NOTICE OF MEETING
ORANGE BOOK FORMS COMMITTEE

TO: Trust and Estate Section — Orange Book Forms Committee
FROM: Elizabeth Meck; Kimberly Raemdonck; Susan Hoyt

The Next Meeting will be October 19, 2017 - 12:15 – 1:30 p.m.
Colorado Bar Association, 9th Floor Executive Conference Room
1900 Grant Street, Suite 900, Denver, CO 80203

AGENDA

I. Welcome & Call to Order

A. Attendance & Introductions

1. Attendance Sheet – ensure name appears as it should appear in OB Forms Book (if applicable) and update contact information as necessary.
2. Introductions – in-person and those attending by phone.

B. Reminders

1. To receive complimentary OB Forms 2018 supplement, committee members must attend 5 entire meetings in a season and participate on at least one subcommittee; and to receive a discount on the OB Forms 2018 supplement, must attend 5 entire meetings.

C. Approval of Minutes: September 14, 2017 Meeting

II. Chairperson's Report

A. Legislative Liaison position report – Gordon Williams.

B. Per Gene Zuspann: "The bankers ran a bill with for new certification of trust form that was passed this summer. The law is at 11-105-111. The UTC includes a proposed certification of trust form which will (probably) be authorized by 15-5-1013. I believe that the committee should prepare form(s) that meet both statutes."

C. Also per Gene Zuspann: "I just had a client ask about a power to execute wind leases. I do not believe that the current trustee power on natural resources would apply to wind leases. The committee should also address wind leases."

D. Other matters.

III. Announcements

IV. Committee Reports

A. *ACTIVE CONSIDERATION*

1. Uniform Pre-Marital and Marital Agreement Act – November 2016

a. Chair(s): Heidi Gassman - hgassman@wadeash.com and Julie McVey - jmcvey@mcveylaw.com

b. Committee members: Rick Mishkin; Bette Heller; Joyce Sanchez; Tom Pohl; Kristin Dittus; Michael Kirtland; Rikke M. Liska; Kate Boland; Barb Cashman, Carolyn Wiley; Tony Vaida

c. Suggested 2012

d. In October/November 2014, Orange Book Forms committee agreed to print a form for a Marital Agreement and tasked this committee with creating a form that follows the plan "what's yours is yours, and what's mine is mine."

e. 2017-2018 – Committee will continue to review the form starting with Section A, 2 – OWNERSHIP AND CONTROL OF SEPARATE PROPERTY.

2. Retirement Assets – In progress.

a. Chair(s): Tim Bounds - Bounds@EvansCase.com

b. Committee members: Bette Heller, Susan Boothby, Elizabeth Meck, Lisa Hardin, Yvonne Olivere, Bill Carew, Michelle Mieras, Ryan Scott

c. Suggested 2017

d. Committee meets in the Stratum Room at 9:00 a.m. on Super Thursdays

3. Beneficiary Deed to Trust – April 2017

a. Chair(s): Peggy Gardner and Joyce Sanchez

b. Committee members: Peggy Gardner, Tom Pohl, Joyce Sanchez, Elizabeth Meck

c. Suggested 2017

d. During Form Review in 2016-2017, it was noticed that there is no beneficiary deed in the Deeds to Trust section. The committee started with the Carpenter real estate form to create the Beneficiary Deed to Trust and presented to the Committee in 2017.

e. 2017-2018 – final form will be presented for a vote.

4. Engagement Letters – No presentation date yet

a. Chair(s): Louisa Ritsick - ritsick@bryantritsick.com

b. Committee members: Julie McVey, Michael Kirtland, Tim Bounds, Ryan Scott, Dan McKenzie, Lauren daCunha, Alison Leary

c. Suggested April 2017

d. Engagement letters – individual, married, non-married joint representation; Non-engagement letters ("I am not your attorney"); Termination letters

5. Miscellaneous Provisions – No presentation date yet

a. Chair(s): *chair needed!*

b. Committee members: Bette Heller, Tony Vaida, Ryan Scott, John Valentine, Carolyn Wiley

c. Suggested April 2017

B. *IN PROGRESS*

1. Impact of 2011 Federal Tax Legislation/Marital Formula Issues/Clayton Election/Family By-Pass Trust – To be presented December 2017

a. Chair(s): Dan Rich - drich@steelestreet.com

b. Committee members: Jim Buchanan; Jim Ingraham; Jonathan Haskell; Jeff Kadavy; Skip Reynolds, Sonny Wiegand, David Taunton; David Brantz; Kristin Dittus; Jennifer Breazeal; Donnia Howell; Rick Mishkin; Bette Heller; Gene Zuspann; Frank Hill

c. Suggested 01/11

d. A subcommittee will be needed to review the book regarding federal tax legislation/marital formula issues/Clayton clause and review to take advantage of tax changes

e. 08/20/15 - stated will present a memo regarding concept, not a form

2. The Uniform Trust Decanting Act—No presentation date at this time, BUT the act has passed

a. Chair(s): Susan Boothby – boothby@hbcboulder.com

b. Committee members: Lisa Willcox; Lauren da Cunha; Sharon Weikel; Georgine Kryda; Michelle Mieras; Bette Heller (pet trust only); Tony Vaida; Susan Boothby; (Jessica Broderick as representative from the Uniform Trust Decanting Committee/SRC)

c. Suggested 02/22/16

d. Will draft "opt-out" provisions for a "How to Approach Drafting for Decanting" section

3. Gifting Language—No presentation date at this time; update in January

a. Chair(s): Gordon Williams – gordlaw@aol.com

b. Committee members:

c. Suggested 10/15/15

d. Create gifting language and identify form where it should be included.

C. *INACTIVE*

1. Charitable Trust – No presentation date at this time

a. *Need to have a chair and form a committee if there is still interest in this form*

2. Disclaimer Review – No presentation date at this time

   a. Chair(s): Peggy Gardner- pkgardner@hollandhart.com; Mike Holder mdholder@aol.com; Skip Reynolds skipreynolds@hotmail.com; Bill Carew lamontwc@msn.com

   b. Committee members: Mike Holder; Bill Carew; Skip Reynolds; Peggy Gardener; Frank Hill; Gordon Williams

   c. Suggested 05/11

   d. Review and see what changes are needed in the book- The disclaimer-related Notes on Use might need to be expanded to include the new *non-tax* uses under our new statute.

   e. 03/17/16 update: Peggy Gardner reported that the Disclaimer Subcommittee decided to first draft a chapter in the Estate Planning ____ before proceeding with any specific disclaimer language in the Orange Book. Peggy Gardner will draft the chapter, with assistance from Frank Hill and Gordon Williams. The Committee agreed to this approach.

3. Third-party Special Needs Trust – No presentation date at this time

   a. Chair(s): Dan Rich - drich@steelestreet.com and Leia Ursery- lursery@lindquist.com

   b. Committee members: Kristen Jacobs; Michael Kirtland; Skip Reynolds; Patrick Thiessen; Elizabeth Meck

   c. Suggested 05/17/12

4. Gun Trust – No presentation date at this time

   a. Chair(s): Myka Landry - mykalandry@mykalandrylaw.com and Mike Holder - mdholder@aol.com

   b. Committee members: Myka Landry; Mike Holder; John Valentine; Lisa Hardin; Maryanne Luu-Chen; Justin Bertron; Heidi Gassman

   c. Suggested 11/17/15

   d. Create form/language for a gun trust

V. New Matters

VI. Other

Orange Book Forms Committee Meeting
September 14, 2017

TO: Trust and Estate Section — Orange Book Forms Committee
FROM: Elizabeth Meck; Kimberly Raemdonck; Susan Hoyt

1. Elizabeth Meck, the Orange Book Committee Chair, began the meeting at 12:17 PM.
2. Elizabeth started introductions. The committee members, including those on the telephone, introduced themselves. The sign-up sheet was passed around.
3. Elizabeth reminded the committee of the attendance and participation requirements to receive a complimentary or discounted Orange Book Forms 2018 supplement (*i.e.,* attendance at five entire meetings in a season and participation on at least one subcommittee; attendance at five entire meetings is required for a discounted update).
4. Elizabeth introduced the August minutes. Susan Boothby requested that Lisa Willcox and Carolyn Wiley be added to Paragraph 7(a)(vii)(4). A motion was made to approve the August minutes, subject to the change, and the minutes were unanimously approved.
5. Chairperson's Reports.
    a. Legislative Updates: No report.
6. Announcements
    a. Elizabeth and Kim are still seeking volunteers for the Orange Book Co-Chair position for the 2018-2019 year.
    b. Susan Hoyt is seeking presenters for the December 8th Orange Book CLE. She is looking for a mix of new and seasoned practitioners to present. Presenters will be given CLE credit.
7. Committee Reports – Active Matters
    a. Uniform Marital and Pre-Marital Agreement Act. The Committee continued to present on the draft Agreement, starting on Page 4.
        i. On page 4, Article 1(A)(3) OWNERSHIP AND CONTROL OF SEPARATE PROPERTY, delete the following: "To retain its character as the separate property of a party as provided in this agreement, such separate property must continue to be held in a form of ownership in which it would qualify as separate property under Paragraph A(1) of this article. As an example and not by way of limitation" and "however, if a party's separate property is transferred into the name of that party and a third person as joint tenants, such interest shall continue to be considerate separate property." Paragraph approved unanimously with these changes.
        ii. On page 4, Note on Use regarding risk to client of accepting paragraph regarding income and earning capacity reads as follows: "This provision supports the voluntary maintenance waiver. This agreement is drafted for couples who intend that neither party be entitled to maintenance were the marriage to

dissolve. Practioner should consider modifying this provision if the client's circumstances make it inappropriate to waive maintenance the client may otherwise be entitled to receive." This Note on Use is to be inserted after Article 1(A)(3) OWNERSHIP AND CONTROL OF SEPARATE PROPERTY. Note on use approved unanimously.

