

Proposed Amendments to C.R.S. §§15-12-102 and 15-12-901

October 7, 2009

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15-12-102. Necessity of order of probate for will. (1) Except as provided in section ~~15-12-901, 15-12-1201, 15-13-204 and 15-13-205~~, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court, ~~, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

~~—(a) No court proceeding concerning the succession or administration of the estate has occurred, and~~

~~—(b) Either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.~~

Comment

With two stated exceptions, section 15-11-102 as written requires probate of a will by a Colorado registrar or judge to prove the transfer of property or to nominate an executor. Section 15-12-1201, which authorizes collection of personal property by affidavit, is the first exception.

Section 15-12-901 is added as an introductory exception and the second exception, the trailing language indicated as deleted above, is relocated to section 15-12-901 with the other rules regarding transfer of title by will without administration.

Sections 15-12-204 and 15-13-205 are added as introductory exceptions because those two sections deal with transfer of title by a foreign personal representative of a decedent who is not domiciled in Colorado without either probate or administration (appointment of a personal representative) in Colorado.

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15-12-901. **Successors' rights if no administration.** (1)(a) As used in this subsection (1), "will probated in this state" means a will which is declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

(b) Except as otherwise provided in paragraph (c) of this subsection (1):

(I) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a ~~probated~~ will probated in this state or the laws of intestate succession.

(II) Devisees may establish title by the ~~probated~~ will probated in this state to devised property.

(c) A duly executed and unrevoked will which is not a will probated in this state may be admitted as evidence of a devise if:

(I) No court proceeding concerning the succession or administration of the estate has occurred, and

(II) Either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Comment

Section 15-12-901 concerns proof of title without administration. The definition of a "will probated in this state" added in section 15-12-901(1)(a) and that phrase used in section 15-12-901(b)(I) and (II) to clarify that probated will, the term formerly used in this section, is the same as the description of what is a probated will in section 15-11-102.

The exception to the requirement of probate for proof a transfer of title by probate is relocated from section 15-11-102 to become section 15-12-901(1)(c).

The last two sentences of section 15-12-901 become subsections (2) and (3) as follows:

(2) Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.