

TRUSTS AND ESTATES LAW UPDATE
(July 2007-June 2008)

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TRUSTS AND ESTATES LAW UPDATE

(May 2007-May 2008)

A. **HB 08-1153: CONCERNING THE OVERSIGHT OF FIDUCIARIES UNDER THE PROVISIONS OF THE COLORADO PROBATE CODE**

1. Bill Summary (As Introduced). Adds a new part to the Colorado probate code concerning oversight of fiduciaries in decedents' estates, guardianships and conservatorships, and trusts. Makes conforming amendments.
2. Court Powers. Gives a court, incident to a court proceeding, certain powers to ensure the timely and proper administration of estates by fiduciaries over whom court has jurisdiction.
 - a. Does not confer jurisdiction over nonsupervised trusts, private trusts, agencies created by powers of attorney, or custodial accounts under UTMA.
 - b. Filing of a trust registration statement, by itself, does not constitute a proceeding.
3. Application. Applies to fiduciaries over which court has obtained jurisdiction, including:
 - a. Personal Representatives;
 - b. Special administrators;
 - c. Guardians;
 - d. Conservators;
 - e. Special Conservators;
 - f. Trustees;
 - g. Agents under powers of attorney; and
 - h. Custodians, including un UTMA.
4. Initial Investigation. Court on its own motion or on the request of an interested person may:
 - a. Direct a fiduciary to file with the court:
 - (1) A Status Report;
 - (2) An Inventory;
 - (3) An Interim Accounting; or
 - (4) A Financial Report.

- b. Order the fiduciary to appear before the court.
5. Emergency Situations - Court Action Without Prior Notice or Hearing. If it appears that there is imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, court may on its own motion or that of an interested person order immediate restraint, restriction, or suspension of the powers of the fiduciary (in which case the court shall set a hearing and give notice to the fiduciary); direct the fiduciary to appear before the court, or take such other action as the court deems appropriate.
6. Nonemergency Situations - Court Action After Notice and Hearing. Upon petition of interested person or on its own motion, after notice and hearing, a court may order:
- a. Supervised administration;
 - b. Temporary restraint on fiduciary's performance of specified acts, or discharge of any duties if it appears that fiduciary may take action that could unreasonably jeopardize the interest of an interested person;
 - c. Additional restrictions on fiduciary's powers;
 - d. Suspension of the fiduciary;
 - e. Removal of the fiduciary for cause;
 - f. Appointment of temporary or permanent successor fiduciary;
 - g. Review of fiduciary's conduct;
 - h. A surcharge or sanction of the fiduciary; or
 - i. Further relief deemed appropriate by the court.
7. Surcharge-contempt-sanctions against fiduciaries.
- a. Court may surcharge fiduciary for damage or loss to estate, beneficiaries, or interested persons, including compensatory

damages, interest, and attorneys fees and costs.

- b. Nothing limits court's authority to proceed against fiduciary for contempt.
- c. Court may order other sanctions it deems appropriate.

8. Effective Date. July 1, 2008

B. HB 08-1173: CONCERNING THE ENACTMENT OF THE "UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT"

- 1. Bill Summary (As Introduced): Replaces the "Uniform Management of Institutional Funds Act" with the "Uniform Prudent Management of Institutional Funds Act", drafted by the national conference of commissioners on uniform state laws. Establishes the same standards for managing and investing institutional funds regardless of whether a charitable organization is organized as a trust, a nonprofit corporation, or some other entity. Imposes additional duties on those who manage and invest charitable funds to provide additional protections for charities and also protects the interests of donors who want to see their contributions used wisely. Establishes stricter guidelines on spending from endowment funds. Updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. ~~Authorizes a court to modify the purposes to which a hospital foundation's funds are dedicated if the foundation proves that continued dedication of the funds to the purposes originally specified is impractical or wasteful.~~ Directs the revisor of statutes to publish, as nonstatutory matter, the official comments to the uniform act. *[Strike through shows changes made by Colorado Legislature]*
- 2. Updates 1972 UMIFA (15-1-1101). UPMIFA was approved by NCUSL in 2006. One issue with UMIFA was "historic dollar value" - charity could never spend below. This act eliminates this rule and replaces with prudent investor rule.
- 3. Definitions - Act applies to charities, not trusts that happen to have charitable beneficiaries. Institutional fund is a fund held exclusively for charitable purposes and excludes trusts held exclusively for a charity.

