination of guardianship. It terminates upon death of either the guardian, removal or resignation. Technical termination is provided upon refusal to probate a will containing a testamentary appointment. The section was adopted intact.

Section 153-5-307 deals with the removal of the guardian upon the finding that his continued appointment is not in the best interest of the ward. It also provides the procedures for review of incapacity, which is similar to the initial determination of incapacity. The procedure may be initiated by the ward or any person interested in his welfare and may be presented at any time. However, upon initial review, the court may, in its order denying restoration of capacity, prescribe that a new petition may not be presented for a minimum period not exceeding one year. The court is permitted, but not required, to send a visitor to the various places. The section also provides for resignation of the guardian. If anyone interferes with an attempt to communicate with the court, the act is punishable by contempt. The Committee amended the section by adding a new subsection (4) which provides that the court may terminate the appointment upon the filing with the court a certified copy of an order of competency entered by the court which originally adjudicated mental incapacity.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

(4) In cases where the appointment was based on the incapacitated person's having been adjudicated mentally ill or mentally deficient, the court may terminate the appointment of the guardian upon the filing with the court of a petition requesting such termination supported by a certified copy of an order of competency entered by the court which originally adjudicated the incapacitated person as mentally ill or mentally deficient, under section 71-1-26, C.R.S. 1963.

153-5-308. Visitor in guardianship proceeding. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

153-5-309. Notices in guardianship proceedings. (1) (a) In a proceeding for the appointment or removal of a guardian of an incapacitated person, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(b) The ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(c) Any person who is serving as his guardian, conservator, or who has his care and custody; and

(d) In case no other person is notified under paragraph (b) of this subsection (1), at least one of his closest adult relatives, if any can be found.

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Section 153-5-308 specifies the qualifications of a visitor. He or she must be trained in law, nursing or social work and be an officer, employee or special appointee of the court with no special interest in the proceeding. The section was adopted intact.

Section 153-5-309 requires that notice be given in all appointment or removal proceedings to the ward or alleged incapacitated person, his spouse, parents and adult children, any person serving as guardian or conservator or who has care and custody and, if no other person is notified, at least one of his closest adult relatives, if any can be found. Notice to the person, his spouse and parents is required to be served personally if they can be found in the state. If they cannot be found, the notice specified in 153-1-401 is sufficient. Waiver of the notice by the incapacitated person is not effective unless he attends the hearing or this is confirmed in an interview with a visitor. Representation by a guardian ad litem is not necessary. However, a guardian ad litem may be appointed if this is the

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(2) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 153-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary except as required under section 153-5-303 (2).

153-5-310. Temporary guardians. If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian or may appoint a temporary guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

153-5-311. Who may be guardian - priorities. (1) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(2) (a) Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:

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only way in which adequate representation may be assured (153-5-303 and 153-5-307). The section was adopted intact.

Section 153-5-310 permits appointment of a temporary guardian or exercise of the powers of a guardian by the court itself if the court finds that the welfare of the incapacitated person requires immediate action. This power on the part of the court may be exercised even though no guardian has been appointed. Under the UPC section, no temporary guardian could be appointed unless there was already an appointed guardian who was not effectively performing his duties. The Committee changed the section to permit the court to appoint a temporary guardian even though a guardian had not been appointed. The temporary appointment may be made for a period not in excess of six months and the temporary guardian is subject to immediate removal.

Section 153-5-311 establishes priority for appointment. The order of priority is the spouse, an adult child, parent (including a nominee of the parent indicated by will or deed), any relative with whom he has been residing for more than six months, and a person nominated by the person caring for or paying benefits to him. The Committee amended the section to provide that an incapacitated person could

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(b) The spouse of the incapacitated person;
(c) A person nominated by the incapacitated person in writing prior to his incapacity;
(d) An adult child of the incapacitated person;
(e) A parent of the incapacitated person, including a person nominated by will or other writing signed by a decesaed parent;
(f) Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
(g) A person nominated by the person who is caring for him or paying tenefits to him.

153-5-312. General powers and duties of guardian. (1) (a) A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not required to provide from his own funds for the incapacitated person, and, except as specifically provided by law, a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the provisions of this paragraph (a), a guardian has the following powers and duties, except as modified by order of the court:
(b) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state;
(c) If entitled to custody of his ward he shall make provision for the care, comfort, and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need

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make a nomination in a writing prior to his incapacity and this nomination would be given priority after the spouse. The Committee also made the question of priority subject to a determination by the court of the best interests of the incapacitated person.

Section 153-5-312 describes the duties and powers of a guardian. He was given the general powers of a parent without legal liability to third person under the UPC. The Committee amended the section to provide that the guardian is not required to provide from his own funds for the incapacitated person and that he is subject to liability as provided in other statutory provisions. The rest of the powers are similar to the powers of a guardian of a minor under 153-5-209. The guardian may receive compensation for services and room and board from the conservator (if one has been appointed) or can request payment by the conservator to a third person for this pupose.

of protection;

(d) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service;

(e) (i) If no conservator for the estate of the ward has been appointed, the guardian may:

(ii) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(iii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice if possible. He must exercise care to conserve any excess for the ward's needs;

(f) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule;

(g) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(2) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian

may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

153-5-313. Proceedings subsequent to appointment - venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(Omitted section numbers reserved for expansion)

(PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS)

153-5-401. Protective proceedings. (1) Upon petition and after notice and hearing the court may appoint a conservator or make other protective order for cause as provided in this section.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(3) Appointment of a conservator or other

Section 153-5-313 deals with venue subsequent to appointment and follows the earlier procedure which recognizes concurrent jurisdiction between the court of residence of the ward and the court which appointed the guardian or in which acceptance of appointment is filed. The same procedure for notification and resolution is provided here as is established in 153-5-211. The Comments there are pertinent to this section. The section was adopted intact.

Section 153-5-401 establishes the conditions in which appointment of a conservator may be made. It is divided into two subsections. Subsection (2) deals with affairs of minors and subsection (3) deals with the affairs of other persons. In relation to minors, a conservator may be appointed only if the court determines that the minor has money or property requiring management or protection which cannot otherwise be protected. Presumably, if the amount involved is not substantial, the appointment of a guardian for the person or simply the management of such property by the parents or person with whom the minor is living would be sufficient. He may have business affairs jeopardized or prevented by his minority or conservatorship may be necessary or desirable to obtain or provide funds for his support and education. The court has to find one or another of these conditions in order to appoint a conservator. Appointment of a conservator does not necessarily follow simply upon a finding of the existence of property.

protective order may be made in relation to the estate and affairs of a person if the court determines that the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and that the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

153-5-402. Protective proceedings - jurisdiction of affairs of protected persons. (1) (a) After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(b) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(c) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;

(d) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

153-5-403. Venue. (1) (a) Venue for protective proceedings is:

(b) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(c) If the person to be protected does not reside in this state, in any place where he has

If the person is someone other than a minor, under subsection (3), the court must also find that he is unable to manage his property and affairs effectively. The reasons include chronic use of drugs, chronic intoxication, advanced age, physical illness or disability, confinement, detention or disappearance. In addition to finding that a condition exists requiring management, the court also has to find that the disabled person has property which will otherwise be wasted or dissipated or that he needs funds and that such protection is necessary or desirable to obtain and provide these funds. The section was adopted intact.

Section 153-5-402 establishes jurisdiction in the court in which the petition is first filed in this state to determine need for a conservator or any other protective order and to determine how the estate of the protected person shall be managed, expended or distributed. In addition, it has concurrent jurisdiction of questions concerning the validity of claims against the person or estate of the protected person. This means that, while protective proceedings are pending, questions as to the appointment, accounts or removal of the conservator, whether he may or should enter into proposed transactions, and what he should pay to or for the use of the protected person or his dependents, must be determined in the court where the protective proceedings are in progress. Litigation brought by or against third persons who claim property adversely to the protected person, who are indebted to him, or who have claims against him or his estate, may be conducted in another court if litigation of the type involved could have been conducted there in the absence of conservatorship proceedings. The section was adopted intact.

Section 153-5-403 establishes venue in the place of residence of the person to be protected or, if residence does not exist in this state, in any jurisdiction in which he has property. If venue exists, the court in which jurisdiction is first instituted will retain the case. If that court is not the proper one for venue, this question may be raised in that court. The section was adopted intact.

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property.

153-5-404. Original petition for appointment or protective order. (1) The person to be protected, any person who is interested in his estate, affairs, or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs, may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

153-5-405. Notice. (1) Except in cases under section 153-5-407(6), on a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 153-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, except when minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of

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Section 153-5-404 describes who may petition for appointment of a conservator. These include anyone interested in his estate, affairs, or welfare including persons who would be adversely affected by failure to appoint a person to manage his property. Subsection (2) details the information to be included in a petition for appointment of a conservator. It requires the names and addresses of only the protected person, his guardian, if any, and the nearest relative known to the petitioner. The section was adopted intact.