iii. On page 5, Article 1(B), insert a Paragraph 3 between the existing Paragraphs 2 and 3 to read: "JOINT MANAGEMENT AND CONTROL OF MARITAL PROPERTY. The parties shall have equal rights to the control, management, and use of marital property during the marriage. Upon the filing of a petition for legal separation, divorce, invalidity of marriage, dissolution of marriage or dissolution of civil union by either party, the parties' marital property rights shall be governed by Article II."

iv. Skipped Section 4 and will come back to it next month.

v. Paragraph 5 on page 5 approved unanimously with changes to the last sentence: "Upon an adjustment by a taxing authority to any jointly-filed income tax return, . . ."

vi. On page 5, insert Note on Use 11 before Paragraph 5 (see page 30 for drafting language):

1. Discussion ensued regarding whether Alternative 1 is too simplistic. A motion to delete Alternative 1 was unanimously approved.
2. Discussion ensued regarding Alternative 2. A motion to delete Alternative 2 was unanimously approved.
3. Discussion ensued regarding Alternative 3. Alternative 3 was conditionally approved unanimously with the following changes:
    a. In Paragraph A, delete "and" between "married" and "filing jointly."
    b. Delete Paragraph B.
    c. Paragraph C to read: "In the event that the parties file jointly, funds for payment of tax due will first come from a joint account, unless the parties agree otherwise. Likewise, any tax refund shall be deposited into an existing joint account and be considered the marital property of the parties."
    d. Paragraph D to read: "In the event that the parties decide to file married filing separately, each of the parties shall pay from their own separate assets any tax due, and shall be entitled to receive any refund as separate property, unless the parties agree otherwise.
    e. Delete Paragraph E.

f. Throughout the section, change “taxes” to “taxes, interest, and penalties.”

8. Committee Reports- In Progress
    a. No discussion.
9. Elizabeth adjourned the meeting at 1:31PM.

A marital agreement can be an effective estate planning tool for different types of couples, particularly couples whose marriage or civil union forms a blended family — one comprised of the spouses along with his, her, or their respective children from previous marriages.

This form is drafted with the approach of "what's mine is mine, what's yours is yours." The practitioner should be aware that many of these provisions are contrary to the provisions of the Colorado Uniform Dissolution of Marriage Act. The optional provisions contained in this form are only a handful of many that may be drafted to encompass a client's intentions and desires. There is no way to address all of the potential issues and combinations of provisions that may be involved. If the practitioner changes one provision of the form to accommodate the wishes of the clients, other paragraphs may need to be adjusted accordingly in order to avoid inconsistency. Care should be taken that the provisions of one section do not conflict with the provisions of other sections.

The practitioner is strongly encouraged to read the following:

1) Colorado Uniform Premarital and Marital Agreements Act, C.R.S. §§ 14-2-301, *et seq*.
2) Colorado Uniform Dissolution of Marriage Act, C.R.S. §§ 14-10-101, *et seq*.
3) "Colorado's New Uniform Premarital and Marital Agreements Act" by Susan Boothby, Esq. and Kim Willoughby, Esq., 43 *Colo. Law*. 57 (March 2014).
4) Constance D. Smith, Esq. and Jane Caddell Paddison, Esq., "Marital Agreements," Chapter 30 in David K. Johns, Esq., et al., *Colorado Estate Planning Handbook (The Orange Book)*, 7th Ed. (CLE in Colo., Inc. Supp. 2017).

See Note on Use 1

PREMARITAL/MARITAL AGREEMENT

This [Premarital] [Marital] Agreement ("this agreement") is made _____, 20___, by and between *1* ("_____"), now residing in _____(city), _____(state), and *2* ("_____"), now residing in _____(city), _____(state). *1* and *2* are sometimes referred to in this agreement individually as a "party" or collectively as the "parties."

See Note on Use 2

EFFECTIVE DATE

This agreement shall become effective on the marriage or civil union of the parties. If the marriage or civil union does not take place within six (6) months from the date hereof, this agreement will be null and void.

[**ALTERNATIVE LANGUAGE FOR MARITAL AGREEMENT**: This agreement shall become effective upon execution by both parties.]

RECITALS

1. [ALTERNATIVE 1 FOR MARRIED COUPLES] *1* and *2* were married to each other on _____.]

See Note on Use 3

1. [ALTERNATIVE 2 FOR COUPLES IN A CIVIL UNION] *1* and *2* entered into a civil union on _____.]

See Note on Use 3

1. [ALTERNATIVE 3 FOR INDIVIDUALS NOT YET MARRIED OR IN A CIVIL UNION] *1* and *2* intend to [be married] [enter into a civil union with] each other on _____(date), or some time in the near future.

2. FAMILY. *1* has _____ child(ren) and *2* has _____ child(ren).

3. PURPOSE. The parties wish to define, limit, or release their respective property and rights thereto in the event of a legal separation or a dissolution of their marriage or civil union, or upon the death of either party.

4. PROPERTY. The parties have made disclosures to each other of their financial condition, including their respective assets, income, and liabilities, set forth in the attached Schedules A and B, which are incorporated into this agreement by this reference. These schedules give a reasonably accurate description and good faith estimate of the current fair market value of the assets and liabilities of the parties, as well as their annual gross income for the past two years for federal tax purposes. [ALTERNATIVE: In addition, each party has included the last two years of their respective tax returns attached as Exhibit D, which are incorporated into this agreement by this reference.]

5. REVIEW OF FINANCIAL INFORMATION. Subject to the terms of **Article 4, Paragraph 4.12 (Confidential Document)**, the parties acknowledge that each party has received the other party's consent to disclose financial information to any professional such party employs to review and advise with regard to the other party's financial circumstances. **(Mike Holder to bring additional language regarding professionals also agreeing to keep information confidential.)**

See Note on Use 4

6. FULL EXPLANATION. Each party has weighed all of the facts, conditions, and circumstances relevant to this agreement. All provisions of this agreement, as well as pertinent questions, have been fully and satisfactorily explained to each party. Each party has given due consideration to such

matters and clearly understands and consents to all the provisions of this agreement. And each party enters into this agreement freely and voluntarily, without coercion or undue influence, and with full knowledge of all facts disclosed in this agreement after consultation with an attorney of each party's choice.

NOW, THEREFORE, in consideration of their affection and esteem for each other, and in consideration of the mutual promises expressed in this agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - SEPARATE PROPERTY VERSUS MARITAL PROPERTY

A. SEPARATE PROPERTY

1. DEFINITION OF SEPARATE PROPERTY. The separate property of a party is defined as specified in this Paragraph A and Paragraph C. "Separate property" means the following:

a) Property held in the name of one party only;

b) Fractional interests held as a tenant-in-common;

c) Property held as joint owners with third persons;

d) All assets listed on Schedules A and B at the values indicated;

See Note on Use 6

e) The property, or any interest therein, whether real or personal, tangible or intangible, owned by either party on the date of their marriage or civil union;

f) All property and property interests acquired after the effective date of this agreement by either party individually by gift, devise, bequest, or inheritance, and held by either of them in their individual names, as tenants in common, or as joint owners with third persons;

See Note on Use 7

g) All interests and ownership in business entities owned or acquired before the effective date of this agreement and held by either party in their individual names, as tenants in common, or as joint owners with third persons;

h) All retirement accounts, including qualified plans of any type and self-employment plans of any kind, created or funded by either party or such party's employer or business, specifically including distributions and contributions made at any time;

i) All assets of any irrevocable trust created for the current or future benefit, direct or indirect, of either party, and any individual revocable trust created by either

party and funded with such party's separate property, regardless of the time of creation or funding; and

See Note on Use 8

j) All appreciation in and proceeds from any separate property and any property exchanged for any of the above listed property after the effective date of this agreement. Proceeds include gains or income regardless of source, and appreciation includes all appreciation in the value of any property owned.

<NEW NOTE ON USE 9 re: Income in (k) deviates from UDMA>

k) All income from the separate property of each party and all accruals and appreciation to such property shall be the separate property of the party owning the property, whether such separate property is currently owned by the party or is acquired after the effective date of this agreement.

See Notes on Use 10 and 16

l) All of a party's income, now or hereafter acquired, is as defined in the maintenance statute, C.R.S. § 14-10-114(8)(c)(I), as of the effective date of this agreement.

See Note on Use 10.5

2. AGREEMENT REGARDING INCOME AND EARNING CAPACITY. The parties recognize and agree that each of them has separate and distinct income, and a separate and distinct income earning capacity.

3. OWNERSHIP AND CONTROL OF SEPARATE PROPERTY. Each party shall have and retain sole ownership, control, and enjoyment of his or her separate property, of whatever nature and wherever located, including the absolute right to independently dispose of or encumber such separate property by any means, including gift, sale, exchange, testamentary devise, transfer to inter vivos trust, or any other manner. If any party's separate property is transferred into the names of both parties as joint tenants, such property shall be considered marital property.

4. DEBTS AND LIABILITIES RELATED TO SEPARATE PROPERTY. Neither party shall have the authority to obligate or encumber the separate property of the other. Each party shall be responsible for separate debts that party incurs. Each party agrees to pay its separate debt from his or her own separate property or separate income. If the separate debts of one party are paid from the separate property of the other party or from marital property, such funds shall be considered a gift from the contributing party to the indebted party, and the contributing party shall not by such contribution acquire any separate ownership interest, lien against the separate property of the indebted party, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties.

See Note on Use 11

5. INCOME TAXES. The parties may, but shall not be obligated to, file joint income tax returns. However, if they do file joint income tax returns, each party shall be liable for his or her pro rata share of the taxes owed, computed as if each had filed separately to determine the separate [taxable] [total] [adjusted gross] income of each party with such amounts used to compute the fraction of the total separate taxes owed and then applying such fractions to the joint tax liability. Upon an adjustment by a taxing authority to any jointly-filed income tax return, the party whose separate income or deduction adjustment resulted in the amount owed or the refund to be received shall be responsible for the respective amount owed or shall be entitled to the respective amount refunded.

See Note on Use 12

6. GIFT TAXES. The parties may, but are not obligated to, consent to have the gifts made by the other during any calendar year considered as made one-half (½) by each of them on a gift tax return for such calendar year.

