

## PROPOSED CHANGES TO UPC III

**C.R.S. 15-10-112. Cost of living adjustment of certain dollar amounts.** (1) As used in this section, unless the context otherwise requires:

- (a) "CPI" means the consumer price index (annual average) for all urban consumers (CPI-U): United States city average – all items, reported by the bureau of labor statistics, United States department of labor or its successor agency or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chose by the department of revenue; and
  - (b) "Reference base index" means the CPI for the calendar year ~~2009~~ 2010.
- (2) The dollar amounts stated in sections 15-11-102, 15-11-201(2), 15-11-403, ~~and~~ 15-11-405, ~~and~~ 15-12-1201 apply to the estate of a decedent who died during or after 2010, but for the estate of a decedent who died after 2011, these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of one ~~hundred thousand~~ **hundred thousand** dollars, the ~~increase or decrease amount~~ is rounded down, if an increase; ~~;~~ or up, if a decrease, to the next multiple of one ~~hundred thousand~~ **hundred thousand** dollars, but for the purpose of section 15-11-405, the periodic installment amount is the lump-sum amount divided by twelve. If the CPI for 2009 is changed by the bureau of labor statistics, the reference base index must be revised using the rebasing factor reported by the bureau of labor statistics, or other comparable data if a rebasing factor is not reported.
- (3). Before February 1, ~~2011~~ **2012**, and before February 1 of each succeeding year, the department of revenue shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in ~~2011~~ **2012** of each dollar amount as increased or decreased under this section.

**C.R.S. 15-10-201. General definitions.** Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this code:

- (1) "Agent" means an attorney in fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under the "Colorado Patient Autonomy Act".
- (2) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of article 12 of this title.

- (3) "Augmented estate" means the estate described in section 15-11-202.
- (4) "Authenticated" means certified, when used in reference to copies of official documents, and only certification by the official having custody is required.
- (5) "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", includes a beneficiary of an insurance or annuity policy, of an account with payment on death (POD) designation, of a security registered in beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- (6) "Beneficiary designation" means a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in the beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.
- (7) "Child" includes an individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- (8) "Claims", in respect to the estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or taxes due the state of Colorado, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- (9) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
- (10) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.
- (11) "Descendant" means all of the individual's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

- (12) "Devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.
- (13) "Devisee" means a person designated in a will to receive a devise. For the purposes of article 12 of this title, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
- (14) "Disability" means cause for a protective order as described in section 15-14-401.
- (15) "Distributee" means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
- (16) "Divorce" includes a dissolution of marriage, and "annulment" includes a declaration of invalidity, as such terms are used in the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S.
- (16.5) "Domiciliary foreign personal representative" means a personal representative appointed by another jurisdiction in which the decedent was domiciled at the time of the decedent's death.
- (17) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.
- (18) "Exempt property" means that property of a decedent's estate which is described in section 15-11-403.
- (19) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- (20) "Foreign personal representative" means a personal representative appointed by another jurisdiction.
- (21) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
- (22) "Governing instrument" means a deed, will, trust, insurance or annuity policy, multiple-party account, security registered in beneficiary form (TOD), pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or power of attorney, or a donative, appointive, or nominative instrument of any other type.

- (23) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.
- (24) "Heirs", except as controlled by section 15-11-711, means persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
- (25) "Incapacitated person" means an individual described in section 15-14-102 (5).
- (26) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will, appointment of a personal representative, or determination of a guardian under sections 15-14-202 and 15-14-301.
- (27) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person, which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.
- (28) "Issue" of a person means descendant as defined in subsection (11) of this section.
- (29) "Joint tenants with right of survivorship" and "community property with the right of survivorship" for the purposes of this code only includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- (30) "Lease" includes an oil, gas, or other mineral lease.
- (31) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- (32) "Minor" means a person who is under eighteen years of age.
- (33) "Mortgage" means any conveyance, agreement, or arrangement in which the property is used as security.
- (34) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.
- (35) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, limited liability company, association, government or governmental subdivision or agency, or any other legal or commercial entity.

