

UPDATE OF COLORADO LAW
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Statutory Update

Uniform Power of Attorney Act - C.R.S. 15-14-701, et.seq. This is a broad enough topic that it merits its own program. I mention it to make you aware of its existence and where to find it in Title 15. Unless otherwise provided in a specific provision, the statute is effective for powers of attorney created on or after January 1, 2010.

Designated Beneficiary Agreements. C.R.S. 15-22-101, et. seq. Effective July 1, 2009. Stated purposes of this act are (i) to make existing laws relating to health care, medical emergencies, incapacity, death, and administration of decedent's estates available to more persons through a process of documenting designated beneficiary agreements and (ii) to allow individuals to elect to have certain default provisions in state statutes provide rights, benefits and protections to a designated beneficiary in situations in which no valid and enforceable estate planning documents exist.

The act provides that a party to a designated beneficiary agreement can grant his or her designated beneficiary certain rights, including:

- the right to own property jointly with the party
- the right to be designated as the beneficiary of the party's life insurance policies and retirement plans
- the right to be covered as a dependent under the party's health insurance plan (if the party's employer elects to provide coverage for designated beneficiaries as dependents).
- the right to serve as the party's conservator or guardian
- the right to visit the party in health care facilities, such as hospitals and nursing homes
- the right to have priority for appointment as the party's personal representative
- the right to act as a proxy decision-maker or surrogate decision-maker to make medical decisions for the party
- the right to receive notice of the withholding or withdrawal of life-sustaining procedures for the party and the right to challenge a Declaration as to Medical or surgical Treatment on behalf of the party
- the right to act as an agent and to make, revoke, or object to anatomical gifts on behalf of the party
- the right to inherit property through intestate succession if the party dies intestate
- the right to have standing to sue for wrongful death of the party
- the right to direct the disposition of the party's last remains.

The parties to the agreement must be over age 18, competent to enter into a contract, not married to another person and neither party may be a party to another designated beneficiary agreement. In order to be valid, the agreement must be in substantial compliance with the requirements of the Act. Specifically, the agreement must contain the disclaimer and certain instructions set forth in the form Agreement (See Section 15-22-106), signed by the parties, notarized and recorded with the county clerk and recorder in the county in which one of the parties resides. The Act contains a form of Designated Beneficiary Agreement and a form of Revocation of Designated Beneficiary Agreement.

To the extent that a superceding legal document conflicts with the agreement, the superceding legal document controls. This is true regardless of when the superceding legal document was executed. A superceding legal document is a will, codicil, power of attorney, medical durable power of attorney, trust instrument, a beneficiary designation in an insurance policy or policy of health care coverage, a beneficiary designation in a retirement or pension plan, a beneficiary designation for a deposit account, a declaration as to medical or surgical treatment executed pursuant to article 18 of Title 15, a declaration as to disposition of last remains, and a marriage license.

Either party to a designated beneficiary agreement may unilaterally revoke the agreement by recording a dated, signed and notarized revocation with the clerk and recorder in the county in which the agreement was recorded. The agreement is also deemed revoked upon the marriage of either party, and, in the case of a common law marriage, as of the date a court determines a valid common law marriage exists. The agreement terminates upon the death of either of the parties to the agreement. However, a right or power conferred upon the surviving designated beneficiary survives the death of the other designated beneficiary.

The Act also amends several other statutes to be consistent with the provisions of the Act and to recognize and allow for the rights that can be granted to a designated beneficiary pursuant to the Act. For example, the Act amends Section 15-11-103 to provide that a designated beneficiary receives the decedent's entire intestate estate, unless the decedent has surviving children, in which case the designated beneficiary receives one-half of the intestate estate.

Changes to Uniform Principal and Income Act. There are two sets of changes to the UPIA. First, SB 09-139, adopts certain amendments to the UPIA drafted by the National Conference of Commissioners on Uniform State Laws. These amendments affect allocations of payments made by a trustee from a separate fund relating to qualifying for the federal estate tax marital deduction, determination of the internal income of separate funds and payment of taxes on a trust's share of an entity's taxable income. There were also changes made by HB 09-1241. This bill enacts the UPIA of 1955, as it existed at the time of the adoption of UPIA 2000. The 1955 Act applies only to legal estates or trusts that are not subject to the 2000 Act. The Bill also adds a new provision to the 2000 Act governing the allocation of principal and income upon disposition of natural resources. Basically, what this provision does is re-enact pre 200 Act law. Important to review if you do any work for clients with oil and gas or mineral interests.