B. PROPERTY TO BE OWNED AS MARITAL PROPERTY. Any property not defined as separate property under this agreement that would be considered marital property under C.R.S. § 14-10-113 shall be defined as marital property under this agreement.

See Note on Use 13

1. JOINT ACCOUNT. In order to more effectively manage their marital property and their marital debts, the parties intend to establish and maintain [ALTERNATIVE 1: have already established and intend to maintain] a joint checking account and may establish [ALTERNATIVE 2: have already established] one or more joint savings or investment accounts, titled in their joint names with rights of survivorship.

See Note on Use 13

2. JOINT EXPENSES. It is the parties' intention that funds held in any joint accounts be used for marital and household expenses, and to purchase joint investments. All property purchased with funds in these joint accounts will be acquired and held by the parties as their marital property.

3. JOINT MANAGEMENT AND CONTROL OF MARITAL PROPERTY. The parties shall have equal rights to the control, management, and use of marital property during the marriage. Upon the filing of a petition for legal separation, divorce, invalidity of marriage, dissolution of marriage, or dissolution of civil union by either party, the parties' marital property rights shall be governed by Article II.

See Note on Use 14

4. JOINT CREDIT CARD ACCOUNT. Prior to the marriage or civil union, the parties opened a joint credit card account. It is their desire that this credit card account be converted to marital property upon their marriage or civil union. All property acquired with this joint credit card account shall

be marital property subject to the provisions of **Article II, Paragraph 6 (Joint Property Right Retained)** of this agreement. All obligations associated with this joint credit card account shall be joint obligations of the parties.

5. PAYMENTS OF DEBTS.

a) USING SEPARATE PROPERTY. If either party contributes his or her separate property or credit to the separate property of the other, such contribution or credit shall be considered a gift, and the contributing party shall not by such contribution acquire any separate ownership interest in or lien against the separate property of the other, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties. If either party contributes his or her separate property or credit to the marital property, such contribution or credit shall be considered a gift to the marital property, unless otherwise expressly stated in a writing signed by both parties.

b) USING MARITAL PROPERTY. If marital property is used to pay the separate debt of one party, such payment will be considered a gift from the marital estate and such contribution shall not result in an ownership interest, lien against the separate property of either party, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties.

C. SPECIFIC PROPERTY PROVISIONS [NOTE: Section (C) was approved 8/17/17]

See Note on Use 15

1. PRIMARY RESIDENCE AS SEPARATE PROPERTY. Prior to the marriage or civil union, *1* (or *2*) purchased a residence located at _____(address). It is the parties' desire that this residence not be converted to marital property upon their marriage or civil union. There is no mortgage on the residence at this time. Real estate taxes, insurance, maintenance, and repairs associated with the residence shall be paid by/from marital assets in lieu of rent. [*2*] waives the right to claim an interest in the residence or a lien based on the payment of these amounts or on the contribution of services or otherwise.

See Note on Use 17

2. BUSINESS INTERESTS. [Reserved.]

See Note on Use 18

ARTICLE 2 -WAIVER AND RETENTION OF RIGHTS UPON DISSOLUTION OF MARRIAGE OR CIVIL UNION

A. DEFINITION. For all purposes of this agreement, a dissolution of marriage or civil union of the

parties shall include:

1. The filing of a petition for legal separation, divorce, annulment, dissolution of marriage, or dissolution of civil union by either party, that remains pending at the time of a particular event that occurs before the proceeding has been concluded by the entry of a final order. For example, the death of either party after either of them has filed a petition to dissolve their marriage or civil union, but before any final order is entered in that proceeding;

2. The entry of a court's order of dissolution or legal separation; or

3. The parties' execution of a separation agreement.

B. DESCRIPTION OF RIGHT TO MAINTENANCE UPON DISSOLUTION. Each party understands that, as currently provided in C.R.S. § 14-10-114, there are guidelines for calculating the amount of maintenance under Colorado law. Those guidelines can be summarized as follows:

1. AMOUNT OF MAINTENANCE: 40 percent of the higher earning party's monthly adjusted gross income (AGI), minus 50 percent of the lower earning party's monthly AGI, but not more than 40 percent of the combined monthly AGIs.

2. YEARS OF PAYMENT OF MAINTENANCE: (i) if less than three years of marriage or civil union, no maintenance; (ii) if marriage or civil union greater than three years and less than 20 years, 31 percent plus approximately 0.2 percent for each full month of marriage or civil union, up to a total of 50 percent of the full years of marriage or civil union between 12½ years and 20 years; or (iii) for a marriage or civil union over 20 years, the court will consider all factors, but the term will not be less than 10 years.

C.R.S. § 14-2-307 of the Colorado Marital Agreement Act (effective before July 1, 2014) and C.R.S. § 14-2-309 of the Colorado Uniform Premarital and Marital Agreements Act (effective July 1, 2014), provide, in part, that portions of a premarital/marital agreement relating to the determination, modification, or waiver of maintenance or a waiver of attorney fees incurred in connection with the dissolution of a marriage or civil union are enforceable only insofar as such provisions are not unconscionable at the time of enforcement of such provisions and that the issue of unconscionability is to be decided by the Court as a matter of law.

3. IMPACT OF A DETERMINATION OF UNCONSCIONABILITY. Notwithstanding the provisions of Paragraph 4 of this Article 2, each party understands and agrees that C.R.S. § 14-2-307 of the Colorado Marital Agreement Act (effective before July 1, 2014) and C.R.S. § 14-2-309 of the Colorado Uniform Premarital and Marital Agreements Act (effective July 1, 2014), provide, in part, that portions of a premarital/marital agreement relating to the determination, modification, or waiver of maintenance or a waiver of attorney's fees incurred in connection with the dissolution of a marriage or civil union are enforceable only insofar as such provisions are not unconscionable at the time of

enforcement and that the issue of unconscionability is to be decided by the court as a matter of law.

See Note on Use 19

4. WAIVER OF MAINTENANCE. Each party waives, discharges, and releases the other from any and all statutory and equitable claims for support. Support shall include "alimony" or "maintenance" or anything similar, regardless of the words used to describe the same, whether temporary or permanent. The parties agree that, at the time of execution of this agreement, this waiver is not unconscionable. The parties intend this paragraph to determine any and all issues of support.

See Note on Use 20

5. RIGHTS WAIVED IN SEPARATE PROPERTY. In the event of a dissolution of the parties' marriage, or civil union, each party waives: (i) any right under the Colorado Dissolution of Marriage Act to have the other's separate property as defined in **Article 1** of this agreement considered in connection with the equitable division of their marital property; and (ii) any right to receive any of the "separate property" of the other as defined in **Article 1** of this agreement as part of the equitable division of the "marital property" as defined in **Article 1** of this agreement.

See Note on Use 21

6. JOINT PROPERTY RIGHTS RETAINED. In the event of a dissolution of the parties' marriage or civil union, any property held by the parties as joint tenants with right~~s~~ of survivorship and all of their marital property, community property, and quasi-community property shall be divided equally between them. Notwithstanding the foregoing, in the event of a dissolution of marriage or civil union, property titled jointly in the parties' names with right~~s~~ of survivorship, but in which the parties have unequal interests at law or in equity, shall be divided between the parties in accordance with their documented ownership interests.

See Note on Use 22

7. COMMUNITY PROPERTY. As more specifically provided in **Article 1**, the income, appreciation or property arising from all separate property now owned or that may be acquired after the effective date of this agreement or held as separate property of one party, shall be and remain such party's separate property and that all compensation for the services of either of them shall be such party's separate property, and such separate property shall not be or become community property or quasi-community property regardless of where earned, invested or sold and regardless of the residence or domicile of either party at any time before or after this agreement is signed.

See Notes on Use 23 and 24

8. LEGAL FEES REGARDING DISSOLUTION OF MARRIAGE OR CIVIL UNION. In the event of a dissolution of their marriage or civil union, each party shall pay for all his or her own respective legal fees and costs. If a court would otherwise find that this provision regarding legal fees and costs is unconscionable, a court may order such portion of one party's legal fees and costs paid by the

other party as the court deems necessary to avoid a finding of unconscionability, but the remaining terms of this agreement shall remain valid and binding on the parties. Any legal fees and costs ordered to be paid, and which are paid by one party for the other, may be treated by the parties as income for tax purposes, allowing the payor to take a deduction for such payments and the payee to report such payments as income.

9. LIABILITIES.

a) SEPARATE PROPERTY. In connection with the dissolution of their marriage or civil union, each party, respectively, shall: (i) be solely responsible for all of the debts and liabilities attaching to or arising out of the separate property each owned at any time prior to the dissolution; and, (ii) indemnify and hold harmless the other and the other's successors and assigns from and against the debts and liabilities attaching to, arising from, or associated with the separate property each owned at any time prior to the dissolution.

b) MARITAL PROPERTY. In connection with the dissolution of their marriage or civil union, each party, respectively, shall: (i) be responsible for all marital debts and liabilities attaching to or arising from the marital property that is set aside to that party; and, (ii) shall indemnify and hold harmless the other and the other's successors and assigns from and against the marital debts and liabilities attaching to, arising from, or associated with the marital property set aside to that party.

ARTICLE 3 - WAIVER AND RETENTION OF RIGHTS UPON DEATH

A. GENERAL PROVISIONS

1. JOINT PROPERTY. In the event of the death of one of the parties, the surviving party shall be entitled to the entire interest of any property held by the parties as joint tenants with right of survivorship.

2. MARITAL PROPERTY. Upon the death of one of the parties, all marital property and community or quasi-community property shall pass directly to the surviving party.

B. DESCRIPTION OF SURVIVING SPOUSE'S STATUTORY RIGHTS

See Note on Use 25

1. RIGHT TO ELECTIVE SHARE. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or a surviving partner in a civil union has the right to elect to receive a percentage of the augmented estate of the first spouse or partner to die. The augmented estate of a surviving spouse or a surviving partner in a civil union could include separate property owned

by the decedent immediately before death.

