

TRUSTS AND ESTATES STATUTORY LAW UPDATE
(July 2008-June 2009)

PRESENTED BY
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ANNUAL LEGISLATIVE UPDATE
COLORADO BAR ASSOCIATION
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STATUTORY UPDATES

(A copy of the Acts can be found on the State Assembly's website at <http://www.leg.state.co.us>)

1. HB 09-1260 CONCERNING DESIGNATED BENEFICIARY AGREEMENTS. (Signed by the Governor on April 9, 2009.)

Summary of the Act (based on a reading of the final Act and the Bill summary, as introduced)

HB 09-1260 adds Article 22 (the "Colorado Designated Beneficiary Agreement Act," hereinafter referred to as the "Act") to Title 15 of the Colorado Revised Statutes. The Act allows any two competent adults who are not married, and who are not parties to another designated beneficiary agreement, to enter into a designated beneficiary agreement. A party to a designated beneficiary agreement can grant his or her designated beneficiary certain rights, including the following:

- the right to own property jointly with the party (and other rights associated with joint ownership of property);
- the right to be designated as the beneficiary of the party's life insurance policies and retirement plans;
- the right to be covered as a dependent under the party's health insurance plan (if the party's employer elects to provide coverage for designated beneficiaries as dependents);
- the right to serve as the party's conservator or guardian;
- the right to visit the party in health care facilities, such as hospitals and nursing homes;
- the right to have priority for appointment as the party's personal representative;
- the right to act as a proxy decision-maker or surrogate decision-maker to make medical decisions for the party;
- the right to receive notice of the withholding or withdrawal of life-sustaining procedures for the party and right to challenge a Declaration as to Medical or Surgical Treatment on behalf of the party;
- the right to act as an agent and to make, revoke, or object to anatomical gifts on behalf of the party;
- the right to inherit property through intestate succession if the party dies intestate;
- the right to have standing to sue for wrongful death of the party; and
- the right to direct the disposition of the party's last remains.

The beneficiary designation agreement is not an all-or-nothing agreement. The Act provides that a designating party can grant or withhold any of the enumerated rights or powers to or from his or her designated beneficiary. Additionally, the Act provides that to the extent a “superseding legal document” (e.g., a will, codicil, trust instrument, beneficiary designation) conflicts with the beneficiary designation agreement, the superseding legal document controls, regardless of when the superseding legal document was executed. Therefore, a beneficiary designation agreement does not modify or revoke previously executed legal documents.

To be valid, the designated beneficiary agreement must comply with the requirements set forth in the Act. The agreement must contain a disclaimer and certain instructions and statements, it must be signed and acknowledged by both parties, and it must be recorded with the clerk and recorder of the county in which one of the parties to the agreement resides. (The Act provides a sample beneficiary designation agreement.)

Either party to a beneficiary designation agreement can unilaterally revoke the agreement by recording a dated, signed, and acknowledged revocation with the clerk and recorder of the county in which the agreement was recorded. (The Act provides a sample revocation form.) Furthermore, the agreement is deemed revoked upon the marriage of either party and, in the case of common law marriage, as of the date a court determines a valid common law marriage exists.

The Act provides that a designated beneficiary agreement terminates upon the death of either of the parties to the agreement; however, a right or power conferred upon the surviving designated beneficiary survives the death of the other designated beneficiary. After one of the parties to the agreement dies, the surviving party may then enter into a designated beneficiary agreement with a different person.

Finally, the Act amends numerous other statutes to be consistent with the provisions of the Act and to recognize and allow for the rights that can be granted to a designated beneficiary pursuant to the Act. For example, the Act amends C.R.S. § 15-11-103 (Share of heirs other than surviving spouse) to provide that a designated beneficiary receives the decedent’s entire intestate estate, unless the decedent has surviving children, in which case the designated beneficiary receives one-half of the intestate estate.

The effective date of the Act is July 1, 2009.

2. HB 09-1198 CONCERNING THE “UNIFORM POWER OF ATTORNEY ACT.

(Signed by the Governor on April 9, 2009.)

Summary of the Act (based on a reading of the final Act, the summary of the Act published on NCCUSL’s website, and the Prefatory Note to and Overview of the Uniform Power of Attorney Act as drafted by NCCUSL)

HB 09-1198 adds Part 7 (the “Uniform Power of Attorney Act,” hereinafter referred to as “UPOAA” or the “Act”) to Article 14 of Title 15 of the Colorado Revised Statutes.

The UPOAA seeks to balance two important concerns: (1) the need for individuals to be able to create an agency relationship that will be recognized and honored by third parties, and (2) the need to protect principals, especially those who are incapacitated, from financial abuse.

The UPOAA consists of four subparts. Subparts 1 and 2 contain the substance of the Act. Subpart 3 contains optional statutory forms. Subpart 4 consists of miscellaneous provisions dealing with general application of the Act and amendments to (or repeal of) other Colorado statutes to ensure consistency between other Colorado law and the UPOAA.

Subpart 1: Section 15-14-702 contains the definitions that are to be used in the application and interpretation of the Act.

Section 15-14-704 provides a new default rule regarding durability of power of attorney documents: powers of attorney created under the UPOAA are durable unless the document provides otherwise.

Section 15-14-705 sets forth the requirements for executing a power of attorney and provides that an acknowledged power of attorney is presumed to be genuine.

Section 15-14-706 recognizes the validity of military powers of attorney and powers of attorney properly executed in other jurisdictions, and section 15-14-707 states a choice of law rule for determining what law governs the meaning and effect of the power of attorney.