Changes to Notaries Public Act. Of most immediate impact, the Act requires the secretary of state to verify the lawful presence of each notary applicant in the United States. The changes also repeal the authority of the notary to notarize photographs, and authorize the secretary of state to promulgate rules to require that notaries public complete a training program.

Inflation Adjustments. Effective July 1, 2010, establishes a formula for an automatic annual adjustment to the dollar amounts for the spousal share of an intestate estate, the spouse's elective share, exempt property and the family allowance. The adjustments are made with reference to the CPI. See Section 15-10-112.

Section 15-10-111 - Entry into a safe deposit box of a decedent by a representative.

Section 15-10-403 - The court may appoint a guardian ad litem at any point in a proceeding to represent the interest of a protected person if the court determines that a need for such representation appears.

Section 15-12-709 - Clarifies that the personal representative, not the person who is presumptively entitled to receive certain items of the decedent's property, may need to take possession of the decedent's property in order to administer the decedent's estate.

Section 15-14-202 - No longer requires a written instrument (that is not a will) that appoints a guardian for a minor child to be signed by at least two witnesses and notarized. Such instrument must be signed only by the appointing parent or guardian.

Intestate Succession - These provisions effective July 1, 2010.

Section 15-11-103 - the provisions relating to the intestate share of grandparents (or the descendants thereof) of a decedent who has no surviving descendants, parents, or siblings. The Act revokes the provisions of Section 15-11-103 relating to birth children adopted away from the decedent and birth parents of a decedent who was adopted away, and adds provisions to allow the surviving descendants of a predeceased spouse of a decedent to inherit as a last alternative to the estate escheating to the state.

Section 15-11-104 - amended to clarify the requirement of survival by 120 hours as it applies to an heir who was born before the decedent's death and an individual who was in gestation at the decedent's death.

Section 15-11-514 - bars a parent from inheriting from or through a child if the parent's parental rights were terminated and not judicially reestablished prior to the child's death or if the child died before reaching 18 years of age and there is clear and convincing evidence that the parental rights could have been terminated immediately before the child's death.

Sections 15-11-115 through 15-11-122 - new sections governing inheritance through intestate succession and parent-child relationship. **Section 15-11-117** states that for purposes of inheritance through intestate succession, a parent-child relationship exists between a child and a child's genetic parents, regardless of the parents' marital status. **Section 15-11-118(1)** provides that a parent-child relationship exists between an adoptee and an adoptee's adoptive parents. **Sections 15-11-118 and 15-11-122** address inheritance/parent-child issues for children in the process of being adopted, adopted children, children conceived through assisted reproduction and children conceived pursuant to gestational agreements.

Wills - These provisions effective for governing instruments executed and decedent's dying after July 1, 2010.

Section 15-11-502(1)(c)(2) - allows the use of notarized wills as an alternative to wills that are attested by two witnesses.

Section 15-11-705(2) - amended to provide that a class gift that uses a term of relationship to identify its members includes children of assisted reproduction, gestational children, adopted children and children born to parents who are not married to each other, and to the descendants of all such children, if appropriate to the class. Section 15-11-705(7) sets forth class closing rules for situations involving children in utero, posthumously conceived children and children in the process of being adopted.

Section 15-11-806 and 15-11-807 - allows a court to reform the terms of a governing instrument to conform to the transferor's intention if it is proved by clear and convincing evidence that the

transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law. The court may also modify the terms of a governing instrument to achieve the transferor's tax objectives.

Federal Developments Affecting Estate and Gift Tax Law

Estate of Thelma G. Hurford V. Comm'r., TC Memo 2008-278 (12/11/08). Section 2036 and FLPs.; annuity arrangements. This is a good case to read for a comprehensive list and discussion of ways that the attorney and CPA can fail to follow through, as well as practice outside their areas of competency. A good example of what not to do.

Estate of Marjorie DeGreeff Litchfield v. Comm'n'r., TC Memo 2009-21 (1/29/09) Allowed discounts for the estate's minority interests in two corporations for capital gain tax on built in gain, lack of control and lack of marketability. Interesting in this case is a description of the methodology the estate successfully used in arriving at values and the actual percentages allowed for the discounts.

Rev. Rul 2009-13, Rev. Rul 2009-14. Tax consequences of a surrender/sale of a life insurance policy.

Publications 1457, 1458 and 1459 - adjustments to the annuity tables. The updated tables reflect more recent mortality experience and a broader range of interest rates.