

PART 5  
VESTING AND SUCCESSION,  
DONATIVE TRUSTS AND NONDONATIVE TRUSTS

15-16-501. **Definitions - application - rules.** (1) **Definitions and rule.** As used in this part 5 unless the context requires otherwise:

(a) “Authority” includes power.

(a) “Donative trust” means an express trust that is defined as a trust in section 15-10-201.

(b) “Express trust” with refers to a trust other than a constructive trust or a resulting trust and includes a business trust.

(c) “Nondonative trust” means an express trust other than a trust as defined in section 15-10-201.

(d) “Property” includes real and personal property.

(e)(I) “Register” and its variants, with respect to a donative trust, refer to registration in this state under sections 15-16-101 to 15-16-103.

(II) “Register” and its variants, with respect to an express trust not registered or required to be registered in this state, refer to registration, however denominated, in a jurisdiction other than this state under a statute or rule similar to sections 15-16-101 to 15-16-103.

(f) The singular includes the plural, and the plural includes the singular as provided by section 2-4-102, C.R.S.

(2) **Application to donative and nondonative trusts - definition of trust - construction.** (a) As used this part 5, other than subsection (1) of this section, unless the context requires otherwise, “trust” includes a donative trust and a nondonative trust.

(b) Nothing in this part 5 shall be construed to be the exclusive manner in which title to an interest in property may be vested in or held, or evidenced as vested in or held, by or on behalf of a trust, and title to an interest property may be vested in or held, or evidenced as vested in or held, by or on behalf of a trust in any other manner permitted by law.

15-16-502. **Options for holding and evidencing ownership.** (1)(a) Title to the property of a trust may be held in:

(I) The name of a trustee of the trust subject, however, in the case of real property located in this state, to section 38-30-108, C.R.S.; or

(II) The name of the trust as provided in section 38-30-108.5, C.R.S.

(b) The authority of a trustee of a trust may be evidenced with respect to property held on behalf of the trust in:

(I) The name of a trustee by a statement of trustee succession as provided in section 15-16-505; or

(II) The name of the trust by a statement of authority as provided by:

(A) Section 38-30-172, C.R.S. with respect to real property located in this state; or

(B) Such section and section 15-16-503 with respect to personal property.

15-16-503. **Personal property in the name of trust - statement of authority.** (1)(a) As used in this section, “statement of authority” refers to a statement of authority executed by a trustee of a trust on behalf of the trust as provided in section 38-30-172, C.R.S.

(b) A statement of authority made on behalf of a trust is also evidence of the authority of the trustee of the trust with respect to personal property held in the name of the trust as provided in section 38-30-108.5, C.R.S. in the same manner and in all respects that a statement of authority operates with respect to real property held in the name of the trust.

(c) A statement of authority is effective for purposes of this section:

(I) Whether or not the statement of authority is recorded with the clerk and recorder of any county of this state; and

(II) Whether or not reference to the provisions of sections 38-30-108.5 and 38-30-172, C.R.S. and this section and facts evidencing the application of section 38-30-108.5, C.R.S. and this section to the trust are included in the statement of authority.

<sup>1</sup> 15-16-503. **Death or incapacity of trustee. (1) Bypass heirs and estate of trustee - power of attorney.** Except as otherwise provided by the terms of a trust:

(a) Upon the death of an individual who is a trustee of a trust, the trust shall not descend to the heirs of the trustee nor pass to the personal representative of the estate of the trustee.

(b) Upon the appointment of a conservator or guardian for an individual who is a trustee of a trust, the trust shall not pass to the conservator or guardian of the trustee.

(c) If an agent may act to exercise the powers of the trustee with respect to the trust under a power of attorney granted by a trustee who is an individual as provided in section 15-14-724(1)(g)(1), then the trust shall remain vested in the trustee subject to the power of attorney.

(2) **Determination of successor trustee - re-vesting of trust.** Except as otherwise provided by the terms of a trust:

(a) In the case that an individual who is a trustee of a trust and is deceased, or for whom a conservator or guardian is appointed or who is otherwise no longer competent to act as a trustee and not represented by an agent under a power of attorney as provided under paragraph (c) of subsection (1) of this section, the trust shall vest in its entirety in the co-trustee or, if no co-trustee is then serving, the trust shall vest in:

(I) The person who succeeds as trustee of the trust as provided under the terms of the trust, or

(II) If such terms fail to provide a successor who qualifies as such under such terms, a person who succeeds as trustee as provided under the law or rules applicable to the trust other than this section;

(III) If such terms, law or rules fail to provide a successor trustee who qualifies as such:

(A) A person who is appointed by the court as trustee on the application of any interested person to the court;

(B) If the public trustee for a county accepts upon application of any interested person the trust

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<sup>1</sup> Section 15-16-504 takes the place of section 38-34-104, C.R.S. which is included for reference at the end of this draft.

with respect to real property located in the county, the public trustee with respect to such property as may be described in the application; or

(C) If the public administrator for the judicial district where the trust is registered within this state, or if not so registered, where the principal place of administration of the trust is located within this state, accepts the trust upon application of any interested person, the public administrator with respect to the property described in the application.