The percentage of the augmented estate the electing spouse or partner is entitled to receive increases from five percent (5%) after the first year of marriage or civil union by five percent (5%) after the second and each succeeding year of marriage, or of civil union, up to a maximum of (50%) after the tenth year of the marriage or civil union. If the applicable percentage would result in a lesser amount, or if the parties were married or in a civil union for less than one year, regardless of provisions in the will of the deceased spouse or partner, the surviving spouse or partner is entitled to a minimum of $50,000 in the absence of an enforceable premarital/marital agreement.

See Note on Use 26

2. RIGHT TO EXEMPT PROPERTY. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union has the right to request an exempt property amount from the deceased spouse's or partner's estate, up to a 2017 value of thirty-two thousand dollars ($32,000.00), as indexed for cost of living. This right has priority over all claims against the estate other than claims for costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses.

See Note on Use 27

3. RIGHT TO FAMILY ALLOWANCE. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union, along with minor children of the deceased spouse or partner who were being supported by the deceased spouse or partner, have the right to request a family allowance from the deceased spouse's or partner's estate. There is no specific value for the family allowance, but the amount should be reasonable for the maintenance of such persons during the period of administration, but not for more than one year after the death of the deceased spouse or partner.

See Note on Use 28

4. RIGHT TO HOMESTEAD EXEMPTION. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union, along with minor children of the deceased spouse or partner, have the right to a homestead exemption to protect the home of the deceased spouse or partner from being attached for his/her debts, as long as the surviving spouse or partner and/or such minor children continue to live in such property. The exemption is seventy-five thousand dollars ($75,000.00) for 2017, as indexed for cost of living. There is a larger exemption if the deceased spouse or partner, the surviving spouse or partner, or the minor children are elderly or disabled.

See Note on Use 29

5. RETIREMENT BENEFITS. Each party understands that federal law gives a spouse pre-retirement and survivor benefits in pension plans, profit-sharing plans, or any other qualified deferred

compensation plans established by the other spouse or the others spouse's employer.

See Note on Use 30

6. COMMUNITY PROPERTY. As more specifically provided in **Article 1**, the income, appreciation or property arising from all separate property now owned or that may be acquired after the effective date of this agreement or held as separate property of one party, shall be and remain such party's separate property and that all compensation for the services of either of them shall be such party's separate property, and such separate property shall not be or become community property or quasi-community property regardless of where earned, invested, or sold, and regardless of the residence or domicile of either party at any time before or after the effective date of this agreement.

C. STATUTORY RIGHTS WAIVED

1. SEPARATE PROPERTY RIGHTS WAIVED. As more specifically provided in **Paragraph 3 of this Section C of this Article 3**, each party waives all rights in the estate of the other that could be satisfied out of or from the separate property of the other as defined in **Article 1** of this agreement. Such waiver is made under C.R.S. §§ 14-2-304(2) and 15-11-207, and shall include, without limitation, a waiver of all rights to an elective share, exempt property allowance, homestead exemption, and family allowance, as well as any other rights granted by the laws of Colorado or by the laws of any other jurisdiction, including any jurisdiction having community property laws, that could be satisfied out of the separate property of the other.

See Note on Use 29

2. RETIREMENT BENEFITS WAIVED. Each party waives the right to receive benefits from any pension plan, profit-sharing plan, individual retirement account (IRA), or any other deferred compensation plan, qualified or nonqualified under federal ERISA law, established by the other party, or any employer of the other party at any time, or any business the other has been associated with at any time, specifically including, but not limited to, all appreciation and contributions after the date of their marriage. Each party agrees to execute a post marital agreement and deliver such consents as are necessary to effectuate such waiver as required by the provisions of such pension plan, profit-sharing plan, retirement account or deferred compensation plan, or as required by state or federal law. By this agreement, the parties appoint the other as their attorney-in-fact for the limited purpose of executing any such document necessary to waive such rights when the waiving party has failed to execute such document within seven (7) days after request and presentment. Such appointment does not relieve a party from the obligation to execute and deliver consents under **this Section C**. The provisions **of this Section C** do not apply to any right either party has now or in the future to collect Social Security Survivor Benefits, Veterans Benefits, or other benefits granted by and subject to federal law.

[ALTERNATIVE: The surviving spouse shall have no rights under federal law or state law or

any plan documents to be the primary beneficiary or joint annuitant of the deceased spouse's retirement plans, and each party may dispose of their retirement plans, (including all plans designated as 401k, IRA, PERA, employer, military, 403(b), or other qualified or nonqualified plan accounts) as that party has designated, with no obligation to name the surviving spouse, provide a joint survivor annuity, or otherwise provide for the surviving spouse through such plans. The parties shall execute any waivers required to effectuate this provision after their marriage, pursuant to **Article 4, Paragraph 1**. Either party may, nonetheless, provide voluntarily for the other through such plans, but no such provision shall create any future or further obligation to so provide for the other from or to encumber any retirement plans, nor shall such provision void any waiver under this agreement.]

See Note on Use 31

3. STATUTORY PROPERTY RIGHTS WAIVED IN SEPARATE PROPERTY. Subject to the provisions of **this Section C of this Article 3**, each party waives the claims and rights presently granted under the following statutory provisions of the State of Colorado, as they may be revised in the future, but only in the parties' separate property, as defined in **Article 1** of this agreement: C.R.S. §§ 15-11-102 (intestate share of surviving spouse); 15-11-201 (elective share of surviving spouse); 15-11-301 (provision for surviving spouse when deceased spouse's will is executed before marriage); 15-11-403 (exempt property allowance); 15-11-404 (family allowance); 15-11-405 (right to select property as exempt property); 38-41-201 and -204 (surviving spouse's right to homestead); and 15-12-901 (right to property if no administration of deceased spouse's estate).

D. RETENTION OF STATUTORY RIGHTS.

See Note on Use 32

1. RETAINED STATUTORY PROPERTY RIGHTS IN MARITAL PROPERTY. Notwithstanding **Article 3, Section C and Paragraph 2 of this Section D**, the parties each retain the claims and rights presently granted under the following statutory provisions of the State of Colorado, as they may be revised in the future, but only in the parties' marital property, as defined in **Article 1** of this agreement: C.R.S. §§ 15-11-102 (intestate share of surviving spouse); 15-11-201 (elective share of surviving spouse); 15-11-301 (provision for surviving spouse when deceased spouse's will is executed before marriage); 15-11-403 (exempt property allowance); 15-11-404 (family allowance); 15-11-405 (right to select property as exempt property); 38-41-204 (surviving spouse's right to homestead); and 15-12-901 (right to property if no administration of deceased spouse's estate).

See Note on Use 33

2. STATUTORY FIDUCIARY AND OTHER RIGHTS RETAINED. If the parties are married or are partners in a civil union when the first of them dies, the other retains the following rights presently granted under the following statutory provisions, as they may be revised in the future: C.R.S. §§

15-12-203(1)(b) and (d) (right to serve as personal representative); 15-12-1201 (right to be a successor under the collection of personal property by affidavit); 15-12-1203 (right to distribution of small estate); 15-20-101, *et seq*. (right to community property); and 15-19-106 (right to dispose of remains).

See Note on Use 34

3. PRIORITY FOR APPOINTMENT IN PROTECTIVE PROCEEDINGS. If the parties are married or are partners in a civil union when a protective proceeding is commenced concerning one of them, the other retains the priority presently granted under the following statutory provisions, as they may be revised in the future: C.R.S. §§ 15-14-310(1)(e) or 15-14-310(1)(e.5), as applicable (priority for appointment as guardian for an incapacitated person); and 15-14-413(1)(d)(4) or 15-14-413(1)(d.5), as applicable (priority for appointment as conservator in a protective proceeding).

4. RIGHT TO NAME SUCCESSOR FIDUCIARY. Each party retains the rights granted under such statutory provisions to name any one or more individuals~~,~~ other than the other party, or a corporate entity, or both, to act with, to be a successor, or to act instead of the party's spouse or partner.

E. OTHER RIGHTS.

See Note on Use 35

1. LIABILITIES REGARDING MARITAL PROPERTY. At the death of one party, the surviving party shall be responsible for all marital debts and liabilities attaching to or arising from marital property passing to the surviving party by operation of law or otherwise. The surviving party shall indemnify and hold harmless the estate of the deceased party and the successors to the estate of the deceased party from and against the marital debts and liabilities attaching to, arising from or associated with the marital property passing to the surviving party.

2. LIABILITIES REGARDING SEPARATE PROPERTY. The estate of a deceased party shall be solely responsible for all separate debts of the deceased party and liabilities attaching to or arising out of the separate property of such deceased party. The estate of a deceased party shall indemnify and hold harmless the surviving party and his or her successors from and against the separate debts and liabilities attaching to, arising from or associated with the separate property of the deceased party.

F. PROVISIONS UPON DEATH

See Note on Use 36

1. UNUSED EXEMPTION AMOUNT. At the death of either spouse while the parties are married, if the survivor is eligible under federal, state, or other law to utilize the decedent's unused estate tax exemption, or a similar death tax benefit, the surviving spouse may require the personal representative or executor of the deceased spouse's estate to file any necessary forms and returns with the Internal Revenue Service, and any other appropriate taxing authority, to protect the deceased spouse's unused

exemption amount, as defined in I.R.C. § 2010 (DSUEA), and to provide the surviving spouse with copies of all such documents, including amendments filed with such taxing agency and adjustments made by any taxing agency. All costs of reporting and preserving the DSUEA shall be paid by the surviving spouse. The parties shall add such provisions to their estate planning documents as are necessary for the efficient administration of their estates consistent with the terms of this agreement.

2. NO CONTEST. Except to the extent that such document fails to comply with the terms of this agreement, neither party will contest the validity of any testamentary or inter vivos estate planning document of the other now existing or hereafter executed.

[ALTERNATIVE: Neither party will contest the validity of any testamentary or inter vivos estate planning document of the other now existing or hereafter executed, except to the extent that such document fails to comply with the terms of this agreement.]