Section 153-5-405 sets forth the requirements for notice. This must be served personally upon the individual to be protected, the spouse and parents, if there is no spouse. The notice must be served personally at least 14 days before the hearing, if within the state, or given notice pursuant to 153-1-401 if they are without the state or cannot be found. Waiver by the protected person of this notice is ineffective unless he appears at the hearing or the waiver is confirmed upon interview. Under subsection (2), notice must be given to anyone requesting it, interested persons and such other persons as the court may require. The Committee amended the section to provide that notice and hearing are not necessary if the petition is supported by a prior adjudication of mental incapacity pursuant to 153-5-407 (6).

any subsequent hearing, must be given to any person who has filed a request for notice under section 153-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection (1) of this section, notice shall be given in accordance with section 153-5-401.

153-5-406. Protective proceedings - request for notice - interested person. Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Section 153-5-406 provides for requests for notification. Requests for notice may be given or filed with the registrar whether or not a conservator has been appointed. If one has been appointed, or upon appointment, notice must be given. This indicates that a check would have to be made with the registrar prior to filing notice in any of these cases. Government agencies are specifically permitted to file under this section. The section was adopted intact.

153-5-407. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

(3) Unless the person to be protected has

Section 153-5-407 describes the procedures to be followed on the hearing. If a minor is involved, the court must determine whether or not the minor's interests are adequately represented. If not, an attorney, with powers and duties of a guardian ad litem, must be appointed to represent the minor. In the event someone other than a minor is involved, the court is required to appoint a guardian ad litem unless the person has counsel of his own choice. In addition to this, the court may direct that the persons to be protected be examined by a court appointed physician, preferably but not necessarily connected with any institution in which the person is a patient or is detained. A visitor may, but need not, be sent to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court. The Committee added new subsections (5) and (6) to give the court flexibility in those cases concerning mentally ill or mentally deficient persons.

counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(5) In lieu of the examination provided for in subsection (3) of this section, the court may require a proceeding under article 1 of chapter 71, C.R.S. 1963, to determine if the person to be protected is mentally ill or mentally deficient.

(6) If the petition for the appointment of a conservator or other protective order is supported by a prior order of adjudication of mental illness or mental deficiency and such order is in full force and effect the court may, without further hearing, and upon such notice as the court may require, appoint a conservator or enter such protective order as it deems necessary.

153-5-408. Permissible court orders. (1) The court has the powers specified in this section which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons.

(2) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the

Section 153-5-408 describes the powers which may be exercised directly by the court or by the conservator. The court has the power to act directly in this situation and thus substantially changes Colorado law. The court is given the powers the individual himself would have including the power to make gifts, to convey or release contingent and expectant interests (including marital property rights and any right of survivorship), to exercise or release a trust power, enter into contracts, to create irrevocable trusts of

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property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.

(4) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(5) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is

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property, to exercise options, change beneficiaries under insurance and annuity policies, surrender policies, exercise elective rights in his share of the estate of a deceased spouse, renounce interests and anything apparently the individual could do except making a will. The more extensive of these powers are required to be exercised by the court only after notice, a hearing and a finding that it is in the best interest of the protected person. Though these powers are exercised by the appointing court, most of them can be exercised by the conservator (153-5-426). The section was adopted intact.

donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

(6) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

153-5-409. Protective arrangements and single transactions authorized. (1) If it is established in a proper proceeding that a basis exists as described in section 153-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in section 153-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall

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Section 153-5-409 establishes procedures to handle the affairs of a person needing protection without appointing a conservator. This allows the court to approve single transactions. If the individual to be protected has cash and no property, the court may approve the purchase of an annuity contract or some kind of a private annuity for life or create a deposit contract with a bank which would have a monthly or weekly payout. A contract for training or education can be executed together with the sale of property to obtain funds to establish these arrangements. If more than this is necessary the court may approve a trust suggested to it or some other arrangement relating to the protection of financial affairs of persons sought to be protected or may require the establishment of a trust. To achieve these various ends, a special or temporary conservator may be appointed to take care of the details. In setting up the protective arrangement, the court is to determine and consider the best interest of creditors and dependents and whether, in view of his disability, the continuing protection of a conservator is required. The section was adopted intact.

consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

153-5-410. Who may be appointed conservator - priorities. (1) (a) The court may appoint an individual, a trust company, or a bank with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(b) A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(c) A nominee of the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice; or a nominee of an adult protected person named in a writing executed prior to the time the need for a protective proceeding arose;

(d) The spouse of the protected person;

(e) An adult child of the protected person;

(f) A parent of the protected person;

(g) Any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;

(h) A person nominated by the person who is caring for him or paying benefits to him; and such nomination may be by the department of social services when the provisions of section 119-14-7, C.R.S. 1963, are applicable.

(2) Except for persons nominated under paragraph

Section 153-5-410 establishes the order of priorites on appointment. The individual must have the power to serve as a trustee. The court may appoint an individual or any corporation with general power to serve as trustee as conservator. The term "corporation" was changed by the Committee to "trust company or bank" to conform to the situation in Colorado. The order of priority recognizes first the right of a conservator appointed by the jurisdiction of domicile; next the individual nominated by a protected person 14 or more years of age with sufficient mental capacity to make an intelligent choice, or "a nominee of an adult protected person named in a writing executed prior to the time the need for a protective proceeding arose" (this provision was added by the Committee); then the spouse; the adult child; then the parent; any relative with whom he has resided for more than six months and; finally, a person nominated by the person caring for him or paying benefits to him. In this last category, the Committee added language that the Department of Social Services may be named as conservator if the department is providing protective services to such person pursuant to 119-14-7, C.R.S. 1963. Any person in any of these categories, other than (c) and (h), may nominate another person to serve in his stead. He may nominate "by will or other writing."; a change made by the Committee to parallel other provisions of the code.

In the event of equal priority, the court is required to select the person most qualified and willing to serve. For good cause, a person having priority may be passed over.

(c) or (h) of subsection (1) of this section, any person eligible under subsection (1) may nominate by will or other writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

153-5-411. Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land. If the conservator is a company or association with capital at least equal to that required by law of a corporate surety the court may excuse the requirement of surety on its bond.

Section 153-4-411 establishes the conditions upon which a bond may be required. The court may, but is not required, to impose a bond upon the conservator. If a bond is required, it must be in the aggregate capital value of the property of the estate, plus one-year's estimated income minus the value of restricted deposits of securities and the value of any land which may not be sold without court authorization. The Committee added the last sentence to the section to permit banks and trust companies with adequate capital to serve as conservators without surety on their bonds.

153-5-412. Terms and requirements of bonds. (1) (a) The following requirements and provisions apply to any bond required under section 153-5-411:

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(c) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be

Section 153-5-412 establishes the terms of the bond. Essentially, these follow the same pattern as those required for personal representatives (153-3-606). The section was adopted intact.

delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(d) On a petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(e) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

153-5-413. Acceptance of appointment -- consent to jurisdiction. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Section 153-5-413 establishes the consent to jurisdiction that arises out of acceptance of appointment. This is one of the key provisions which is found in each of the separate areas of the code. Once acceptance is filed, that court establishes a forum for any proceeding against the conservator. The section was adopted intact.

153-5-414. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, with the approval of the court.

Section 153-5-414 establishes the requirement for reasonable compensation for visitors, lawyers, physicians, conservators, or special conservators. The section was adopted intact.

153-5-415. Death, resignation, or removal of conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to

Section 153-5-415 permits removel of a conservator for good cause after notice and hearing or acceptance of resignation. Upon finding a vacancy in the office, a new conservator with the same title and powers of the predecessor may be appointed. The section was adopted intact.

the title and powers of his predecessor.

153-5-416. Petitions for orders subsequent to appointment. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order requiring bond or security or additional bond or security, or reducing bond, requiring an accounting for the administration of the trust, directing distribution, removing the conservator and appointing a temporary or successor conservator, or granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

153-5-417. General duty of conservator. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section 153-7-302.

153-5-418. Inventory and records. Within ninety days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located and has attained the age of fourteen years, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same at any reasonable time on request of any interested person made a reasonable time in advance.

153-5-419. Accounts. Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other

Section 153-5-416 permits any person interested in the welfare of a person for whom a conservator has been appointed to file a petition challenging the conservator and requiring the filing of bond, security, additional bond or security or, conversely, permits the conservator to request a reduction in bond or anyone else interested in the estate to do likewise. An accounting may be required, distribution directed, or the conservator removed and a temporary or successor conservator appointed. The court, in general, is permitted to grant "any appropriate relief" upon request of the interested person. A conservator, in addition to this, is permitted to petition the court for instructions concerning his responsibility and upon notice and hearing the court may give appropriate instructions or make any appropriate order. The section was adopted intact.

Section 153-5-417 establishes the fiduciary requirement in the exercise of the powers of a conservator. Again, he is treated (as is the personal representative) as a trustee with the standard of care set forth in 153-7-302. If he fails to adhere to these duties, he will be responsible to any injured party and the court, by virtue of 153-5-413, will have continuing jurisdiction over him. The section was adopted intact.

