

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1054.01 Richard Sweetman x4333

SENATE BILL 16-133

SENATE SPONSORSHIP

Tate, Johnston

HOUSE SPONSORSHIP

Pabon and Willett,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE TRANSFER OF PROPERTY RIGHTS UPON THE DEATH
102 OF A PERSON, AND, IN CONNECTION THEREWITH, INCLUDING
103 INHERITED INDIVIDUAL RETIREMENT ACCOUNTS AND INHERITED
104 ROTH INDIVIDUAL RETIREMENT ACCOUNTS AS PROPERTY
105 EXEMPT FROM LEVY AND SALE UNDER WRIT OF ATTACHMENT OR
106 WRIT OF EXECUTION, CLARIFYING
107 DETERMINATION-OF-HEIRSHIP PROCEEDINGS IN PROBATE, AND
108 ENACTING PORTIONS OF THE "UNIFORM POWER OF
109 APPOINTMENT ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

Under current law, a certificate of death, a verification of death document, or a certified copy thereof, of a person who is a joint tenant may be placed of record with the county clerk and recorder of the county in which the real property affected by the joint tenancy is located, together with a supplementary affidavit. The bill removes the requirement that the person who swears to and affirms the supplementary affidavit has no record interest in the real property.

The bill includes inherited individual retirement accounts and inherited Roth individual retirement accounts as property exempt from levy and sale under writ of attachment or writ of execution.

The bill amends provisions concerning determination-of-heirship proceedings, as follows:

- ! Clarifies the definition of "interested person" so that anyone affected by the ownership of property may commence a proceeding;
- ! Describes when an unprobated will may be used as part of a proceeding;
- ! Clarifies notice requirements; and
- ! Ensures that a judgment and decree will convey legal title as opposed to equitable title.

The bill enacts portions of section 5 of the "Uniform Power of Appointment Act", with amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-31-102, **amend**
3 (1) as follows:

4 **38-31-102. Proof of death - certificate of death available -**
5 **definitions.** (1) A certificate of death, a verification of death document,
6 or a certified copy thereof, of a person who is a joint tenant may be placed
7 of record with the county clerk and recorder of the county in which the
8 real property affected by the joint tenancy is located, together with a
9 supplementary affidavit. The supplementary affidavit, which shall be
10 properly sworn to or affirmed by a person of legal age having personal
11 knowledge of the facts, ~~and having no record interest in the real property,~~

1 ~~shall~~ MUST include the legal description of the real property. ~~and a~~
2 ~~statement that the person referred to in the certificate was at the time of~~
3 ~~death the owner of a joint tenancy interest in the real property.~~ When
4 recorded, the original certificate or verification document and
5 supplementary affidavit, or certified copies thereof, ~~shall~~ MUST be
6 accepted in all courts of the state of Colorado as prima facie proof of the
7 death of the joint tenant. The certificate or verification document and
8 supplementary affidavit provided for in this section may also be used to
9 provide proof of the death of a life tenant, THE OWNER UNDER A
10 BENEFICIARY DEED, or any other person whose record interest in real
11 property terminates upon the death of such person to the same extent as
12 a joint tenant as provided in this section.

13 **SECTION 2.** In Colorado Revised Statutes, 13-54-102, **amend**
14 (1) (s) as follows:

15 **13-54-102. Property exempt - definitions.** (1) The following
16 property is exempt from levy and sale under writ of attachment or writ of
17 execution:

18 (s) Property, including funds, held in or payable from any pension
19 or retirement plan or deferred compensation plan, including those in
20 which the debtor has received benefits or payments, has the present right
21 to receive benefits or payments, or has the right to receive benefits or
22 payments in the future and including pensions or plans ~~which~~ THAT
23 qualify under the federal "Employee Retirement Income Security Act of
24 1974", as amended, as:

25 (I) An employee pension benefit plan, as defined in 29 U.S.C. sec.
26 1002;

27 (II) Any individual retirement account, as defined in 26 U.S.C.