<DRAFTING NOTE: *We invite open discussion about the utility and enforceability of this No Contest clause (possibly including contract to will issues).*

See Notes on Use 37 and 38

3. [**OPTIONAL**] DISPOSITION UPON DEATH. The parties will execute certain estate planning documents which effectuate their agreement as to how their assets shall be distributed upon each death. This estate plan consists of the following:

a) *1* agrees to provide by will, trust, or beneficiary designation as follows: <INSERT PROVISIONS>;

b) *2* agrees to provide by will, trust, or beneficiary designation as follows: <INSERT PROVISIONS>.

ARTICLE 4 -MISCELLANEOUS PROVISIONS

See Note on Use 39

A. INCORPORATION BY REFERENCE. The Recitals that precede this agreement and any attached Schedules are incorporated into this agreement by this reference.

B. BINDING EFFECT. This agreement shall inure to the benefit of and shall be binding upon the parties and their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, trustees, fiduciaries, personal representatives, grantees, donees, successors and assigns.

See Notes on Use 40 and 41

C. CONSTRUCTION; CHOICE OF LAW. This agreement shall be enforced, construed and interpreted according to the laws of the State of Colorado, whether either or both of the parties are at any time a temporary or permanent resident or domiciled in any other jurisdiction, or whether any assets or events are situated in Colorado or any other place.

See Note on Use 42

D. CHANGES IN THE LAW. The parties recognize that the laws of Colorado and other applicable jurisdictions affecting marital rights and interests in the property, assets, and estates of the parties may be amended or increased. It is the intention and agreement of the parties to be bound by the terms of this agreement, regardless of any changes to applicable laws.

E. WAIVER. Neither the failure nor any delay on the part of either party to exercise any right, power, or privilege hereunder shall operate as a waiver of such right, power or privilege.

See Note on Use 43

F. LEGAL FEES REGARDING THE INTERPRETATION, ENFORCEMENT, OR PERFORMANCE OF THIS AGREEMENT. In the event that a dispute arises between the parties hereto relating to the interpretation, enforcement, or performance of this agreement and such matter is referred to an attorney for resolution, the prevailing party in any litigation or alternative dispute resolution shall be entitled to collect his or her reasonable attorney fees, costs, and/or expenses (including expert fees) incurred in such litigation or alternative dispute resolution or on appeal from the non-prevailing party.

G. HEADINGS. Paragraph titles or captions contained in this agreement are inserted only as a matter of convenience and for reference. Such titles and captions in no way define, limit, extend or describe the scope of this agreement nor the intent of any provision of this agreement.

H. SEVERABILITY. If any provision of this agreement shall be invalid, illegal, or unenforceable to any extent, the remainder of this agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

I. COMPETENCE; FAIRNESS. The parties are each competent to enter into this agreement and enter into this agreement freely and voluntarily, and not on the basis of any duress, coercion, time pressure, or other pressure or influence from any person or circumstances. Each party believes that the agreement, as a whole, and each of its provisions, is fair.

See Note on Use 44

J. AMENDMENTS. This agreement may not be amended, supplemented, or terminated, except by an agreement in writing, expressly referring to this agreement and signed by the parties while both are living and competent.

K. CONFIDENTIAL DOCUMENT. With the exception of disclosure to professionals for purposes of examining financial disclosure information as referred to in section 5 of the Recitals herein, each party agrees to keep confidential and not disclose any financial information respecting the other, except with the other's consent, or as necessary to enforce the provisions of this agreement. If in the future it becomes necessary to file this agreement with any court or take other action, the result of which would or could be the making of this agreement a public record, all schedules attached shall be deleted from any such filing or publication and shall only be disclosed, if necessary, under the circumstances most reasonably

calculated to protect, to the greatest extent possible, the confidentiality of such information.

L. ENFORCEMENT; SPECIFIC PERFORMANCE. The parties intend in good faith that this agreement shall be fully enforced as written; and any questions, disagreements, or ambiguities shall be resolved in favor of the enforceability of this agreement at any future time in any jurisdiction. Neither party shall be entitled to any rescission, modification, or other relief from any of the terms of this agreement, or to any additional or different rights or relief of any kind against the other, by reason of mistake of law or mistake of fact. In addition to and not in lieu of any other remedies or methods of enforcement, this agreement may be enforced by specific performance or injunctive relief.

M. VOLUNTARY GIFTS. The waivers contained in this agreement shall not affect either party's rights to make gifts during life or at death to the other party or to receive any gift which either party may choose to make to the other. Each party is free to make any disposition in favor of the other party which could be made in the absence of this agreement, including naming the other party as a devisee under a will or a beneficiary under a trust, naming the other party as a beneficiary of death benefits, life insurance policies, annuities, employee benefit plans, self-employment benefit plans, and similar arrangements. No gift shall constitute an amendment of this agreement.

N. CHANGED CIRCUMSTANCES. The parties anticipate that the value of the separate property of either or both of them may increase or decrease during the marriage or civil union. No such increase or decrease in the value of the separate property of either party, and no other changed circumstance affecting the relative financial positions of the parties, shall in any way affect the validity and binding effect of this agreement. However, such changed circumstances could be considered for amending this agreement, or drafting estate planning documents.

O. EFFECT OF DRAFTING OF PROVISION BY EITHER COUNSEL. No provision in this agreement is to be interpreted for or against either party because that party's counsel drafted the provision.

P. INTEGRATED AGREEMENT. This agreement contains the entire agreement between the parties with regard to the subject matter of the agreement. All prior agreements, covenants, representations, warranties, express and implied, whether oral or written, of the parties with regard to their financial relationship, are either contained in this agreement or are void. No other enforceable agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this agreement. [OPTIONAL: The parties acknowledge that they have been fully advised to their entire satisfaction of the rights they would have in the absence of this agreement and that they fully understand all of the provisions of this agreement.]

Q. COUNTERPARTS. The parties have signed this Agreement in two (2) original documents, one to be retained by each party. This agreement may be executed in several counterparts, and as so executed,

a set of all the pages shall constitute one agreement, binding on both parties, notwithstanding that both parties are not signatory to one original or to the same counterpart.

See Note on Use 45

R. INDEPENDENT COUNSEL. The parties have been advised of their right to independent counsel regarding this agreement, and have either sought such counsel or elected not to seek such counsel. Both parties have had reasonable time to decide to retain independent counsel, to locate a lawyer, and to obtain and consider that lawyer's advice. If either party is unrepresented, such party acknowledges that he/she has the financial ability to retain a lawyer, or the represented party has agreed to pay the reasonable fees and expenses of representation for the unrepresented party.

S. ACKNOWLEDGEMENT. The parties acknowledge that by signing this agreement, each party may be:

1. Giving up the right to be supported by the person you are marrying or to whom you are married;
2. Giving up the right to ownership or control of money and property;
3. Agreeing to pay bills and debts of the person you are marrying or to whom you are married;
4. Giving up the right to money and property if the marriage ends or the person to whom you are married dies; or
5. Giving up the right to have your legal fees paid.

See Note on Use 46

[ALTERNATIVE:

S. ACKNOWLEDGEMENT. Each of the parties makes the following acknowledgments as evidenced by their signing this agreement:

1. That he or she has been provided with sufficient time and adequate information to review this agreement and the attached schedules;
2. That he or she has had the opportunity to ask for, and has received, such requested additional information;
3. That he or she is satisfied with the knowledge he or she has acquired with regard to the other's income, property, financial obligations, and other financial circumstances; and
4. That he or she may be:
   a) Giving up the right to be supported by the person you are marrying or to whom you are married;
   b) Giving up the right to ownership or control of money and property;
   c) Agreeing to pay bills and debts of the person you are marrying or to whom you are married;
   d) Giving up the right to money and property if the marriage ends or the person to whom you are married dies; or

e) Giving up the right to have your legal fees paid.]

See Note on Use 47

In witness whereof, The parties have subscribed their initials on each page of this agreement and the attached Schedules, and have signed and acknowledged this agreement as of the date first set forth above, and further state:

[*1*]

I acknowledge that I have received "A" and have had time to review it and consult with counsel.

_____

[*1*]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ (*1*) is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument and acknowledged it to be [his][her] free and voluntary act for the uses and purposes mentioned in this instrument.

Subscribed and sworn to before me this _____ day of _____, 20___.

_____

Print Name:

Notary public in and for the State of _____
My commission expires: _____

[*2*]

I, _____ (*2*), acknowledge that I am fully acquainted with the nature and extent of the current income and holdings and the current liabilities of _____ (*1*). _____ (*1*) has answered any and all questions I have asked [him][her] about [his][her] income, assets, and liabilities. I have carefully weighed all of the facts and circumstances and desire to marry or enter into a civil union with _____ (*1*) regardless of any financial arrangements made for one another's benefit. I am entering into this agreement freely, voluntarily and with full knowledge of all material facts, including but not limited to the amount, character and value of _____(*1*)'s separate property, income, and liabilities, as set forth, in part, in **Schedule A**.

_____

[*2*]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ (*2*) is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument and acknowledged it to be [his][her] free and voluntary act for the uses and purposes mentioned in this instrument.

Subscribed and sworn to before me this _____ day of _____, 20___.

_____

Print Name:

Notary public in and for the State of _____
My commission expires: _____

ATTORNEY CERTIFICATE

The undersigned hereby certifies that [he][she] is an attorney at law, duly licensed and admitted to practice in the State of Colorado; that [he][she] has been employed by *1*, a party to this agreement, and that [he][she] has advised such party with respect to this agreement and explained to [him][her] the meaning and legal effect of the agreement; and that *1* has acknowledged [his][her] full and complete understanding of this agreement and its legal consequences, and has freely and voluntarily executed this agreement in the undersigned's presence.

_____

_____

Dated: _____

ATTORNEY CERTIFICATE

The undersigned hereby certifies that [he][she] is an attorney at law, duly licensed and admitted to practice in the State of Colorado; that [he][she] has been employed by *2*, a party to this agreement, and that [he][she] has advised such party with respect to this agreement and explained to [him][her] the meaning and legal effect of it; and that *2* has acknowledged [his][her] full and complete understanding of this agreement and its legal consequences, and has freely and voluntarily executed this agreement in the undersigned's presence.