Section 153-5-418 requires the conservator to file with the court a complete inventory of the estate within 90 days after appointment. Compare with 153-3-706 which requires the personal representative of a decedent's estate to file an inventory of property owned by the decedent at the time of his death within three months after appointment. A copy has to be provided to the protected person if he can be located and is 14 years of age or older and has sufficient mental capacity to understand and to the parent or guardian with whom he resides. Suitable records are required to be kept and these must be exhibited upon request to any interested person. The provision for inspection of a conservator's books was qualified so that he would have reasonable notice of the request.

times as the court may direct. On termination of the protected person's minority or disability, a conservator must account to the court or to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

Section 153-5-419 requires accounting upon resignation or removal and at other times as directed by the court. The account may be rendered to the former protected person, his personal representative or to the court. An intermediate account adjudicates liabilities concerning matters considered in connection with the account and any order made after notice and hearing upon a final account adjudicates all previously unsettled liabilities of the conservator. The court may require a physical check of the estate and specify the manner in which it may be made. The Committee provided that, upon termination of minority or disability, the conservator must account. This was a change from the UPC provision where it was discretionary.

153-5-420. Conservators - title by appointment. The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

Section 153-5-420 establishes title in the conservator upon his appointment. The title he holds is that of trustee to all property of the protected person. This includes a right to title to any property now held for the protected person by custodians or attorneys in fact. To protect the individual from operation of state laws relating to insurance or contractual provisions in policies or pension plans, contracts, wills, or any such device imposing restrictions upon transfer, the section provides that this is no transfer. However, if specific provision is made in the instrument concerning the relationship of the conservator, it may be regarded as a transfer. The section was adopted intact.

153-5-421. Recording of conservator's letters. Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his

Section 153-5-421 permits letters of conservatorship and orders terminating conservatorships to be recorded as evidence of title to property. Upon recording, the recording statutes operate to determine the respective rights of the conservator and the protected person. The section was adopted intact.

successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

153-5-422. Sale, encumbrance, or transaction involving conflict of interest - voidable - exceptions. Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Section 153-5-422 makes voidable any transaction involving a substantial conflict of interest. They can be approved by the court after notice to interested persons. The section was adopted intact.

153-5-423. Persons dealing with conservators - protection. A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 153-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 153-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Section 153-5-423 protects persons dealing with conservators in the same manner as person dealing with personal representatives are protected by 153-3-714. Persons are protected, except for transactions requiring court order under 153-5-408 (gifts in excess of 20% of income) and when restrictions of conservator's powers are endorsed on his letters. Third parties need not inquire into existence of power, propriety of exercise, or application of estate assets. The protection applies even if there is a procedural defect in the issuance of letters. The section does not substitute for other provisions of laws relating to commercial transactions and securities transfers. The section was adopted intact.

153-5-424. Powers of conservator in

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administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 153-5-209 until the minor attains the age of eighteen or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian.

(2) A conservator may exercise any of the powers enumerated in the "Colorado Fiduciaries' Powers Act" at the time of such exercise.

153-5-425. Distributive duties and powers of conservator. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the provisions of this section.

(2) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care, to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(3) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be

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Section 153-5-424 details the administrative powers of a conservator, exercisable without court order. The Committee deleted all of the specific powers enumerated in the section and cross-referred to the Colorado Fiduciaries' Powers Act, giving the conservator all the powers enumerated therein. In general, the same powers vested in the personal representative under 153-3-715 are vested in the conservator under this section, through incorporation by reference to the Colorado Fiduciaries' Powers Act.

Section 153-5-425 establishes guidelines for the expenditure and distribution of income and principal without court authorization or confirmation. If the conservator follows recommendations of a parent or guardian, he is protected unless he knows the parent or guardian is himself deriving benefit of a financial nature from the expenditures or the recommendations are clearly not in the best interest of the protected person. Absent guidance of this nature; the conservator is obligated to take into consideration those factors which the courts have normally expressed in this area, things such as size, duration, standard of living and other funds or sources for support. He is also permitted to support those persons legally dependent upon the protected person and others, though not dependent, if they are members of his household and unable to support themselves. This broadens current law substantially. He is permitted to reimburse for expenditure made by others and to pay in advance for services to be rendered, if advance payment is customary or reasonably necessary. He is even permitted to make gifts to charity in amounts which do not exceed 20% of the income of the estate for any given year. Upon attainment of majority by aminor the conservator is required to pay over to him all the funds and property as soon as possible. If a conservator is appointed for disabilities other than minority and he is satisfied that the disability has ceased, he is required to pay over all funds and properties as soon as

fully able to manage his affairs and the estate which has been conserved for him; and with regard to the accustomed standard of living of the protected person and members of his household, and other funds or sources used for the support of the protected person.

(4) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(5) Funds expended under this section may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be preformed and where advance payments are customary or reasonably necessary under the circumstances.

(6) If the estate is ample to provide for the purposes implicit in the other distributions authorized by this section, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the net income from the estate, as determined under normally acceptable trust accounting principles.

(7) When a minor other than one who has been adjudged disabled under section 153-5-401 (3) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(8) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former

possible. If death ensues, he is required to deliver a will to the court, inform the executor or beneficiary named therein that he has done this and retain the estate for delivery to the appointed personal representative. A simple endorsement on his letters gives him powers of a personal representative. Upon the death of the protected person, the conservator is permitted to apply to the court for appointment as personal representative of the decedent's estate 40 days after death, if no other person has been appointed and no application for appointment is pending. The Committee adopted the entire section intact except for adding a definition of income to the end of subsection (6).

protected person as soon as possible.

(9) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 153-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 153-3-308 and sections 153-3-601 to 153-3-1008, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.

153-5-426. Enlargement or limitation of powers of conservator. Subject to the restrictions in section 153-5-408 (5), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections

Section 153-5-426 permits enlargement or restriction of the powers of the trustee. The court has very broad powers which it may exercise under 153-5-408. They can be extended by endorsement upon the letters of the conservator. In addition to this, the court may restrict the power of the con-

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153-5-424 and 153-5-425, any power which the court itself could exercise under sections 153-5-408 (3) and 153-5-408 (4). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 153-5-424 and 153-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 153-5-424 or section 153-5-425, the limitation shall be endorsed upon his letters of appointment.

153-5-427. Preservation of estate plan. In investing the estate, and in selecting assets of the estate for distribution under section 153-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, and in exercising any other powers vested in them, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

153-5-428. Claims against protected person - enforcement. (1) Subject to all defenses available to the protected person or the conservator, a conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or he may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. The

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servator by endorsing this restriction upon his letters. In Veteran's Administration proceedings it may be necessary to utilize the restrictive powers of this section in order to qualify for receipt of benefits. In the event the Veteran's Administration refuses to accept the law as it may be passed this section provides the vehicle by which compliance with conditions insisted upon may be attained. The section was adopted intact.

Section 153-5-427 enjoins upon both court and conservator the duty of following any know estate plan. To further this end, the conservator is given the power to examine the will of the protected person. If the will lies within the jurisdiction, the provision will insure an ability to recognize the estate plan. Presumably, the penalty for failure to follow this section would be a breach of duty on the part of the conservator as a trustee, he could be liable in damages. How far this liability would extend would depend upon the duty he might owe third parties. The Committee added language to the section to broaden it by requiring that the conservator and the court take into account a known estate plan in the exercise of any power.

Section 153-5-428 establishes the system of presentation of claims to the estate and the order of priority for insolvent estates. Claims may be presented simply by mailing or delivery or this may be accomplished by filing with the clerk of the court. Presenting a claim tolls the statute of limitations until 30 days after disallowance. In the event it is not paid or it is disallowed, the claimant may petition the court for payment and then litigate the obligation of the estate. The section establishes an order of priority of claims in the event of insolvency. Prior claims for care, maintenance, education and existing claims for expenses of administration are preferred.

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153-5-424 and 153-5-425, any power which the court itself could exercise under sections 153-5-408 (3) and 153-5-408 (4). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 153-5-424 and 153-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 153-5-424 or section 153-5-425, the limitation shall be endorsed upon his letters of appointment.

153-5-427. Preservation of estate plan. In investing the estate, and in selecting assets of the estate for distribution under section 153-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, and in exercising any other powers vested in them, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

153-5-428. Claims against protected person - enforcement. (1) Subject to all defenses available to the protected person or the conservator, a conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or he may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. The

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presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(2) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(3) (a) If the available assets are insufficient to pay all claims in full, the conservator shall make payment in the following order:

(b) Expenses of administration;

(c) Claims for the care, maintenance, and education of the protected person or his dependents arising within sixty days prior to the creation of the conservatorship;

(d) All other claims.

(4) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

153-5-429. Individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

The Committee amended the section by eliminating the automatic claim approval provision and by adding a provision to allow the conservator to raise any available defense to a claim. Subsection (3) was rewritten by the Committee so that it would parallel the provisions of 153-3-805.

Section 153-5-429 treates the conservator the same as the personal representative in his dealings on behalf of the estate. He is not individually liable for estate obligations nor for torts, unless he is personally at fault. This is similar to 153-3-808 dealing with personal representatives.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

153-5-430. Termination of proceeding. The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors, to evidence the transfer.