Section 15-14-709 sets forth the default rule for when a power of attorney becomes effective: unless the principal provides otherwise, powers of attorney are effective upon execution. If the power of attorney provides that it is effective only upon the happening of some contingency, the principal can choose who has the ability to determine that the power of attorney has become effective. If the power is to become effective upon the principal’s incapacity and the principal does not designate any person to make this determination (or if the designated person is

unable or unwilling to make the determination), section 15-14-709 authorizes other persons to make the determination.

Section 15-14-710 governs termination of a power of attorney. Unlike section 15-14-605 (repealed by the Act), which provided that the authority of a principal's spouse terminated upon the entry of court decree for legal separation or marital dissolution, section 15-14-710 provides that any authority granted to a principal's spouse terminates when an action for dissolution, annulment, or legal separation is filed.

Sections 15-14-711 through 15-14-718 provide default rules for matters relating to agents. Section 15-14-711 sets forth default rules for coagents and successor agents. Section 15-14-712 governs agent reimbursement and compensation. Section 15-14-713 governs an agent's acceptance of appointment. Section 15-14-714 sets forth the duties of an agent (some of which are mandatory and some of which may be altered), and section 15-14-715 allows a principal to relieve an agent of liability for breach of fiduciary duty (except for actions committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or best interest of the principal). Section 15-14-716 provides a list of interested persons who can petition the court to review an agent's conduct and grant appropriate relief. Section 15-14-717 addresses the liability of agents who violate the UPOAA. Section 15-14-718, which governs resignation of agents, requires an agent to give notice if the agent is no longer willing or able to act.

Sections 15-14-719 and 15-14-720 set forth rules relating to a third party's acceptance of and reliance on an acknowledged power of attorney and liability for a third party's refusal to accept an acknowledged power of attorney. Section 15-14-719 provides that a third party acting in good faith, without actual knowledge that a power of attorney or authority of an agent is void, invalid, or terminated or that an agent is acting improperly, may rely on the power of attorney and/or the agent's authority to act pursuant thereto. Section 15-14-720 sanctions the refusal to accept an acknowledged power of attorney (unless the refusal falls within one of a limited number of exceptions set forth in section 15-14-720).

Subpart 2: Section 15-14-724(1) provides that a principal must expressly grant an agent authority that could dissipate the principal's property or alter the principal's estate plan. For example, section 15-14-724(1) provides that a principal must expressly grant an agent authority to make a gift, to create or change rights of survivorship, and to create or change beneficiary designations. Section 15-14-724(2) further provides that an agent may not create in the agent, or in any person to whom the agent owes a legal obligation of support, an interest in the principal's property unless the agent is an ancestor, spouse, or descendant of the principal.

Sections 15-14-727 through 15-14-740 set forth the general authority of an agent with respect to subjects, including real property, tangible personal property, stocks and bonds, banks and other financial institutions, insurance and annuities, retirement plans, taxes, and gifts.

Subpart 3: Subpart 3 contains an optional statutory power of attorney form and an optional form for an agent to use to certify facts concerning a power of attorney or the agent's authority.

Subpart 4: Subpart 4 consists of miscellaneous provisions dealing with general application of the Act and amendments to (or repeal of) other Colorado statutes to ensure consistency between other Colorado law and the UPOAA.

Certain sections of the UPOAA act are effective upon passage. Others are effective as of January 1, 2010.

3. SB 09-139 CONCERNING THE ADOPTION OF RECENT CHANGES TO THE "UNIFORM PRINCIPAL AND INCOME ACT" PROPOSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. (Signed by the Governor on April 16, 2009.)

Summary of the Act (based on a reading of the final Act and the Bill summary, as introduced)

As enacted, SB 09-139 adopts amendments to the "Uniform Principal and Income Act" drafted by the National Conference of Commissioners on Uniform State Laws governing:

- Allocations of payments made by a trustee from a separate fund relating to qualifying for the federal marital deduction;
- Determination of the internal income of separate funds; and
- Payment of taxes on a trust's share of an entity's taxable income.

4. SB 09-111 CONCERNING CONTINUATION OF THE "NOTARIES PUBLIC ACT." (Signed by the Governor on April 22, 2009.)

Summary of the Act (based on a reading of the final Act and the Bill summary, as introduced)

As enacted, SB 09-111 continues the "Notaries Public Act" until July 1, 2018. SB 09-111 also makes the following amendments to the Notaries Public Act:

SB 09-111:

- Requires the secretary of state to verify the lawful presence of each applicant in the United States;
- Allows the secretary of state to suspend a notary public commission or issue a letter of admonition as a means of discipline;
- Requires a notary public to make a journal entry for each notarial act performed;
- Repeals the authority of a notary public to notarize photographs; and
- Authorizes the office of the secretary of state to promulgate rules to require that notaries public complete a training program.

SB 09-111, as enacted, becomes effective on July 1, 2009.

