

**SLAYER STATUTE
STATUTE OF LIMITATIONS
C.R.S. §15-11-803**

Current statute:

(7) Felonious killing; how determined. After all right to appeal has been exhausted, a judgment of conviction, a plea of guilty, or a plea of nolo contendere, establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. Notwithstanding the status or disposition of a criminal proceeding, a court of competent jurisdiction, **AT ANY TIME**, upon the petition of an interested person, shall determine whether, by a preponderance of the evidence standard, each of the elements of felonious killing of the decedent has been established. If such elements have been so established, such determination conclusively establishes the individual as the decedent's killer for purposes of this section. (Emphasis added.)

Discussion:

The "at any time" allows a civil action for the determination of responsibility under the slayer statute to be brought whenever any interested person chooses to do so, even many years after the Decedent's death. There is virtually no time limit when a civil action can be brought before the court. This defeats a fundamental premise of the administration of Decedent's Estates which is finality. A recent case was brought in Colorado over 30 years after the date of the death of the decedent. Is difficult to find justice for any party in such circumstances where frequently key witnesses have died and essential evidence has been lost or destroyed.

There are many adverse consequences resulting from allowing a wrongful death determination to be accomplished years after the date of the Decedent's death and the close of the estate administration. This is particularly true in husband-wife relationships. Taxes have been paid based upon a spousal relationship, title to real property will have been retitled and may even have been resold. Property will have been distributed and dispersed, and possibly consumed. Imagination can only create a myriad of adverse consequences.

It thus appears clear that a statute of limitations is needed and thus a discussion and evaluation must be undertaken as to what period of time should be set and what time or times should be utilized as a starting point for the running of the statute of limitations.

Original Language Found in the Uniform Probate Code

Is interesting to note that the original Uniform Probate Code language appears to have been modified by the Colorado legislature at the time Colorado adopted its version of the Uniform Probate Code in 1974 (the effective date of the Colorado [Uniform] Probate Code was July 1, 1975.). It does not appear that the language in this particular statute subsection was

modified when the Colorado legislature passed UPC II in 1995. The original draft of the Uniform Code has the following language and does not contain the "at any time" phraseology:

§2-803 (g). [Felonious and Intentional Killing; How Determined.] After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. *In the absence of a conviction, the court, upon petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent.* If the court determines that, under that standard, the individual would be found criminally accountable for the felonious intentional killing of the decedent, the determination conclusively establishes that the individual as the decedent's killer for purposes of this section. (Italics added.)

Possibilities for a Statute of Limitations arising from similar or related Colorado statutes:

1. General Limitation of Actions - Three Years. C.R.S. §13-80-101 (1) The following civil actions, regardless of the theory upon which suit is brought, or against whom the suit is brought, shall be commenced within three years after the cause of action accrued, and not thereafter:

- (a) Contract actions, including personal contract from actions under the "Uniform Commercial Code", except as otherwise provided in section 13-80-103.5;
- (b) Repealed.
- (c) All actions for fraud, misrepresentation, concealment, or deceit except those in section 13-80-102(1)(j) or section 13-80-103(1)(g);
- (d) and (e) Repealed.
- (f) All actions for breach of trust or breach of fiduciary duty;
- (g) through (m) omitted.
- (n) (I) All tort actions for bodily injury or property damage arising out of the use or operation of a motor vehicle including all actions pursuant to paragraph (j) of this subsection (1).
(II) Omitted.
- (o) through (p) omitted.

2. Absentees. C.R.S. §15-10-107 (e). An individual whose death is not otherwise established, and who is absent for a continuous period of **five years**, during which he or she has not been heard from, and whose absence is not satisfactory explained after diligent search |, is presumed to be dead.

3. Claims against Decedents. C.R.S. §15-12-803. Limitations on Presentation of Claims. (1)

(a) Claims against the Decedent's Estate that arose before the death of the Decedent, including claims of the State of Colorado and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal bases if not barred earlier by other statute limitations, apart against the estate, the Personal Representative, any transferee or other person incurring liability under section 15-15-103, and the heirs of that decedent, less presented as follows: (III) as to all creditors, within **one year** after the Decedent's death. Exceptions are made to enforce any mortgage, pledge or

other lien upon property of the estate; to the limits of insurance protection any proceeding to establish liability of the decedent or the Personal Representative for which he is protected by liability insurance; or the collection of compensation for services rendered and reimbursed for expenses by the Personal Representative or by the attorney or accountant for the Personal Representative.

4. Probate, Testacy, and Appointment Proceeding - ultimate time limit. C.R.S. §15-12-108.

(1) No informal probate for appointment proceedings or formal testacy or appointment proceedings, although in a proceeding to probate a Will previously probated at the testator's domicile and appointment proceedings relating to a state in which there has been a prior appointment, may be commenced more than three years after the Decedent's death, except:

(a) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter **upon** a finding that the Decedent's death occurred prior to the initiation of the previous proceeding and the applicant or Petitioner is not delayed unduly in initiating the subsequent proceedings;

(b) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a Conservator has been appointed, **at any time within three years after the conservator becomes able to establish the death of the Protected Person**; and

(c) A proceeding to contest and informally appropriated will answer secure appointment of a person with legal priority for the appointment in the event the contest is successful may be commenced **within the later of 12 months from the informal probate or three years from the Decedent's death**.

(2) These limitations do not apply to:

(a) Proceedings to construe probate in wills; or

(b) Proceedings to determine heirs of an intestate and related appointment proceedings; or

(c) Appointment proceedings and testacy proceedings if no previous testacy proceedings or proceedings determining heirship relating to the Decedent's Estate have been concluded in this state.

PROPOSAL:

Amend C.R.S. §15-11-803(7) Felonious killing; how determined. (a) Criminal proceedings. After all right to appeal has been exhausted, a judgment of conviction, a plea of guilty, or a plea of nolo contendere, establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section.

(b) Civil proceedings. If a civil action is filed within three years after the date of the Decedent's death, or within one year after the conclusion of any criminal action pursuant to the criteria established in subsection (a) above, whichever last occurs, ~~Notwithstanding the status or disposition of a criminal proceeding,~~ a court of competent jurisdiction, ~~at any time,~~ upon the petition of an interested person, shall determine whether, by a preponderance of the evidence standard, each of the elements of felonious killing of the decedent has been established. If such elements have been so established, such determination conclusively establishes the individual as the decedent's killer for purposes of this section.

Comment.

There needs to be a balance between the time period set for the statue of limitations and the desire for finality in the administration of decedent's estates. This proposal cuts off the opportunity to bring a civil action where there is the later discovery of a feloniously caused death after running of the three-year statue limitations when there has been no criminal prosecution; however, since there is no statue of limitations on murder, there is still the opportunity for a state criminal action to be initiated to address this circumstance and the slayer statute would still be applied an individual was found guilty of a felonious killing.