- (36) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
- (37) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
- (38) "Person" means an individual or an organization.
- (39) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
- (40) "Petition" means a written request to the court for an order after notice.
- (41) "Proceeding" includes action at law and suit in equity.
- (42) "Property" means both real and personal property or any interest therein and anything that may be the subject of ownership.
- (43) "Protected person" has the same meaning as set forth in section 15-14-102 (11).
- (44) "Protective proceeding" has the same meaning as used in section 15-14-401.
- (44.5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Annotations Editor's note: Subsection (44.5) is effective July 1, 2010. Statute text

- (45) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in section 15-10-307.
- (46) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; or, in general, any interest or instrument commonly known as security; any certificate of interest or participation; any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the items enumerated in this subsection (46).
- (47) "Settlement", in reference to a decedent's estate, means the full process of administration, distribution, and closing.
- (47.5) "Sign" means, with present intent to authenticate or adopt a record other than a will:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach to or logically associate with the record an electronic symbol, sound, or process.

Annotations Editor's note: Subsection (47.5) is effective July 1, 2010. Statute text

- (48) "Special administrator" means a personal representative as described by sections 15-12-614 to 15-12-618.
- (49) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or insular possession subject to the jurisdiction of the United States.
- (50) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- (51) "Successors" means persons other than creditors, who are entitled to property of a decedent under his or her will or this code.
- (52) "Supervised administration" means the proceedings described in part 5 of article 12 of this title.
- (53) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 15-11-104, 15-11-702, or 15-11-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".
- (54) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- (55) "Testator" includes an individual of either sex.
- (56) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created and any amendments to such trusts. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; accounts as defined in section 15-15-201 (1); custodial arrangements pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.
- (57) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

- (58) "Ward" means an individual described in section 15-14-102 (15).
- (59) "Will" includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. **A designated beneficiary agreement under Article 22 of this title is not a will.**

**C.R.S. 15-11-102.5 Share of designated beneficiary.** If the decedent is survived by a person with the right to inherit real or personal property from the decedent in a designated beneficiary agreement made pursuant to Article 22 of this title, the intestate share of the decedent's designated beneficiary is:

- (1) The entire estate if no descendant of the decedent survives the decedent; or
- (2) One-half of the intestate estate if one or more descendants of the decedent survive the decedent.

**C.R.S. 15-11-103 Status of heirs other than surviving spouse and designated beneficiary.** Any part of the intestate estate not passing to the decedent's surviving spouse under section 15-11-102 or to the decedent's surviving designated beneficiary under section 15-11-102.5, or the entire intestate estate if there is no surviving spouse and no surviving designated beneficiary with the right to inherit real or personal property from the decedent through intestate succession, passes in the following order to the individuals who survive the decedent:

- ~~(1) To a designated beneficiary who was designated by the decedent to be his or her designated beneficiary for purposes of intestate succession pursuant to a designated beneficiary agreement that has been executed and recorded with a county clerk and recorder as provided in article 22 of this title; except that, if the decedent has surviving children, then the designated beneficiary shall receive one-half of the intestate estate and the surviving children shall receive one-half of the intestate estate;~~
- (12) To the decedent's descendants per capita at each generation;
- (23) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;
- (34) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation;
- (45) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:
  - (a) Half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation; and

- (b) Half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation;
- (56) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner as described in subsection ~~(5)~~(4) of this section.
- ~~(6 7) If there is no taker under subsections (1) to (6) of this section, but the decedent has:~~
  - ~~(a) One deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants per capita at each generation; or~~
  - ~~(b) More than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants per capita at each generation.~~
- ~~(8) (Deleted by amendment, L. 2009, (HB 09-1287), ch. 310, p. 1672, § 4, effective July 1, 2010.)~~

**C.R.S. 15-11-106. Per capita at each generation. (1) Definitions.** As used in this section, unless the context otherwise requires:

- (a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section 15-11-104.
- (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 15-11-104.
- (2) **Decedent's descendants.** If, under section 15-11-103~~(1)~~(2), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who are allocated a share and their surviving descendants had predeceased the decedent.
- (3) **Descendants of parents or grandparents.** If, under section 15-11-103~~(3)~~(4), (4) or ~~(5)~~(6), a decedent's intestate estate or a part thereof passes "per capita at each

generation" to the descendants of the decedent's deceased parents or either of them, or to the descendants of the decedent's deceased grandparents or any of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or any of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

**C.R.S. 15-11-118. Adoptee and Adoptee's Adoptive Parent or Parents. (1) Parent-child relationship between adoptee and adoptive parent or parents.** A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

- (2) **Individual in process of being adopted by married couple - stepchild in process of being adopted by stepparent.** For purposes of subsection (1) of this section:
  - (a) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and
  - (b) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.
- (2.5) **Individual in process of being adopted by second parent.** For purposes of subsection (1) of this section, a child who is in the process of being adopted by a second adult in a second-parent adoption when the second adult dies is treated as adopted by the second adult if the parent survives the second adult by 120 hours.
- (3) **Child of assisted reproduction or gestational child in process of being adopted.** If, after a parent-child relationship is established between a child of assisted reproduction and a parent under 15-11-120 or between a gestational child and a parent under 15-11-121, the child is in the process of being adopted by the parent's spouse **or another individual** when that spouse **or individual** dies, the child is treated as adopted by the deceased spouse **or individual** for the purpose of paragraph (b) of subsection (2) of this section.