153-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) (a) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed at least ninety days prior to the date of payment or delivery by a court of the state of residence of the protected person, upon

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Section 153-5-430 permits termination proceedings by the protected person, his personal representative, a conservator or any interested person. Upon initiation of the proceedings, the procedure is exactly the same as that required for initiation of the conservatorship and appropriate findings are required. Upon termination, title reverts to the former protected person unless some provision to the contrary is made in the termination order. Termination orders may be recorded and will establish the right to title. It would not seem necessary in all cases to have this kind of a proceeding. In other words, termination could be accomplished by a transfer from the conservator to the protected person and this might be appropriate, for instance in the case of return of missing persons. In most situations, it would appear appropriate to acquire a court order. The section was adopted intact.

Section 153-5-431 extends to foreign personal representatives. Local persons indebted to a protected person will be protected by this section upon payment of the property or debt to the foreign guardian. All that is required is proof of appointment and an affidavit stating that there are no proceedings pending inthis state and that the foreign representative has a right to receipt. The procedure is substantially identical to that set forth for foreign personal representatives. The Committee amended the section by adding a provision which would require a 90-day waiting period.

being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(b) That no protective proceeding relating to the protected person is pending in this state; and

(c) That the foreign conservator is entitled to payment or to receive delivery. If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state and if he forthwith notifies the court of appointment of such payment or delivery, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

before payment may be made to a foreign conservator. The Committee also added language placing the payor under a duty to notify the court of appointment that the payment has been made. The Committee felt that these safeguards were essential.

153-5-432. Foreign conservator - powers. If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Upon filing any additional bond required by the Colorado court based upon Colorado assets, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

The Committee adopted section 153-5-432 intact.

(Omitted section numbers reserved for expansion)

(POWERS OF ATTORNEY)

153-5-501. When power of attorney not affected by disability. Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf

Section 153-5-501 permits continuance of a power of attorney which has been executed in writing and contains the words "this power of attorney shall not be affected by disability of the principal or shall become effective upon disability of the principal" or similar words showing a clear intent to continue during incompetency or to initiate upon incompetency. During the period of disability or incapacity and during any period or uncertainty as to whether the principal is dead or alive all conduct of the principal or the agent is binding upon the principal, his heirs, devisees and personal representative just as if he were alive, competent and not disabled. If a conservator is appointed, the agent

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of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

153-5-502. Other powers of attorney not revoked until notice of death or disability. (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 153-5-501, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the

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is obligated to account to him; appointment terminates the power of the agent. Some language will have to be found in them which will warrant the clear inference that they are intended to continue during disability or to provide against disability or incompetency. The section was adopted intact.

Section 153-5-502 establishes the rule which operates upon death, disability on incompetence of the principal. None of these automatically revoke or terminate the agency. This is without regard to the provision which is discussed in the above section. There must be knowledge of death, disability or incompetency on the part of the agent. Absent fraud, an affidavit executed by the attorney in fact or agent of absence of knowledge is conclusive proof of non-revocation or non-termination. The affidavit is subject to recordation. However, this does permit continuation of the old rule if the persons establishing the power so indicate in the instrument creating it. Note that the ability to deal during periods of incompetency with knowledge of it is different. That requires a specific delegation of power "in writing". This is somewhat similar to present law and the section was adopted intact.

exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

ARTICLE 6

Non-Probate Transfers

(MULTIPLE-PARTY ACCOUNTS)

153-6-101. Definitions. In sections 153-6-102 to 153-6-113, unless the context otherwise requires:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement;

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;

(3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, industrial banks, building and loan associations, savings and loan companies or associations, and credit unions;

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship;

(5) A "multiple-party account" is any of the following types of account: a joint account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is

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This part of Article 6 deals with multiple-party accounts in financial institutions. Multiple-party accounts refer to accounts involving two or more names on the accounts. Basically there are three types of such accounts: (1) the joint account; (2) the trust account; and (3) an account payable on death to a named beneficiary (P.O.D.). The code not only authorizes these kinds of accounts and spells out the beneficial interests in these accounts as between the named persons on the account during lifetime and after the death of any such person but also provides protection for the financial institutions when payment is made in accordance with the deposit contract.

Section 153-6-101 establishes a series of definitions that are used in the article. The Committee adopted the section intact, except for adding "industrial banks" to the definition of "financial institutions" in subsection (3).

established other than by deposit agreement;

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge;

(9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section 153-1-107;

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees;

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is

payable on request after the death of one or more persons;

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party;

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

153-6-102. Ownership as between parties, and others - protection of financial institutions. The provisions of sections 153-6-103 to 153-6-105 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to

Section 153-6-102 is a general section delineating two different areas. It sets apart Sections 153-6-103 through 153-6-105 as sections which describe relationships between parties to the various account and Sections 153-6-108 to 153-6-113 as sections relating to liabilities of financial institutions. The other sections are general in nature. Thus, the purpose of this section is to keep the objectives of the indicated sections clear. The Committee adopted the section intact.

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controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisons of sections 153-6-108 to 153-6-113 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.

153-6-103. Ownership during lifetime. (1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(2) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (1) of this section.

(3) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (1) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

153-6-104. Right of survivorship. (1) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownership during lifetime shall be in proportion to their previous ownership interests under section 153-6-103 augmented by an equal share for each survivor of any

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Section 153-6-103 describes the nature of different kinds of accounts and the rights of parties among themselves during the lifetime of the principle parties. Joint accounts, during the life of all the parties, are owned by them in proportion to their net contributions unless there is clear and convincing evidence of an intent to make an absolute gift at the time of deposit. P.O.D. accounts belong to the original payee, the contributor, the person to whom the account is originally payable. If more than one person makes the initial deposit, their interests are governed by the net contributions made by each. Unless there is clear evidence of irrevocability, a trust account established by a trustee during his life belongs to him and is subject to withdrawal by him at any time. If there is more than one person named as trustee, their ownership rights are determined by their net contributions. In the event that the trust is made irrevocable by its terms or apparently by other evidence, it belongs to the beneficiary. Ownership rights between the parties are based on presumptions established by this section. It is possible to overcome or rebut these presumptions by evidence of intent outside of the formal arrangement with the financial institution. Thus the form of the account, while important in determining rights, is not conclusively controlling. On the other hand financial institutions must be able to rely on the form of the account and their agreement with the depositor. Hence a financial institution may be protected in making payment according to the form of the account, but the parties to the account may still litigate between themselves the ownership of the funds paid out. The Committee adopted the section intact.

Section 153-6-104 establishes the rules of ownership of these accounts at death. The survivors on a joint account own this as opposed to the estate -- unless there is convincing evidence of a different intent at the time

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interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

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

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

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

153-6-105. Effect of written notice to financial institution. The provisions of section 153-6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may not be altered by written order given by a party to the financial institution either to change the form of

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the account is created. Rules are established for survival in the event there are multiple parties. These add to the contribution of the survivor a proportionate interest in contributions made by the decedent. The P.O.D. payee has an absolute right to succeed to the property on death of the original payee. If there is more than one P.O.D. payee, no right of survivorship is implied unless the terms of the account expressly so provide. In this situation, the account will be payable in equal proportions established by the original deposit. If there is more than one original payee, the account remains payable as a "joint account" until the survivor of all the original payees (as opposed to P.O.D. payees) dies. With trust accounts, the monies remaining in the account upon the death of the trustee (if more than one, all trustees) belong to the designated beneficiary unless there is clear and convincing evidence of a contrary intent. The same rule in survivorship is applied here as in the P.O.D. account. In those cases where there is no survivorship right, the death of any party to a multiple-party account merely results in the account passing as part of his estate. The Committee adopted the section intact.

Under Section 153-6-105 of the UPC, the form of the account could be altered at any time before death if, before death, the financial institution received a written order from a party to the account. A party is one who has a present right to payment from a multiple-party account. The Committee changed this section to provide that a party may not

the account or to stop or vary payment under the terms of the account. The rights of a party in a multiple-party account are limited to his right to payment.

153-6-106. Accounts and transfers nontestamentary. Any transfers resulting from the application of section 153-6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to articles 1 to 4 of this code.

153-6-107. Rights of creditors. No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor or dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.

alter the form of the account and provided that the rights of a party in a multiple-party account are limited to his right to payment.

Section 153-6-106 specifically states that P.O.D. account, trust accounts, and joint accounts are not testamentary transfers. This is to establish the validity of non-testamentary acts in the event there is any question about it. The section was adopted intact.

Under Section 153-6-107 the creditor of any party has the right to reach the ownership interest of that party, during the lifetime of all parties to a multiple-party account. If a party to the account dies, the creditor's claim will be satisfied out of the estate assets, if the assets of the probate estate are sufficient to pay the creditor. If, however, assets are not sufficient, the creditor must make a written demand on the personal representative to proceed against a surviving party to a joint account, a P.O.D. payee, or the beneficiary of a trust account to recover amounts necessary to discharge the claim. The amount recovered by the personal representative may not exceed the amount the decedent owned beneficially immediately before his death. The personal representative could sue the financial institution if it has not made payment prior to service of process in the proceeding by the personal representative. The financial institution would be protected if prior to service of process, it makes payment according to the terms of the account to the survivor of a joint account, the P.O.D. payee, or the beneficiary of a trust account. The financial institution might interplead the necessary parties if it anticipates problems under this section. If the financial institution has already made payment, the payee may be required in a proceeding to account to the personal representative. There is a time limit of two years following death of the decedent on any such proceeding. For purposes of this section, the surviving spouse, minor children and dependent children are treated as creditors for statutory allowances. The surviving spouse could also proceed to claim an elective

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153-6-108. Financial institution protection - payment on signature of one party. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

153-6-109. Financial institution protection - payment after death or disability - joint account. Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 153-6-104.

