

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.

PART 6

COMPENSATION AND COST RECOVERY

■ **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

account; a security registered in beneficiary form; a pension; a profit-sharing, retirement, or similar benefit plan; or an individual retirement account.

Source: L. 2011: Entire part added, (SB 11-083), ch. 101, p. 295, § 1, effective August 10.

■ **15-10-602. Recovery of reasonable compensation and costs.** (1) A fiduciary and his or her lawyer are entitled to reasonable compensation for services rendered on behalf of an estate.

(2) A lawyer hired by a respondent, ward, or protected person is entitled to reasonable compensation and costs incurred for the legal representation the lawyer provides for the respondent, ward, or protected person.

(3) A third party who performs services at the request of a court is entitled to reasonable compensation.

(4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.

(5) Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered pursuant to this section may be paid directly or reimbursed without a court order. After a fiduciary receives notice of proceedings for his, her, or its removal, the fiduciary shall not pay compensation or attorney fees and costs from the estate without an order of the court. A court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.

(6) Except as provided in sections 15-10-605 (2), (3), and (4); 15-14-318 (4); and 15-14-431 (5), if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian, or trustee defends or prosecutes a proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate reimbursement for reasonable costs and disbursements, including but not limited to reasonable attorney fees.

(7) (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.

(b) If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, respondent, ward, or protected person, the lawyer or other person not appointed by

the court may receive costs and reasonable compensation from the estate as provided below:

(I) The lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within thirty-five days after the entry of the order or within a greater or lesser time as the court may direct. Any objection thereto must be filed within twenty-one days after the filing of the request for compensation or costs. Any reply to the objection must be filed within seven days after the filing of the objection.

(II) After a request for compensation or costs or an objection to such a request, if any has been filed, the court shall determine, without a hearing, the benefit, if any, that the estate received from the services provided.

(III) If the court determines that a compensable benefit resulted from the services, then the person requesting compensation or costs shall submit to the court only those fees or costs purportedly incurred in providing the beneficial services. If no objection to those fees and costs is filed, the court shall determine the amount of compensation or costs to be awarded for the benefit, without a hearing.

(IV) An interested person disputing the reasonableness of the amount of compensation or costs requested for the beneficial services may file an objection. If an objection is filed, the proceedings to resolve the dispute shall be governed by section 15-10-604.

(c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in section 15-10-603 (3):

(I) The value of a benefit to the estate, respondent, ward, or protected person;

(II) The number of parties involved in addressing the issue;

(III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and

(IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

(d) For the purposes of this subsection (7), services rendered by a lawyer or a person not appointed by a court that confer a benefit to an estate, respondent, ward, or protected person are those significant, demonstrable, and generally noncumulative services that assist the court in resolving material issues in the administration of an estate. By way of example and not limitation, such benefits may result in significant-

ly increasing or preventing a significant decrease in the size of the estate, preventing or exposing maladministration or a material breach of fiduciary duty, or clarifying and upholding a decedent's, settlor's, principal's, respondent's, ward's, or protected person's intent with respect to a material issue in dispute.

(8) A fiduciary who is a member of a law firm may use the services of the law firm and charge for the reasonable value of the services of the members and staff of the firm that assist the fiduciary in performing his or her duties.

(9) Every application or petition for appointment of a fiduciary filed under this code, including without limitation those required under sections 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, and 15-14-403, shall include a statement by the applicant or petitioner disclosing the basis upon which any compensation is to be charged to the estate by the fiduciary and his or her or its counsel or shall state that the basis has not yet been determined. The disclosure statement shall specifically describe, as is applicable, the hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated. This disclosure obligation shall be continuing in nature so as to require supplemental disclosures if material changes to the basis for charging fees take place.

Source: **L. 2011:** Entire part added, (SB 11-083), ch. 101, p. 296, § 1, effective August 10. **L. 2012:** (7)(b)(I) amended, (SB 12-175), ch. 208, p. 837, § 41, effective July 1. **L. 2016:** (5), (6), and (7)(b)(I) amended, (SB 16-131), ch. 286, p. 1166, § 5, effective August 10.

■ **15-10-603. Factors in determining the reasonableness of compensation and costs.** (1) A court may review and determine:

(a) The reasonableness of the compensation of any fiduciary, lawyer, or other person who:

(I) Is employed on behalf of an estate, fiduciary, respondent, ward, or protected person;

(II) Is appointed by the court; or

(III) Provides beneficial services to an estate, respondent, ward, or protected person; and

(b) The appropriateness of any cost sought to be paid by or recovered from an estate.