4. Requirements are similar to prudent investor act, duty to diversify, etc.
5. List of seven (7) factors that institution must consider in managing and investing institutional funds:
 - a. duration and preservation of the endowment fund;
 - b. the purposes of the institution and endowment fund;
 - c. general economic conditions;
 - d. effect of inflation and deflation;
 - e. the expected total return from income and the appreciation of investments;
 - f. other resources of the institution; and
 - g. the investment policy of the institution.
6. Spending policy, basic rule is rule of prudence. Intent is to allow charities to spend down endowments not just spending income and dividends. Donor can draft around this by specifically stating.
7. Does not include Uniform Act's provision that raises a rebuttable presumption of imprudence if more than 7% of the fund is spent down.
8. Deals with delegation, similar to UPIA, institution can delegate investment functions but not expenditure functions.
9. Deals with the release or modification of restrictions on management of investments. 1) if donor consents, can do it; 2) can get court modification if restrictions have become impracticable or unmanageable; 3) codifies Cypr Doctrine; 4) small old fund (less than \$100,000 (\$25,000 under Uniform Act) and more than 20 years old) - Cypr rule applies without going to court by giving notice to Attorney General.
10. Effective Date. September 1, 2008. Applies to institutional funds existing on or established after the effective date.

C. HB 08-1248: CONCERNING JOINT TENANCY IN REAL PROPERTY

1. Bill Summary (As Introduced). Defines joint tenancy and establishes how a joint tenant may sever a joint tenancy.
2. Doctrine of 4 Unities. Except as specifically provided in the Act, the Doctrine of the Four Unities of Time, Title, Interest, and Possession

continue as part of Colorado law. Direct response to *Taylor v. Canterbury*, 92nd P3rd 961 (CO 2004).

3. Severance of Joint Tenancy. A joint tenant may sever unilaterally. Can now sever without strawman but Beneficiary Deeds and Deeds to sever joint tenancy must now be recorded to be effective. States that case law establishing other means of severing still effective.
4. Bankruptcy. Bankruptcy of joint tenant does not sever.
5. Unequal Joint Tenancies. Joint tenancy can be unequal but must record to be protected against third parties. However, for Medicaid purposes, all joint tenancies are presumed to be equal regardless of what deed says.
6. Survivorship Interests. Vest upon death of a joint tenant, not upon creation.
7. Effective Date. Effective April 25, 2008 as to joint tenancies created on or after April 25, 2008. There are many ambiguities that will most likely be addressed by technical corrections next session.

D. SB 08-100: CONCERNING THE CREATION OF THE “UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT”

1. Bill Summary (As Introduced): Enacts the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act" drafted by the national conference of commissioners on uniform state laws. Incorporates the jurisdictional rules and the rules relating to cooperation and communication between courts of different states as provided in the uniform act.
2. Jurisdiction. State Court has jurisdiction to appoint guardian or issue protective order if:
 - a. Respondent’s Home State;
 - b. Significant-Connection State and:
 - (1) Respondent does not have a home state; or
 - (2) Has a home state but petition for appointment is not pending.
 - c. Respondent’s Home State and all Significant-Connection states have declined to exercise jurisdiction; or

- d. Requirements of Special Jurisdiction are met:
 - (1) Emergency appointment not to exceed 60 days;
 - (2) Protective order with respect to real or tangible personal property in this state;
 - (3) Provisional order to transfer from another state has been issued.
3. Transfer of Guardianship or Conservatorship. Act addresses the transfer of a guardianship or conservatorship from Colorado to another state or from another state to Colorado.
4. Registration and Recognition of Orders from Other States. Creates a registry for guardianship and protective orders from other states allowing the guardian or conservator to exercise its powers in Colorado.
5. Effective Date: Effective May 14, 2008.

E. SB 08-033: CONCERNING PRIVATE FAMILY TRUST COMPANIES

1. Bill Summary (As Introduced): Creates provisions for the administration of private trust companies. Prohibits private trust companies from transacting business with the general public. Allows a private trust company to apply to the banking board for a whole or partial exemption from one or more provisions governing trust companies, and allows the banking board to grant and revoke such exemptions. Sets forth procedures by which a private trust company may terminate its status as a private trust company, become a public trust company, and begin to transact business with the general public. Requires the banking board to promulgate rules for the administration of private trust companies. Allows a private trust company to make loans and extend credit to its officers, directors, and employees.
2. Effective Date: _____.

F. RULES AND FORMS The September 2006 audit titled, "Oversight of Probate Cases - Colorado Judicial Branch Performance Audit," resulted in several form changes in 2007 and 2008. Select CPC forms have been replaced by JDF forms, and new JDF forms have been created to address circumstances not covered by CPC forms. Available JDF forms should be used in 2008, and the use of JDF forms becomes

mandatory on January 1, 2009 in all types of cases. Current JDF forms are available online at <http://www.courts.state.co.us/chs/court/forms/probate/probate.htm>.