153-6-110. Financial institution protection - payment of P.O.D. account. Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

153-6-111. Financial institution protection - payment of trust account. Any trust account may be

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share insofar as deposits by the decedent come within the augmented estate concept. In this instance the surviving spouse is not proceeding as a creditor under this section. If assets of the probate estate are insufficient to pay taxes and expenses of administration, the personal representative may also proceed under this section in order to satisfy those claims. The Committee adopted the section intact.

Section 153-6-108 encourages the creation of multiple-party accounts by financial institutions and permits payment by the bank to any one or more of the parties requesting it unless some restriction is imposed upon the account at the bank. Withdrawal is permitted and the financial institution has no duty of inquiry. It can make payment to any of the persons named on the account as "parties". The section was adopted intact.

Section 153-6-109 provides that on a joint account the financial institution may pay to any party without regard to whether another party to the account is incapacitated or deceased at the time payment is made. If the personal representative or heirs of a deceased party request payment, the financial institution must request proof showing that the decedent was the last surviving party if there is a right of survivorship. If there is no right of survivorship then ownership of the account will belong to the personal representative or heirs of a deceased party only to the extent of his ownership interest. The Committee adopted the section intact.

Under Section 153-6-110 the financial institution may make payment to any original party to the account. On death of the original party, or if there are several original payees then on death of the survivor, the financial institution may pay to the P.O.D. payee if it is presented with proof of death showing that the P.O.D. payee survived the original payee or, if there are several original payees, survived all persons named as original payees. If the P.O.D. payee dies before the original party to the account, payment may be

paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

153-6-112. Financial institution protection - discharge. Payment made pursuant to sections 153-6-105 to 153-6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

153-6-113. Financial institution protection - set-off. Without qualifying any other statutory right

made to the personal representative or heirs of the deceased original payee upon presentation of proof of death of the P.O.D. payee and the original payee. The Committee adopted the section intact.

Under Section 153-6-111 the financial institution may make payment to any party named as trustee. The only exception is where there are two or more trustees and the account agreement requires signature of more than one trustee, in which case payment may only be made if the conditions of the account are satisfied. If the trustee or all persons named as trustees die, payment may be made to the beneficiary upon presentation of proof of death. If a beneficiary predeceases the trustee, the financial institution may make payment to the personal representative or heirs of a deceased trustee upon presentation of proof of death showing that his decedent survived all other persons named on the account either as trustee or as beneficiary. The Committee adopted the section intact.

Under Section 153-6-112 when the financial institution makes payment pursuant to the rules it is given complete protection and is discharged from all liability. The institution is protected unless it has received written notice of a restriction or withdrawal from any party who can currently request payment. Once this restriction is established, it must be withdrawn to protect the institution. Absent the written notice, the institution is protected without regard to the state of its knowledge. The right of the institution has no bearing upon and does not determine the rights of the parties. This section was adopted intact

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to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal to the extent of the account.

(PROVISIONS RELATING TO EFFECT OF DEATH)

153-6-201. Provisions for payment or transfer at death. (1) (a) Any of the following provisions in an insurance, annuity or endowment contract or policy, and an agreement issued or entered into by an insurance company in connection therewith, supplemental thereto, or in settlement thereof, a contract of employment, bond, mortgage, promissory note, deposit agreement, thrift, pension, retirement, death benefit, stock bonus or profit-sharing contract, plan, system, or trust, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(b) That money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent to be a beneficiary, payee or owner of any right, title, or interest, in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(c) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(d) That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Under the provisions of subsection (1) of

EXPLANATION

If a party to a multiple-party account has a present right of withdrawal and is indebted to the financial institution, the institution has a right to set-off against the indebtedness the beneficial interest of the debtor in the account under Section 153-6-113. The Committee changed the section to provide that in cases where the debtor is deceased, the institution has a right to set-off to the extent of the account, rather than to the extent that the debtor had a beneficial interest immediately before his death as provided in the UPC section.

Section 153-6-201 authorizes a variety of contractual arrangements which have in the past been treated as testamentary. Because the types of provisions described in this section are characterized as nontestamentary, the instrument does not have to be executed in compliance with 153-2-502; nor does it have to be probated, nor does the personal representative have any power or duty with respect to the assets involved. The section does not invalidate other arrangements by negative implication. The Committee combined the provisions of this section with the provisions of present law (153-19-1, C.R.S. 1963).

this section, it is permissible to designate as a beneficiary, payee, or owner a trustee named in an inter vivos or testamentary trust in existence at the date of such designation. It is not necessary to the validity of any such trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation. It is also permissible to designate as a beneficiary, payee, or owner a trustee named in, or ascertainable under, the will of the designator. The benefits or rights resulting from such a designation shall be payable or transferable to the trustee pursuant to section 153-3-913.

(3) If a trustee is designated pursuant to subsection (2) of this section and no qualified trustee makes claim to the benefits or rights resulting from such a designation within one year after the death of the designator, or if evidence satisfactory to the person obligated to make the payment or transfer is furnished within such one-year period that there is or will be no trustee to receive the proceeds, payment, or transfer shall be made to the personal representative of the designator, unless otherwise provided by such designation or other controlling agreement made during the lifetime of the designator.

(4) The payment of the benefits due or a transfer of the rights given under a designation pursuant to subsections (2) or (3) of this section and the receipt for such payment or transfer executed by the trustee or other authorized payee thereof shall constitute a full discharge and acquittance of the person obligated to make the payment or transfer.

(5) Payment of the benefits due or the transfer of the rights given in accordance with a designation under the provisions of subsection (2) of this section shall not cause such benefits or rights to be included in the property administered as part of the designator's estate under this chapter or to be

subject to the claims of his creditors, except as provided in section 153-2-202.

(6) The express provisions of the trust agreement, declaration of trust or testamentary trust shall control and regulate the extent to which the benefits or rights payable or transferable under such a designation shall be subject to the debts of the designator if paid or transferred under the provisions of subsection (2) of this section.

(7) Section 138-3-9, C.R.S. 1963, regarding taxation of the proceeds of insurance policies payable through the medium of a trustee shall control and regulate the extent to which proceeds of a policy of life insurance shall be subject to taxation for inheritance taxes if such proceeds shall be paid under the provisions of subsections (2) or (3) of this section.

(8) Nothing in this section limits the rights of creditors under other laws of this state.

153-6-202. Will not to affect joint tenancy in real property or personality. No will, codicil or other testamentary disposition or testamentary provision of one of the owners in joint tenancy of real or personal property or of an interest in real or personal property shall destroy or affect the joint tenancy or prevent the entire title and interest owned by the joint tenants from becoming vested upon his death in the joint tenants who shall have survived him. Upon the death of an owner in joint tenancy of real or personal property or of an interest in real or personal property, leaving surviving him co-owners under such joint tenancy, all of the interest and title which, immediately before such death was owned by all of the joint tenants under such joint tenancy, shall become vested in the survivors of such joint tenants in spite of and without regard to the provisions of a will or codicil of the joint tenant so dying or the admission to probate of such will or codicil and without regard to whether such will or

Section 153-6-202 is a new section added by the Committee. The section is adapted from present law (153-15-4, C.R.S. 1963).

codicil was executed before or after the creation of the joint tenancy.

ARTICLE 7

Trust Administration

(TRUST REGISTRATION)

153-7-101. Duty to register trusts. (1) The trustee of a trust having its principal place of administration in this state shall register the trust in the court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is the usual place of business of the corporate trustee if there is but one corporate co-trustee, or the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

(2) Registration of a trust which has no asset other than the right to receive property upon the occurrence of some future event shall not be required until the occurrence of such event.

153-7-102. Registration procedures. (1) Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere.

(2) (a) The statement shall identify the trust

EXPLANATION

Article 7 of the code attempts to achieve several objectives in reducing the need for resort to judicial proceedings with concomitant costs and in providing protection for beneficiaries with regard to trusts. These objectives are summarized as follows: (1) To eliminate procedural distinctions between testamentary and inter vivos trusts. (2) To strengthen the ability of owners to select trustees by eliminating formal qualifications of trustees and restrictions on the place of administration. (3) To locate nonmandatory judicial proceedings for trustees and beneficiaries in a convenient court fully competent to handle all problems that may arise. (4) To facilitate judicial proceedings concerning trusts by comprehensive provisions for obtaining jurisdiction over interested persons by notice. (5) To protect beneficiaries by having trustees file written statements of acceptance of trusts with suitable courts, thereby acknowledging jurisdiction and providing some evidence of the trust's existence for future beneficiaries. (6) To eliminate routinely required court accountings, substituting clear remedies and statutory duties to inform beneficiaries. The provisions of the code are thus intended to provide a simple direct procedure without the requirements of detailed supervision or routine accounting.

