

**Potential devisee is entitled to notice of hearing during which court will determine validity of will.** If, at time of hearing, the court had yet to determine the validity of the will, the potential devisee must be given notice in order to have the opportunity to meet her burden to prove decedent's intent and overcome any presumption of revocation. *In re Estate of Evarts*, 166 P.3d 161 (Colo. App. 2007).

**Applied** in *Craig v. Rider*, 651 P.2d 397 (Colo. 1982).

■ **15-10-402. Notice - waiver.** A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

**Source:** L. 73: R&RE, p. 1547, § 1. **C.R.S. 1963:** § 153-1-402.

#### ANNOTATION

**Law reviews.** For article, "Will Contests—Some Procedural Aspects", see 15 Colo. Law. 787 (1986).

■ **15-10-403. Pleadings - when parties bound by others - notice.** (1) In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the provisions of this section are applicable.

(2) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(3) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate.

(c) If there is no conflict of interest and no conservator or guardian has been appointed, a parent may rep-

resent his minor child, and where there is such representation orders binding the parent bind the minor child.

(d) An unborn, unascertained, minor, or incapacitated person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(4) Notice is required as follows:

(a) Notice as prescribed by section 15-10-401 shall be given to each interested person or to one who can bind an interested person as described in subsection (3) of this section. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn, unascertained, minor, or incapacitated persons who are not represented under subsection (3) of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn, unascertained, minor, or incapacitated persons.

(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, protected, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that a need for such representation appears. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

**Source:** L. 73: R&RE, p. 1547, § 1. **C.R.S. 1963:** § 153-1-403. **L. 2000:** (3)(d) and (4)(b) amended, p. 1172, § 2, effective May 26. **L. 2009:** (5) amended, (HB 09-1241), ch. 169, p. 761, § 16, effective April 22.

#### ANNOTATION

**Law reviews.** For article, "Trust Termination and Modification", see 15 Colo. Law. 389 (1986). For article, "Will Contests—Some Procedural Aspects", see 15 Colo. Law. 787 (1986). For article, "The Adoptee Trap, the Accidental Beneficiary, and the Rational Testator", see 42 Colo. Law. 29 (February 2013).

## PART 5

### FIDUCIARY OVERSIGHT, REMOVAL, SANCTIONS, AND CONTEMPT

■ **15-10-501. Court powers - definitions - application.** (1) **Court powers.** A court, incident to a court proceeding, possesses and may employ all of

the powers and authority expressed in the provisions of this part 5 to maintain the degree of supervision necessary to ensure the timely and proper administration of estates by fiduciaries over whom the court has obtained jurisdiction. Nothing in this part 5 shall be interpreted to limit a court's powers under Colorado law. The powers of a court as described in this part 5 do not confer jurisdiction over the fiduciaries of non-supervised trusts, private trusts, agencies created by powers of attorney, and custodial accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., except as provided in paragraph (c) of subsection (2) of this section.

(2) **Definitions.** As used in this part 5, unless the context otherwise requires:

(a) "Court" means a district court of Colorado and the probate court of the city and county of Denver.

(b) "Estate" means the estate of a decedent; a guardianship; a protective proceeding; a trust, including an implied trust; an agency created by a power of attorney; or a custodial account created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

(c) "Jurisdiction" means, and is restricted to, the personal jurisdiction obtained by a court over a fiduciary as a result of the filing of a proceeding concerning the estate. The filing of a trust registration statement, by itself, shall not constitute a proceeding for the purposes of this part 5.

(3) **Application.** The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

**Source: L. 2008:** Entire part added, p. 477, § 1, effective July 1.

■ **15-10-502. Initial investigation.** (1) If, during the administration of an estate, a court desires to be informed about the current status of the administration, then the court, on its own motion or the request of an interested person, and without the need to state any reason for its actions, may:

(a) Send a letter to the fiduciary of the estate directing the fiduciary to file with the court one or

more of the following documents on or before a date to be determined by the court:

- (I) A status report;
- (II) An inventory of the current assets of the estate;
- (III) An up-to-date interim accounting; or
- (IV) A financial report concerning the estate;

(b) Order the fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1) on or before a date to be determined by the court.