1 sec. 408, INCLUDING INHERITED INDIVIDUAL RETIREMENT ACCOUNTS;
2 (III) Any Roth individual retirement account, as defined in 26
3 U.S.C. sec. 408A, ~~and~~ INCLUDING INHERITED ROTH INDIVIDUAL
4 RETIREMENT ACCOUNTS; OR
5 (IV) Any plan, as defined in 26 U.S.C. sec. 401, and as these plans
6 may be amended from time to time;

7 **SECTION 3.** In Colorado Revised Statutes, 15-12-1301, **amend**
8 (1) and (2) as follows:

9 **15-12-1301. Definitions.** As used in this part 13, unless the
10 context otherwise requires:

11 (1) "Interested person" means an OWNER BY DESCENT OR
12 SUCCESSION, AN alleged heir or devisee of a decedent, ~~or~~ any OTHER
13 person claiming an OWNERSHIP interest derived from an OWNER BY
14 DESCENT OR SUCCESSION, OR AN alleged heir or devisee in any property
15 the descent or succession of which is to be determined pursuant to this
16 part 13, BUT EXCLUDING ANY PERSON HOLDING A NON-OWNERSHIP
17 INTEREST IN SUCH PROPERTY.

18 (2) "Owner by ~~inheritance~~ DESCENT OR SUCCESSION" means a
19 person in whom all or any part of the decedent's interest in the property
20 vests as a result of intestate or testate succession.

21 **SECTION 4.** In Colorado Revised Statutes, **amend** 15-12-1302
22 as follows:

23 **15-12-1302. Petition to determine heirship - devisees - interests**
24 **in property.** (1) When any person dies leaving an interest in real
25 property in this state, or dies domiciled in this state leaving an interest in
26 personal property wherever located, AND THERE IS NO PROBATE
27 PROCEEDING PRESENTLY PENDING FOR SUCH PERSON IN ANY JURISDICTION,

1 any interested person OR PERSON WHO MAY BE AFFECTED BY THE
2 OWNERSHIP OF SUCH PROPERTY may petition the court having jurisdiction
3 over probate matters in and for THE COUNTY IN WHICH THE REAL
4 PROPERTY OR SOME PORTION THEREOF IS SITUATED, OR, IF THE
5 PROCEEDING IS TO AFFECT AN INTEREST IN PERSONAL PROPERTY, the
6 county in which the decedent was domiciled or resided at the time of
7 death ~~or the county in which the property or some portion thereof is~~
8 ~~situated~~; to determine:

9 (a) The heirs of the decedent and the descent of all or any portion
10 of intestate property; or

11 (b) ~~to determine~~ The devisees of the decedent under a will
12 ~~previously admitted to probate in this or any other state~~ and the
13 succession of ALL OR ANY PORTION OF testate property.

14 (2) ~~The petition shall be in writing, signed, and verified and shall~~
15 ~~include the following:~~ THE PETITION MAY INCLUDE MORE THAN ONE
16 DECEDENT IF THEY ARE RELATED BY SUCCESSIVE INTERESTS IN THE
17 PROPERTY.

18 (a) ~~A statement that one year has passed since the date of death of~~
19 ~~the decedent;~~

20 (b) ~~A statement that administration of the decedent's estate has not~~
21 ~~been granted in this state, or if administration has been granted in this~~
22 ~~state the estate has been settled without determination of the descent or~~
23 ~~succession of all or a portion of the decedent's property;~~

24 (c) ~~A statement containing the name, age, and disability of any~~
25 ~~interested person who is known to the petitioner to be a minor or under~~
26 ~~legal disability;~~

27 (d) ~~A statement of the time and place of death of the decedent;~~

1 ~~(e) A statement of the last place of domicile or residence of the~~
2 ~~decedent;~~

3 ~~(f) A statement of whether the decedent died intestate or testate~~
4 ~~and, if testate, the name of the court which admitted the decedent's will~~
5 ~~to probate and a certified copy of the will and the order admitting the will~~
6 ~~to probate;~~

7 ~~(g) The names, addresses, and relationship of all interested~~
8 ~~persons, owners by inheritance, and all the heirs and devisees entitled to~~
9 ~~any part of the property;~~