Under Section 153-7-101 the trustee of a trust, testamentary and inter vivos alike, is required to register the trust in the court in the county of the principal place of administration. This is the trustee's usual place of business where records are kept or his residence if he has no place of business. The trust instrument itself may designate this. Absent designation, in the event more than one trustee is appointed, the choice will gravitate first toward the corporate trustee and then toward the professional trustee. Agreement by the co-trustees may establish the place of registration. Registration is not required if, in the jurisdiction in which the trust is being administered, the trustee cannot obtain a release. Also, the trustee may be excused from registering when the holder of a presently exercisable general power of appointment agrees or directs other-

as follows:

(b) In the case of a testimentary trust, by the name of the testator and the date and place of domiciliary probate;

(c) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument;

(d) In the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries and time of performance.

(3) If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the Court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.

153-7-103. Effect of registration. (1) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 153-7-201 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first class mail at his address as listed in the registration or as thereafter reported to the court and to his address as then known to the petitioner.

(2) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 153-7-201, provided notice is given pursuant to section 153-1-401.

153-7-104. Effect of failure to register. A trustee who fails to register a trust in a proper place, for purposes of any proceedings initiated by a

wise under 153-1-108. The Committee added subsection (2) to provide that registration is not required of a trust which has no asset other than the right to receive property upon the occurrence of some future event until the occurrence of such event.

Section 153-7-102 describes the registration procedure. A trust is registered by filing a statement indicating the name and address of the trustee, acknowledging the trusteeship, stating whether there has been registration elsewhere, identifying the trust either by name of the testator, date and place of fomiciliary probate or by the name of the settlor, original trustee and date of the trust instrument if it is an inter vivos trust, or, if an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of creation and the terms, including; subject matter, beneficiaries and time of performance. If registration has occurred elsewhere, registration here is ineffective until the earlier registration is released, unless all beneficiaries of the trust consent to registration in his state. The Committee adopted the section intact.

Section 153-7-103 describes the effects of registration. By registering a trust or accepting trusteeship of a registered trust, there is submission to personal jurisdiction of the court over the trustee. To the extent of their interest in the trust, all beneficiaries are also subject to the jurisdiction of the court. This does not initiate a continuous supervision of the trust but rather only assures that a particular court will be accessible to the parties on a permissive basis without subjecting the trustee to compulsory supervision by the court. The process of registration does not involve any judicial action or determination and each proceeding initiated by a party will be separate although the court will maintain a single file for each registered trust as a record available to interested persons.

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beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required is subject to removal and denial of compensation or to surcharge as the court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective.

153-7-105. Registration, qualification of foreign trustee. A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign co-trustee is not required to qualify in this state solely because its co-trustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

(Omitted section numbers reserved for expansion)

(JURISDICTION OF COURT CONCERNING TRUSTS)

153-7-201. Court - exclusive jurisdiction of trusts. (1)(a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees

EXPLANATION

Section 153-7-104 provides that a trustee who fails to register the trust is nevertheless subject to the personal jurisdiction of any court in which the trust could have been registered for purposes of any proceeding initiated by a beneficiary prior to registration. In addition, a failure to register upon written demand by a settlor or beneficiary subjects the trustee to removal and denial of compensation or to surcharge for damages. The duty to register may not be excused by any provision in the terms of the trust. It may, however, be waived by a direction from the settlor who has all powers under the trust and who holds a general power of appointment under 153-1-108. The section was adopted intact.

Section 153-7-105 establishes a requirement for qualification to do business in the state upon a foreign corporate trustee. If there is a domestic co-trustee, qualification is not required. Unless otherwise doing business in this state, local qualification by a foreign trustee is not required in order for that foreign trustee to receive distribution from a local estate, nor is it required in order to hold, invest in, or manage or acquire property located in this state or to maintain litigation. The section was adopted intact.

The jurisdictional pattern regarding trusts is to provide for the exclusive jurisdiction in the court of registration of proceedings concerning the internal affairs of the trust and for that court and other courts to have concurrent jurisdiction of litigation involving trusts and third parties. Section 153-7-201 provides for the exclusive jurisdiction and 153-7-204 provides for the concurrent jurisdiction. Those proceedings over which the court of registration has

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and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(b) Appoint or remove a trustee;

(c) Review trustees' fees and to review and settle interim or final accounts;

(d) Ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and

(e) Release registration of a trust.

(2) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

153-7-202. Trust proceedings - venue. Venue for proceedings under section 153-7-201 involving registered trusts is in the place of registration. Venue for proceedings under section 153-7-201 involving trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise as provided by the Colorado rules of civil procedure.

153-7-203. Trust proceedings - dismissal of matters relating to foreign trusts. The court will not, over the objection of a party, entertain proceedings under section 153-7-201 involving a trust registered or having its principal place of administration in another state, except when all

EXPLANATION

exclusive jurisdiction are those concerning the administration and distribution of trusts and the declaration of rights or the determination of other matters involving trustees and beneficiaries of the trust. The section specifically provides that continuing supervisory proceedings are not warranted and not intended and enjoins expeditious management and distribution free of judicial intervention and without order or approval of action by the court. Control is maintained by permitting resort to the court by an interested party at any time and submitting the trustee to jurisdiction of the court for any malfeasance or non-feasance in office or failure to properly perform his trust duties. The Committee adopted the section intact.

Section 153-7-202 provides that venue for proceedings under 153-7-201 involving registered trusts is at the place of registration, which under 153-7-101 is in the court in the county of the principal place of administration.

Although recognizing that trusts which are essentially foreign can be the subject of proceedings in this state, Section 153-7-203 employs the concept of forum non conveniens to center litigation involving the trustee and beneficiaries at the principal place of administration of the trust. However, the section leaves open the possibility of suit else-

appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration, or when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

153-7-204. Court - concurrent jurisdiction of litigation involving trusts and third parties. The court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

153-7-205. Proceedings for review of employment of agents and review of compensation of trustee and employees of trust. On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

153-7-206. Trust proceedings - initiation by notice - necessary parties. Proceedings under section 153-7-201 are initiated by filing a petition in the court and giving notice pursuant to section 153-1-401

where when necessary in the interests of justice. The court may condition a dismissal of a proceeding on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business or the court may grant a continuance or enter other appropriate order. The section was adopted intact.

Section 153-7-204 deals with litigation involving third parties and provides that the court of the place in which the trust is registered has concurrent jurisdiction with the other courts of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees, and third parties. Most of these actions are the usual proceedings by or against a trustee as the owner of property and do not involve the validity of the trust in anyway. Even so it is possible for a third party to claim assets of the trust and to attack the existence of the trust at least where created other than by will. Venue for proceedings under this section are determined by the rules generally applicable to civil actions. The section was adopted intact.

Section 153-7-205 permits review of the propriety of employment of any auditor, investment advisor or other agent or assistant of the trustee together with reasonableness of compensation paid to them and reasonableness of compensation paid by the trustee to himself for his own services. The court is permitted to enter a surcharge order for excessive compensation. The section was adopted intact.

Section 153-7-206 was adopted intact.

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to interested parties. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

(Omitted section numbers reserved for expansion)

(DUTIES AND LIABILITIES OF TRUSTEES)

153-7-301. General duties not limited. Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this code.

153-7-302. Trustee's standard of care and performance. Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

153-7-303. Duty to inform and account to beneficiaries. (1) The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration.

(2) Within thirty days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible, one or more persons who under section 153-1-403 represent beneficiaries with future interests, of the court in which the trust is registered and of his name and address.

(3) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(4) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust

EXPLANATION

Section 153-7-301 was adopted intact.

Section 153-7-302 establishes the prudent man rule and goes further and specifically provides for the standard of skill expected from trustees both individual and corporate, non-professional and professional. It clearly conveys the idea that a trustee must comply with an external, rather than with a personl, standard of care. The section was adopted intact.

Section 153-7-303 establishes the duty of notification of beneficiaries by the trustee. He is required to keep them reasonably informed of the trust and its administration. Within thirty days after acceptance, he is required to inform the current beneficiaries and any persons who may represent beneficiaries with future interests of the court where the trust is registered and of his name and address. He is also required to furnish them with a copy of the terms of the trust which affect or describe the particular interest they have and with relevant information about trust assets and particulars relating to administration upon reasonable request. He must give an annual statement of accounts and an account upon termination or change of trustees to the beneficiaries. The section as adopted intact.

annually and on termination of the trust or change of the trustee.

153-7-304. Duty to provide bond. A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the Court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 153-3-604 and 153-3-606 relating to bonds of personal representatives.

Section 153-7-304 follows the pattern earlier provided with regard to personal representatives and states that a trustee need not provide bond unless required by the terms of the trust, or reasonable request by a beneficiary, or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. The section was adopted intact.

153-7-305. Trustee's duties - appropriate place of administration deviation. A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control, unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

Section 153-7-305 establishes the jurisdiction in which the trust is to be administered. This is defined as that place appropriate to its purposes and sound efficient management. If this place becomes inappropriate for any reason, the court is empowered to transfer the trust and its registration to a more convenient location. The section was adopted intact.

153-7-306. Personal liability of trustee to third parties. (1) Unless otherwise provided in the

contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration, may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

(5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory or investment committee, or in any other person or persons, including one or more cotrusteees, to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.