5. HB 09-1241 CONCERNING TITLE 15 OF THE COLORADO REVISED STATUTES. (Signed by the Governor on April 22, 2009.)

Summary of the Act (based on a reading of the final Act and the Bill summary, as introduced)

HB 09-1241 enacts the “Uniform Principal and Income Act of 1955” (hereinafter referred to as the “1955 Act”) as it existed at the time of the adoption of the “Uniform Principal and Income Act of 2000” (hereinafter referred to as the “2000 Act”). The 1955 Act applies only to legal estates or trusts that are not subject to the 2000 Act. The 1955 Act applies retroactively to life estates (or estates for term in principal) that were created during the period beginning on July 1, 2001, and ending on July 1, 2010, unless a tenant or remainderman files an election on or before July 1, 2009 to not have the 1955 Act apply retroactively. HB 09-1241 also adds a new provision to the 2000 Act regarding disposition of natural resources. (The 1955 Act contains the same provision.) The amendments to the 2000 Act provide that such provisions will apply to all trusts and estates that are subject to the 2000 Act and that are executed after July 1, 2009, unless the qualified beneficiaries elect otherwise. Such provisions apply to all trusts and estate subject to the 1955 Act, unless the appropriate person elects otherwise.

HB 09-1241 also makes amendments to the Colorado Probate Code. HB 09-1241:

- Amends provisions of the Colorado Probate Code concerning entry by a representative into a safe deposit box of a decedent. (See C.R.S. § 15-10-111)
- Provides that a court may appoint a guardian ad litem at any point in a proceeding to represent the interest of a protected person if the court determines that a need for such representation appears. (See C.R.S. § 15-10-403)
- Clarifies that the personal representative, not the person who is presumptively entitled to receive certain items of the decedent’s property, may need to take possession of the

decedent's property in order to administer the decedent's estate. (See C.R.S. § 15-12-709)

- No longer requires a written instrument (that is not a will) that appoints a guardian for a minor child to be signed by at least two witnesses and notarized. Such instrument must be signed only by the appointing parent or guardian. (See C.R.S. § 15-14-202)

6. SB 09-1287 CONCERNING CHANGES TO THE “COLORADO PROBATE CODE.” (Signed by the Governor on May 21, 2009.)

Summary of the Act (based on a reading of the final Act and the Bill summary, as introduced)

SB 09-1287, as enacted, makes changes to the Colorado Probate Code, as drafted by NCCUSL.

Inflation Adjustments. SB 09-1287, as enacted, (hereinafter referred to as “SB 09-1287” or the “Act”) makes inflation adjustments to the dollar amounts for the spousal share amounts of an intestate estate, and establishes a formula for an automatic annual adjustment to these dollar amounts and to the dollar amounts for the elective share, the spouse's share of exempt property, and the family allowance.

Intestate Succession. SB 09-1287 amends the provisions of C.R.S. § 15-11-103 relating to the intestate share of grandparents (or the descendants thereof) of a decedent who has no surviving descendants, parents, or siblings. The Act revokes the provisions of C.R.S. § 15-11-103 relating to birth children adopted away from the decedent and birth parents of a decedent who was adopted away, and adds provisions to allow the surviving descendants of a predeceased spouse of a decedent to inherit as a last alternative to the estate escheating to the state.

SB 09-1287 amends C.R.S. § 15-11-104 to clarify the requirement of survival by 120 hours as it applies to an heir who was born before the decedent's death and an individual who was in gestation at the decedent's death.

The Act bars a parent from inheriting from or through a child if the parent's parental rights were terminated and not judicially reestablished prior to the child's death or if the child died before reaching 18 years of age and there is clear and convincing evidence that the parental rights could have been terminated immediately before the child's death. (C.R.S § 15-11-114).

The Act adds a new subpart 2 to part 1 of Article 11 of Title 15 of the Colorado Revised Statutes (C.R.S. §§ 15-11-115 through 15-11-122). Section 15-11-117 states that, for purposes of inheritance through intestate succession, a parent-child relationship exists between a child and

the child's genetic parents, regardless of the parents' marital status, and § 15-11-118(1) provides that a parent-child relationship exists between an adoptee and an adoptee's adoptive parent(s). Sections 15-11-118(2) and (3) through 15-11-222 address inheritance/parent-child issues for children in the process of being adopted, adopted children, children conceived through assisted reproduction (a method of causing pregnancy other than sexual intercourse), and children conceived pursuant to gestational agreements (agreements for assisted reproduction in which a woman agrees to carry a child to birth for intended parent(s)).

Wills. The Act amends C.R.S. § 15-11-502(1)(c)(2) to allow the use of notarized wills as an alternative to wills that are attested by two witnesses.

SB 09-1287 amends C.R.S. § 15-11-705(2) to provide that a class gift that uses a term of relationship to identify its members includes children of assisted reproduction, gestational children, adopted children, and children born to parents who are not married to each other, and to the descendants of all such children, if appropriate to the class. Also, C.R.S. § 15-11-705(7) sets forth class-closing rules for situations involving children in utero, posthumously conceived children, and children in the process of being adopted.

The Act adds provisions to part 8 of Article 11 of Title 15 of the Colorado Revised Statutes (C.R.S. §§ 15-11-806 and 15-11-807) that allow a court to reform the terms of a governing instrument to conform to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law. The new provisions also allow a court to modify the terms of a governing instrument to achieve the transferor's tax objectives.

The Act applies to governing instruments executed by decedents dying on or after July 1, 2010. ***[Please note, a subcommittee of the Trusts & Estates Section is currently preparing amendments to certain provisions of the Act to comply with Colorado law, with the idea that such amendments will be enacted prior to the effective date of the Act.]***

The Statutory Development materials are provided for informational purposes only. Practitioners are encouraged to read and interpret the cited materials themselves, as these summaries do not represent the official language of the proposed or enacted legislation. Only items which the preparer of the materials, in her sole discretion, deemed noteworthy are included, and no attempt was made to include every development affecting trust and estate practitioners.

