

MINUTES OF THE MEETING HELD
ON JANUARY 17, 2013

TO: Trust and Estate Section — Orange Book Forms Committee

FROM: Susan Hoyt and Lisa Travis Fischer

DATE: January 21, 2013

1. The committee chair, Sonny Wiegand, began the meeting at 12:25 pm with a rap of the gavel, and the attendance sheet was passed around.

2. As the first order of business, Dan Rich raised a question from the Disability Trust Subcommittee. Mr. Rich noted that there is a great deal of federal law compliance necessary for a disability trust, and the area is fraught with peril for inexperienced practitioners. The subcommittee, therefore, sought direction from the committee at large as to whether to proceed with drafting a form or if the area was too complex for the Orange Book. Stan Kent noted that the Colorado Department of Health Care Policy and Financing has a standard safeguard form for self-settled disability trusts. Mike Holder commented that he would like to see a third-party special needs trust for the Orange Book. There was some discussion about whether a self-settled disability trust or a third-party special needs trust (SNT) was to be the focus of the subcommittee. The third-party SNT is the form for which CLE receives requests, and Lisa Travis Fischer reminded the committee that we greatly prefer to offer practitioners forms that have been vetted by the wise minds of the Orange Book Forms committee. The committee moved and unanimously agreed that the subcommittee should draft a third-party SNT that is NOT a disability trust under the statute.

3. With that business covered, the committee reviewed the December minutes and approved them unanimously. Introductions occurred. Gordon Williams gave the legislative update, and reported that the civil unions bill would be presented again this legislative session, which—if it passes—would affect many of the Orange Book forms. He also commented that there was lengthy discussion of the adoptee statutes, that John DeBruyn has a proposal regarding the death of a trustee when the trust is in the trustee's name, there may also be elective share changes, trifurcation is still pending, virtual assets issues are being considered, decanting is on the table, and Shelly Merritt is considering grantor's income tax legislation.

4. The committee turned to the Designated Beneficiary Agreement (DBA) at approximately 12:45 p.m. Bette Heller led the discussion regarding the DBA subcommittee's changes to the form since December 2012. The subcommittee added the statutorily-mandated disclaimer in a box at the top of the form. Ms. Travis Fischer advised the committee that

she had spoken to Beth Bryant about the form, and that there was some language that Ms. Bryant considered required that did not seem to be in the subcommittee's form. Ms. Heller noted that she would discuss this issue with Ms. Bryant directly and perhaps make changes for February. However, the committee continued looking at the subcommittee's proposals in order to achieve efficiency. Language was added to the first paragraph regarding marriages recognized in the State of Colorado.

5. Mr. Williams reminded the committee that the civil unions bill is expected to pass, and recommended that civil unions language be added to the form. After much discussion, the committee decided that, since the bill has not yet passed, the civil unions language should be added to a Note on Use instead.
6. On page 2 of the DBA form, the committee voted to use the first sentence of alternative suggestion #2 and the second sentence of the first suggested paragraph as both sentences were amended, so that the new language would read

We declare that this document expresses our intent and we understand that the execution of additional legal documents may be required to give effect to our intent. We acknowledge that other legal documents, such as wills, durable powers of attorney, and beneficiary designations, whether prepared before or after this Designated Beneficiary Agreement, may supersede and set aside any provisions in this Designated Beneficiary Agreement to the extent they are in conflict.

7. The committee considered the changes on page 3 of the DBA form and made minor changes consistent with the discussion of marriages recognized in Colorado. Changes were also made to the corresponding Notes on Use.
8. For the final consideration on the DBA form, the third paragraph was deleted from Note on Use 5. The form was approved as amended, pending changes from the subcommittee after its discussion with Ms. Bryant.
9. At 1:30, the meeting was adjourned. Recycling ensued.