10 ~~(h) A description of the decedent's interest in the property the~~
11 ~~descent or succession of which is to be determined through the petition;~~
12 ~~and~~

13 ~~(i) The name and address of the petitioner and a statement of the~~
14 ~~petitioner's interest in the property.~~

15 ~~(3) The petition may include more than one decedent if related by~~
16 ~~successive interests in the property. THE PETITION MUST BE IN WRITING,~~
17 ~~SIGNED, AND VERIFIED, AND IT MUST INCLUDE THE FOLLOWING:~~

18 ~~(a) THE NAME AND ADDRESS OF THE PETITIONER;~~

19 ~~(b) A STATEMENT OF THE INTEREST OF THE PETITIONER;~~

20 ~~(c) A DESCRIPTION OF THE PROPERTY, INCLUDING A LEGAL~~
21 ~~DESCRIPTION IF THE PROPERTY IS REAL PROPERTY;~~

22 ~~(d) AS TO EACH DECEDENT ADDRESSED IN THE PETITION:~~

23 ~~(I) THE NAME OF THE DECEDENT;~~

24 ~~(II) THE AGE OF THE DECEDENT AT THE DECEDENT'S DEATH;~~

25 ~~(III) A STATEMENT OF THE DATE AND PLACE OF THE DECEDENT'S~~
26 ~~DEATH;~~

27 ~~(IV) A STATEMENT THAT ONE YEAR HAS PASSED SINCE THE~~

1 DECEDENT'S DATE OF DEATH;

2 (V) A STATEMENT THAT EITHER ADMINISTRATION OF THE
3 DECEDENT'S ESTATE HAS NOT BEEN GRANTED OR COMMENCED IN ANY
4 JURISDICTION, OR, IF ADMINISTRATION HAS BEEN GRANTED OR
5 COMMENCED IN ANY JURISDICTION, THE ESTATE HAS BEEN SETTLED
6 WITHOUT DETERMINATION OF THE DESCENT OR SUCCESSION OF ALL OR A
7 PORTION OF THE DECEDENT'S PROPERTY;

8 (VI) A STATEMENT AS TO THE COUNTY AND STATE OF THE
9 DECEDENT'S LAST PLACE OF DOMICILE OR RESIDENCE;

10 (VII) A STATEMENT OF WHETHER THE DECEDENT DIED INTESTATE
11 OR TESTATE, AND, IF TESTATE, THE ADDITIONAL INFORMATION REQUIRED
12 BY SUBSECTION (4) OF THIS SECTION;

13 (VIII) THE NAMES, ADDRESSES, AND RELATIONSHIPS OF ALL
14 INTERESTED PERSONS;

15 (IX) A STATEMENT CONTAINING THE AGE AND DISABILITY OF ANY
16 INTERESTED PERSON WHO IS KNOWN TO THE PETITIONER TO BE A MINOR OR
17 UNDER LEGAL DISABILITY;

18 (X) A DESCRIPTION OF THE DECEDENT'S INTEREST IN THE
19 PROPERTY THE DESCENT OR SUCCESSION OF WHICH IS TO BE DETERMINED
20 THROUGH THE PETITION, WHICH DESCRIPTION INCLUDES PROPERTY
21 LOCATED IN THE COUNTY WHERE THE PETITION IS FILED AND REAL
22 PROPERTY LOCATED IN ANY OTHER COLORADO COUNTY;

23 (XI) A DESCRIPTION OF THE INTERESTS HELD BY ALL OWNERS BY
24 DESCENT OR SUCCESSION FOR THE DECEDENT IN THE PROPERTY; AND

25 (XII) A STATEMENT THAT THE RELIEF SOUGHT BY THE PETITION IS
26 CONSISTENT WITH ANY PREVIOUS ADMINISTRATION OF THE DECEDENT'S
27 PROPERTY; AND

1 (e) IF THE NAME OR ADDRESS OF ANY INTERESTED PERSON IS
2 UNKNOWN, A STATEMENT DETAILING THE REASONABLE, DILIGENT EFFORTS
3 MADE TO DETERMINE THE NAME OR ADDRESS OF THE INTERESTED PERSON.

