

SB077\_L.012

## SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.SB13-077 be amended as follows:

1 Amend printed bill, page 14, after line 9 insert:

2 "SECTION 7. In Colorado Revised Statutes, add part 7 to article  
3 16 of title 15 as follows:

## PART 7

## REVOCABLE TRUSTS

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5  
6 **15-16-701. Reserved.**

7 **15-16-702. Revocation of amendment of revocable trust.**

8 (1) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST  
9 IS IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS  
10 SUBSECTION (1) DOES NOT APPLY TO A TRUST CREATED UNDER AN  
11 INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS PART 7.

12 (2) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE  
13 OTHERWISE, IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE  
14 THAN ONE SETTLOR:

15 (a) TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY  
16 PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING  
17 ALONE, WITH REGARD TO THE PORTION OF THE TRUST PROPERTY  
18 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, BUT MAY BE AMENDED  
19 ONLY BY JOINT ACTION OF BOTH SPOUSES;

20 (b) TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER  
21 THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE  
22 TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY  
23 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION; AND

24 (c) UPON THE REVOCATION OR AMENDMENT OF THE TRUST BY  
25 FEWER THAN ALL OF THE SETTLORS, THE TRUSTEE SHALL PROMPTLY  
26 NOTIFY THE OTHER SETTLORS OF THE REVOCATION OR AMENDMENT.

27 (3) THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST:

28 (a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN  
29 THE TERMS OF THE TRUST; OR

30 (b) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR  
31 THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE  
32 EXCLUSIVE, BY ANY OTHER METHOD MANIFESTING CLEAR AND  
33 CONVINCING EVIDENCE OF THE SETTLOR'S INTENT, WHICH MAY INCLUDE  
34 A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR  
35 SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED  
36 ACCORDING TO THE TERMS OF THE TRUST.

37 (4) UPON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE  
38 SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.



1 (5) A SETTLOR'S POWERS WITH RESPECT TO REVOCATION,  
2 AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED  
3 BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT  
4 EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR THE POWER.

5 (6) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE  
6 OTHERWISE, OR THE POWER TO DO SO HAS BEEN EXPRESSLY GRANTED TO  
7 ANOTHER PERSON, A CONSERVATOR OF THE SETTLOR OR, IF NO  
8 CONSERVATOR HAS BEEN APPOINTED, A GUARDIAN OF THE SETTLOR, MAY  
9 EXERCISE THE SETTLOR'S POWERS WITH RESPECT TO REVOCATION,  
10 AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY, BUT ONLY WITH THE  
11 APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR  
12 GUARDIANSHIP.

13 (7) A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN  
14 REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR THE SETTLOR'S  
15 SUCCESSORS INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS  
16 TAKEN ON THE ASSUMPTION THAT THE TRUST HAS NOT BEEN AMENDED OR  
17 REVOKED.

18 **15-16-703. Settlor's powers.** UNLESS THE TERMS OF THE TRUST  
19 EXPRESSLY PROVIDE OTHERWISE, WHILE A TRUST IS REVOCABLE, THE  
20 RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE  
21 DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

22 **15-16-704. Limitation on action contesting validity of**  
23 **revocable trust.** (1) A PERSON MUST COMMENCE A JUDICIAL PROCEEDING  
24 TO CONTEST THE VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE  
25 SETTLOR'S DEATH WITHIN THE EARLIER OF:

26 (a) THREE YEARS AFTER THE SETTLOR'S DEATH; OR

27 (b) ONE HUNDRED TWENTY DAYS AFTER THE TRUSTEE SENT THE  
28 PERSON A COPY OF THE TRUST INSTRUMENT AND A NOTICE INFORMING THE  
29 PERSON OF THE TRUST'S EXISTENCE, OF THE TRUSTEE'S NAME AND  
30 ADDRESS, AND OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.  
31 A TRUSTEE SHALL NOT BE LIABLE TO ANY PERSON FOR GIVING OR FAILING  
32 TO GIVE NOTICE UNDER THIS SECTION.

33 (c) THE APPLICABLE TIME LIMIT DESCRIBED IN THIS SUBSECTION (1)  
34 IS AN ABSOLUTE BAR THAT MAY NOT BE WAIVED OR TOLLED.

35 (2) UPON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS  
36 REVOCABLE AT THE SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO  
37 DISTRIBUTE THE TRUST PROPERTY IN ACCORDANCE WITH THE TERMS OF  
38 THE TRUST. THE TRUSTEE IS NOT SUBJECT TO LIABILITY FOR DOING SO  
39 UNLESS:

40 (a) THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING  
41 CONTESTING THE VALIDITY OF THE TRUST; OR

1 (b) A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE OF A  
2 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL  
3 PROCEEDING IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT  
4 SENT THE NOTIFICATION.