FORMS UPDATE

As many of you know, the Probate Task Force is in the process of replacing all Colorado Probate Code (CPC) forms with Judicial Department Forms (JDF) forms. Practitioners may continue to use both CPC and JDF forms until **July 1, 2009**, at which time the use of JDF forms will become mandatory. Current JDF forms are available online at the Colorado State Judicial Branch website at http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/143.

Between February and May, 2009, the following JDF forms were approved or revised and made available for use:

JDF 809	Order Appointing Court Visitor
JDF 810	Court Visitor's Report
JDF 830	Letters of Guardianship – Minor
JDF 834	Guardian's Report – Minor
JDF 849	Letters of Guardianship – Adult
JDF 850	Guardian's Report – Adult
JDF 868	Motion to Withdraw Funds from Restricted Account
JDF 869	Order Allowing Withdrawal of Funds from Restricted Account
JDF 880	Letters of Conservatorship – Adult
JDF 882	Conservator's Inventory with Financial Plan and Motion for Approval
JDF 883	Order Regarding Conservator's Financial Plan
JDF 892	Certificate of Ancillary Filing – Conservatorship
JDF 930	Certificate of Ancillary Filing – Decedent Estate
JDF 944	Notice to Creditors by Mail or Delivery

Attachment A

15-22-106. Statutory form of a designated beneficiary agreement. (1) THE FOLLOWING STATUTORY FORM SHALL BE THE STANDARD FORM FOR A DESIGNATED BENEFICIARY AGREEMENT:

DESIGNATED BENEFICIARY AGREEMENT

DISCLAIMER

WARNING: WHILE THIS DOCUMENT MAY INDICATE YOUR WISHES, CERTAIN ADDITIONAL DOCUMENTS MAY BE NEEDED TO PROTECT THESE RIGHTS.

THIS DESIGNATED BENEFICIARY AGREEMENT IS OPERATIVE IN THE ABSENCE OF OTHER ESTATE PLANNING DOCUMENTS AND WILL BE SUPERSEDED AND SET ASIDE TO THE EXTENT IT CONFLICTS WITH VALID INSTRUMENTS SUCH AS A WILL, POWER OF ATTORNEY, OR BENEFICIARY DESIGNATION ON AN INSURANCE POLICY OR PENSION PLAN. THIS DESIGNATED BENEFICIARY AGREEMENT IS SUPERSEDED BY SUCH OTHER DOCUMENTS AND DOES NOT CAUSE ANY CHANGES TO BE MADE TO THOSE DOCUMENTS OR DESIGNATIONS. THE PARTIES UNDERSTAND THAT EXECUTING AND SIGNING THIS AGREEMENT IS NOT SUFFICIENT TO DESIGNATE THE OTHER PARTY FOR PURPOSES OF ANY INSURANCE POLICY, PENSION PLAN, PAYABLE UPON DEATH DESIGNATION OR MANNER IN WHICH TITLE TO PROPERTY IS HELD AND THAT ADDITIONAL ACTION WILL BE REQUIRED TO MAKE OR CHANGE SUCH DESIGNATIONS. THE PARTIES UNDERSTAND THAT THIS DESIGNATED BENEFICIARY AGREEMENT MAY BE ONE COMPONENT OF ESTATE PLANNING INSTRUCTIONS AND THAT THEY ARE ENCOURAGED TO CONSULT AN ATTORNEY TO ENSURE THEIR ESTATE PLANNING WISHES ARE ACCOMPLISHED.

We, _____, (INSERT FULL NAME AND ADDRESS) REFERRED TO AS PARTY A, AND _____, (INSERT FULL NAME AND ADDRESS) REFERRED TO AS PARTY B, HEREBY DESIGNATE EACH OTHER AS THE OTHER'S DESIGNATED BENEFICIARY WITH THE FOLLOWING RIGHTS AND PROTECTIONS, GRANTED OR WITHHELD AS INDICATED BY OUR INITIALS:

TO GRANT ONE OR MORE OF THE RIGHTS OR PROTECTIONS SPECIFIED IN THIS FORM, INITIAL THE LINE TO THE LEFT OF

EACH RIGHT OR PROTECTION YOU ARE GRANTING. TO WITHHOLD A RIGHT OR PROTECTION, INITIAL THE LINE TO THE RIGHT OF EACH RIGHT OR PROTECTION YOU ARE WITHHOLDING.