**C.R.S. 15-11-119. Adoptee and Adoptee's Genetic Parents. (1) Parent-child relationship between adoptee and genetic parents.** Except as otherwise provided in this section a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

- (2) **Stepchild adopted by stepparent.** A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:
  - (a) The genetic parent whose spouse adopted the individual; and

- (b) The other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.
- (2.5) **Child of a second-parent adoption.** A parent-child relationship exists between an individual who is adopted by a second parent and;
- (a) ~~The A~~ genetic parent who consented to a second-parent adoption; and
  - (b) ~~The other~~ **Another** genetic parent **who is not a third-party donor**, but only for the purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.
- (3) **Individual adopted by relative or genetic parent.** A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.
- (4) **Individual adopted after death of both genetic parents.** A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.
- (5) **Child of assisted reproduction or gestational child who is subsequently adopted.** If after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under section 15-11-120 or between a gestational child and a parent or parents under section 15-11-121, the child is adopted by another or others, the child's parent or parents under section 15-11-120 or 15-11-121 are treated as the child's genetic parent or parents for the purpose of this section.

**C.R.S. 15-11-120. Child conceived by assisted reproduction other than child born to gestational carrier. (1) Definitions.** In this section:

- (a) "Birth mother" means a woman, other than a gestational carrier under section 15-11-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.
- (b) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under section 15-11-121.
- (c) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

- (I) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;
  - (II) the birth mother of a child of assisted reproduction; or
  - (III) an individual who has been determined under subsection (5) or (6) of this section to have a parent-child relationship with a child of assisted reproduction.
- (2) **Third-party donor.** A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.
- (3) **Parent-child relationship with birth mother.** A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.
- (4) **Parent-child relationship with husband whose sperm were used during his lifetime by his wife for assisted reproduction.** Except as otherwise provided in subsections (9) and (10) of this section, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.
- (5) **Birth certificate - presumptive effect.** A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.
- (6) **Parent-child relationship with another.** Except as otherwise provided in subsections (7), (9), and (10) of this section, and unless a parent-child relationship is established under subsection (4) or (5) of this section, a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:
- (a) Before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or
  - (b) In the absence of a signed record under paragraph (a) of this subsection (6):
    - (I) Functioned as a parent of the child no later than two years after the child's birth;
    - (II) Intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or
    - (III) Intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

- (7) **Record signed more than two years after the birth of the child - effect.** For the purpose of paragraph (a) of subsection (6) of this section, neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached eighteen years of age.
- (8) **Presumption - birth mother is married or surviving spouse.** For the purpose of paragraph (b) of subsection (6) of this section, the following rules apply:
- (a) If the birth mother is married **at the time of conception** and no divorce proceeding is **then** pending ~~in the absence of clear and convincing evidence to the contrary~~, her spouse ~~satisfies~~ **is presumed to satisfy** the requirements of subparagraph (I) or (II) of paragraph (b) of subsection (6) of this section.
  - (b) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, ~~in the absence of clear and convincing evidence to the contrary~~, her deceased spouse ~~satisfies~~ **is presumed to satisfy** the requirements of subparagraph (II) or (III) of paragraph (b) of subsection (6) of this section.
- (9) **Divorce before placement of eggs, sperm, or embryos.** If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.
- (10) **Withdrawal of consent before placement of eggs, sperm, or embryos.** If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (6) of this section.
- (11) **When posthumously conceived child treated as in gestation.** If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of section 15-11-104(1)(b) if the child is:
- (a) in utero not later than thirty-six months after the individual's death; or
  - (b) born not later than forty-five months after the individual's death.