4 (4) ~~Upon filing of the petition, the court shall set a time and date~~
5 ~~for hearing the petition.~~ IF THE DECEDENT DIED TESTATE, ONE OF THE
6 FOLLOWING CONDITIONS MUST BE SATISFIED:

7 (a) IF THE DECEDENT'S WILL HAS BEEN PREVIOUSLY ADMITTED TO
8 PROBATE, THE PETITION MUST INCLUDE THE NAME OF THE COURT THAT
9 ADMITTED THE WILL TO PROBATE, THE CASE NUMBER, AND THE DATE UPON
10 WHICH THE WILL WAS ADMITTED TO PROBATE, AND THE PETITIONER SHALL
11 PROVIDE A CERTIFIED COPY OF THE WILL AND THE ORDER ADMITTING THE
12 WILL TO PROBATE; OR

13 (b) IF THE ADMISSIBILITY OF THE DECEDENT'S WILL TO PROBATE
14 HAS NOT BEEN PREVIOUSLY DETERMINED BY A COURT, THE PETITION MUST
15 INCLUDE A STATEMENT THAT THE ORIGINAL WILL HAS BEEN LODGED WITH
16 A COURT, THAT THE PETITIONER BELIEVES THE WILL TO BE THE
17 DECEDENT'S LAST WILL, THAT THE WILL WAS VALIDLY EXECUTED, AND
18 THAT THE PETITIONER IS UNAWARE OF ANY INSTRUMENT REVOKING THE
19 WILL OR OF ANY PRIOR WILL RELATING TO THE PROPERTY THAT HAS NOT
20 BEEN EXPRESSLY REVOKED BY A LATER INSTRUMENT, AND THE PETITIONER
21 SHALL PROVIDE A CERTIFIED COPY OF SUCH WILL OR, IF CERTIFICATION IS
22 NOT POSSIBLE, A COPY OF SUCH WILL AND A STATEMENT CONCERNING THE
23 ABSENT CERTIFICATION; OR

24 (c) IF THE ADMISSIBILITY OF THE DECEDENT'S WILL TO PROBATE
25 HAS NOT BEEN PREVIOUSLY DETERMINED BY A COURT AND THE ORIGINAL
26 WILL HAS NOT BEEN LODGED WITH A COURT, THE PROVISIONS OF SECTION
27 15-12-402 (3) APPLY AND THE PETITION MUST INCLUDE A STATEMENT

1 THAT THE ORIGINAL WILL IS LOST, DESTROYED, OR OTHERWISE
2 UNAVAILABLE; THAT THE WILL WAS VALIDLY EXECUTED; THAT THE
3 PETITIONER BELIEVES THE WILL TO BE THE DECEDENT'S LAST WILL; AND
4 THAT THE PETITIONER IS UNAWARE OF ANY INSTRUMENT REVOKING THE
5 WILL OR OF ANY PRIOR WILL RELATING TO THE PROPERTY THAT HAS NOT
6 BEEN EXPRESSLY REVOKED BY A LATER INSTRUMENT, AND THE PETITIONER
7 SHALL PROVIDE A COPY OF THE WILL OR OTHERWISE ESTABLISH THE
8 CONTENTS OF THE WILL TO THE SATISFACTION OF THE COURT.

9 (5) UPON FILING OF THE PETITION, THE COURT SHALL SET A TIME
10 AND DATE FOR HEARING THE PETITION.