AGENDA

TO: Trust and Estate Section — Orange Book Forms Committee
FROM: Sonny Wiegand, Kate Boland, Susan Hoyt, and Lisa Travis Fischer
DATE: January 17, 2013

Agenda for February 21, 2013 Meeting, 12:15-1:30 pm

1. Welcome and Call to Order

- A. Attendance Sheet
- B. Reminder to receive complimentary OB Forms supplement, must attend 5 entire meetings in a season and be active on a subcommittee. To receive a discount on an OB Forms supplement, must attend 5 entire meetings in a season.
- C. Reminder to return extra copies
- D. Introductions and sign-in sheet
 - i. Name as you would like it to appear in book should the participant attend 5 meetings in a season and be active on a subcommittee.
 - ii. E-mail
- E. Approval of Minutes from the January 17, 2013 meeting

2. Chairperson's Report

- A. Legislative Liaison position report-Gordon Williams
 - i. Adoptee and Directed Trustee Issues-Gordon Williams
- B. Sub-Committee Chair Reports:
 - i. Active or inactive?
 - ii. When and where are you meeting?
 - iii. When do you expect to present a form for review?
- C. Other matters
 - i. Possible Decanting subcommittee

3. Committee Reports

A. ACTIVE CONSIDERATION

- 1. Designated Beneficiary Agreement Form and Letter to Clients—To be presented in February 2013
 - a. Chair-Barbara Cashman- becashman@gmail.com
 - b. Committee members-Bette Heller, Michael Kirtland, Ayo Labode, Robert Aghazarian
 - c. Suggested 02/18/10
 - d. Form for Marital Agreements (pre & post)
 - e. Creation of new form, client letter, and notes on use
- 2. Tab A at A-16 and A-17; Discretionary Guidelines A-28 and A-29— To be presented in February 2013
 - a. Chair-Mike Holder- mdholder@aol.com
 - b. Committee members-

- c. Suggested 2009
- d. Review
- 3. Notarized Will Issue–To be presented in February 2013
 - a. Chair- Andrew Guetzkow- andrewg.legal@gmail.com
 - b. Committee Members-Sherry Purdy, Andrew Guetzkow
 - c. Suggested 02/18/10
 - d. Ms. Hunter also noted that a new law will permit notarized wills without witnesses and wondered if the committee needed to address this issue. There was discussion of forming a subcommittee to go through the forms and find problems.
- 4. Single Person Pour-Over Will–To be presented in February 2013
 - a. Chair- Michelle Mieras,- michelle.mieras@bankofthewest.com
 - b. Committee members-Joyce Sanchez, Leia Ursery, Michelle AmRhein
 - c. Suggested 2010
 - d. Create

B. IN-PROGRESS

- 5. Living Will and Medical Power of Attorney– To be presented in 2012-2013 or not at all
 - a. Co-Chairs-Susan Fox- sfb823@aol.com and Michael Kirtland mak@kirtlandseal.com
 - b. Committee members-Rebecca Bromley, Steven Strandberg, David Urban
 - c. Suggested 2012
 - d. Review
- 6. Notes on Use Review– To be presented in March 2013
 - a. Chair-David Brantz- david@kottkeandbrantz.com
 - b. Committee members-Frank Hill, Bette Heller, Susan Boothby, and John Valentine, Kyle Getchey
 - c. Suggested 08/18/2011
 - d. Review OB Forms book to see which Notes on Use need to be updated regarding recent legislation- restart with Form 23
- 7. Small Estate Affidavit– To be presented in March 2013
 - a. Co-Chairs-Bette Heller-bhelleresq@earthlink.net and John DeBruyn-jdebruyn@debruyn.com
 - b. Committee members-
 - c. Suggested 09/20/12
 - d. Create Notes on Use to accompany Small Estate Affidavit
- 8. QDot Review– To be presented in April 2013
 - a. Chair- Michelle Mieras,- michelle.mieras@bankofthewest.com
 - b. Committee Members-Peggy Gardner, Michelle Mieras
 - c. Suggested 2007
 - d. There has been a slight modification to the language. A revised draft of the provision was sent out to the subcommittee. There was a discussion that if there currently isn't any QDot language in the Orange Book Forms, there should be. 09/2007. Joyce Sanchez agreed to contact Peggy for an update. 04/16/09