(2) In considering the reasonableness of the compensation, there shall be no presumption that any

method of charging a fee for services rendered to an estate, fiduciary, principal, respondent, ward, or protected person is per se unreasonable. Regardless of the method used for charging a fee, in determining appropriate compensation, the court shall apply the standard of reasonableness in light of all relevant facts and circumstances.

(3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court considers relevant in reaching its decision:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the service properly;

(b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;

(c) (I) The compensation customarily charged in the community for similar services with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;

(II) As used in this subsection (3), unless the context otherwise requires, "community" means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.

(d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;

(e) Whether and to what extent any litigation has taken place and the results of such litigation;

(f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;

(g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;

(h) The adequacy of any detailed billing statements upon which the compensation is based;

(i) Whether the fiduciary has charged variable rates that reflect comparable payment standards in the community for like services;

(j) The expertise, special skills, reputation, and ability of the person performing the services and, in the case

of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;

(k) The terms of a governing instrument;

(l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

(m) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the cost-effectiveness of the action taken under the circumstances existing at the time the service was performed.

(4) If a governing instrument provides that a fiduciary is entitled to receive compensation in accordance with a published fee schedule in effect at the time the services are performed, fees charged in accordance with the published fee schedule shall be presumed to be reasonable. The absence of such a provision in a governing instrument shall not preclude the fiduciary from receiving compensation in accordance with a published fee schedule in effect at the time the services are performed.

(5) Nothing in this section shall be interpreted to prohibit members or employees of a professional fiduciary's organization or law firm, including partners, associates, paralegals, law clerks, trust officers, caregivers, and social workers, from collaborating on the same service so long as the collaboration is reasonable and the total compensation charged for the service in the aggregate is reasonable under the circumstances.

Source: L. 2011: Entire part added, (SB 11-083), ch. 101, p. 298, § 1, effective August 10. L. 2013: (3)(j) amended, (SB 13-077), ch. 190, p. 767, § 2, effective August 7.

■ **15-10-604. Fee disputes - process and procedure.** (1) A dispute over the reasonableness of a request for compensation or costs authorized by this part 6 shall be resolved in accordance with the factors set forth in section 15-10-603 (3) and the process and procedure set forth in this section.

(2) For purposes of this section, a fee dispute shall be deemed to have arisen when an objection to compensation or costs has been filed in a proceeding.

(3) After the objection to compensation or costs has been filed, the person requesting compensation or costs shall have thirty-five days, or a greater or lesser

time as the court may direct, to make available to the objector for inspection and copying all documentation that the person deems necessary to establish the reasonableness of the compensation and costs in consideration of the factors set forth in section 15-10-603 (3) and to certify to the court that such documentation was made available to the objector on a certain date. The objector shall then have fourteen days, or a greater or lesser time as the court may direct, to file specific written objections to such compensation and costs based on the factors set forth in section 15-10-603 (3). The fourteen days shall commence on the date that the person makes the documentation available to the objector or upon the filing of the person's certification, whichever is later. The court may permit further discovery on the compensation and cost issues raised by the pleadings only upon good cause shown.

(4) Subject to the court's inherent authority to order alternative dispute resolution methods, the court shall determine, after notice and hearing, the amount of compensation and costs it considers to be reasonable and shall issue its findings of fact and conclusions of law referencing the factors set forth in section 15-10-603 (3) and any other factors it deems relevant to its decision.

Source: L. 2011: Entire part added, (SB 11-083), ch. 101, p. 300, § 1, effective August 10. L. 2012: (3) amended, (SB 12-175), ch. 208, p. 837, § 42, effective July 1.

■ **15-10-605. Compensation and costs - assessment - limitations.** (1) If the court determines that any proceedings pursuant to this code or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and the costs, including reasonable attorney fees, incurred by the fiduciary and other affected parties in responding to the proceedings or pleadings, against an estate, party, person, or entity that brought or defended the proceedings or filed the pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction, or surcharge provided by law.

(2) If any person entitled to compensation under this part 6 is required to defend the reasonableness of compensation or costs in a proceeding, the court may review the fees and costs incurred by the person in defending the compensation or costs, and the fees incurred in challenging the compensation and costs, and may assess the reasonable fees and costs incurred in the proceeding as the court deems equitable. The

court may allocate fees or costs assessed pursuant to this subsection (2) in favor of or against the estate or any party, person, or entity involved in the proceeding as justice and equity may require.

(3) A person who is unsuccessful in defending the reasonableness of compensation or costs at a hearing shall not be entitled to recover the fees or costs of that defense as the court deems equitable.