TO GRANT A RIGHT
OR PROTECTION
INITIAL

TO WITHHOLD A RIGHT
OR PROTECTION
INITIAL

PARTY A PARTY B

PARTY A PARTY B

---	---	THE RIGHT TO ACQUIRE, HOLD TITLE TO, OWN	---	---
		JOINTLY, OR TRANSFER INTER VIVOS OR AT DEATH REAL OR		
		PERSONAL PROPERTY AS A JOINT TENANT WITH ME WITH RIGHT		
		OF SURVIVORSHIP OR AS A TENANT IN COMMON WITH ME;		
---	---	THE RIGHT TO BE DESIGNATED BY ME AS A	---	---
		BENEFICIARY, PAYEE, OR OWNER AS A TRUSTEE NAMED IN AN		
		INTER VIVOS OR TESTAMENTARY TRUST FOR THE PURPOSES OF		
		A NONPROBATE TRANSFER ON DEATH;		
---	---	THE RIGHT TO BE DESIGNATED BY ME AS A	---	---
		BENEFICIARY AND RECOGNIZED AS A DEPENDENT IN AN		
		INSURANCE POLICY FOR LIFE INSURANCE;		
---	---	THE RIGHT TO BE DESIGNATED BY ME AS A	---	---
		BENEFICIARY AND RECOGNIZED AS A DEPENDENT IN A HEALTH		
		INSURANCE POLICY IF MY EMPLOYER ELECTS TO PROVIDE		
		HEALTH INSURANCE COVERAGE FOR DESIGNATED		
		BENEFICIARIES;		
---	---	THE RIGHT TO BE DESIGNATED BY ME AS A	---	---
		BENEFICIARY IN A RETIREMENT OR PENSION PLAN;		
---	---	THE RIGHT TO PETITION FOR AND HAVE	---	---
		PRIORITY FOR APPOINTMENT AS A CONSERVATOR, GUARDIAN,		
		OR PERSONAL REPRESENTATIVE FOR ME;		
---	---	THE RIGHT TO VISIT ME IN A HOSPITAL,	---	---
		NURSING HOME, HOSPICE, OR SIMILAR HEALTH CARE FACILITY		
		IN WHICH A PARTY TO A DESIGNATED BENEFICIARY		
		AGREEMENT RESIDES OR IS RECEIVING CARE;		
---	---	THE RIGHT TO INITIATE A FORMAL	---	---
		COMPLAINT REGARDING ALLEGED VIOLATIONS OF MY RIGHTS		
		AS A NURSING HOME PATIENT AS PROVIDED IN SECTION		
		25-1-120, COLORADO REVISED STATUTES;		
---	---	THE RIGHT TO ACT AS A PROXY	---	---
		DECISION-MAKER OR SURROGATE DECISION-MAKER TO MAKE		
		MEDICAL CARE DECISIONS FOR ME PURSUANT TO SECTION		

15-18.5-103 OR 15-18.5-104, COLORADO REVISED STATUTES;
 ___ ___ THE RIGHT TO NOTICE OF THE WITHHOLDING ___ ___
 OR WITHDRAWAL OF LIFE-SUSTAINING PROCEDURES FOR ME
 PURSUANT TO SECTION 15-18-107, COLORADO REVISED
 STATUTES;
 ___ ___ THE RIGHT TO CHALLENGE THE VALIDITY OF ___ ___
 A DECLARATION AS TO MEDICAL OR SURGICAL TREATMENT OF
 ME PURSUANT TO SECTION 15-18-107, COLORADO REVISED
 STATUTES;
 ___ ___ THE RIGHT TO ACT AS MY AGENT TO MAKE, ___ ___
 REVOKE, OR OBJECT TO ANATOMICAL GIFTS INVOLVING MY
 PERSON PURSUANT TO THE "REVISED UNIFORM ANATOMICAL
 GIFT ACT", PART 1 OF ARTICLE 34 OF TITLE 12, COLORADO
 REVISED STATUTES;
 ___ ___ THE RIGHT TO INHERIT REAL OR PERSONAL ___ ___
 PROPERTY FROM ME THROUGH INTESTATE SUCCESSION;
 ___ ___ THE RIGHT TO HAVE STANDING TO RECEIVE ___ ___
 BENEFITS PURSUANT TO THE "WORKERS' COMPENSATION ACT
 OF COLORADO", ARTICLE 40 OF TITLE 8, COLORADO REVISED
 STATUTES, IN THE EVENT OF MY DEATH ON THE JOB;
 ___ ___ THE RIGHT TO HAVE STANDING TO SUE FOR ___ ___
 WRONGFUL DEATH IN THE EVENT OF MY DEATH; AND
 ___ ___ THE RIGHT TO DIRECT THE DISPOSITION OF ___ ___
 MY LAST REMAINS PURSUANT TO ARTICLE 19 OF TITLE 15,
 COLORADO REVISED STATUTES.

THIS DESIGNATED BENEFICIARY AGREEMENT IS EFFECTIVE WHEN
 RECEIVED FOR RECORDING BY THE COUNTY CLERK AND RECORDER OF
 THE COUNTY IN WHICH ONE OF THE DESIGNATED BENEFICIARIES RESIDES.
 THIS DESIGNATED BENEFICIARY AGREEMENT WILL CONTINUE IN EFFECT
 UNTIL ONE OF THE DESIGNATED BENEFICIARIES REVOKES THIS
 AGREEMENT BY RECORDING A REVOCATION OF DESIGNATED
 BENEFICIARY FORM WITH THE COUNTY CLERK AND RECORDER OF THE
 COUNTY IN WHICH THIS AGREEMENT WAS RECORDED OR UNTIL THIS
 AGREEMENT IS SUPERSEDED IN PART OR IN WHOLE BY A SUPERSEDING
 LEGAL DOCUMENT.

 SIGNATURE OF DESIGNATED BENEFICIARY

 SIGNATURE OF DESIGNATED BENEFICIARY

STATE OF COLORADO

COUNTY OF _____

THIS DOCUMENT WAS SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME ON _____DATE

BY

MY COMMISSION EXPIRES _____

[SEAL]

NOTARY PUBLIC

(2) THE INSTRUCTIONS TO EACH PARTY REGARDING HOW TO GRANT OR WITHHOLD A RIGHT OR PROTECTION BY INITIALING AND THE WORDS "PARTY A" AND "PARTY B" SHALL APPEAR AT THE TOP OF EACH PAGE OF THE STATUTORY FORM ABOVE THE COLUMNS FOR THE INITIALS OF THE DESIGNATED BENEFICIARIES.