(2) When a court has directed a fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1), the fiduciary may request that the documents be placed under security pursuant to rule 20 of the Colorado rules of probate procedure.

**Source: L. 2008:** Entire part added, p. 478, § 1, effective July 1.

■ **15-10-503. Power of a court to address the conduct of a fiduciary - emergencies - nonemergencies.** (1) **Emergency situations - court action without the requirement of prior notice or hearing.** If it appears to a court that an emergency exists because a fiduciary's actions or omissions pose an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may, on its own motion or upon the request of an interested person, without a hearing and without following any of the procedures authorized by section 15-10-502, order the immediate restraint, restriction, or suspension of the powers of the fiduciary; direct the fiduciary to appear before the court; or take such further action as the court deems appropriate to protect the ward or protected person or the assets of the estate. If a court restrains, restricts, or suspends the powers of a fiduciary, the court shall set a hearing and direct that notice be given pursuant to section 15-10-505. The clerk of the court shall immediately note the restraint, restriction, or suspension on the fiduciary's letters, if any. Any action for the removal, surcharge, or sanction of a fiduciary shall be governed by this section.

(2) **Nonemergency situations - court action after notice and hearing.** Upon petition by a person who appears to have an interest in an estate, or upon the court's own motion, and after a hearing for which notice to the fiduciary has been provided pursuant to section 15-10-505, a court may order any one or more of the following:

(a) Supervised administration of a decedent's estate, as described in part 5 of article 12 of this title. The degree and extent of the supervision shall be endorsed upon the fiduciary's letters, if any.

(b) A temporary restraint on the fiduciary's performance of specified acts of administration, disbursement, or distribution; a temporary restraint on the fiduciary's exercise of any powers or discharge of any duties of the office of the fiduciary; or any other order to secure proper performance of the fiduciary's duty if it appears to the court that, in the absence of such an order, the fiduciary may take some action that would unreasonably jeopardize the interest of the petitioner or of some other interested person. The court may make persons with whom the fiduciary may transact business parties to any order issued pursuant to this paragraph (b). The restraint shall be endorsed upon the fiduciary's letters, if any.

(c) Additional restrictions on the powers of the fiduciary. The restrictions shall be endorsed upon the fiduciary's letters, if any.

(d) The suspension of the fiduciary if the court determines that the fiduciary has violated his, her, or its fiduciary duties. If a court orders the suspension of a fiduciary pursuant to this paragraph (d), the court shall direct that the suspension be endorsed upon the fiduciary's letters, if any.

(e) The appointment of a temporary or permanent successor fiduciary;

(f) A review of the fiduciary's conduct. If a court orders a review of the fiduciary's conduct, the court shall specify the scope and duration of the review in the court's order.

(g) A surcharge or sanction of the fiduciary pursuant to section 15-10-504;

(h) The removal of the fiduciary; or

(i) Such further relief as the court deems appropriate to protect the ward or protected person or the assets of the estate.

**(3) Removal of a fiduciary - procedures.** A court may remove a fiduciary for cause at any time, and the following provisions apply:

(a) If a court orders the removal of a fiduciary, the court shall direct by order the disposition of the assets remaining in the name of, or under the control of, the fiduciary being removed.

(b) If a court orders the removal of a fiduciary, the court shall direct that the fiduciary's letters, if any,

be revoked and that such revocation be endorsed upon the fiduciary's letters, if any.

(c) Cause for removal of a fiduciary exists when:

(I) Removal would be in the best interests of the estate;

(II) It is shown that the fiduciary or the person seeking the fiduciary's appointment intentionally misrepresented material facts in the proceedings leading to the fiduciary's appointment; or

(III) The fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

**(4) Petition for removal - temporary restraints on fiduciary powers.** After a fiduciary receives notice of the filing of a petition for his, her, or its removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.