9. Tax Apportionment Clauses – To be presented in April 2013
 - a. Chair-Dennis Whitmer- dnwhitmer@hfwpc.com
 - b. Committee members-Dylan Metzner, Michelle AmRhein, Douglas J. Mitchell
 - c. Suggested 03/11
 - d. Review and see what changes are needed in the book regarding tax apportionment drafting issues
10. Update Gray Boxes – To be presented in May 2013
 - a. Chair-Gordon Williams- gordlaw@aol.com
 - b. Committee members-Andrew Guetzkow, Joyce Sanchez, Lisa Blattner, Tricia Lind, Julie McVey
 - c. Suggested 10/09
 - d. Review, create, and alter as needed
11. Disclaimer Review – To be presented in May 2013
 - a. Chair-Gordon Williams- gordlaw@aol.com
 - b. Committee members- Mike Holder, Bill Carew, Skip Reynolds
 - 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.
12. 2503(c) Trusts– To be presented in September 2013
 - a. Chair-Mike Holder-mdholder@aol.com
 - b. Committee members-Bill Carew, Tony Vaida
 - c. Suggested 2012
 - d. Intentionally defective gift issue
13. Disability Trust– No presentation date at this time- Will have conference call on 01/11/13
 - a. Co Chairs-Dan Rich- drich@steelestreet.com and Leia Ursery-lursery@olsentraeger.com
 - b. Committee members- Kristen Jacobs, Tricia Lind, Michael Kirtland, Skip Reynolds, Patrick Thiessen
 - c. Suggested 05/17/12
 - d. Create
 - e. Form 7A–Will with Contingent Trust. The committee discussed drafting a group trust to cover someone who becomes disabled, and decided to add the issue of harmonizing paragraphs 4.1 and 8.8 in Form 7A
14. Impact of 2011 Federal Tax Legislation/Marital Formula Issues/Clayton Election – No presentation date at this time- Will report progress 01/17/13
 - a. Chair-Dan Rich- drich@steelestreet.com
 - b. Committee members-Jim Buchanan, Jim Ingraham, Doug Hoak, Douglas J. Mitchell
 - c. Suggested 01/11
 - d. A small committee will be needed to review the book regarding federal tax legislation/marital formula issues/Clayton clause
15. Notes on Use regarding Class Gifts – To be presented in 2013-2014
 - a. Chair-Gordon Williams- gordlaw@aol.com

- b. Committee members-
 - c. Suggested 05/12
 - d. Review and see what changes are needed in the book
16. Joint Trust for Community Property – To be presented in 2013-2014
- a. Chair-Dennis Whitmer- dnwhitmer@hfwpc.com
 - b. Committee members-David Silberstein, Pete Bullard, Peggy Gardner, Becky Aldrich, Andrea Schrack
 - c. Suggested 09/08
 - d. To be presented in September 2011, but full committee answered pending questions in January 2011
17. Uniform Pre-Marital and Marital Agreement Act– Sonny Wiegand to discuss with Chair, Gordon Williams.
- a. Chair- Gordon Williams- gordlaw@aol.com
 - b. Committee members-Rick Mishkin, Andrew Guetzkow
 - c. Suggested 2012
 - d. Create
 - e. Update as of 12/20/12- waiting to see if a formal statute is suggested for 2012 or 2013

C. INACTIVE

4. New Matters & Announcements

5. Adjournment

DISCLAIMER

Warning: While this document may indicate your wishes, certain additional documents may be needed to protect these rights.

This designated beneficiary agreement is operative in the absence of other estate planning documents and will be superseded and set aside to the extent it conflicts with valid instruments such as a will, power of attorney, or beneficiary designation on an insurance policy or pension plan. This designated beneficiary agreement is superseded by such other documents and does not cause any changes to be made to those documents or designations.

The parties understand that executing and signing this agreement is not sufficient to designate the other party for purposes of any insurance policy, pension plan, payable upon death designation or manner in which title to property is held and that additional action will be required to make or change such designations.

The parties understand that this designated beneficiary agreement may be one component of estate planning instructions and that they are encouraged to consult an attorney to ensure their estate planning wishes are accomplished.