(3) A DESIGNATED BENEFICIARY AGREEMENT SHALL BE PRESUMED TO EXTEND ALL OF THE RIGHTS AND PROTECTIONS LISTED IN THE STATUTORY FORM UNLESS THE PARTIES TO THE AGREEMENT EXPLICITLY EXCLUDE A RIGHT OR PROTECTION.

(4) A PARTY TO A DESIGNATED BENEFICIARY AGREEMENT MAY LIMIT THE SCOPE OF A DESIGNATED BENEFICIARY AGREEMENT BY THE TERMS OF THE AGREEMENT OR BY EXECUTING A SUPERSEDING LEGAL DOCUMENT THAT CONTROLS AND SUPERSEDES PART OR ALL OF THE DESIGNATED BENEFICIARY AGREEMENT.

ATTACHMENT B

SUBPART 3 STATUTORY FORMS

15-14-741. Statutory form - power of attorney. A DOCUMENT SUBSTANTIALLY IN THE FOLLOWING FORM MAY BE USED TO CREATE A STATUTORY FORM POWER OF ATTORNEY THAT HAS THE MEANING AND EFFECT PRESCRIBED BY THIS PART 7.

STATE OF COLORADO STATUTORY FORM POWER OF ATTORNEY IMPORTANT INFORMATION

THIS POWER OF ATTORNEY AUTHORIZES ANOTHER PERSON (YOUR AGENT) TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU (THE PRINCIPAL). YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF. THE MEANING OF AUTHORITY OVER SUBJECTS LISTED ON THIS FORM IS EXPLAINED IN THE "UNIFORM POWER OF ATTORNEY ACT", PART 7 OF ARTICLE 14 OF TITLE 15, COLORADO REVISED STATUTES.

THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.

YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.

IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A SUCCESSOR AGENT. YOU MAY ALSO NAME A SECOND SUCCESSOR AGENT.

THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

DESIGNATION OF AGENT

I _____ (NAME OF PRINCIPAL) NAME THE FOLLOWING PERSON AS MY AGENT:

NAME OF AGENT: _____ AGENT'S

ADDRESS: _____

AGENT'S TELEPHONE NUMBER: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

IF MY AGENT IS UNABLE OR UNWILLING TO ACT FOR ME, I NAME AS MY SUCCESSOR AGENT:

NAME OF SUCCESSOR AGENT: _____

SUCCESSOR AGENT'S ADDRESS: _____

SUCCESSOR AGENT'S TELEPHONE NUMBER: _____

IF MY SUCCESSOR AGENT IS UNABLE OR UNWILLING TO ACT FOR ME, I NAME AS MY SECOND SUCCESSOR AGENT:

NAME OF SECOND SUCCESSOR AGENT: _____

SECOND SUCCESSOR AGENT'S ADDRESS: _____

SECOND SUCCESSOR AGENT'S TELEPHONE NUMBER: _____

GRANT OF GENERAL AUTHORITY

I GRANT MY AGENT AND ANY SUCCESSOR AGENT GENERAL AUTHORITY TO ACT FOR ME WITH RESPECT TO THE FOLLOWING SUBJECTS AS DEFINED IN THE "UNIFORM POWER OF ATTORNEY ACT", PART 7 OF ARTICLE 14 OF TITLE 15, COLORADO REVISED STATUTES:

(INITIAL EACH SUBJECT YOU WANT TO INCLUDE IN THE AGENT'S GENERAL AUTHORITY. IF YOU WISH TO GRANT GENERAL AUTHORITY OVER ALL OF THE SUBJECTS YOU MAY INITIAL "ALL PRECEDING SUBJECTS" INSTEAD OF INITIALING EACH SUBJECT.)

- REAL PROPERTY
- TANGIBLE PERSONAL PROPERTY
- STOCKS AND BONDS
- COMMODITIES AND OPTIONS

- BANKS AND OTHER FINANCIAL INSTITUTIONS
- OPERATION OF ENTITY OR BUSINESS
- INSURANCE AND ANNUITIES
- ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS
- CLAIMS AND LITIGATION
- PERSONAL AND FAMILY MAINTENANCE
- BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE
- RETIREMENT PLANS
- TAXES

- ALL PRECEDING SUBJECTS

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

MY AGENT MAY NOT DO ANY OF THE FOLLOWING SPECIFIC ACTS FOR ME UNLESS I HAVE INITIALED THE SPECIFIC AUTHORITY LISTED BELOW:

(CAUTION: GRANTING ANY OF THE FOLLOWING WILL GIVE YOUR AGENT THE AUTHORITY TO TAKE ACTIONS THAT COULD SIGNIFICANTLY REDUCE YOUR PROPERTY OR CHANGE HOW YOUR PROPERTY IS DISTRIBUTED AT YOUR DEATH. INITIAL ONLY THE SPECIFIC AUTHORITY YOU WANT TO GIVE YOUR AGENT.)

