

CHAPTER 145

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 16-133

BY SENATOR(S) Tate, Johnston, Hill, Jahn, Martinez Humenik, Merrifield, Newell, Roberts, Scott, Steadman, Todd;
also REPRESENTATIVE(S) Pabon and Willett, Fields, Vigil.**AN ACT****CONCERNING THE TRANSFER OF PROPERTY RIGHTS UPON THE DEATH OF A PERSON, AND, IN CONNECTION THEREWITH, CLARIFYING DETERMINATION-OF-HEIRSHIP PROCEEDINGS IN PROBATE.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, 38-31-102, **amend** (1) as follows:

38-31-102. Proof of death - certificate of death available - definitions. (1) 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 supplementary affidavit, which shall be properly sworn to or affirmed by a person of legal age having personal knowledge of the facts, ~~and having no record interest in the real property,~~ **shall** MUST include the legal description of the real property and a statement that the person referred to in the certificate ~~was at the time of death the owner of a joint tenancy interest in the real property~~ IS THE SAME PERSON WHO IS NAMED IN A SPECIFIC RECORDED DEED OR SIMILAR INSTRUMENT CREATING THE JOINT TENANCY. When recorded, the original certificate or verification document and supplementary affidavit, or certified copies thereof, ~~shall~~ MUST be accepted in all courts of the state of Colorado as prima facie proof of the death of the joint tenant. The certificate or verification document and supplementary affidavit provided for in this section may also be used to provide proof of the death of a life tenant, ~~THE OWNER UNDER A BENEFICIARY DEED,~~ or any other person whose record interest in real property terminates upon the death of such person to the same extent as a joint tenant as provided in this section.

SECTION 2. In Colorado Revised Statutes, 15-12-1301, **amend** (1) and (2) as

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

follows:

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

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

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

SECTION 3. In Colorado Revised Statutes, **amend** 15-12-1302 as follows:

15-12-1302. Petition to determine heirship - devisees - interests in property.

(1) When any person dies leaving an interest in real property in this state, or dies domiciled in this state leaving an interest in personal property wherever located, AND THERE IS NO PROBATE PROCEEDING PRESENTLY PENDING FOR SUCH PERSON IN ANY JURISDICTION, any interested person OR PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF SUCH PROPERTY may petition the court having jurisdiction over probate matters in and for THE COUNTY IN WHICH THE REAL PROPERTY OR SOME PORTION THEREOF IS SITUATED, OR, IF THE PROCEEDING IS TO AFFECT AN INTEREST IN PERSONAL PROPERTY, the county in which the decedent was domiciled or resided at the time of death ~~or the county in which the property or some portion thereof is situated~~; to determine:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) THE NAME AND ADDRESS OF THE PETITIONER;

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

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

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

(I) THE NAME OF THE DECEDENT;

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

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

(IV) A STATEMENT THAT ONE YEAR HAS PASSED SINCE THE DECEDENT'S DATE OF DEATH;

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

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

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

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

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

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

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

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

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

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

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

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

(c) IF THE ADMISSIBILITY OF THE DECEDENT'S WILL TO PROBATE HAS NOT BEEN PREVIOUSLY DETERMINED BY A COURT AND THE ORIGINAL WILL HAS NOT BEEN LODGED WITH A COURT, THE PROVISIONS OF SECTION 15-12-402 (3) APPLY AND THE PETITION MUST INCLUDE A STATEMENT THAT THE ORIGINAL WILL IS LOST, DESTROYED, OR OTHERWISE UNAVAILABLE; THAT THE WILL WAS VALIDLY EXECUTED; THAT THE PETITIONER BELIEVES THE WILL TO BE THE DECEDENT'S LAST WILL; AND THAT THE PETITIONER IS UNAWARE OF ANY INSTRUMENT REVOKING THE WILL OR OF ANY PRIOR WILL RELATING TO THE PROPERTY THAT HAS NOT BEEN

EXPRESSLY REVOKED BY A LATER INSTRUMENT, AND THE PETITIONER SHALL PROVIDE A COPY OF THE WILL OR OTHERWISE ESTABLISH THE CONTENTS OF THE WILL TO THE SATISFACTION OF THE COURT.