(6) In the absence of actual knowledge or information which would cause a reasonable trustee to inquire further, no trustee shall be liable for any act or omission of any predecessor executor, trustee, or other fiduciary. The provisions of this section

EXPLANATION

Section 153-7-306 establishes the same rule of liability for trustees as established elsewhere for conservators (153-5-429) and personal representatives (153-3-808). Subsections (5) and (6) were added by the Committee and were adapted from present law (153-10-52 and 53, C.R.S. 1963).

shall not be construed to limit the fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

153-7-307. Limitations on proceedings against trustees after final account. Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in section 153-1-403.

Section 153-7-307 establishes a statute of limitations for actions against trustees. The time period is six months after presenting a final accounting in which the problem is fully disclosed and termination of the trust relationship is made clear. In any event, and without regard to disclosure, a trustee who has informed the beneficiary of the location and the availability of records for his examination is protected after three years from the time of receiving a final account or statement showing termination of the trust relationship between the trustee and the beneficiary. The section was adopted intact.

ARTICLE 8

Effective Date and Repealer

153-8-101. Time of taking effect -- provisions for transition. (1) This code takes effect on July 1, 1974.

Section 153-8-101 establishes the effective date of this act as July 1, 1974.

(2) (a) Except as provided elsewhere in this code, on the effective date of this code:

(b) The code applies to any wills of decedents dying thereafter;

(c) The code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decendent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(d) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(e) An act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(f) Any rule of construction or presumption provided in this code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent.

153-8-102. Repeal. Article 4 of chapter 107, Colorado Revised Statutes 1963 (1967 Supp.), is repealed.

SECTION 2. 14-3-6, Colorado Revised Statutes 1963, is amended to read:

14-3-6. Joint deposits - right of survivor. EXCEPT AS TO P.O.D. ACCOUNTS WHICH SHALL BE PAID AS PROVIDED IN ARTICLE 6 OF CHAPTER 153, C.R.S. 1963, when a bank deposit in any bank transacting business in this state has been made, or shall hereafter be made, in the names of two or more persons payable to them or to any of them, such deposits, or any part thereof, or any interest thereon, may be paid to any one of said persons whether the other or others be living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient discharge to the paying bank from all said persons, their heirs, executors, administrators, and assigns; such deposit shall be deemed, so far as the rights and liabilities of the bank are concerned, to be owned by said persons

in joint tenancy with the right of survivorship, provided, the bank shall have the right of set-off against such deposit to the extent thereof to collect a debt owed to the bank by any joint depositor, which right shall not be affected by death. Such deposits shall be subject to section 138-3-43, ~~Colorado Revised Statutes~~ C.R.S. 1963.

SECTION 3. 14-4-5, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

14-4-5. Death of lessee - procedure. (1) The provisions of sections 153-1-111 and 138-3-43, C.R.S. 1963, shall apply on the death of a lessee of a safe deposit box as defined in section 14-4-1.

SECTION 4. 38-1-5 (4), Colorado Revised Statutes 1963, is amended to read:

38-1-5. Membership. (4) EXCEPT AS TO P.O.D. ACCOUNTS WHICH SHALL BE PAID AS PROVIDED FOR IN ARTICLE 6 OF CHAPTER 153, C.R.S. 1963, nothing in this article shall be construed to prohibit credit unions organized under this article from carrying membership accounts in the names of two or more persons in joint tenancy and any credit union transacting business in this state which has issued or shall hereafter issue shares and deposits in the names of two or more persons payable to them or to any of them, such shares and deposits or any part thereof or any interest or dividend thereon may be paid to any one of said persons whether the other or others be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient discharge to the credit union from all of said persons, their heirs, executors, administrators, and assigns, and such shares and deposits shall be deemed to be owned by said persons in joint tenancy with the right of survivorship. In the event any credit union has actual knowledge that one or more owners of said shares and deposits is dead, nothing in this section contained shall be deemed to except such payment from

the operation of section 138-3-36, C.R.S. 1963.

SECTION 5. Chapter 41, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE, to read:

ARTICLE 4

Survival of Actions

41-4-1. What actions survive. (1) All causes of action, except actions for slander or libel, shall survive and may be brought or continued notwithstanding the death of the person in favor of or against whom such action has accrued, but punitive damages shall not be awarded nor penalties adjudged after the death of the person against whom such punitive damages or penalties are claimed; and in tort actions based upon personal injury, the damages recoverable after the death of the person in whose favor such action has accrued shall be limited to loss of earnings and expenses sustained or incurred prior to death, and shall not include damages for pain, suffering or disfigurement, nor prospective profits or earnings after date of death. An action under this section shall not preclude an action for wrongful death under article 1 of this chapter.

(2) Any action under this section may be brought, or the court on motion may allow, the action to be continued by or against the personal representative of the deceased. Such action shall be deemed a continuing one, and to have accrued to or against such representative at the time it would have accrued to or against the deceased, if he had survived. If such action is continued against the personal representative of the deceased, a notice shall be served on him as in cases of original process, but no judgment shall be collectible against a deceased person's estate or personal representative unless a claim shall have been filed within the time and in the manner required for other claims against an estate.

SECTION 6. 45-1-11 (3), Colorado Revised

Statutes 1963 (1971 Supp.), is amended to read:

46-1-11. Declaration of invalidity. (3) A declaration of invalidity for the reason set forth in subsection (1) (h) of this section may be sought by either party, by the legal spouse in case of bigamous, polygamous, or incestuous marriages; by the appropriate state official, or by a child of either party at any time prior to the death of either party or prior to the final settlement of the estate of either party and the discharge of the personal representative, executor, or administrator of the estate, or prior to six months after ~~an order of distribution is made~~ AN ESTATE IS CLOSED under section ~~153-7-4~~, 153-3-1204 C.R.S. 1963.

SECTION 7. 57-8-2 (2) and (5), Colorado Revised Statutes 1963 (1967 Supp.), are amended to read:

57-8-2. Construction of terms. (2) "Estate" means the estate of a decedent OR A PERSON UNDER DISABILITY.

(5) "Fiduciary" means the one or more ADMINISTRATORS, SPECIAL ADMINISTRATORS, PUBLIC ADMINISTRATORS, CONSERVATORS, executors, administrators with will annexed (or cum testamento annexo), administrators in succession acting under a will (de bonis non), ancillary administrators acting under a will, or ancillary executors of an estate and the one or more trustees of a trust, including corporate as well as natural persons acting as fiduciary, and a successor or substitute fiduciary, whether designated in a will, trust instrument, or otherwise. Fiduciary does not include ~~an administrator, special administrator,~~ A guardian, OR ~~conservator,~~ special fiduciary. ~~or public administrator; but, the administrator of an intestate estate is a "fiduciary" within the meaning of this article when and to the extent that the court expressly provides in his letters of appointment or supplementary or amended letters of appointment that such administrator shall have one, some, or all powers~~

~~accorded to fiduciaries under this article.~~

SECTION 8. 57-8-3, Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

57-8-3. Powers conferred on fiduciaries. Fiduciaries have all powers conferred upon them by the provisions of this article unless limited by the language or provisions in the will or trust instrument expressing a clear intention that powers conferred under this article shall be denied to the fiduciary. They have, in addition to the powers conferred in this article, such other or further powers as are set forth in the will or trust instrument or as are provided by other statutes or by court rule or order. If any power specifically conferred on a fiduciary by the will or trust instrument conflicts with any power conferred by this article, the fiduciary shall be deemed to have only the power specifically conferred by the will or trust instrument and not the conflicting power conferred by this article. Provisions in chapter 153, ~~Colorado Revised Statutes 1963, as amended,~~ C.R.S. 1963, concerning the exercise of powers in the administration of an estate by an executor having powers under a will shall apply to executors having powers conferred under this article. ~~Such provisions shall also apply to administrators of intestate estates as to those powers granted by court order pursuant to section 57-8-2 (5) and such powers may be exercised by said administrators in the manner authorized for executors, not withstanding any provision to the contrary in chapter 153, Colorado Revised Statutes 1963, as amended.~~

SECTION 9. 77-3-11, Colorado Revised Statutes 1963, is amended to read:

77-3-11. Exemption in addition to allowances. The homestead exemption granted under this article shall be in addition to and not in lieu of the allowance to a widow and minor children of a decedent ~~or a mental incompetent as provided in sections 153-12-16 and 153-12-17.~~ AND THE PREFERENCES GRANTED

TO DEPENDENTS OF PROTECTED PERSONS UNDER CHAPTER 153, C.R.S. 1963.

