

Title 15, Article 10

Part 7 – Dispute Resolution Provisions in Wills and Trusts

¹ 15-10-701. **Legislative declaration.** (1) The general assembly:

(a) Recognizes the public policy of this state supporting alternative dispute resolution as embraced by parts 2 and 3 of article 22 of title 13, C.R.S. and the decisions of the supreme court and the court of appeals favoring arbitration, mediation and other methods of alternative dispute resolution.

² (b) Declares that the enforcement of provisions in wills and trusts requiring or permitting dispute resolution under this part 7 is in the public interest.

15-10-702. **Definitions.** (1) In this part 7 unless the context otherwise requires:

(a) "Dispute resolution" means negotiation, mediation, arbitration, appraisal, or other methods for binding or nonbinding alternative dispute resolution enumerated in section 13-22-302, C.R.S. or methods that are similar to the methods enumerated in such section or this subsection (1) and includes any sequence or combination of two or more of such methods.

(b) "Governing instrument" means the instrument or instruments that constitute the will of a decedent or create or govern a trust.

15-10-703. **Validity of will or trust reserved to court.** A binding determination of the validity of a governing instrument is reserved to the court and is not within the scope of dispute resolution under this part 7 except as interested persons may agree in writing or as the court may order under section 13-22-313, C.R.S.

¹ *Other examples of declarations:* The probate code has a general declaration of purpose to aid construction, section 15-10-102, the power of attorney acts, section 15-14-500.3, the medical treatment decision act, section 15-18-102, the proxy decision maker provisions, section 15-18.5-101, disposition of last remains, section 15-19-102, designated beneficiary agreements, section 15-22-102, and the 1992 revision of the dispute resolution act has a declaration of legislative intent as part of the 1992 act noted following section 13-22-302.

² References to a contractual basis for the enforcement of will and trust provisions was deleted here and from other sections of the draft. It is noted, however, that contract-law concepts of third party beneficiary to bind non-parties to arbitration under the terms of a contract should inform the application of will and trust provisions under part 7 to beneficiaries and fiduciaries accepting interests, rights, powers or authority under wills and trusts. So far no case has been found to support the proposition that binding persons accepting the benefits of a contract to arbitration required by the contract is a deprivation of due process or otherwise unfair.

15-10-704. **Dispute resolution provisions.** A provision of a governing instrument may require or permit dispute resolution in accordance with its terms between or among any two or more of the devisees, beneficiaries, fiduciaries, and the estate and trusts under the governing instrument and other persons who claim or accept any interest, right or benefit or who claim or accept any position, power or authority under the governing instrument and, in the case of a dispute resolution provision of the will of a decedent, under any beneficiary designation or other instrument which creates or governs a nonprobate transfer at death from the decedent.

15-10-705. **Rules applicable to dispute resolution – arbitration – incorporation by reference.** (1) Unless a dispute resolution provision provides otherwise, an arbitration required or permitted by the provision is governed by part 2 of article 22 of title 13.

(2) A dispute resolution provision may incorporate by reference rules of dispute resolution adopted by an organization as such rules may be amended from time to time.

³ (3) If no objection is made by any interest person in accordance with the rules of procedure applicable to a request to the court for relief made in accordance with such rules by the fiduciary acting under the governing instrument, then the court may grant the relief requested.

³ Generally the parties to a contract with an arbitration clause may proceed with the resolution of their differences in court if none of the parties object. This general proposition is applied here to all forms of dispute resolution under a will or trust where the fiduciary seeks instructions, a construction of the instrument or any other relief from the court.