**C.R.S. 15-11-502. Execution - witnessed or notarized wills - holographic wills.** (1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a will shall be:

- (a) In writing;

- (b) Signed by the testator, or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
- (c) Either;
  - (I) Signed by at least two individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will as described in paragraph (b) of this subsection (1) or the testator's acknowledgment of that signature or acknowledgment of the will; or
  - (II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
- (2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
- (3) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.
- (4) For purposes of this section, "conscious presence" requires physical proximity to the testator but not necessarily within testator's line of sight.
- (5) **A designated beneficiary agreement under Article 22 of this title is not a will.**

**C.R.S. 15-11-503 Writings intended as wills.** (1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (a) The decedent's will;
  - (b) A partial or complete revocation of the will;
  - (c) An addition to or an alteration of the will; or
  - (d) A partial or complete revival of the decedent's formerly revoked will or a formerly revoked portion of the will.
- (2) Subsection (1) of this section shall apply only if the document is signed or acknowledged by the decedent as his or her will or if it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse.

- (3) Whether a document or writing is treated under this section as if it had been executed in compliance with section 15-11-502 is a question of law to be decided by the court, in formal proceedings, and is not a question of fact for a jury to decide.
- (4) Subsection (1) of this section shall not apply to a designated beneficiary agreement under Article 22 of this title.

**C.R.S. 15-11-701. Scope.** For the purposes of this part 7, the term “governing instrument” shall be as defined in section 15-10-201 (22); except:

- (1) “Governing instrument” shall not include a deed which transfers any interest in real property; however, section 15-11-712 shall apply to such deeds; and
- (2) As the application of a particular section is limited by its terms to a specific type of provision or governing instrument. In the absence of a finding of a contrary intention, the rules of construction in this part 7 control the construction of a governing instrument executed or republished or reaffirmed on or after July 1, ~~2995~~, 1995, and the rules of construction under prior law control the construction of a governing instrument executed prior to July 1, 1995 and not a governing instrument republished or reaffirmed after that date. In the process of determining whether a contrary intention exists, the rules of construction of this part 7 shall not apply.
- (3) In the absence of a finding of a contrary intention, the rules of construction in section 15-11-705 apply to a governing instrument executed or re-published or reaffirmed on or after July 1, 2010, and the rules of construction under the prior section 15-11-705 apply to a governing instrument executed prior to July 1, 2010, and not re-published or reaffirmed after that date.

**C.R.S. § 15-11-705. Class gifts construed to accord with intestate succession. (1) Definitions.** In this section:

- (a) “Adoptee” has the meaning set forth in section 15-11-115.
- (b) “Child of assisted reproduction” has the meaning set forth in section 15- 11-120.
- (c) “Distribution date” means the date when an immediate or postponed class gift takes effect in possession or enjoyment.
- (d) “Functioned as a parent of the adoptee” has the meaning set forth in section 15-11-115, substituting “adoptee” for “child” in that definition.
- (e) “Functioned as a parent of the child” has the meaning set forth in section 15-11-115.
- (f) “Genetic parent” has the meaning set forth in section 15-11-115.
- (g) “Gestational child” has the meaning set forth in section 15-11-121.

- (h) “Relative” has the meaning set forth in section 15-11-115.
- (2) **Terms of relationship.** A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (5) and (6) of this section, an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.
- (3) **Relatives by marriage.** Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, **standing alone** are construed to exclude relatives by marriage, ~~unless:~~
- (a) ~~When the governing instrument was executed, the class was then and foreseeably would be empty; or~~
- (b) ~~The language or circumstances otherwise establish that relatives by marriage were intended to be included.~~
- (4) **Half-blood relatives.** Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, **standing alone** are construed to include both types of relationships.
- (5) **Transferor not genetic parent.** In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of the genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached eighteen years of age.
- (6) **Transferor not adoptive parent.** In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:
- (a) The adoption took place before the adoptee reached eighteen years of age;
- (b) The adoptive parent was the adoptee’s stepparent or foster parent; or
- (c) The adoptive parent functioned as a parent of the adoptee before the adoptee reached eighteen years of age.
- (7) **Class-closing rules.** The following rules apply for purposes of the class-closing rules:
- (a) A child in utero at a particular time is treated as living at that time if the child lives one hundred twenty hours after birth.