11 **SECTION 5.** In Colorado Revised Statutes, **amend** 15-12-1303
12 as follows:

13 **15-12-1303. Hearing - notice - service.** (1) The petitioner shall
14 prepare a notice ~~of the filing of the petition which notice shall include~~
15 THAT IDENTIFIES THE PETITION AND INCLUDES the name of ~~the~~ EACH
16 decedent; THE NAME OF EACH INTERESTED PERSON; a description of the
17 property set forth in the petition, ~~the name of each interested person, and~~
18 ~~the name of each owner by inheritance. The notice may be served by~~
19 ~~personal service or by mailing a copy thereof, postage prepaid, addressed~~
20 ~~to the person at the address given and shall be directed to the interested~~
21 ~~persons and owners by inheritance set forth in the petition.~~ INCLUDING A
22 LEGAL DESCRIPTION IF THE PROPERTY IS REAL PROPERTY; AND THE TIME
23 AND PLACE OF THE HEARING ON THE PETITION. The notice ~~shall~~ MUST
24 direct all interested persons ~~and owners by inheritance~~ to appear and
25 ~~answer~~ OBJECT TO the petition ~~within twenty-one days after service of the~~
26 ~~notice if personal service occurs within the state of Colorado or thirty-five~~
27 ~~days after service if personal service occurs outside the state of Colorado~~

1 ~~or service is had by mail or by publication~~ ON OR BEFORE THE HEARING
2 DATE AND TIME SPECIFIED IN THE NOTICE. The notice ~~shall~~ MUST further
3 ~~provide~~ DIRECT that all objections to the petition must be filed in writing
4 with the court AND BE SERVED ON THE PETITIONER, and THAT the filing fee
5 MUST BE paid ~~within the time required for answering the petition and that~~
6 ON OR BEFORE THE HEARING DATE AND TIME SPECIFIED IN THE NOTICE.
7 THE NOTICE MUST SET FORTH THAT the hearing ~~shall~~ WILL be limited to
8 ~~the~~ objections timely filed ~~and the parties answering the petition in a~~
9 ~~timely manner. The notice shall set forth the time and place of the hearing~~
10 ~~on the petition~~ AND SERVED AND THAT, IF NO OBJECTIONS ARE TIMELY
11 FILED AND SERVED, THEN THE COURT MAY ENTER A DECREE WITHOUT A
12 HEARING.

13 (2) ~~The notice shall be published once a week for three~~
14 ~~consecutive weeks, as defined in section 15-10-401 (4), in a newspaper~~
15 ~~of general circulation in the county where the proceeding is filed, or if~~
16 ~~there is no such newspaper in such county, then in some newspaper of~~
17 ~~general circulation in an adjoining Colorado county. Service by~~
18 ~~publication shall be complete on the last day of publication. Prior to the~~
19 ~~hearing the petitioner shall file with the court the publisher's affidavit of~~
20 ~~publication stating the dates of publication. The petition itself need not be~~
21 ~~published~~ THE NOTICE MUST BE SERVED ON EACH INTERESTED PERSON
22 NAMED IN THE PETITION WHOSE ADDRESS IS SHOWN ON THE PETITION AND
23 WHO DOES NOT JOIN IN THE PETITION; OR WHO DOES NOT CONSENT TO THE
24 GRANTING OF THE PETITION OR ENTER A PERSONAL APPEARANCE; OR WHO
25 DOES NOT ADMIT, ACCEPT, OR WAIVE SERVICE. SERVICE MAY BE BY
26 PERSONAL SERVICE OR BY MAILING. IF SERVICE IS BY PERSONAL SERVICE
27 WITHIN THE STATE, SERVICE MUST BE COMPLETED AT LEAST TWENTY-ONE

1 DAYS PRIOR TO THE HEARING. IF SERVICE IS BY PERSONAL SERVICE
2 OUTSIDE THE STATE OR BY MAILING A COPY THEREOF, POSTAGE PREPAID,
3 ADDRESSED TO THE ADDRESS SHOWN ON THE PETITION EITHER WITHIN OR
4 OUTSIDE THE STATE, SERVICE MUST BE COMPLETED AT LEAST THIRTY-FIVE
5 DAYS PRIOR TO THE HEARING. THE PETITIONER SHALL FILE A RETURN OF
6 SERVICE FOR EACH INSTANCE OF PERSONAL SERVICE AND SHALL MAKE
7 AND FILE A CERTIFICATE OF MAILING STATING THE NAME OF THE PERSON
8 TO WHOM THE COPY WAS MAILED, THE ADDRESS TO WHICH THE COPY WAS
9 MAILED, THAT IT WAS MAILED POSTAGE PREPAID, AND THE DATE OF
10 MAILING. A COPY OF THE PETITION MUST BE SERVED WITH THE NOTICE.