Designated Beneficiary Agreement of

_____ and _____
Party A Name Party B Name

We, ____[Party A]____ and __[Party B]____, who reside at _____ (address or addresses) _____, hereby designate each other as the other's Designated Beneficiary, with the following rights as specified below. [See Note on Use 1]

Recitals: We each state that we are both over the age of eighteen years; that both ____[Party A]____ and __[Party B]____ are competent to enter into this Designated Beneficiary Agreement; that neither ____[Party A]____ nor ____[Party B]____ is married HAS ENTERED INTO A MARRIAGE THAT IS RECOGNIZED IN THE STATE OF COLORADO; that neither ____[Party A]____ nor ____[Party B]____ **OR** is a party to another Designated Beneficiary Agreement; and that pursuant to Colo. Rev. Stat. §15-22-106, the parties understand the limitations of this Designated Beneficiary Agreement, and have granted to each other

[Alternative 1: all rights and protections available under the statute and have chosen to withhold none of the rights and protections from the other]

*[Alternative 2: only the rights specified below as to both Parties **FOR BOTH PARTY A AND PARTY B**]*

[Alternative 3: only the rights specified below by Party A or Party B [see suggested language in Note on Use 4]

[See Note on Use 2]

Severability: The parties are mindful of Colo. Rev. Stat. §15-22-105(6), which provides that execution of a designated beneficiary agreement shall in no way impede the ability of individuals to make specific determinations as to any or all of the matters specified in the statute by acting through superseding legal documents or other contracts or instruments. In light of the foregoing, if any part of this agreement shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

We declare that this document DESIGNATED BENEFICIARY AGREEMENT expresses our ~~wishes but~~ INTENT AND we understand that THE EXECUTION OF additional LEGAL documents may be ~~needed to protect those~~ REQUIRED TO GIVE EFFECT TO OUR INTENT. ~~We also understand that this agreement may be superseded by other documents.~~ We acknowledge that other LEGAL estate planning documents (such as wills, durable powers of attorney, BENEFICIARY DESIGNATIONS), whether prepared before or after this Designated Beneficiary Agreement, MAY supersede and set aside any provisions in this Designated Beneficiary Agreement to the extent they are in conflict.

(DELETE RIGHTS NOT GRANTED AND ONLY LIST RIGHTS BEING GRANTED)

1. The right to acquire, hold title to, own jointly, or transfer *inter vivos* or at death real or personal property as a joint tenant with me with right of survivorship or as a tenant in common with me;
2. The right to be designated by me as a beneficiary, payee, or owner as a trustee named in an *inter vivos* or testamentary trust for the purposes of a nonprobate transfer on death;
3. The right to be designated by me as a beneficiary and recognized as a dependent in an insurance policy for life insurance;
4. The right to be designated by me as a beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries;

5. The right to be designated by me as a beneficiary in a retirement or pension plan;
6. The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for me;
7. The right to visit me in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary agreement resides or is receiving care;
8. The right to initiate a formal complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes;
9. The right to act as a proxy decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes;
10. The right to notice of the withholding or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes;
11. The right to challenge the validity of a declaration as to medical or surgical treatment of me pursuant to section 15-18-107, Colorado Revised Statutes;
12. The right to act as my agent to make, revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, Colorado Revised Statutes;
13. The right to inherit real or personal property from me through intestate succession;
14. The right to have standing to receive benefits pursuant to the "Workers' Compensation Act of Colorado," article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job;
15. The right to have standing to sue for wrongful death in the event of my death; and
16. The right to direct the disposition of my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.

We recognize that this Designated Beneficiary Agreement is effective when received for recording by the County Clerk and Recorder for the County in which ~~we both (or one of us)~~ EITHER ONE OF US reside/s. [See Note on Use ~~4A~~ 5] This Designated Beneficiary Agreement will continue in effect until one of us: (a) revokes this agreement by recording a Revocation of Designated Beneficiary form with the Clerk and Recorder for the county in which it was originally recorded [See Note on Use ~~4B~~ 6]; (b) enters into or executes a legal document which supersedes in part or in whole this Designated Beneficiary Agreement; (c) ~~gets married~~ ENTERS INTO A MARRIAGE RECOGNIZED

Proposed Notes on Use

Note 1. The Designated Beneficiary Agreement [DBA] Act became effective on July 1, 2009. See CRS §15-22-101 *et seq.* The Act allows unmarried couples, or two unmarried friends or relatives to enter into a DBA.