(b)(I) For purposes of this subsection (2), the court is:

(A) The court for the county of this state where the trust is required to be registered or is registered;

(B) If not so registered or required to be registered, the district court or the probate court for the county where the principal place of administration of the trust is maintained within this state; or

(C) If not so registered or required to be registered and such place of administration is not in this state, then, except as otherwise provided in section 15-16-203 with respect to donative trusts or under similar principles as a court of this state may apply with respect to a nondonative trust, the court, other than a court of this state, with jurisdiction over the administration of the trust.

(II) The court on the application of any interested person may appoint a successor trustee for a trust if no trustee is then serving and a successor trustee is not provided under the terms of the trust or fails to qualify as trustee.

(3) **Public trustee - public administrator - procedure - evidence.** (a) As used in this subsection (3), “public trustee” includes a public administrator.

(b)(I) A public trustee shall be entitled to reasonable compensation for services and reimbursement of expenses incurred on behalf a trust vested in the public trustee as provided in subsection (2) of this section from the property subject to the trust.

(II) In making application to a public trustee for a trust to be vested in the public trustee under such subparagraph, the interested person shall make arrangements to assure the payment of such compensation and reimbursement which is acceptable to the public trustee.

(III) The application made by a interested person to a public trustee, may be amended by such

party with the consent of the public trustee to whom the application is made.

(c) A purported instrument of conveyance or other act by a public trustee with respect to the property vested in the public trustee as provided in subsection (2) of this section shall be prima facie evidence of the authority of the public trustee to convey or otherwise act with respect to the property so vested and of the other facts recited in such instrument.

<sup>2</sup> 15-1-1505. **Evidence of succession of trustee.** (1) **Definition.** As used in this section, "statement of trustee succession" means an instrument executed on behalf of a trust and the trustee of the trust by any trustee of the trust that contains:

(a) The identification of the trust including its name or other information required by section 38-30-108(1), C.R.S. with respect to real property held on behalf of a trust in the name of its trustee and;

(b) A mailing address for the trust;

(c)(I) The name of the county in this state where the trust is registered or is required to be registered; or

(II) If the trust is not so registered or required to be so registered in this state:

(A) A statement that the trust in a nondonative trust or other reason that the trust is not required to register with a court of this state under sections 15-16-101 to 15-16-103, and

(B) The name of the county in this state or, if elsewhere, the jurisdiction other than this state where its principal place of administration is located;

(d) The name of the trustee authorized to execute instruments conveying, encumbering, or otherwise affecting title to property on behalf of the trust;

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<sup>2</sup> Section 15-16-505 tracks closely with section 38-30-172, C.R.S. relating to statements of authority for entities and trusts holding title in the name of the trust as provided in section 38-30-108.5, C.R.S.. Section 15-16-505 also coordinates with the required amendment of the trust registration for a trust required to register and requires service of corresponding information on the beneficiaries of a trust that is not registered or required to be registered.

(e) The name of the former trustee in whose name title to property is or may be held;

(f) The date, circumstances and manner of succession of the trustee;

(g) A description sufficient for its identification of the documentation required with respect to the trust under subsection (2) of this section which documentation shall be incorporated by reference in and a copy of the documentation attached to the statement of trustee succession; and

(h) The name of the trustee executing the statement of trustee succession and the date its execution.

**(2) Additional documentation required - notice.** (a) The documentation required with respect to a statement of trust succession as provided in paragraph (g) of subsection (1) is as follows:

(I) If the trust is registered or required to be registered, the documentation is the trust registration statement, an amended trust registration statement or similar document evidencing the succession of the trustee which statement or similar document is filed with the court and a certificate or other proof that the statement or similar document was served on the beneficiaries and, if required by paragraph (b) of this subsection (2), the fiduciary or other person as determined under such paragraph, and which documentation bears or otherwise includes evidence of such filing by a filing stamp or other certification by the court or its clerk endorsed upon or accompanying the documentation.

(II) If the trust is not registered or required to be registered in any jurisdiction including this state, the documentation is a notice in writing by the trustee executing the statement of trustee succession which notice provides the same information as required in the case of an amended trust registration statement evidencing the succession of the trustee for a trust required to be registered by section 15-16-101 to 15-16-103 and includes documentation to evidence that the notice was served upon the beneficiaries of the trust to the same extent and in the same manner as required with respect to a trust required to be so registered and, if required by paragraph (b) of this subsection (2), the fiduciary or other person as determined under such paragraph, which service shall be made in the same manner as the service upon the beneficiaries.