_____

_____

Dated: _____

SAMPLE SCHEDULE A and/or B

Separate Property declared by _____ to be separate before marriage and to be held separate throughout the union.

Employment

1 is currently employed by _____ as_____, and had income during ____(year) of _____.

Assets

1) _____ Bank, _____ Branch, account no. _____, value of approximately $_____.

2) Two firearms:
   a) Glock 9 millimeter handgun, serial number _____, value of approximately $_____.
   b) HK 91 rifle, 308 caliber, serial number _____, value of approximately $_____.

3) Runco Cinema Pro Digital 750 Projection Theatre System, serial number _____, Onkyo 5.1 Theatre Surround Sound System, Yahama 7.1 Theatre Surround Sound System and Chapman speakers originally from the Paramount Theater, 2 at 350 Watts, and 2 at 250, Watts, total value of approximately $_____.

4) Snap-On Tools and roller box and toolbox, value of approximately $_____.

5) _____ Retirement Fund, value of approximately $_____.

6) The residence and real property located at _____, value of approximately $_____, more particularly described as follows:

   ********legal description**********

7) All interest in the _____ Living Trust dated April 1, 1999 as beneficiary of said Trust, value unknown, estimated at between $_____ to $_____.

8) Motor vehicles belonging to _____ acquired before marriage, including:

   8.1) 1968 Ford Torino Convertible GT, #_____, value of approximately $_____;
   8.2) 1960 Cadillac Deville Hardtop, value of approximately $_____;
   8.3) 1988 Chevrolet Iroc Camaro, value of approximately $_____;
   8.4) 1983 Toyota 4X4, value of approximately $_____;
   8.5) 1985 928 Porsche, value of approximately $_____;

8.6) 1977 GMC Pickup Truck, value of approximately $_____;
8.7) 1968 Dodge Charger, value of approximately $_____; and
8.8) Used JetSki, value of approximately $_____.

9) The 401K Salary Reduction Plan & Trust through _____ as existing and in the amount before marriage and held through the offices of Lincoln National Life Insurance Company, and through _____'s employment with _____, Annuity Contract No. _____, value of approximately $_____ to $_____.

Debts and Liabilities

Household utilities: approximately $_____.

_____ _____

Signature Date

SCHEDULE A

Separate Property declared by ____*1*____ to be separate before marriage and to be held separate throughout the union.

Employment

1 is currently employed by _____ as_____, and had income during ____(year) of _____.

Assets

General personal property: $_____ – $_____.

Debts and Liabilities

None.

_____ _____

Signature Date

SCHEDULE B

Separate Property declared by ____*2*____ to be separate before marriage and to be held separate throughout the union.

Employment

2 is currently employed by _____ as_____, and had income during ____(year) of _____.

Assets

General personal property: $_____ – $_____.

Debts and Liabilities

None.

_____ _____

Signature Date

EXHIBIT C
To be signed after the marriage

POSTMARITAL WAIVER OF RIGHTS UNDER THE RETIREMENT EQUITY ACT

The undersigned parties to that certain Premarital Agreement entered into by them on _____, hereby affirm, ratify and agree to all of the provisions of **Article 3, Section B, Paragraph 5** (Retirement Benefits) and **Article 3, Section C, Paragraph 2** (Retirement Benefits Waived), and each party consents to any designation of beneficiary or method of payment made by the other party with respect to such other party's qualified plan benefit. Each party waives any right to any such qualified plan benefit accorded to spouses under the Retirement Equity Act of 1984, or the provisions of any other federal or state law, and each party shall, upon the request of the other, execute, acknowledge, and deliver any instruments or documents appropriate or necessary to carry into effect the intentions and provisions of the Premarital Agreement.

Dated: _____

_____
1

_____
2

See Note on Use 29

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, ____, by [*1*] and [*2*].

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT D

TAX RETURNS

See Note on Use 48

EXHIBIT E
CHECKLIST FOR PREMARITAL/MARITAL AGREEMENT EXECUTION

Date: _____

Each of us acknowledges that:	*1*	*2*
1. I have had sufficient time to discuss the agreement with my attorney prior to signing it	_____	_____
2. I have not consumed any alcohol, drugs or other substances within the last 12 hours that would impair my ability to understand the terms of this agreement and to sign it at this time freely, voluntarily and with full knowledge	_____	_____
3. I have reviewed my partner's schedule of assets, liabilities, and income attached to this agreement	_____	_____
4. I have accurately prepared my own schedule of assets, liabilities, and income attached to the agreement	_____	_____
5. I understand after full consideration with my attorney that the agreement does or may provide to me substantially more or less assets and income than I would receive in the absence of the Agreement under Colorado law in the event of death or dissolution of marriage	_____	_____
6. I am under no pressure or coercion by any person or circumstance to sign this agreement	_____	_____
7. I have had sufficient time to consider each term and the agreement in its entirety before signing the agreement at this time	_____	_____
8. I am satisfied in every respect with the representation I received from my attorney	_____	_____
9. I am signing the agreement freely and voluntarily	_____	_____

_____ _____
1 *2*

NOTES ON USE

1) Basic requirements of the Colorado Premarital and Marital Agreements Act are:

   a) Both parties must have had meaningful access to independent legal representation.
   b) The agreement must be in writing and signed by both parties.
   c) The consent to the agreement must be voluntary and not the result of duress.

   Both parties must have provided adequate financial disclosure of not only assets, but also liabilities and income. Such disclosure cannot be waived.

2) The new Uniform Marital and Premarital Agreements Act provides that a premarital agreement is effective upon the marriage or civil union, and a marital agreement is effective upon signing by both parties. C.R.S. § 14-2-307.

3) The new Uniform Colorado Premarital and Marital Agreements Act applies to parties to a civil union or prospective parties to a civil union.

4) It is a requirement of the new Uniform Premarital and Marital Agreements Act that the party against whom enforcement is sought had reasonable time and meaningful access to independent legal representation. If a party has chosen not to be represented, the last part of this paragraph should be revised accordingly.

5) The Uniform Dissolution of Marriage Act defines marital property as all property acquired by either spouse subsequent to the marriage except: (a) property acquired by gift, bequest, devise, or descent; (b) property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent; (c) property acquired by a spouse after a decree of legal separation; and (d) property excluded by valid agreement of the parties. Care should be taken if the clients want to deviate from the Act. Remember that there are many ways to define separate property and marital property in addition to those listed in this form. Note that items not specified as separate property either in Section 1.1 or section 1.3 of this agreement may be considered marital property.

6) Subparagraph (e) differs from subparagraph (d) above because it includes all tangible personal property, which is frequently not itemized on the schedules.

7) If the parties want to keep any future business interest as separate property, regardless of the source of funding, this language should be adjusted.

8) The Colorado Uniform Dissolution of Marriage Act provides that property that one party brings to the marriage or civil union is separate property. Gifts or inheritances received by one party during the marriage or civil union are also separate property of that party. However, the appreciation in value of these assets during marriage or civil union is marital property in the absence of an agreement to the contrary. This subparagraph states that all appreciation will continue to be treated as separate property.

9) Income in (k) deviates from UDMA → need new language

10) The Colorado Maintenance Statute, C.R.S. § 14-10-114(8)(c)(I), sets forth a specific list of what is counted as income for maintenance purposes, and subsection (8)(c)(II) sets forth a specific list of what is not included in the definition of income for maintenance purposes. The practitioner may want to review this list with the client.

10.5) This provision supports the voluntary maintenance waiver. This agreement is drafted for couples who intend that neither party be entitled to maintenance, were the marriage to dissolve. Practitioner should consider modifying this provision if the client's circumstances make it inappropriate to waive maintenance the client may otherwise be entitled to receive.

11) Note that there are other ways to handle income taxes, depending on the exact circumstances and wishes of the parties. For example, there may be a potentially significant difference in the calculation using adjusted gross income versus total versus taxable income. Below are examples of optional language regarding income taxes. These provisions should be closely tailored to the client's needs and situation.

[ALTERNATIVE: Taxes, Interest, and Penalties.

The parties agree that they may elect to file as married filing separately, or as married filing jointly, whichever they shall choose.

In the event that the parties file jointly, funds for payment of tax due will first come from a joint account, unless the parties agree otherwise. Likewise, any tax refund shall be deposited into an existing joint account and be considered the marital property of the parties.

In the event that the parties decide to file married filing separately, each of the parties shall pay from their own separate assets any tax due, and shall be entitled to receive any refund as separate property.

The parties may change their method of filing at any time.]

12) Federal law gives spouses in a marriage the option to "split" gifts, or treat gifts made to a person or entity as having been made one-half by each spouse. Federal law does not give such rights to partners in a civil union.

13) If the parties wish to address the management of a joint account, and/or how marital and household expenses are to be treated, the exact circumstances and wishes of the parties can be specified in a paragraph included in this agreement regarding such. The new Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and property titled any other way is separate property. Care should be taken if the clients want to deviate from the act.

Because the parties' circumstances or wishes may change in the future, use of a specific amount or percentage of contribution could be problematic.

These provisions should be closely tailored to the client's needs and situation.

The following are some options of suggested language that could be used to specify how marital and household expenses are to be treated, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

[ALTERNATIVE 1 FOR PARAGRAPHS 1 AND 2:
1. JOINT ACCOUNTS. Each party shall make an initial contribution of $_____ to the joint checking account. Further contributions to such account shall be made as the parties shall agree from time to time.
2. JOINT EXPENSES: At the beginning of each month, the parties will review the expenditures of the previous month and make any adjustments to the joint checking account necessary in order to assure that each party pays no more than the following percentage of the household and living expenses for each month, unless otherwise agreed to from time to time by the parties: ____% to be contributed by *1*, and ____% to be contributed by *2*.]