Note 2. The structure of this form differs from the form available for download at www.designatedbeneficiaries.com,ⁱ but retains the two required basic elements of an enforceable agreement: (1) that the parties are qualified to enter into the DBA; and (2) the form meets substantial compliance with recitations and statutory requirements.

Note 3. Practitioner may wish to inform their clients entering into a DBA that there are several ways to revoke or terminate a DBA, and include: (a) a Revocation by one of the designated beneficiaries which is recorded with the Clerk & Recorder in the county where the DBA was filed or recorded; (b) signing a legal document that conflicts with all or part of a DBA; (c) marriage of either of the designated beneficiaries; and (d) death of a designated beneficiary. Particular statutory provisions provide important details relevant to revocation of a DBA and survival of certain rights.

Note 4. The drafter should take care to delete rights not given. If the parties choose to not grant all rights mutually (as contemplated in Alternative 1 and 2 in the Recitals paragraph), the Practitioner may draft the document to reflect that the specified rights are given from the grantor to the grantee only, and may wish to clarify which rights are not granted at all.

Suggested language for Alternative 3 in the form:

 (Party A - NAME) grants the following rights to (Party B - NAME) :

(delete rights not granted AND ONLY LIST RIGHTS BEING GRANTED)

1. The right to acquire, hold title to, own jointly, or transfer *inter vivos* or at death real or personal property as a joint tenant with me with right of survivorship or as a tenant in common with me;
2. The right to be designated by me as a beneficiary, payee, or owner as a trustee named in an *inter vivos* or testamentary trust for the purposes of a nonprobate transfer on death;
3. The right to be designated by me as a beneficiary and recognized as a dependent in an insurance policy for life insurance;
4. The right to be designated by me as a beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries;
5. The right to be designated by me as a beneficiary in a retirement or pension plan;

6. The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for me;
7. The right to visit me in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary agreement resides or is receiving care;
8. The right to initiate a formal complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes;
9. The right to act as a proxy decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes;
10. The right to notice of the withholding or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes;
11. The right to challenge the validity of a declaration as to medical or surgical treatment of me pursuant to section 15-18-107, Colorado Revised Statutes;
12. The right to act as my agent to make, revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, Colorado Revised Statutes;
13. The right to inherit real or personal property from me through intestate succession;
14. The right to have standing to receive benefits pursuant to the "Workers' Compensation Act of Colorado," article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job;
15. The right to have standing to sue for wrongful death in the event of my death; and
16. The right to direct the disposition of my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.

_____(Party B)___ grants the following rights to _____(Party A)___:

(delete rights not granted AND ONLY LIST RIGHTS BEING GRANTED)

1. The right to acquire, hold title to, own jointly, or transfer *inter vivos* or at death real or personal property as a joint tenant with me with right of survivorship or as a tenant in common with me;
2. The right to be designated by me as a beneficiary, payee, or owner as a trustee named in an *inter vivos* or testamentary trust for the purposes of a nonprobate transfer on death;
3. The right to be designated by me as a beneficiary and recognized as a dependent in an insurance policy for life insurance;

4. The right to be designated by me as a beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries;
5. The right to be designated by me as a beneficiary in a retirement or pension plan;
6. The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for me;
7. The right to visit me in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary agreement resides or is receiving care;
8. The right to initiate a formal complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes;
9. The right to act as a proxy decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes;
10. The right to notice of the withholding or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes;
11. The right to challenge the validity of a declaration as to medical or surgical treatment of me pursuant to section 15-18-107, Colorado Revised Statutes;
12. The right to act as my agent to make, revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, Colorado Revised Statutes;
13. The right to inherit real or personal property from me through intestate succession;
14. The right to have standing to receive benefits pursuant to the "Workers' Compensation Act of Colorado," article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job;
15. The right to have standing to sue for wrongful death in the event of my death; and
16. The right to direct the disposition of my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.