11 (3) ~~The notice, in addition to publication, shall be served on each~~
12 ~~person named in the petition whose address is shown on the petition and~~
13 ~~who does not join in the petition, or does not consent to the granting of~~
14 ~~the petition or enter a personal appearance, or does not admit, accept, or~~
15 ~~waive service. If service is by personal service within the state, service~~
16 ~~must be completed at least twenty-one days prior to the hearing. If service~~
17 ~~is by personal service outside the state or by mail within or outside the~~
18 ~~state or by publication, service must be completed at least thirty-five days~~
19 ~~prior to the hearing. The petitioner shall file a return of service or shall~~
20 ~~make and file a certificate of mailing, stating the name of the person to~~
21 ~~whom the copy was mailed and the address to which mailed, that it was~~
22 ~~mailed, postage prepaid, and the date of mailing. A copy of the petition~~
23 ~~shall be served with the notice~~ THE PETITIONER SHALL ALSO CAUSE THE
24 NOTICE TO BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS,
25 AS DEFINED IN SECTION 15-10-401 (4), IN A NEWSPAPER OF GENERAL
26 CIRCULATION IN THE COUNTY IN WHICH THE PROCEEDING IS FILED, OR IF
27 THERE IS NO SUCH NEWSPAPER IN THE COUNTY, THEN IN A NEWSPAPER OF

1 GENERAL CIRCULATION IN AN ADJOINING COLORADO COUNTY.
2 ADDITIONALLY, SUCH NOTICE MUST ALSO BE PUBLISHED ONCE A WEEK FOR
3 THREE CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION
4 IN ANY OTHER COUNTY IN WHICH REAL PROPERTY THAT IS SUBJECT TO THE
5 PROCEEDING IS LOCATED, OR IF THERE IS NO SUCH NEWSPAPER IN SUCH
6 COUNTY, THEN IN A NEWSPAPER OF GENERAL CIRCULATION IN AN
7 ADJOINING COLORADO COUNTY. SERVICE BY PUBLICATION IS COMPLETE
8 ON THE LAST DAY OF PUBLICATION, WHICH MUST OCCUR ON OR BEFORE
9 THIRTY-FIVE DAYS BEFORE THE HEARING. THE PETITIONER SHALL FILE
10 WITH THE COURT THE PUBLISHER'S AFFIDAVIT OR AFFIDAVITS OF
11 PUBLICATION STATING THE DATES OF PUBLICATION.

12 **SECTION 6.** In Colorado Revised Statutes, **amend 15-12-1304**
13 as follows:

14 **15-12-1304. Appearance - hearing.** Any interested person or
15 ~~owner by inheritance~~ PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP
16 OF THE DECEDENT'S INTEREST IN THE PROPERTY, THE DESCENT OR
17 SUCCESSION OF WHICH IS TO BE DETERMINED IN THE PETITION, may appear
18 and ~~answer such petition~~ OBJECT and establish any proper defense to the
19 petition or any part thereof, or assert or protect any interest the person
20 may claim. ~~at any time within the time for filing an answer as set forth in~~
21 ~~the notice. After the expiration of the time periods allowed for appearance~~
22 ~~and answer,~~ AN APPEARANCE AND OBJECTION MUST BE PRESENTED IN
23 WRITING WITHIN THE TIME PERIOD FOR FILING AN OBJECTION AS SET FORTH
24 IN THE NOTICE; EXCEPT THAT, FOR GOOD CAUSE, THE COURT MAY ALLOW
25 AN ENTRY OF APPEARANCE AND OBJECTION BY AN INTERESTED PERSON OR
26 PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF THE PROPERTY AT
27 ANY TIME PRIOR TO THE ENTRY OF THE COURT'S JUDGMENT AND DECREE.