- CREATE, AMEND, REVOKE, OR TERMINATE AN INTER VIVOS TRUST
- MAKE A GIFT, SUBJECT TO THE LIMITATIONS OF THE "UNIFORM POWER OF ATTORNEY ACT" SET FORTH IN SECTION 15-14-740, COLORADO REVISED STATUTES, AND ANY SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY
- CREATE OR CHANGE RIGHTS OF SURVIVORSHIP
- CREATE OR CHANGE A BENEFICIARY DESIGNATION
- AUTHORIZE ANOTHER PERSON TO EXERCISE THE AUTHORITY GRANTED UNDER THIS POWER OF ATTORNEY
- WAIVE THE PRINCIPAL'S RIGHT TO BE A BENEFICIARY OF A JOINT AND SURVIVOR ANNUITY, INCLUDING A SURVIVOR BENEFIT UNDER A RETIREMENT PLAN
- EXERCISE FIDUCIARY POWERS THAT THE PRINCIPAL HAS AUTHORITY TO DELEGATE
- DISCLAIM, REFUSE, OR RELEASE AN INTEREST IN PROPERTY OR A POWER OF APPOINTMENT
- EXERCISE A POWER OF APPOINTMENT OTHER THAN: (1) THE EXERCISE OF A GENERAL POWER OF APPOINTMENT FOR THE BENEFIT OF THE PRINCIPAL WHICH MAY, IF THE SUBJECT OF ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS IS AUTHORIZED ABOVE, BE EXERCISED AS PROVIDED UNDER THE SUBJECT OF ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS; OR (2) THE EXERCISE OF A GENERAL POWER OF APPOINTMENT FOR THE BENEFIT OF PERSONS OTHER THAN THE PRINCIPAL WHICH MAY, IF THE MAKING OF A GIFT IS SPECIFICALLY AUTHORIZED ABOVE, BE EXERCISED UNDER THE SPECIFIC AUTHORIZATION TO MAKE GIFTS

(____) EXERCISE POWERS, RIGHTS, OR AUTHORITY AS A PARTNER, MEMBER, OR MANAGER OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY THAT THE PRINCIPAL MAY EXERCISE ON BEHALF OF THE ENTITY AND HAS AUTHORITY TO DELEGATE EXCLUDING THE EXERCISE OF SUCH POWERS, RIGHTS, AND AUTHORITY WITH RESPECT TO AN ENTITY OWNED SOLELY BY THE PRINCIPAL WHICH MAY, IF OPERATION OF ENTITY OR BUSINESS IS AUTHORIZED ABOVE, BE EXERCISED AS PROVIDED UNDER THE SUBJECT OF OPERATION OF THE ENTITY OR BUSINESS

LIMITATION ON AGENT'S AUTHORITY

AN AGENT THAT IS NOT MY ANCESTOR, SPOUSE, OR DESCENDANT MAY NOT USE MY PROPERTY TO BENEFIT THE AGENT OR A PERSON TO WHOM THE AGENT OWES AN OBLIGATION OF SUPPORT UNLESS I HAVE INCLUDED THAT AUTHORITY IN THE SPECIAL INSTRUCTIONS.

SPECIAL INSTRUCTIONS (OPTIONAL)

YOU MAY GIVE SPECIAL INSTRUCTIONS ON THE FOLLOWING LINES:

EFFECTIVE DATE

THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY UNLESS I HAVE STATED OTHERWISE IN THE SPECIAL INSTRUCTIONS.

**NOMINATION OF CONSERVATOR
OR GUARDIAN(OPTIONAL)**

IF IT BECOMES NECESSARY FOR A COURT TO APPOINT A CONSERVATOR OF MY ESTATE OR GUARDIAN OF MY PERSON, I NOMINATE THE FOLLOWING PERSON(S) FOR APPOINTMENT:

NAME OF NOMINEE FOR CONSERVATOR OF MY ESTATE:

NOMINEE'S ADDRESS:

NOMINEE'S TELEPHONE NUMBER: _____

NAME OF NOMINEE FOR GUARDIAN OF MY PERSON:

NOMINEE'S ADDRESS: _____

NOMINEE'S TELEPHONE NUMBER: _____

RELIANCE ON THIS POWER OF ATTORNEY

ANY PERSON, INCLUDING MY AGENT, MAY RELY UPON THE VALIDITY OF THIS POWER OF ATTORNEY OR A COPY OF IT UNLESS THAT PERSON KNOWS IT HAS TERMINATED OR IS INVALID.

SIGNATURE AND ACKNOWLEDGMENT

YOUR SIGNATURE

DATE

YOUR NAME PRINTED

YOUR ADDRESS

YOUR TELEPHONE NUMBER

STATE OF _____

[COUNTY] OF _____

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME ON _____,
(DATE)

BY _____.
(NAME OF PRINCIPAL)

SIGNATURE OF NOTARY

(SEAL, IF ANY)

MY COMMISSION EXPIRES: _____

THIS DOCUMENT PREPARED BY:

IMPORTANT INFORMATION FOR AGENT

AGENT'S DUTIES

WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF ATTORNEY IS TERMINATED OR REVOKED. YOU MUST:

- (1) DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS YOU TO DO WITH THE PRINCIPAL'S PROPERTY OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, ACT IN THE PRINCIPAL'S BEST INTEREST;
- (2) ACT IN GOOD FAITH;
- (3) DO NOTHING BEYOND THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY; AND
- (4) DISCLOSE YOUR IDENTITY AS AN AGENT WHENEVER YOU ACT FOR THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF THE PRINCIPAL AND SIGNING YOUR OWN NAME AS "AGENT" IN THE FOLLOWING MANNER:

(PRINCIPAL'S NAME) BY (YOUR SIGNATURE) AS AGENT

UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE OTHERWISE, YOU MUST ALSO:

- (1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT;
- (2) AVOID CONFLICTS THAT WOULD IMPAIR YOUR ABILITY TO ACT IN THE PRINCIPAL'S BEST INTEREST;
- (3) ACT WITH CARE, COMPETENCE, AND DILIGENCE;
- (4) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL;
- (5) COOPERATE WITH ANY PERSON THAT HAS AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR THE PRINCIPAL TO DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, TO ACT IN THE PRINCIPAL'S BEST INTEREST; AND
- (6) ATTEMPT TO PRESERVE THE PRINCIPAL'S ESTATE PLAN IF YOU KNOW THE PLAN AND PRESERVING THE PLAN IS CONSISTENT WITH THE PRINCIPAL'S BEST INTEREST.