[ALTERNATIVE 2 FOR PARAGRAPH 2:
2. JOINT EXPENSES. All living expenses shall be paid as the parties agree during their marriage or civil union. It is the parties' intent under current circumstances that the parties will pay for their living expenses in proportion to their earned incomes.]

14) If the parties wish to address the management of a joint credit card account, and/or how items charged to that account are to be treated, the exact circumstances and wishes of the parties can be specified in a paragraph included in this agreement regarding such. The new Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and property titled any other way is separate property. Care should be taken if the clients want to deviate from the act.

These provisions should be closely tailored to the client's needs and situation.

The following is one option for suggested language that could be used to specify how a joint credit card account is to be treated, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

[OPTIONAL LANGUAGE FOR PARAGRAPH B.3: 3. Joint Credit Card Account. Prior to the marriage or civil union, *1* (or *2*) opened a separate credit card account with _____ (name of institution), and hereby agrees to shall add the other party to such account as a joint owner of such account. After the other party is added to the account, (i) all assets purchased with this credit card shall become marital property, and (ii) all obligations associated with this joint credit card account shall be the joint obligations of the parties.]

15) The parties should decide whether they want their primary residence to be treated as separate property or marital property. In addition, the exact circumstances and wishes of the parties should be specified in any paragraph included in this agreement regarding their residence. The Colorado Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and that property titled any other way is separate property. Care should be taken if the clients want to deviate from the Act.

The following is one option of suggested language that could be used to treat the residence as marital property, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

PRIMARY RESIDENCE AS MARITAL PROPERTY. Prior to the marriage or civil union, *1* (or *2*) purchased a residence located at _____(address) titled solely in his or her name. It is the parties' desire that this residence be treated as marital property upon their marriage or civil union.

16) This paragraph treats income generated during the marriage or civil union as separate property, and specifies that any appreciation in value of these assets remains separate property. The exact circumstances and wishes of the parties should be specified in any paragraph included in this agreement regarding such income. For example, clients may want income generated during the marriage or civil union from separate property and inheritance to continue to be separate property, but salary and compensation earned from employment during the marriage or civil union to be marital property.

The Colorado Uniform Dissolution of Marriage Act provides that all income generated during the marriage or civil union, and property brought into the marriage or civil union, are marital property. However, this form treats these items as separate property.

17) If either party owns a business interest, the practitioner may consider including a separate provision with special language regarding such business interest in this agreement. Due to the complexities of business interests, this is beyond the scope of this form.

18) Normally in a dissolution of marriage or a dissolution of a civil union, the division of property between parties occurs when the court enters a decree of dissolution that divides their property or a decree approving a separation agreement signed by the parties. This provision accelerates the time when a dissolution of marriage or civil union is deemed to occur between the parties.

If the parties do not want to effectively change the provisions in the Colorado Uniform Dissolution of Marriage Act by agreeing to this Article 2, the practitioner may consider determining the wishes of the clients and drafting accordingly.

19) This language can be adjusted to conform to the wishes of the parties. The parties may want partial support either in certain situations and/or for limited periods of time.

20) This paragraph addresses the difference between (i) separate property being considered as a relevant factor in connection with any equitable division of the parties' marital estate, and (ii) such property being awarded to the other party. This form modifies the definitions of separate property and marital property from the definitions found in the Colorado Uniform Dissolution of Marriage Act. See **Article 1** of this agreement.

21) If the parties claim to have unequal interests in any property held by them as joint tenants with right of survivorship, or they claim that even though they each own a half-interest in the property

as tenants-in-common, they actually have unequal claims to the equity in that property, the practitioner may consider documenting their respective claims to unequal interests in such property, both at the time of signing this agreement and thereafter.

For example, if the parties did not contribute equally to the purchase of a home that is titled in both of their names as joint tenants with right of survivorship and they want to have this agreement reflect that one owns more than an equal amount of the equity in the home and the other owns less than an equal amount of the equity in the home, getting the details down on paper and incorporating them in the appropriate schedule to the agreement may be beneficial.

As another example, regardless of how much money each party contributed to the purchase of the home now titled in their names as joint tenants with right of survivorship, if they want to have any past or future unequal contributions to the maintenance, repair, or remodeling of the home, the debt on the property, or any other expenses, the practitioner may want to consider adding an appropriate provision to the agreement that addresses how the parties have, or in the future will, keep track of their respective unequal contributions to the equity in the home. This may also include non-cash contributions to equity, often referred to as "sweat equity."

22) This is important for clients who have moved to Colorado from a community property state.

23) The practitioner may wish to add the following language to this paragraph: "In case at the time of dissolution one party cannot afford attorney fees, either party may file a petition in a court of competent jurisdiction for an award of temporary attorney fees prior to the resolution of the conflict, and any such temporary attorney fees will be subject to reimbursement to the paying party."

24) The new Uniform Premarital and Marital Agreements Act provides that provisions relating to attorney fees will be unenforceable if considered unconscionable at the time of enforcement. See the Act for provisions deemed unconscionable.

25) See C.R.S. § 15-11-201. It is suggested that the practitioner explain this to the client.

26) See C.R.S. § 15-11-403. It is suggested that the practitioner explain this to the client.

27) See C.R.S. § 15-11-404. As of 2017, the amount of the family allowance is normally no more than thirty-two thousand dollars ($32,000.00), as indexed for cost of living. It is suggested that the practitioner explain this to the client.

28) See C.R.S. §§ 15-11-402, 38-41-201 and 38-41-204. It is suggested that the practitioner explain this to the client.

29) Federal law gives spouses in a marriage pre-retirement and survivor benefits in pension plans, profit-sharing plans, or any other qualified deferred-compensation plans established by the other spouse or the other spouse's employer. Federal law does not give such rights to partners in a civil union. Under ERISA, retirement benefits cannot be waived until after the date of marriage. Exhibit C (attached) or a post-marital agreement should be signed after the marriage in order to

effectuate any waiver of such benefits. Additional ERISA language may be required in this or any subsequent agreement and in any waiver submitted to the plan administrator. In addition, specific ERISA forms may need to be submitted to the plan administrator. *See Kennedy v. Plan Administrator for DuPont*, 555 U.S. 285 (2009). Such language and forms are beyond the scope of this Premarital/Marital Agreement form.

30) This is important for clients who have moved to Colorado from a community property state.

31) Because this form is drafted with the approach of "what's mine is mine and what's yours is yours, care should be taken…. The Colorado Uniform Premarital and Marital Agreements Act, effective July 1, 2014, provides that waivers of rights upon death will be valid only if each right that is waived is specifically identified in the agreement. A blanket waiver of "all rights" is no longer sufficient.

This is a list of all relevant rights. If the parties do not want to waive one or more of these rights, those rights not to be waived should be deleted from this list.

Practitioners should be aware that this paragraph relates to rights in separate property, and Section D, Paragraph 1 relates to rights in marital property. The same rights can be listed under both paragraphs, but care should be taken to assure that those rights waived and those rights retained are what the client wants.

32) This is a list of all relevant rights. If the parties do not want to retain one or more of these rights, those rights not to be retained should be deleted from this list.

Practitioners should be aware that this paragraph relates to rights in marital property, and Section C, Paragraph 3 relates to rights in separate property. The same rights can be listed under both paragraphs, but care should be taken to assure that those rights waived and those rights retained are what the client wants.

33) If the parties do not want to retain one or more of these rights, those rights not to be retained should be deleted from this list.

34) The parties may wish to relinquish one or more of these priorities, especially in a civil union or blended family situation.

35) If there is an agreement that marital property will go to someone other than the surviving party, consider addressing the issue in this agreement to provide that the surviving party be indemnified against any liabilities that attach to such marital property that does not pass to the surviving party.

<DRAFTING NOTE: Do we want to add the duty to defend to cover attorney's fees and related costs during any adversarial proceedings?>

36) Federal law gives surviving spouses in a marriage the right to apply the DSUEA; federal law does not give such rights to partners in a civil union.

[OPTIONAL LANGUAGE (from Gordon Williams): Notwithstanding the provisions of **Article 3** or any other provision herein, upon the death of either party, the survivor shall be entitled to elect portability of the deceased's unused exclusion amount in effect at the time of the deceased's death pursuant to I.R.C. § 2010. No waiver of the right to elect portability of the deceased's unused exclusion amount is intended by any provision of this agreement.]

37) This paragraph is optional. However, if the parties wish to agree as to how property will be distributed upon death, references to specific provisions in applicable estate planning documents may be inserted here. Practitioners should note that this may be considered a contract to will.

38) In a second marriage situation, the parties may wish to provide for the surviving party for life but also make sure that the deceased party's assets come back to the deceased party's children upon the death of the surviving party. This could be accomplished through the use of a family trust.

39) The practitioner may consider adding the following language to this paragraph to ensure that the signature of both parties is on all documents necessary to effect the agreement. However, this will not work for any qualified retirement plans covered by ERISA plans.

"By this agreement, the parties appoint the other party as their attorney in fact for the limited purpose of executing any such document which is necessary to effectuate the purpose of this agreement and which the first party has failed for any reason to execute within seven (7) days after request and presentment."

40) The new Uniform Premarital and Marital Agreements Act provides for limited choice of law. A state other than Colorado may be chosen if that state has a significant relationship to one of the parties or to the agreement itself, and if such other state laws regarding enforcement are not contrary to those of Colorado or to Colorado public policy.