SECTION 10. 92-23-4, Colorado Revised Statutes 1963, is amended to read:

92-23-4. Statement - disposition of profits. The working tenant shall render to the nonworking tenant, at least once in every six months after commencing said operation and also within thirty days after completing said operation, a written statement giving a true, full, and fair account of all of the expenditures and expenses of said work and mining operation and of the proceeds of all ore or minerals extracted and sold, and the net profits or losses of the operation from the beginning of said operation to the date of such statement. If said operation has been conducted at a net profit the working tenant shall at once pay to the nonworking tenant his proportionate share of said net profits, and failing so to do his right to continue such mining operation under the provisions of this article shall at once cease. In case the address of any nonworking tenant is unknown, or he shall have failed to notify the working tenant of a place at which, or an agent to whom, payment may be made, or if he cannot be conveniently found so that payment may be made to him of his proportionate share of said net profits, or in case any nonworking tenant is dead and there is no known executor or administrator of his estate in the state of Colorado qualified to receive such statement and payment, the working tenant may deposit said statement and payment with the state treasurer who shall receive said deposit under the same obligations and with like effect as other deposits made under the provisions of section ~~153-14-14.~~ 153-3-914, C.R.S. 1963.

SECTION 11. 119-6-19, Colorado Revised Statutes 1963, is amended to read:

119-6-19. Recovery from estate. Upon the death or mental incompetency of any recipient and where the

inventory of his estate shows assets in excess of that amount which he was allowed to have in order to receive assistance, or if it be shown that he was otherwise ineligible for assistance, then the claim of the county and state for the excess assistance paid for which the recipient was ineligible, if filed as required by section ~~153-12-7, Colorado Revised Statutes 1963,~~ 153-3-804, C.R.S. 1963, shall have priority over other creditors of the estate as a claim of the fourth class.

SECTION 12. 119-14-7, Colorado Revised Statutes 1963 (1971 Supp.), is amended to read:

119-14-7. Appointment as conservator. The department may be appointed under ~~article 9 of chapter 153,~~ SECTION 153-5-410 (1) (h), C.R.S. 1963, as conservator of the estate of any person adjudicated mentally deficient, if the department is providing protective services for such person, and if it shall appear to the court that the value of the assets of such person does not exceed ten thousand dollars, and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report semiannually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of chapter 153, C.R.S. 1963, governing conservators.

SECTION 13. 122-3-16, Colorado Revised Statutes 1963, is amended to read:

122-3-16. Joint accounts. EXCEPT AS TO P.O.D. ACCOUNTS WHICH SHALL BE PAID AS PROVIDED IN ARTICLE 6 OF CHAPTER 153, C.R.S. 1963, where shares of stock of an association are issued in the name of two or more persons, or the survivor or survivors of them, such shares or stock and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants, and the same, together with dividends, shall be held for the

exclusive use of such persons, and may be paid to either or any of them during their lifetime or to the survivor or survivors of them after the death of one or more of them, and such payment and the receipt and acquittance of the person or persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or stock.

SECTION 14. 122-7-6 (2), Colorado Revised Statutes 1963, is amended to read:

122-7-6. Leases to joint tenants. (2) Upon the death of any joint tentant the provisions of section ~~153-5-19, Colorado Revised Statutes 1963,~~ 153-1-111, C.R.S. 1963, and of this section with regard to examination shall apply and the provisions of section 138-3-43, ~~Colorado Revised Statutes~~ C.R.S. 1963, shall apply with regard to inheritance tax. Upon the deposit with the lessor of an inheritance tax release releasing the contents of said safe deposit box, the surviving tenants or tenant shall thereupon have access to said box.

SECTION 15. 122-7-7, Colorado Revised Statutes 1963, is amended to read:

122-7-7. Search procedure on death. The provisions of section ~~153-5-19, Colorado Revised Statutes~~ 153-1-111, C.R.S. 1963, shall apply to the search procedure of a safe deposit box on the death of a lessee. ~~A purported will of the decedent shall be delivered in accordance with the provisions of said section. A deed to a burial plot or a paper giving burial instructions may be delivered to the person requesting the search. An insurance policy on the life of the decedent payable to a third party beneficiary may be delivered to such beneficiary. Except as herein provided all other property shall be held subject to the provisions of section 138-3-43, Colorado Revised Statutes 1963. To the extent only that said section 153-5-19, Colorado Revised Statutes 1963, and said section 138-3-43, Colorado Revised~~

~~Statutes 1963, are in conflict herewith, the provisions of this section shall apply.~~

SECTION 16. 125-3-2 (5), Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

125-3-2. Definitions. (5) "Court" means the district or probate court which would have jurisdiction of the minor's estate, if he had property other than custodial property, as provided in section ~~153-1-3,~~ 153-5-205, C.R.S. 1963. ~~as amended.~~

SECTION 17. 125-3-5 (10) (b), Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

125-3-5. Duties and powers of custodian. (10) (b) In his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate or a trustee named in the will of said minor as permitted under ~~article 19 of chapter 153,~~ SECTION 153-6-201, C.R.S. 1963, and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

SECTION 18. 125-3-6 (3) (c), Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

125-3-6. Custodian's expenses, compensation, bond, and liabilities. (3) (c) The provisions of section ~~153-14-16~~ 153-5-414, C.R.S. 1963, pertaining to compensation of guardians;

SECTION 19. 135-6-19, Colorado Revised Statutes 1963 (1971 Supp.), is amended to read:

135-6-19. Tax levy on civil actions. In lieu of the tax imposed by section 135-4-29, C.R.S. 1963, a tax of one dollar is imposed upon each action filed in the office of each clerk of a court of record of the state of Colorado, except criminal actions, cases filed for reviews of findings and orders of the industrial commission, petitions relating to the distribution of estates under ~~section 153-7-4,~~

SECTIONS 153-3-1203 AND 153-3-1204, C.R.S. 1963, petitions relating to the mentally ill or deficient filed under chapter 71, C.R.S. 1963, cases filed by the state of Colorado, cases filed by the United States of America or any of its agencies in any matter under chapter 153, C.R.S. 1963, and cases where a party is allowed to sue as a poor person. The tax shall be paid to the clerk by the party filing the action, at the time of such filing. Each clerk shall keep the taxes so received in a separate fund and remit them to the state treasurer on the first day of each month, for the purpose of reimbursing the general fund for appropriations heretofore or hereafter made for the use of the committee on legal services for statutory revision purposes.

SECTION 20. 138-3-43 (3), Colorado Revised Statutes 1963 (1971 Supp.), is amended to read:

138-3-43. Transfer of "securities or assets" - release required when over two thousand dollars - release of abstracts of title. (3) (a) Assets or securities, including safe deposit boxes, shall be considered the property of the decedent if held by him jointly with one or more other persons; but the first ~~one~~ TWO thousand dollars of the total amount of deposit in a bank, or of the total amount owing from one person, or of the total value of securities in one company, or of the total value of property in the hands of one person, to the credit of or owing to, or standing in the name of, or belonging to the decedent alone or jointly with another or others, as of the date of death, may be paid, transferred, or delivered by such bank, company, or person, or his or its agent, without a release by the attorney general, and all such amounts or values in excess of ~~one~~ TWO thousand dollars shall not be paid, transferred, or delivered until released by the attorney general; but if any deposit, amounts owing, securities, property, or any part thereof, in excess of five hundred dollars, is paid, transferred, or delivered to any person by any

bank, company, or person, or his or its agent without a release by the attorney general, said bank, company, or person, or his or its agent, shall file a report with the attorney general stating the name and date of death of the decedent, the total amount or value of said deposit, amounts owing, securities, or property, the name of the person to whom said deposit, amounts owing, securities, or property was paid, transferred, or delivered, and the amount or value so paid, transferred, or delivered. ~~and~~

(b) Abstracts of title may be so transferred or delivered without a release by the attorney general, AS WELL AS THE PURPORTED WILL OF A DECEDENT, A DEED TO A BURIAL PLOT AND PAPERS GIVING BURIAL INSTRUCTIONS, ANY INSURANCE POLICY ON THE LIFE OF THE DECEDENT PAYABLE TO A NAMED BENEFICIARY OTHER THAN THE DECEDENT'S ESTATE, and ALL OTHER DOCUMENTS AND PAPERS HAVING NO APPARENT ASSET VALUE IN THEMSELVES.

(c) With respect to shares of stock or interests in corporations which are transferred in this state, the attorney general may make such regulations with reference to waiving the provisions of this section as he deems necessary and proper; but nothing in this section shall be construed to limit the powers of the attorney general granted by section 138-3-58.

SECTION 21. 144-1-8 (1), Colorado Revised Statutes 1963 (1969 Supp.), is amended to read:

144-1-8. Estates of occupants - escheat. (1) If any occupant of the center shall die without legal heirs and without a will disposing of his estate, all of his property, both real and personal or mixed, shall pass to the state of Colorado for the sole use and benefit of the center, in the manner as provided in section ~~153-14-14,~~ 153-3-914, C.R.S. 1963.

SECTION 22. 154-1-2 (8), Colorado Revised Statutes 1963, is amended to read:

154-1-2. Party in interest may not testify - when. (8) When the defendant in any such suit has previously been required to testify under the

provisions of section ~~153-5-20~~ 153-2-902, C.R.S. 1963, or section ~~153-10-42~~ 153-1-106, C.R.S. 1963, the testimony so given if reduced to writing, or the stenographic minutes thereof, so far as the same relates to the estate concerning which or for the benefit of which such suit is brought, and is relevant to the issue in such suit and competent under the general rules of evidence, may be read in behalf of such defendant.

SECTION 23. Effective date. This act shall take effect July 1, 1974.

SECTION 24. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.