TERMINATION OF AGENT'S AUTHORITY

YOU MUST STOP ACTING ON BEHALF OF THE PRINCIPAL IF YOU LEARN OF ANY EVENT THAT TERMINATES THIS POWER OF ATTORNEY OR YOUR AUTHORITY UNDER THIS POWER OF

ATTORNEY. EVENTS THAT TERMINATE A POWER OF ATTORNEY OR YOUR AUTHORITY TO ACT UNDER A POWER OF ATTORNEY INCLUDE:

- (1) DEATH OF THE PRINCIPAL;
- (2) THE PRINCIPAL'S REVOCATION OF THE POWER OF ATTORNEY OR YOUR AUTHORITY;
- (3) THE OCCURRENCE OF A TERMINATION EVENT STATED IN THE POWER OF ATTORNEY;
- (4) THE PURPOSE OF THE POWER OF ATTORNEY IS FULLY ACCOMPLISHED; OR
- (5) IF YOU ARE MARRIED TO THE PRINCIPAL, A LEGAL ACTION IS FILED WITH A COURT TO END YOUR MARRIAGE, OR FOR YOUR LEGAL SEPARATION, UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR AUTHORITY.

LIABILITY OF AGENT

THE MEANING OF THE AUTHORITY GRANTED TO YOU IS DEFINED IN THE "UNIFORM POWER OF ATTORNEY ACT", PART 7 OF ARTICLE 14 OF TITLE 15, COLORADO REVISED STATUTES. IF YOU VIOLATE THE "UNIFORM POWER OF ATTORNEY ACT", PART 7 OF ARTICLE 14 OF TITLE 15, COLORADO REVISED STATUTES, OR ACT OUTSIDE THE AUTHORITY GRANTED, YOU MAY BE LIABLE FOR ANY DAMAGES CAUSED BY YOUR VIOLATION.

IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

15-14-742. Certification. THE FOLLOWING OPTIONAL FORM MAY BE USED BY AN AGENT TO CERTIFY FACTS CONCERNING A POWER OF ATTORNEY.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

STATE OF _____
COUNTY OF _____

I, _____ (NAME OF AGENT), CERTIFY UNDER PENALTY OF PERJURY THAT _____ (NAME OF PRINCIPAL) GRANTED ME AUTHORITY AS AN AGENT OR SUCCESSOR AGENT IN A POWER OF ATTORNEY DATED _____.

I FURTHER CERTIFY THAT TO MY KNOWLEDGE:

- (1) THE PRINCIPAL IS ALIVE AND HAS NOT REVOKED THE POWER OF ATTORNEY OR MY AUTHORITY TO ACT UNDER THE POWER OF ATTORNEY AND THE POWER OF ATTORNEY AND MY AUTHORITY TO ACT UNDER THE POWER OF ATTORNEY HAVE NOT TERMINATED;

(2) IF THE POWER OF ATTORNEY WAS DRAFTED TO BECOME EFFECTIVE UPON THE HAPPENING OF AN EVENT OR CONTINGENCY, THE EVENT OR CONTINGENCY HAS OCCURRED;

(3) IF I WAS NAMED AS A SUCCESSOR AGENT, THE PRIOR AGENT IS NO LONGER ABLE OR WILLING TO SERVE; AND

(4) _____

(INSERT OTHER RELEVANT STATEMENTS)

SIGNATURE AND ACKNOWLEDGMENT

AGENT'S SIGNATURE

DATE

AGENT'S NAME PRINTED

AGENT'S ADDRESS

AGENT'S TELEPHONE NUMBER

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME ON _____,
(DATE)

BY _____.
(NAME OF AGENT)

SIGNATURE OF NOTARY

(SEAL, IF ANY)

MY COMMISSION EXPIRES: _____

THIS DOCUMENT PREPARED BY:

SHELLY D. MERRITT, JD, CPA

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Shelly D. Merritt is a sole practitioner in Boulder, Colorado. Her practice emphasizes estate planning, probate, and small business law with a focus on complex wealth preservation plans, including multi generational planning and business succession planning. Ms. Merritt graduated from the University of Texas at Arlington with a Bachelor of Business Administration in Accounting Degree, with honors, in 1987. She received her law degree from the University of Texas School of Law in 1991 and is also a Certified Public Accountant. She served as Co-Chair of the Taxation, Estate Planning & Probate Section of the Boulder County Bar Association for 2001-2002 and is outgoing Chair of the Statutory Revisions Committee of the Trusts and Estates Section of the Colorado Bar Association. She is also on the Board of Trustees of The Community Foundation Serving Boulder County. Ms. Merritt is a Fellow of the American College of Trust and Estate Counsel and is admitted to practice in Colorado and Texas.