41) <DRAFTING NOTE: The following alternative language has been suggested. Should we include this in a note on use?>

GOVERNING LAW.

a. Each party recognizes that the provisions of the laws of the State of Colorado affecting the rights and interests of persons in the property or estate of their spouses or partners, during their lifetime or at death, may from time-to-time be changed, limited, or enlarged, and that the laws of other jurisdictions or places may contain the same or similar or substantially different provisions. It is the intention and agreement of the parties to waive and release all such rights and interests now or hereafter granted by, or as they may be changed, limited, or enlarged in the future under the laws of the State of Colorado, and any other jurisdiction or place.

b. In the event that any time during the parties' marriage or civil union they become domiciled in a "community property" or other equitable distribution state or jurisdiction under the laws of which a spouse or partner, in the absence of a marital or other contrary agreement, acquire property interests in the property of the community or of the other, or in any other state or jurisdiction under the laws of which property interests, in the absence of an agreement, are different from the property interests of a spouse or partner under the

laws of the State of Colorado, their respective property rights, real and personal, tangible and intangible, including all of the earnings, appreciation, accretion, and any other increases in value thereof, shall be determined consistent and based upon the characterization, terms, and provisions set forth in this Agreement.

c. This agreement shall extend to all property, (whether real, personal, or tangible) whether located within Colorado or not, now owned or hereafter acquired during the marriage or civil union in any way by either party or by both parties.

d. The validity, interpretation, and implementation of this agreement shall be determined by the laws of the State of Colorado as it existed on the effective date of this agreement even though the parties, or either of them, may now be or hereafter become domiciled in another jurisdiction.

e. Although this agreement is being executed in and under the laws of the United States of America, the parties intend and desire that it be fully enforceable and effective in every country and jurisdiction in the world, regardless of any law to the contrary in any such jurisdiction. Accordingly, each of them shall at all times execute such documents and take such actions, upon the request of the other, to make this agreement enforceable and effective in one or more other countries or jurisdictions.

42) If the alternative language above is used for Paragraph C, this language may be duplicative. If the alternative language above for Paragraph 3 is not used, then this NOTE ON USE will not be necessary.

43) The new Uniform Premarital and Marital Agreements Act provides that provisions relating to attorney fees will be unenforceable if considered unconscionable at the time of enforcement. See the Act for provisions deemed unconscionable.

44) In order for an amendment or revocation of a premarital or marital agreement to be enforceable, it must also comply with the terms of the Uniform Premarital and Marital Agreements Act under C.R.S. § 14-2-309.

45) It is a requirement of the new Uniform Premarital and Marital Agreements Act that the party against whom enforcement is sought had meaningful access to independent legal representation.

46) If one party is not represented by independent counsel, you MUST insert this acknowledgement language (see C.R.S. § 14-2-309(3)). **<DRAFTING NOTE:** C.R.S. § 14-2-309(3) requires the use of specific language contained in that statute (or language "substantially similar" to the specific language. That does not refer to civil unions. Should we add references to civil unions in this paragraph?>

47) The practitioner may want to consider using the "Checklist for Premarital/Marital Agreement Execution", which is attached to this form as Exhibit E.

48) This Exhibit E is drafted assuming that both parties are represented. If either party is not represented, this exhibit should be revised accordingly.

OUTLINE (8/17/17) FOR MARITAL AGREEMENT FORM

RECITALS

(not an Article, but a stand alone section)

ARTICLE I – What is separate property vs. what is marital property

A. Separate Property: defined; ownership/control of separate property; separate property debts; income taxes; gift taxes
B. Marital Property: defined; joint accounts; joint expenses; joint credit cards; payment of debts
C. Specific Property Provisions: personal residence; business interests

ARTICLE II – Waivers & Retention of Rights at Dissolution

1. Definition of Dissolution
2. Description of Right to Maintenance upon Dissolution
3. Impact of Determination of Unconscionability
4. Waiver of Maintenance
5. Rights Waived in Separate Property
6. Joint Property Rights retained
7. Community Property
8. Legal Fees regarding Dissolution
9. Liabilities (with separate property and with marital property)

ARTICLE III – Waivers & Retention of Rights at Death

A. General Provisions (joint property and marital property)

B. Description of SS's Statutory Rights

1. Right to Elective Share
2. Right to Exempt Property
3. Right to Family Allowance
4. Right to Homestead Exemption
5. Right to Retirement Benefits
6. Right to Community Property

C. Statutory Rights Waived

1. Separate Property Rights Waived = General Waiver listing all rights mentioned in Section B above
2. Retirement Rights Waived
3. Statutory Property Rights Waived in Separate Property (may be redundant with 1.) A waiver of statutory rights *with regard to separate property*.

D. Retention of Statutory Rights

1. Retained Statutory Property Rights *with regard to marital property*
2. Statutory Fiduciary and Other Rights Retained

3. Priority for Appointment in Protective Proceedings
4. Right to Name Successor Fiduciary

E. Other Rights

1. Liabilities regarding marital property
2. Liabilities regarding separate property

F. Provisions upon Death

1. Unused Exemption Amount
2. No Contest
3. Estate Planning Documents to comply with the marital agreement

ARTICLE IV- Miscellaneous Provisions

1. Recitals incorporated by reference
2. Binding effect
3. Construction; Choice of Law
4. Changes in the Law
5. Waiver
6. Legal Fees regarding interpretation, enforcement or performance of agreement
7. Headings
8. Severability
9. Competence; Fairness
10. Amendments
11. Confidentiality
12. Enforcement; Specific performance
13. Voluntary Gifts
14. Changed circumstances
15. Effect of Drafting Agreement by either counsel
16. Integrated agreement
17. Counterparts
18. Independent Counsel
19. Acknowledgement: Bolded as identified in statute (C.R.S. 14-2-309(3))

Signatures; Attorney Certificates; Exhibits of Assets and Liabilities; Post Marital Waiver of Rights Under ERISA (if needed); & Execution Checklist

This sample form of beneficiary deed, as defined in C.R.S. § 15-15-401(1), is based on the statutory language provided in C.R.S. § 15-15-404 and is intended to be used when an owner intends to transfer an interest in real property effective on the death of the owner. *See* C.R.S. §§ 15-15-401, *et seq*. The beneficiary deed need not be supported by consideration, the consent of a grantee-beneficiary prior to the death of the grantor-owner shall not be required, and, subject to the right of the grantee-beneficiary to disclaim or refuse to accept the property, the conveyance shall be effective upon the death of the owner provided properly prepared and recorded in the county where the real property is located during the owner's life. C.R.S. §§ 15-15-402, -414.

Unless designated otherwise in this form, the beneficiary deed does not contain any warranties of title and shall have the same force and effect as a conveyance made using a bargain and sale deed. C.R.S. § 15-15-404(2). This beneficiary deed is revocable by the grantor-owner prior to death in the manner prescribed by C.R.S. § 15-15-405. The advantage of using this form of deed is that when effectively used, the transfer avoids probate and the requirement of conforming with the provisions of the Colorado Probate Code governing wills. C.R.S. § 15-15-412.

Note that a grantee-beneficiary of a beneficiary deed takes title to the grantor-owner's interest subject to all encumbrances and other interests affecting title to the property, and the interest of the grantee-beneficiary shall be subject to any claim of the Department of Health Care Policy and Financing for recovery of medical assistance payments. C.R.S. § 15-15-407. Further, use of this form shall cause the property to be considered a countable resource for Medicaid eligibility purposes and may disqualify the grantor-owner from otherwise qualifying for medical assistance. C.R.S. § 15-15-403.

Note that a trust does not qualify as a valid grantor of a beneficiary deed, therefore this form should not be used to transfer property held in trust. *Fischbach v. Holzberlein*, 215 P.3d 407 (Colo. App. 2009).

See Note on Use 9

BENEFICIARY DEED

C.R.S. §§ 15-15-401, *et seq*.

CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

[NAME OF GRANTOR] _____, as grantor, designates [NAME OF TRUST] _____ as grantee-beneficiary, whose legal address is [STREET ADDRESS OF TRUSTEE] _____

If grantee-beneficiary fails to survive grantor, grantor designates [ALTERNATE BENEFICIARY] _____ as successor grantee-beneficiary, whose legal address is [STREET ADDRESS OF TRUSTEE] _____.

Grantor transfers, sells, and conveys on grantor's death to the grantee-beneficiary the following described real property located in the County of _____, State of Colorado:

[INSERT LEGAL DESCRIPTION]

also known and numbered as [ADDRESS OF REAL ESTATE] _____

THIS BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS REAL PROPERTY.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY DISQUALIFY THE GRANTOR FROM BEING DETERMINED ELIGIBLE FOR OR FROM RECEIVING MEDICAID UNDER TITLE 26, COLORADO REVISED STATUTES.

WARNING: EXECUTION OF THIS BENEFICIARY DEED MAY NOT AVOID PROBATE.

Executed on [DATE] _____.

_____
Grantor

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by [NAME OF GRANTOR] _____.

Witness my hand and official seal.

My commission expires: _____.

_____
Notary Public

_____
Name and Address of Person Creating Newly Created Legal Description (C.R.S. § 38-35-106.5)

*(Note to Assessor and Treasurer: This address is for identification purposes only. All notices and tax statements should continue to be sent to Grantor.)

NOTES ON USE

9) *Beneficiary Deeds*. The following Notes on Use are applicable only for the use of beneficiary deeds. *See* C.R.S. §§ 15-15-401, *et seq.*

a) While the beneficiary deed effectively transfers an owner's interest in property at the time of death, it provides the owner with full control over the property during life. C.R.S. § 15-15-402(3). A valid beneficiary deed cannot be revoked, altered, or amended by a dispositive instrument such as a will or trust. C.R.S. § 15-15-405(4).

b) Anti-lapse provisions of the Colorado Probate Code are not applicable to the beneficiary deed. However, a successor or alternate beneficiary may be named in the deed itself. C.R.S. § 15-15-407(5). The grantee-beneficiary does not need to consent to or have notice of the beneficiary deed for the transfer to be valid. Further, no consideration is necessary. C.R.S. § 15-15-402.

c) A beneficiary deed does not sever a joint tenancy. Rather, the grantee-beneficiary's interest in a joint tenancy will vest only in the grantor of the beneficiary deed is the sole surviving joint tenant at the time of death. C.R.S. § 15-15-408.

d) For further discussion of the use of beneficiary deeds, see § 22.6.5, "Beneficiary Deeds," in the *Colorado Estate Planning Handbook*. *See, generally*, Chapter 22, "Real Property," *Colorado Estate Planning Handbook (Orange Book Handbook)*, Sixth Ed. (David K. Johns et al. eds., CLE in Colo., Inc. Supp. 2016).