- (b) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives one hundred twenty hours after birth and was in utero not later than thirty-six months after the deceased parent's death or born not later than forty-five months after the deceased parent's death.
- (c) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

**C.R.S. 15-12-703. General duties - relation and liability to persons interested in estate - standing to sue.** (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-16-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

- (2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent.
- (3) ~~Repealed.~~ A personal representative shall not be surcharged for distributions made which do not take into consideration the possible birth of a posthumously conceived child unless prior to distribution (1) the personal representative has received notice or has actual knowledge that there is an intention to use an individual's genetic material to create a child or has received written notice that there may be an intention to use an individual's genetic material to create a child, and (2) the birth of the child could have an effect on distribution of the decedent's estate.
- (4) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

**C.R.S. 15-12-705. Duty of personal representative - information to heirs and devisees.** (1) Not later than thirty days after appointment, every personal representative, except any special administrator, shall give information of his or her appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall:

- (a) Include the name and address of the personal representative;
  - (b) Indicate that it is being sent to persons who have or may have some interest in the estate being administered;
  - (c) Indicate whether bond has been filed;
  - (d) Describe the court where papers relating to the estate are on file;
  - (e) Indicate that the surviving spouse, children under twenty-one years of age, and dependent children may be entitled to exempt property and a family allowance if a request for payment is made in the manner and within the time limits prescribed by statutes;
  - (f) Indicate that the surviving spouse may have a right of election to take a portion of the augmented estate if a petition is filed within the time limits prescribed by statute;
  - (g) Indicate that, because a court will not routinely review or adjudicate matters unless it is specifically requested to do so by a beneficiary, creditor, or other interested person, all interested persons, including beneficiaries and creditors, have the responsibility to protect their own rights and interests in the estate in the manner provided by the provisions of this code by filing an appropriate pleading with the court by which the estate is being administered and serving it on all interested persons pursuant to section 15-10-401; and
  - (h) Indicate that all interested parties have the right to obtain information about the estate by filing a demand for notice pursuant to section 15-12-204.
  - (i) **Indicate that any person having knowledge that (1) there is or may be an intention to use an individual's genetic material to create a child and (2) the birth of the child could have an effect on distribution of the decedent's estate should give written notice to the personal representative of the decedent's estate.**
- (2) The personal representative's failure to give the information required by this section is a breach of his or her duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative

may inform other persons of his or her appointment by delivery or ordinary first-class mail.

**C.R.S. 15-12-808. Individual liability of personal representative.** (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

- (2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a personal representative in his fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.
- (4) Issues of liability as between the estate and the personal representative individually may be determined:
  - (a) In a proceeding pursuant to section 15-10-504;
  - (b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or
  - (c) In other appropriate proceedings.
- (5) A personal representative is not individually liable for making distributions which do not take into consideration the possible birth of a posthumously conceived child if the personal representative made the distribution prior to (1) receiving notice or acquiring actual knowledge of the existence of an intention to use an individual's genetic material to create a child or receiving written notice that there may be an intention to use an individual's genetic material to create a child, and (2) the birth of the child could have an effect on distribution of the decedent's estate.

**C.R.S. 15-16-306. Personal liability of trustee to third parties.** (1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

- (2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in

the course of trust administration, may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

- (4) The question of liability as between the trust estate and the trustee individually may be determined:
  - (a) In a proceeding pursuant to section 15-10-504;
  - (b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or
  - (c) In other appropriate proceedings.
- (5) ~~(5) and (6) Repealed.~~ A trustee is not personally liable for making a distribution of property which did not take into consideration the possible birth of a posthumously conceived child unless prior to distribution the trustee has (1) received notice or has actual knowledge that there is an intention to use an individual's genetic material to create a child or has received written notice that there may be an intention to use an individual's genetic material to create a child, and (2) the birth of the child could have an effect on the distribution of trust assets.

[STAN KENT TO PUT INTO THE FORM OF AN EDITOR'S NOTE]

**Effective date - applicability.** (1) This Act takes effect on July 1, 2010.

- (2) This Act applies on or after July 1, 2010, to:
  - (a) Governing instruments executed by decedents dying on or after July 1, 2010;
  - (b) Any proceeding in court then pending or thereafter commenced regardless of the time of death of the decedent except to the extent that, in the opinion of the court, the former ~~procedure~~ statute should be made applicable in a particular case in the interest of justice or because of infeasibility of application of ~~the procedure of the "Colorado Probate Code", articles 10-17 of title 15, Colorado Revised Statutes;~~ an amendment under this Act;
  - (c) An act done before the effective date of this Act in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date of this Act, the provisions shall remain in force with respect to that right; and
  - (d) Any rule of construction or presumption provided in this Act applies to governing instruments executed before the effective date of this Act unless there is a clear indication of a contrary intent.

- (3) Section 15-11-701 (3) contains special provisions for the applicability of section 15-11-705 as amended by this act.