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

SECTION 4. In Colorado Revised Statutes, **amend** 15-12-1303 as follows:

15-12-1303. Hearing - notice - service. (1) The petitioner shall prepare a notice ~~of the filing of the petition which notice shall include~~ THAT IDENTIFIES THE PETITION AND INCLUDES the name of ~~the~~ EACH decedent; THE NAME OF EACH INTERESTED PERSON; a description of the property set forth in the petition, ~~the name of each interested person, and the name of each owner by inheritance.~~ The notice may be served by personal service or by mailing a copy thereof, postage prepaid, addressed to the person at the address given and shall be directed to the interested persons and owners by inheritance set forth in the petition. INCLUDING A LEGAL DESCRIPTION IF THE PROPERTY IS REAL PROPERTY; AND THE TIME AND PLACE OF THE HEARING ON THE PETITION. The notice shall MUST direct all interested persons ~~and owners by inheritance~~ to appear and answer OBJECT TO the petition within twenty-one days after service of the notice if personal service occurs within the state of Colorado or thirty-five days after service if personal service occurs outside the state of Colorado or service is had by mail or by publication ON OR BEFORE THE HEARING DATE AND TIME SPECIFIED IN THE NOTICE. The notice shall MUST further provide DIRECT that all objections to the petition must be filed in writing with the court AND BE SERVED ON THE PETITIONER, and that the filing fee MUST BE paid within the time required for answering the petition and that ON OR BEFORE THE HEARING DATE AND TIME SPECIFIED IN THE NOTICE. THE NOTICE MUST SET FORTH THAT the hearing shall will be limited to the objections timely filed and the parties answering the petition in a timely manner. ~~The notice shall set forth the time and place of the hearing on the petition~~ AND SERVED AND THAT, IF NO OBJECTIONS ARE TIMELY FILED AND SERVED, THEN THE COURT MAY ENTER A DECREE WITHOUT A HEARING.

(2) ~~The notice shall be published once a week for three consecutive weeks, as defined in section 15-10-401 (4), in a newspaper of general circulation in the county where the proceeding is filed, or if there is no such newspaper in such county, then in some newspaper of general circulation in an adjoining Colorado county. Service by publication shall be complete on the last day of publication. Prior to the hearing the petitioner shall file with the court the publisher's affidavit of publication stating the dates of publication. The petition itself need not be published~~ THE NOTICE MUST BE SERVED ON EACH INTERESTED PERSON NAMED IN THE PETITION WHOSE ADDRESS IS SHOWN ON THE PETITION AND WHO DOES NOT JOIN IN THE PETITION; OR WHO DOES NOT CONSENT TO THE GRANTING OF THE PETITION OR ENTER A PERSONAL APPEARANCE; OR WHO DOES NOT ADMIT, ACCEPT, OR WAIVE SERVICE. SERVICE MAY BE BY PERSONAL SERVICE OR BY MAILING. IF SERVICE IS BY PERSONAL SERVICE WITHIN THE STATE, SERVICE MUST BE COMPLETED AT LEAST TWENTY-ONE DAYS PRIOR TO THE HEARING. IF SERVICE IS BY PERSONAL SERVICE OUTSIDE THE STATE OR BY MAILING A COPY THEREOF, POSTAGE PREPAID, ADDRESSED TO THE ADDRESS SHOWN ON THE PETITION EITHER WITHIN OR OUTSIDE THE STATE, SERVICE MUST BE COMPLETED AT LEAST THIRTY-FIVE DAYS PRIOR TO THE HEARING. THE PETITIONER SHALL FILE A RETURN OF SERVICE FOR EACH INSTANCE OF PERSONAL SERVICE AND

SHALL MAKE AND FILE A CERTIFICATE OF MAILING STATING THE NAME OF THE PERSON TO WHOM THE COPY WAS MAILED, THE ADDRESS TO WHICH THE COPY WAS MAILED, THAT IT WAS MAILED POSTAGE PREPAID, AND THE DATE OF MAILING. A COPY OF THE PETITION MUST BE SERVED WITH THE NOTICE.

(3) ~~The notice, in addition to publication, shall be served on each person named in the petition whose address is shown on the petition and who does not join in the petition, or does not consent to the granting of the petition or enter a personal appearance, or does not admit, accept, or waive service. If service is by personal service within the state, service must be completed at least twenty-one days prior to the hearing. If service is by personal service outside the state or by mail within or outside the state or by publication, service must be completed at least thirty-five days prior to the hearing. The petitioner shall file a return of service or shall make and file a certificate of mailing, stating the name of the person to whom the copy was mailed and the address to which mailed, that it was mailed, postage prepaid, and the date of mailing. A copy of the petition shall be served with the notice~~ THE PETITIONER SHALL ALSO CAUSE THE NOTICE TO BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS, AS DEFINED IN SECTION 15-10-401 (4), IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE PROCEEDING IS FILED, OR IF THERE IS NO SUCH NEWSPAPER IN THE COUNTY, THEN IN A NEWSPAPER OF GENERAL CIRCULATION IN AN ADJOINING COLORADO COUNTY. ADDITIONALLY, SUCH NOTICE MUST ALSO BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN ANY OTHER COUNTY IN WHICH REAL PROPERTY THAT IS SUBJECT TO THE PROCEEDING IS LOCATED, OR IF THERE IS NO SUCH NEWSPAPER IN SUCH COUNTY, THEN IN A NEWSPAPER OF GENERAL CIRCULATION IN AN ADJOINING COLORADO COUNTY. SERVICE BY PUBLICATION IS COMPLETE ON THE LAST DAY OF PUBLICATION, WHICH MUST OCCUR ON OR BEFORE THIRTY-FIVE DAYS BEFORE THE HEARING. THE PETITIONER SHALL FILE WITH THE COURT THE PUBLISHER'S AFFIDAVIT OR AFFIDAVITS OF PUBLICATION STATING THE DATES OF PUBLICATION.