Note 4A 5. If the Parties live in different counties, the DBA should be recorded in both counties, since a Personal Representative is only required to look for a DBA in the county in which a Decedent resided at death. (CITE NEW STATUTE ONCE PASSED) If either of the Parties moves to a different county, the DBA should be recorded in that new county.

Note 4B 6. A Revocation of Designated Beneficiary form should be recorded in all counties in which the DBA was recorded, so that there is no question when a Party dies that the DBA has been revoked.

Note 5 7. The practitioner may wish to consider portability limitations that affect the DBA. Recognition of the DBA document outside Colorado is not established, so the existence of a DBA between two persons may not obviate the need for (1) durable powers of attorney naming a designated beneficiary as an agent; and (2) a living-together contract akin to a marital agreement that could be recognized and enforceable as a contract.

For a more comprehensive overview of estate planning for unmarried couples in Colorado, the practitioner may want to read “Non-Traditional Families,” by Elizabeth A. Bryant and Erica L. Johnson, in 1 Colorado Estate Planning Handbook 10-1, sixth ed., (David K. Johns, *et al.*, eds., Continuing Legal Education in Colorado, Inc. 2010)

~~Other possible issues to include: (1) DBA is only a will substitute for the first Designated Beneficiary to die; and (2) DBA and estate administration — the parties can't avoid probate with a DBA; and (3) may need the court to possibly construe/harmonize estate planning documents that include a DBA?~~

ⁱThe standard form of the DBA is found at CRS §15-22-106.

Designated Beneficiaries Agreement Cover Letter to Client

Re: Your Designated Beneficiaries Agreement

Dear Client A and Client B:

You have asked me to prepare a Designated Beneficiaries Agreement (DBA) for you to sign and have recorded in the county clerk's office of _____ county, ___[Party A, Party B or both]_____ county of residence. Please take a moment to review this letter to clarify the nature of your DBA and the DBA itself.

As I have explained to you, the DBA is a contract between two unmarried persons that gives rights and protections as specified within the DBA itself. The signed and notarized document becomes effective once it is received by the county clerk of the county of residence specified above. (See Note on Use 4A of the DBA Form)

If you have other estate planning or disability planning documents (regardless of when they were prepared), I have explained how those documents fit together with the DBA. Please remember that the DBA may be altered by the provisions in those documents as those documents are considered "superseding documents", which means that they will control to the extent they conflict with the DBA. Please keep this in mind that if you change any of your disability or estate planning documents in the future, this DBA will be subject to the provisions in those documents as well . Otherwise, the DBA is enforceable until the Clerk & Recorder's office of _____(county or counties where the DBA was originally filed)_____ county(ies) receives a written Revocation of Designated Beneficiary Agreement by either of you. (See Note on Use 4B of the DBA Form). Except for survivor rights you have given each other, if any, the DBA will also become unenforceable after one of you dies. At that time, the DBA of the two parties will lapse, and the survivor may enter into another DBA with an unmarried person.

Finally, I have advised you that although this Agreement will be valid in Colorado if all the requirements are satisfied as specified above, other states may not have such laws, and so this Agreement may not be valid should either or both of you move to

another state. If that happens, you should immediately consult with an estate planning attorney in that state.

Please feel free to contact my office regarding questions about your DBA.

Sincerely,

(Attorney)

**WILL
OF**

ARTICLE 1 – FAMILY INFORMATION

ARTICLE 2 – SPECIFIC AND GENERAL GIFTS

ARTICLE 3 – RESIDUARY ESTATE

ARTICLE 4 – DESIGNATION AND SUCCESSION OF FIDUCIARIES

ARTICLE 5 – POWERS OF FIDUCIARIES

5.1

5.2

5.3 DISTRIBUTION ALTERNATIVES: My fiduciaries may make any payments under my will or any trust under my will:

- a) Directly to the beneficiary;
- b) In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;
- c) To the beneficiary's guardian, conservator, or caregiver for the benefit of the beneficiary; and
- d) By direct payment of the beneficiary's expenses. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries' duties hereunder, shall fully discharge my fiduciaries.