(b) In the case that the former trustee is an individual who is still living at the time the statement of trustee succession is executed:

(I) A copy of the statement or similar document or notice, whichever is applicable as provided

under paragraph (a) of this subsection (2), shall also be served upon a conservator or guardian of the former trustee or, if no conservator or guardian is then serving, an agent under a power of attorney granted by the former trustee in his or her individual capacity, or, if no conservator or guardian is then serving and such an agent is not known by the trustee executing the statement of trustee succession to be serving, a person who has the care or custody of the former trustee or an individual with whom the former trustee resides.

(II) Such service shall be documented as provided in the case of service of such statement or similar document or notice, whichever is applicable as provided under paragraph (a) of this subsection (2), upon a beneficiary of the trust.

**(3) Execution and recording of statement.** (a) In order to evidence the succession of the trustee of a trust with respect to an interest in property that is held in the name of a former trustee of the trust which trustee is deceased or no longer competent to act or, or in the case of an entity, terminated, and which trust is named in a conveyance or other instrument, any trustee of the trust may execute a statement of trustee succession.

(b) A statement of trustee succession may be recorded with the clerk and recorder for:

(I) Any county where a conveyance or other instrument vesting title to real property subject to the trust in the name of a former trustee is of record; or

(II) The county where the trust is registered or required to be registered in this state or, if not registered or required to be registered in this state, the county where its place of administration is located, and, if the trust is not so registered or required to be registered and its principal place of administration is not located in this state, the city and county of Denver.

(c) A statement of trustee succession shall be effective with respect to real property in this state only when it is recorded with the clerk and recorder of the county where the real property is located and with respect to other property whether or not recorded with a clerk and recorder.

**(4) Evidentiary effect - limitations on authority.** (a) A statement of trustee succession is prima facie evidence of:

(I) The existence and identity of the trust and of its trustee;

(II) The authority of a trustee to execute an instrument on behalf of a trust purporting to convey,

encumber, or otherwise affect title to property held under an instrument in the name of the former trustee in the representative capacity of trustee on behalf of the trust which trust is named or otherwise identified by information required by section 38-30-108(1), C.R.S. with respect to real property held on behalf of a trust in the name of its trustee;

(III) The facts recited in the statement of trustee succession insofar as the facts affect title to property; and

(IV) The authority of a person executing the statement of trustee succession to execute or execute and record the statement of trustee succession on behalf of the trust.

(b)(I) A statement of trustee succession may contain any limitation as may exist upon the authority of a trustee named in the statement of trustee succession to bind or otherwise act on behalf of the trust and any other matters concerning the manner in which the trustee deals on behalf of the trust with any interest in property.

(II) The absence of any limitation described in subparagraph (I) of this paragraph (b) in a statement of trustee succession shall be prima facie evidence that no such limitations exist.

(6) **Subsequent statements.** A statement of trustee succession may be superseded by a subsequent statement of trustee succession by a successor trustee who is a successor to the trustee named in a prior statement of statement of trustee succession.

15-16-506. **Donative trust as relationship - not legal entity.** (1)(a) A donative trust is a relationship of a person as a fiduciary with respect property recognized by the law of this state as an express trust and is not a legal entity or a legal person.

(b) No inference contrary to paragraph (a) of this subsection (1) shall be drawn with respect to a donative trust from other statutory provisions that cast a trust as a person or entity including:

(I) The definitions of the terms “person” in section 2-4-401, C.R.S., of “organization” in section 15-10-201, and of other terms mean, refer to or otherwise include a trust; and

(II) The recognition of property in the name of a trust as property held by or on behalf of a trust as provided in section 38-30-108.5.

**Appendix - existing statutes for reference**

TITLE 15 Probate, Trusts and Fiduciaries  
ARTICLE 14 Persons Under Disability - Protection  
PART 7 - Uniform Power of Attorney Act  
SUBPART 2 - Authority

<sup>3</sup> 15-14-724. **Authority that requires specific grant - grant of general authority.** (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

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(g) Exercise:

(I) A power held by the principal in a fiduciary capacity;

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TITLE 38 Property - Real and Personal  
ARTICLE 34 Rules of Construction

<sup>4</sup> 38-34-104. **Death of trustee.** Upon the death of a sole trustee or the surviving trustee of an express trust created by any written instrument affecting title to real property, the trust shall not descend to the heirs of such trustee nor pass to his personal representative, but the trust if then unexecuted shall vest in the then public trustee and his successors in office of the county wherein the real estate is situate, with all powers of the original trustee. The district court may, upon application of any party in interest, appoint a new trustee except in such cases where by law or by the instrument a successor in trust is provided, and in such cases the trust shall vest in such successor.

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<sup>3</sup> HB09-1198 enacts the Uniform Power of Attorney. The bill passed both houses of the General Assembly and is being presented to the Governor for signature.

<sup>4</sup> Section 38-34-104, C.R.S. would be repealed.