1 IF AN INTERESTED PERSON OR PERSON WHO MAY BE AFFECTED BY THE
2 OWNERSHIP OF THE PROPERTY APPEARS AND FILES A TIMELY OBJECTION,
3 the court shall proceed with the hearing on the petition; ~~Any person who~~
4 ~~objects to the relief prayed for in the petition must present all such~~
5 ~~objections in writing within the time period for filing an answer; except~~
6 ~~that the court, for good cause, may allow an entry of appearance by any~~
7 ~~interested person at any time prior to the entry of the court's judgment and~~
8 ~~decree.~~ EXCEPT THAT THE COURT MAY CONTINUE THE HEARING IN ITS
9 DISCRETION OR DIRECT SUCH FURTHER PROCEEDING AS THE COURT MAY
10 DETERMINE. OTHERWISE, IF AFTER PROPER SERVICE PURSUANT TO SECTION
11 15-12-1303 THERE ARE NO OBJECTIONS FILED TO THE PETITION, THEN THE
12 COURT MAY ENTER A JUDGMENT AND DECREE PURSUANT TO THIS PART 13
13 WITHOUT A HEARING.

14 **SECTION 7.** In Colorado Revised Statutes, **amend** 15-12-1305
15 as follows:

16 **15-12-1305. Judgment.** The court shall determine the standing of
17 the petitioner to bring the action; the heirs and devisees of the decedent;
18 the owners by ~~inheritance~~ DESCENT OR SUCCESSION of the property; a
19 description of the property, INCLUDING A LEGAL DESCRIPTION IF THE
20 PROPERTY IS REAL PROPERTY; and any other pertinent facts, and shall
21 enter judgment on the petition. ~~If after proper service pursuant to section~~
22 ~~15-12-1303 there are no objections or answers filed to the petition, then~~
23 ~~the court may enter a decree pursuant to this part 13 without a hearing.~~

24 **SECTION 8.** In Colorado Revised Statutes, **amend** 15-12-1306
25 as follows:

26 **15-12-1306. Decree - conclusive and when - reopening.** A
27 decree entered pursuant to this part 13 ~~shall be~~ IS conclusive as to the

1 rights of heirs or devisees in the property described in the order from the
2 date of its entry. IF SUCH A DECREE AFFECTS TITLE TO REAL PROPERTY, A
3 CERTIFIED COPY OF THE DECREE MUST BE RECORDED AND INDEXED IN THE
4 OFFICE OF THE COUNTY CLERK AND RECORDER OF EACH COUNTY IN WHICH
5 REAL PROPERTY IS LOCATED IN LIKE MANNER AND IN LIKE EFFECT AS IF IT
6 WERE A DEED OF CONVEYANCE FROM THE DECEDENT TO THE HEIRS OR
7 DEVISEES. Any person claiming to be an heir or devisee, or the grantee or
8 successor in interest of an heir or devisee, not served with notice by
9 personal service or by mail, and who did not admit, accept, or waive
10 service, or consent to the granting of the petition or enter a personal
11 appearance, may petition to reopen the proceeding and modify the decree
12 within one year after the entry thereof, but not thereafter; except that no
13 such modification of the decree shall MAY serve to impair the rights of
14 any person who, in reliance upon such decree, in good faith, for value,
15 and without notice, purchased property or acquired a lien upon property.
16 NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE CONTRARY,
17 THE ADMISSION OF A PREVIOUSLY UNPROBATED WILL AS PART OF A
18 PROCEEDING UNDER THIS PART 13 APPLIES ONLY TO THE DECEDENT'S
19 PARTICULAR PROPERTY INTERESTS DESCRIBED IN THE PETITION, IN
20 ACCORDANCE WITH SECTION 15-12-1302 (3) (d) (X), FOR THE DECEDENT.