SECTION 5. In Colorado Revised Statutes, **amend** 15-12-1304 as follows:

15-12-1304. Appearance - hearing. Any interested person or ~~owner by inheritance~~ PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF THE DECEDENT'S INTEREST IN THE PROPERTY, THE DESCENT OR SUCCESSION OF WHICH IS TO BE DETERMINED IN THE PETITION, may appear and ~~answer such petition~~ OBJECT and establish any proper defense to the petition or any part thereof, or assert or protect any interest the person may claim. ~~at any time within the time for filing an answer as set forth in the notice. After the expiration of the time periods allowed for appearance and answer;~~ AN APPEARANCE AND OBJECTION MUST BE PRESENTED IN WRITING WITHIN THE TIME PERIOD FOR FILING AN OBJECTION AS SET FORTH IN THE NOTICE; EXCEPT THAT, FOR GOOD CAUSE, THE COURT MAY ALLOW AN ENTRY OF APPEARANCE AND OBJECTION BY AN INTERESTED PERSON OR PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF THE PROPERTY AT ANY TIME PRIOR TO THE ENTRY OF THE COURT'S JUDGMENT AND DECREE. IF AN INTERESTED PERSON OR PERSON WHO MAY BE AFFECTED BY THE OWNERSHIP OF THE PROPERTY APPEARS AND FILES A TIMELY OBJECTION, the court shall proceed with the hearing on the petition; ~~Any person who objects to the relief prayed for in the petition must present all such objections in writing within the time period for filing an answer; except that the court, for good cause, may allow an entry of appearance by any interested person~~

~~at any time prior to the entry of the court's judgment and decree.~~ EXCEPT THAT THE COURT MAY CONTINUE THE HEARING IN ITS DISCRETION OR DIRECT SUCH FURTHER PROCEEDING AS THE COURT MAY DETERMINE. OTHERWISE, IF AFTER PROPER SERVICE PURSUANT TO SECTION 15-12-1303 THERE ARE NO OBJECTIONS FILED TO THE PETITION, THEN THE COURT MAY ENTER A JUDGMENT AND DECREE PURSUANT TO THIS PART 13 WITHOUT A HEARING.

SECTION 6. In Colorado Revised Statutes, **amend** 15-12-1305 as follows:

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

SECTION 7. In Colorado Revised Statutes, **amend** 15-12-1306 as follows:

15-12-1306. Decree - conclusive and when - reopening. A decree entered pursuant to this part 13 ~~shall be~~ is conclusive as to the rights of heirs or devisees in the property described in the order from the date of its entry. IF SUCH A DECREE AFFECTS TITLE TO REAL PROPERTY, A CERTIFIED COPY OF THE DECREE MUST BE RECORDED AND INDEXED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL PROPERTY IS LOCATED IN LIKE MANNER AND IN LIKE EFFECT AS IF IT WERE A DEED OF CONVEYANCE FROM THE DECEDENT TO THE HEIRS OR DEVISEES. Any person claiming to be an heir or devisee, or the grantee or successor in interest of an heir or devisee, not served with notice by personal service or by mail, and who did not admit, accept, or waive service, or consent to the granting of the petition or enter a personal appearance, may petition to reopen the proceeding and modify the decree within one year after the entry thereof, but not thereafter; except that no such modification of the decree ~~shall~~ MAY serve to impair the rights of any person who, in reliance upon such decree, in good faith, for value, and without notice, purchased property or acquired a lien upon property. NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE CONTRARY, THE ADMISSION OF A PREVIOUSLY UNPROBATED WILL AS PART OF A PROCEEDING UNDER THIS PART 13 APPLIES ONLY TO THE DECEDENT'S PARTICULAR PROPERTY INTERESTS DESCRIBED IN THE PETITION, IN ACCORDANCE WITH SECTION 15-12-1302 (3) (d) (X), FOR THE DECEDENT.

SECTION 8. Inclusion of official comments. The revisor of statutes shall include, as nonstatutory matter, following each section of the "Colorado Uniform Powers of Appointment Act", article 2.5 of title 15, C.R.S., the full text of the official comment to each such section contained in the official volume containing the "Uniform Powers of Appointment Act" issued by the Uniform Law Commission, with any changes in the official comments to correspond to Colorado changes in the uniform act. The revisor shall prepare the comments for approval by the committee on legal services.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final

adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 4, 2016