

UNIFORM POWER OF ATTORNEY ACT
Part 7, Article 14, Title 15
Colorado Revised Statutes

Amendments 1, 2 and 3 are amendments considered during 2009 legislative session by not acted upon in discussions with legislative drafting office to avoid floor amendment in second house.

Amendment 4 undoes the retroactive application of the annual exclusion limitation, which is a default rule, that limits the amount of gifts made to any one person during any year by an agent upon whom the principal has expressly granted general authority to make gifts.

1. Amend section 15-14-702:

15-14-702. Definitions. Except as otherwise provided under this part 7 and as the context may otherwise require, in this part 7:

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Comment on Colorado changes as enacted in 2009: The introductory portion of the corresponding uniform act section reads "in this act" without the preceding "except as otherwise provided", which was inserted to accommodate provisions of part 7 where a different meaning is provided or may be inferred from the context in which a defined term appears. The provisions accommodated include the principles of law and equity that supplement part 7 in accordance with section 15-14-721 to the extent that the definitions inform the application of the principles of law and equity.

The need for flexibility in application of the definitions for part 7 was raised with respect to the definition of incapacity in section 15-14-702(5)(b) relating to incarceration, detention and absence from the United States. This particular concern was also addressed by adding section 15-14-706(2.5), which, as explained in the comment on Colorado changes to that section, expressly avoids any inference that an individual so incarcerated, detained or absent is incompetent to grant a power of attorney.

Comment on additional Colorado change: Similar to introductory portion to the definitions under section 15-10-201 concerning the general application the definitions under that section to the provisions of the Colorado Probate Code, the definitions for part 7 are to apply unless the context otherwise requires. In addition the phrase "Unless otherwise provided" is focused on part 7 by adding the phrase "under this part 7".

2. Amend section 15-14-741 by inserting the words "including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers" in the grant of fiduciary powers that may be delegated as follows:

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**

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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:

* * * *

() Exercise fiduciary powers that the principal has authority to delegate including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers

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Comment on Additional Colorado Change: The fiduciary power item on the check list of powers required to be expressed is amended to conform to the 2009 Colorado change the corresponding section 15-14-724(1)(g) concerning fiduciary powers that may be delegate.

Comment on Colorado Changes as enacted in 2009: Paragraph (g)(II) and (III) was added to include powers held in a fiduciary or non-fiduciary capacity to participate in the designation or changing of a trustee and to direct a fiduciary in the exercise of a power with respect to property or otherwise participate in controlling the exercise of such a power. These provisions were added to paragraph (g) instead of paragraph (a), which is limited to inter vivos trusts, because paragraph (g) includes trustees of testamentary trusts and fiduciaries other than trustees.

The powers enumerated in paragraph (g) are all powers with respect to a fiduciary and in the case of the powers enumerated in subparagraphs (ii) and (iii) are fiduciary powers in the sense

are fiduciary powers whether or not the power may be exercised in a fiduciary capacity.

The reference in the listing of expressly authorized powers in the statutory form power of attorney set forth in section 15-14-741 includes an option to indicate whether or not fiduciary powers may be exercised by the agent. That reference to fiduciary powers, considering the purpose of that list to correspond to the powers set forth in section 15-14-724(1), should be construed to include the powers enumerated in section 15-14-724 (ii) and (iii). It is anticipated that this item in the list of express powers set forth in a statutory power may be clarified by the addition of the following phrase: "including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers". In this regard it should also be noted that a statutory form published as contemplated by section 15-14-741 need only be in substantially the same form as that set forth in that section.

3. Reference to adult protective services agency or governmental agency with authority to protect the principal is referred to by the uniform act in three different ways in four sections. Amend sections 15-14-716(1)(g) and 15-14-720(1)(f) to conform to sections 15-14-714(8) and 15-14-718(1)(b)(3).

15-14-714. Agent's duties. * * * *

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.

15-14-716. Judicial relief. (1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

* * * *

(g) A governmental agency having regulatory authority to protect the welfare of the principal;

15-14-718. Agent's resignation - notice. (1) Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(a) To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(b) If there is no person described in paragraph (a) of this subsection (1), to:

(I) The principal's caregiver;

(II) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(III) A governmental agency having authority to protect the welfare of the principal.

15-14-720. Liability for refusal to accept acknowledged power of attorney. (1) Except as otherwise provided in subsection (2) of this section:

(f) The person makes, or has actual knowledge that another person has made, a report to ~~the local adult protective services office~~ a governmental agency having authority to protect the welfare of the principal stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent; or

4. Amend section 15-14-740(2) to make that limitation apply prospectively. This amendment undoes the retroactive application of the annual exclusion limitation, which is a default rule, that limits the amount of gifts made to any one person during any year by an agent upon whom the principal has expressly granted general authority to make gifts.

15-14-704. Gifts. * * * *

(2)(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(I) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code section 2503 (b), 26 U.S.C. sec. 2503 (b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code section 2513, 26 U.S.C. sec. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(II) Consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. sec. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(b) Paragraph (a) of this subsection (2) does not apply to, or affect by inference or otherwise, a power of attorney in existence on December 31, 2009, unless, on that date, this part 7 applies to the power of attorney as provided in section 15-14-745(2).

Note: As written section 15-14-740(2) does more than limit the amounts that may be given under a general express grant of authority to make gifts. Section 15-14-740 (2) provides that an express power to gift includes (a) the power to exercise a general power of appointment held by the principal for the purpose of making gifts and (b) the power to consent to splitting of gifts. Paragraph (b) makes it clear that there will be no negative inference regarding such powers arising from making section 15-14-740(2) in applicable to pre-existing powers of attorney.