21 **SECTION 9.** In Colorado Revised Statutes, **add** part 5 to article
22 2.5 of title 15 as follows:

23 PART 5

24 RIGHTS OF POWERHOLDER'S

25 CREDITORS IN APPOINTIVE PROPERTY

26 **15-2.5-501. General power created by powerholder.** (1) IN
27 THIS SECTION, "POWER OF APPOINTMENT CREATED BY THE POWERHOLDER"

1 INCLUDES A POWER OF APPOINTMENT CREATED IN A TRANSFER BY
2 ANOTHER PERSON TO THE EXTENT THE POWERHOLDER HOLDS A GENERAL
3 POWER OF APPOINTMENT AND CONTRIBUTED VALUE TO THE TRANSFER.
4 CONTRIBUTED VALUE TO A TRANSFER DOES NOT APPLY TO A GENERAL
5 POWER OF APPOINTMENT CREATED IN SETTLEMENT, AWARD, OR JUDGMENT
6 IN CONNECTION WITH A GOOD FAITH CONTROVERSY.

7 (2) APPOINTIVE PROPERTY SUBJECT TO A GENERAL POWER OF
8 APPOINTMENT CREATED BY THE POWERHOLDER IS SUBJECT TO A CLAIM OF
9 A CREDITOR OF THE POWERHOLDER OR OF THE POWERHOLDER'S ESTATE TO
10 THE EXTENT PROVIDED IN THE "COLORADO UNIFORM FRAUDULENT
11 TRANSFER ACT", ARTICLE 8 OF TITLE 38, C.R.S.

12 (3) SUBJECT TO SUBSECTION (2) OF THIS SECTION, APPOINTIVE
13 PROPERTY SUBJECT TO A GENERAL POWER OF APPOINTMENT CREATED BY
14 THE POWERHOLDER IS NOT SUBJECT TO A CLAIM OF A CREDITOR OF THE
15 POWERHOLDER OR THE POWERHOLDER'S ESTATE TO THE EXTENT THE
16 POWERHOLDER IRREVOCABLY APPOINTED THE PROPERTY IN FAVOR OF A
17 PERSON OTHER THAN THE POWERHOLDER OR THE POWERHOLDER'S ESTATE.

18 (4) SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION, AND
19 NOTWITHSTANDING THE PRESENCE OF A SPENDTHRIFT PROVISION OR
20 WHETHER THE CLAIM AROSE BEFORE OR AFTER THE CREATION OF THE
21 POWER OF APPOINTMENT, APPOINTIVE PROPERTY SUBJECT TO A GENERAL
22 POWER OF APPOINTMENT CREATED BY THE POWERHOLDER IS SUBJECT TO
23 A CLAIM OF A CREDITOR OF:

24 (a) THE POWERHOLDER, TO THE SAME EXTENT AS IF THE
25 POWERHOLDER OWNED THE APPOINTIVE PROPERTY, IF THE POWER IS
26 PRESENTLY EXERCISABLE; AND

27 (b) THE POWERHOLDER'S ESTATE, TO THE EXTENT THE ESTATE IS

1 INSUFFICIENT TO SATISFY THE CLAIM AND SUBJECT TO THE RIGHT OF A
2 DECEDENT TO DIRECT THE SOURCE FROM WHICH LIABILITIES ARE PAID, IF
3 THE POWERHOLDER IS DECEASED.

4 **15-2.5-502. Reserved.**

5 **15-2.5-503. Reserved.**

6 **15-2.5-504. Creditor claim - nongeneral power.** (1) EXCEPT AS
7 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, APPOINTIVE
8 PROPERTY SUBJECT TO A NONGENERAL POWER OF APPOINTMENT IS EXEMPT
9 FROM A CLAIM OF A CREDITOR OF THE POWERHOLDER OR THE
10 POWERHOLDER'S ESTATE.

11 (2) APPOINTIVE PROPERTY SUBJECT TO A NONGENERAL POWER OF
12 APPOINTMENT IS SUBJECT TO A CLAIM OF A CREDITOR OF THE
13 POWERHOLDER OR THE POWERHOLDER'S ESTATE TO THE EXTENT THAT THE
14 POWERHOLDER OWNED THE PROPERTY, AND, RESERVING THE NONGENERAL
15 POWER, TRANSFERRED THE PROPERTY IN VIOLATION OF THE "COLORADO
16 UNIFORM FRAUDULENT TRANSFER ACT", ARTICLE 8 OF TITLE 38, C.R.S.

17 (3) (Reserved)

18 **SECTION 10. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2016 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.