(4) A fiduciary who is unsuccessful in defending the fiduciary's conduct in a proceeding pursuant to this code alleging breach of fiduciary duty shall not recover the fees or costs of that defense as the court deems equitable.

Source: L. 2011: Entire part added, (SB 11-083), ch. 101, p. 301, § 1, effective August 10.

■ **15-10-606. Applicability.** (1) This part 6 applies to:

(a) An estate existing before, on, or after August 10, 2011; and

(b) Proceedings to determine the reasonableness of compensation and costs commenced on or after August 10, 2011.

(2) This part 6 does not apply to proceedings to determine the reasonableness of compensation and costs commenced before August 10, 2011, unless the court determines that the application of this part 6 would not prejudice the rights of any party to the proceeding and the court directs otherwise.

Source: L. 2011: Entire part added, (SB 11-083), ch. 101, p. 302, § 1, effective August 10.

ARTICLE 11

Intestate Succession and Wills

Editor's note. Articles 10 to 17 of this title were repealed and reenacted in 1973, and parts 1 to 9 of this article were subsequently repealed and reenacted in 1994, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to parts 1 to 9 of this article prior to 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note immediately preceding article 10 of this title. Former C.R.S. section numbers prior to 1994 are shown in editor's notes following those sections that were relocated. For a detailed comparison of parts 1 to 9 of this article for 1994, see the comparative tables located in the back of the index.

Law reviews: For article, "Highlights of the Uniform Probate Code, Article II", see 23 Colo. Law. 2279 (1994).

PREFATORY NOTE

The Uniform Probate Code was originally promulgated in 1969. **1990 Revisions.** In 1990, Article II underwent significant revision. The 1990 revisions were the culmination of a systematic study of the Code conducted by the Joint Editorial Board for the Uniform Probate Code (now named the Joint Editorial Board for Uniform Trust and Estate Acts) and a special Drafting Committee to Revise Article II. The 1990 revisions concentrated on Article II, which is the article that covers the substantive law of intestate succession; spouse's elective share; omitted spouse and children; probate exemptions and allowances; execution and revocation of wills; will contracts; rules of construction; disclaimers; and the effect of homicide and divorce on succession rights; and the rule against perpetuities and honorary trusts.

Themes of the 1990 Revisions. In the twenty or so years between the original promulgation of the Code and 1990, several developments occurred that prompted the systematic round of review. Three themes were sounded: (1) the decline of formalism in favor of intent-serving policies; (2) the recognition that will substitutes and other inter-vivos transfers have so proliferated that they now constitute a major, if not the major, form of wealth transmission; (3) the advent of the multiple-marriage society, resulting in a significant fraction of the population being married more than once and having stepchildren and children by previous marriages and (4) the acceptance of a partnership or marital-sharing theory of marriage.

The 1990 revisions responded to these themes. The multiple-marriage society and the partnership/marital-sharing theory were reflected in the revised elective-share provisions of Part 2. As the General Comment to Part 2 explained, the revised elective share granted the surviving spouse a right of election that implemented the partnership/marital-sharing theory of marriage.

The children-of-previous-marriages and stepchildren phenomena were reflected most prominently in the revised rules on the spouse's share in intestacy.

The proliferation of will substitutes and other inter-vivos transfers was recognized, mainly, in measures tending to bring the law of probate and nonprobate transfers into greater unison. One aspect of this tendency was reflected in the restructuring of the rules of construction. Rules of construction are rules that supply presumptive meaning to dispositive and similar provisions of governing instruments. See Restatement (Third) of Property: Wills and Other Donative Transfers § 11.3 (2003). Part 6 of the pre-1990 Code contained several rules of construction that applied only to wills; provisions relating to lapse, testamentary exercise of a power of appointment, and ademption of a devise by satisfaction exemplify such rules of construction. Other rules of construction, however, properly apply to all governing instruments, not just wills; the provision relating to inclusion of adopted persons in class gift language exemplifies this type of rule of construction. The 1990 revisions divided pre-1990 Part 6 into two parts—Part 6, containing rules of construction for wills only; and Part 7, containing rules of construction for wills and other governing instruments. A few new rules of construction were also added.

In addition to separating the rules of construction into two parts, and adding new rules of construction, the revocation-upon-divorce provision (section 2-804) was substantially revised so that divorce not only revokes testamentary devises, but also nonprobate beneficiary designations, in favor of the former spouse. Another feature of the 1990 revisions was a new section (section 2-503) that brought the execution formalities for wills more into line with those for nonprobate transfers.