As of June 9, 2008, the following JDF forms had been made available for use:

JDF 703	Petition for Transfer of Will
JDF 704	Order for Transfer of Will
JDF 711	Notice of Hearing
JDF 712	Notice of Non-appearance Hearing Pursuant to C.R.C.P. 8.8
JDF 714	Affidavit regarding Due Diligence and Proof of Publication
JDF 716	Notice of Hearing by Publication
JDF 718	Personal Service Affidavit
JDF 719	Waiver of Notice
JDF 721	Irrevocable power of attorney Designating Clerk of Court as Agent for Service of Process
JDF 722	Objection: To Non-Appearance Hearing
JDF 730	Decree of Final Discharge
JDF 731	Receipt and Release
JDF 750	Instructions for Delegation of Power by Parent or Guardian Pursuant to §15-14-105, C.R.S.
JDF 751	Delegation of Power by Parent or Guardian Pursuant to §15-14-105, C.R.S.
JDF 797	A Petition Has Been Filed to Appoint a Guardian, Conservator, or Both For You. You Have Certain Rights
JDF 798	What it Means for you When a Request for Appointment of a Conservator has been Filed - Information Sheet
JDF 799	What it Means for you When a Request for Appointment of a Guardian has been Filed - Information Sheet
JDF 805	Acceptance of Office
JDF 806	Notice of Hearing to Interested Person
JDF 807	Notice of Hearing to Respondent/Minor
JDF 809	Order Appointing Court Visitor
JDF 810	Visitor's Report
JDF 812	Notice of Appointment of Guardian and/or Conservator
JDF 823	Instructions for Appointment of a Guardian - Minor
JDF 824	Petition for Appointment of Guardian for Minor
JDF 825	Verified Consent of Parent (Replaces CPC 34-CP)
JDF 826	Verified Consent or Nomination of Minor (Replaces CPC 34-NC)
JDF 830	Letter of Guardianship - Minor
JDF 834	Guardian's Report - Minor

JDF 835 Verified Petition for Termination of Guardianship - Minor
 JDF 836 Order for Termination of Guardianship - Minor
 JDF 840 Instructions for Appointment of a Guardian - Adult
 JDF 841 Petition for Appointment of a Guardian - Adult
 JDF 844 Notice of Appointment of Emergency Guardian (Replaces CPC 2-ERA)

 JDF 849 Letter of Guardianship - Adult
 JDF 850 Guardian's Report - Adult
 JDF 852 Petition for Termination of Guardianship – Adult
 JDF 853 Verified Notice of Death
 JDF 854 Order for Termination of Guardianship - Adult
 JDF 855 Petition for Modification of Guardianship
 JDF 856 Order for Modification of Guardianship
 JDF 857 Petition for Appointment of Co-Guardian Successor Guardian
 JDF 858 Order Appointing Co-Guardian or Successor Guardian
 JDF 860 Instructions for Appointment of Conservator - Minor
 JDF 861 Petition for Appointment of Conservator - Minor
 JDF 863 Letters of Conservatorship - Minor
 JDF 866 Order for Deposit of Funds to Restricted Account (Replaces CPC 55)
 JDF 867 Acknowledgment of Deposit of Funds to Restricted Account
 JDF 868 Motion to Withdraw Funds from Restricted Account
 JDF 869 Order to Withdraw Funds from Restricted Account
 JDF 870 Restricted Log
 JDF 875 Instructions for Appointment of Conservator - Adult
 JDF 876 Petition for Appointment of Conservator - Adult
 JDF 879 Petition for Appointment of Co-Conservator Successor Conservator
 JDF 880 Letters of Conservatorship – Adult
 JDF 882 Conservator's Inventory with Financial Plan
 JDF 883 Order Regarding Approval of Conservator's Inventory with Financial Plan

 JDF 884 Order Appointing Co-Conservator or Successor Conservator
 JDF 885 Conservator's Report
 JDF 891 Foreign Conservator's Sworn Statement (Replaces CPC 60-C)
 JDF 892 Certificate of Ancillary Filing – Conservatorship (Replaces CPC 61-C)

 JDF 912 Renunciation and/or Nomination of Personal Representative (Replaces CPC 17-A)

 JDF 929 Domiciliary Foreign Personal Representative Sworn Statement (Replaces CPC 60)

 JDF 930 Certificate of Ancillary Filing – Decedent's Estate (Replaces CPC 61)

JDF 940 Information of Appointment (Replaces CPC 42)
JDF 951 Application for Informal Appointment of Successor Personal
Representative
JDF 952 Informal Appointment of Successor Personal Representative
JDF 963 Notice of Non-Appearance Hearing on Petition for Final Settlement
and Distribution