**Source: L. 2008:** Entire part added, p. 478, § 1, effective July 1. **L. 2016:** (1), (2)(e), (2)(f), (2)(g), and (2)(h) amended and (3) and (4) added, (SB 16-131), ch. 286, p. 1163, § 1, effective August 10.

■ **15-10-504. Surcharge - contempt - sanctions against fiduciaries.** (1) **Notice.** Except as provided in subsection (3) of this section, notice to a fiduciary concerning any matters governed by the provisions of this section shall be provided pursuant to section 15-10-505.

(2) **Surcharge.** (a) If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs.

(b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of part 6 of this article.

(3) **Contempt proceedings against fiduciary.** Nothing in this part 5 shall be interpreted to limit or restrict a court's authority to proceed against a fiduciary for direct contempt as provided in rule 107 of the Colorado rules of civil procedure. In addition, if a fiduciary fails to comply with an order of a court issued pursuant to this part 5, the court may proceed against the fiduciary for indirect contempt as provided in rule 107 of the Colorado rules of civil procedure. A court may initiate indirect contempt proceedings on its own motion or upon the filing of a motion

supported by affidavit as described in rule 107 of the Colorado rules of civil procedure.

(4) **Sanctions.** If a court determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court, after a hearing, may order such other sanctions as the court deems appropriate.

**Source: L. 2008:** Entire part added, p. 480, § 1, effective July 1. **L. 2011:** (2)(b) amended, (SB 11-083), ch. 101, p. 302, § 2, effective August 10.

■ **15-10-505. Notice to fiduciary - current address on file.** (1) In all actions undertaken pursuant to this part 5, the following provisions shall govern notice to fiduciaries:

(a) **In emergency situations.** If it appears to a court that an emergency exists because there is an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may take appropriate action and issue an order with or without prior notice to a fiduciary as the court determines appropriate based upon the nature of the emergency. If a fiduciary of an estate is not present when an emergency order is entered concerning the administration of the estate, the court shall attempt to notify the fiduciary of the court's action and mail a copy of the court's order to the fiduciary at the fiduciary's last address of record on file with the court. Notice of the court's order shall also be served, pursuant to section 15-10-401, upon all interested persons or as the court directs. Notice of all hearings set under section 15-10-503 (1) shall be given pursuant to section 15-10-401.

(b) **In nonemergency situations.** In nonemergency situations, notice to a fiduciary shall be governed by section 15-10-401.

(c) **Contempt.** For a hearing to determine possible contempt of a fiduciary, the court shall provide notice to the fiduciary as required by rule 107 of the Colorado rules of civil procedure.

(2) **Fiduciary's responsibility to keep current address in court file.** Every fiduciary appointed by a court is required to keep his, her, or its current address and telephone number on file with the court. The fiduciary shall promptly notify the court of any change in the fiduciary's address or telephone number.

**Source: L. 2008:** Entire part added, p. 481, § 1, effective July 1.

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## PART 6

### COMPENSATION AND COST RECOVERY

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■ **15-10-601. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as the estate is originally constituted and as the estate exists from time to time during administration. "Estate" includes custodial property as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; custodial trust property as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and the property of a principal that is subject to a power of attorney.

(2) "Fiduciary" means:

(a) A personal representative, guardian, conservator, or trustee;

(b) A custodian as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;

(c) A custodial trustee as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;

(d) An agent as defined in sections 15-10-201 (1), 15-14-602 (3), and 15-14-702 (1); and

(e) A public administrator as described in section 15-12-619.

(3) (a) "Governing instrument" means a will or a trust or a donative, appointive, or nominative instrument of any other type, including but not limited to:

(I) An instrument that creates a custodial transfer as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;

(II) A custodial trust as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;

(III) A medical durable power of attorney as described in section 15-14-506;

(IV) An agency instrument as defined in section 15-14-602 (2);

(V) A power of attorney as defined in section 15-14-702 (7);

(VI) A court order appointing a guardian as described in parts 2 and 3 of article 14 of this title; and

(VII) A court order appointing a conservator as described in part 4 of article 14 of this title.

(b) "Governing instrument" does not include a deed; an insurance or annuity policy; a multiple-party