5 (3) UNLESS A DISTRIBUTION OR PAYMENT NO LONGER CAN BE  
6 QUESTIONED BECAUSE OF ADJUDICATION, ESTOPPEL, OR LIMITATION, A  
7 BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID, OR  
8 A DISTRIBUTEE OF PROPERTY IMPROPERLY DISTRIBUTED OR PAID, OR A  
9 CLAIMANT WHO IS IMPROPERLY PAID, IS LIABLE FOR THE RETURN OF THE  
10 PROPERTY IMPROPERLY RECEIVED AND ITS INCOME, IF ANY, SINCE THE  
11 DISTRIBUTION IF HE OR SHE HAS THE PROPERTY. IF HE OR SHE DOES NOT  
12 HAVE THE PROPERTY, THEN HE OR SHE IS LIABLE FOR THE RETURN OF THE  
13 VALUE AS OF THE DATE OF HIS OR HER DISPOSITION OF THE PROPERTY  
14 IMPROPERLY RECEIVED, AND ITS INCOME AND GAIN, IF ANY RECEIVED BY  
15 HIM OR HER.

16 **SECTION 8.** In Colorado Revised Statutes, 15-10-201, **amend**  
17 **(56); and add (6.5) as follows:**

18 **15-10-201. General definitions.** Subject to additional definitions  
19 contained in the subsequent articles that are applicable to specific articles,  
20 parts, or sections, and unless the context otherwise requires, in this code:

21 (6.5) "BUSINESS TRUST" INCLUDES, BUT IS NOT LIMITED TO,  
22 MASSACHUSETTS BUSINESS TRUSTS CREATED FOR BUSINESS OR  
23 INVESTMENT PURPOSES; DELAWARE STATUTORY TRUSTS; ILLINOIS LAND  
24 TRUST; MUTUAL FUND TRUSTS; COMMON TRUST FUNDS; VOTING TRUSTS;  
25 LIQUIDATION TRUSTS; REAL ESTATE INVESTMENT TRUSTS; STRUCTURED  
26 SETTLEMENT TRUSTS; ENVIRONMENTAL REMEDIATION TRUSTS; TRUSTS  
27 FOR THE PRIMARY PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST,  
28 SALARIES, WAGES, COMPENSATION, PROFITS, PENSIONS OR EMPLOYEE  
29 BENEFITS OF ANY KIND; AND OTHER TRUSTS WITH PURPOSES THAT ARE THE  
30 SAME OR SIMILAR TO ANY OF THE TRUSTS DESCRIBED IN THIS SUBSECTION  
31 (6.5), REGARDLESS OF WHETHER SUCH OTHER TRUSTS ARE CREATED  
32 UNDER STATUTORY OR COMMON LAW, AND REGARDLESS OF WHETHER THE  
33 BENEFICIAL INTERESTS IN SUCH OTHER TRUSTS ARE EVIDENCED BY  
34 CERTIFICATES.

35 (56) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
36 SUBSECTION (56):

37 (I) "Trust" includes an express trust, private or charitable, with  
38 additions thereto, wherever and however created and any amendments to  
39 such trusts.

40 (II) "Trust" also includes a trust created or determined by  
41 judgment or decree under which the trust is to be administered in the

1 manner of an express trust.

2 (b) (I) "Trust" excludes other constructive trusts and UNLESS A  
3 COURT, IN DETERMINING SUCH A TRUST, PROVIDES THAT THE TRUST IS TO  
4 BE ADMINISTERED AS AN EXPRESS TRUST.

5 (II) "TRUST" ALSO excludes resulting trusts; conservatorships;  
6 personal representatives; accounts as defined in section 15-15-201 (1);  
7 custodial arrangements pursuant to the "Colorado Uniform Transfers to  
8 Minors Act", article 50 of title 11, C.R.S.; business trusts providing for  
9 certificates to be issued to beneficiaries; common trust funds; voting  
10 trusts; security arrangements; liquidation trusts; trusts for the primary  
11 purpose of paying debts, dividends, interest, salaries, wages, profits,  
12 pensions, or employee benefits of any kind AS DEFINED IN SUBSECTION  
13 (6.5) OF THIS SECTION; and any arrangement under which a person is  
14 nominee or escrowee for another."

15 Renumber succeeding sections accordingly.

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