ARTICLE 6 – ADMINISTRATIVE PROVISIONS

6.1

6.2

6.3

6.4

16.5 DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If any beneficiary to whom my personal representative is directed to distribute any share of my probate estate is under the age of 21 years or is, in the opinion of that fiduciary, under any disability which renders such beneficiary unable to administer distributions properly when the distribution is to be made, such fiduciary, in its discretion, acting as trustee, may continue to hold such beneficiary's share as a separate trust until he or she reaches the age of 21 or overcomes the disability, when my trustee shall distribute such beneficiary's trust to him or her.

- a) While any trust is being held under this paragraph, my trustee may distribute to, or apply for the benefit of, the beneficiary for whom the trust is held such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any agreement with any representative of a medical or public assistance program or governmental entity which

compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.

- b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will. Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.

DISCRETIONARY DISTRIBUTIONS

POWERS OF FIDUCIARIES

or

ADMINISTRATIVE PROVISIONS

a. DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If under another provision of this agreement *(any part of the trust property)* or *(any share of my probate estate)* becomes distributable outright BY *(A FIDUCIARY)* *(THE TRUSTEE)* *(THE PERSONAL REPRESENTATIVE)*, or if a distribution is authorized or required to be made to a person, *other than settlor's spouse*¹, at a time when such person has not yet attained the age of 21 years, or at a time when such person is under any form of disability, without regard to whether such person is legally so adjudicated, and in the discretion of trustee is unable to properly manage ~~his or her~~ financial affairs, SUCH DISTRIBUTIONS PROPERLY, THEN THE *(trustee)* or *(personal representative)* or *(fiduciary)* may retain ALL OR ANY PORTION OF the share of such person (hereinafter, in this article, sometimes called "~~disabled person~~ DISABLED PERSON") in a separate trust until he or she attains the age of 21 years, or until his or her disability has ceased, WHICHEVER LATER OCCURS.

- a) While any trust is being held under this ~~paragraph~~ PROVISION, my trustee may AT ANY TIME AND FROM TIME TO TIME distribute to, or apply for the benefit of, the beneficiary for whom the trust is held ALL OR such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any

¹ "*settlor's spouse*" appears in the Revocable MD Trust, Non-Tax Revocable Trust, and Revocable Disclaimer Trust.

agreement with any representative of a medical or public assistance program or governmental entity which compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.

b) TRUSTEE MAY MAKE SUCH DISTRIBUTIONS OR APPLICATIONS WITHOUT CONTINUING COURT SUPERVISION OR THE INTERVENTION OF ANY GUARDIAN OR CONSERVATOR OR OTHER PERSONAL REPRESENTATIVE FOR THE DISABLED PERSON, AND WITHOUT GIVING OR REQUIRING ANY BOND. ANY DISTRIBUTION SO MADE SHALL BE WITHOUT OBLIGATION ON THE PART OF TRUSTEE TO SEE TO THE FURTHER APPLICATION THEREOF. A RECEIPT BY THE RECIPIENT FOR ANY SUCH DISTRIBUTION, IF SUCH DISTRIBUTION IS MADE IN A MANNER CONSISTENT WITH THE PROPER EXERCISE OF TRUSTEE'S FIDUCIARY DUTIES HEREUNDER, SHALL FULLY DISCHARGE TRUSTEE. SUCH DISTRIBUTIONS MAY BE MADE:

1. DIRECTLY TO OR ON BEHALF OF THE DISABLED PERSON;

2. TO AN ACCOUNT IN A BANKING OR SAVINGS INSTITUTION, EITHER IN THE NAME OF THE DISABLED PERSON OR IN A FORM RESERVING TITLE, MANAGEMENT, AND CUSTODY OF SUCH ACCOUNT TO A SUITABLE PERSON FOR THE USE OF THE DISABLED PERSON;

3. IN ANY FORM OF ANNUITY;

4. TO ANY PERSON OR FINANCIAL INSTITUTION, INCLUDING TRUSTEE, AS CUSTODIAN OR CUSTODIAL TRUSTEE, AND IN ALL OTHER WAYS PROVIDED BY THE STATUTES OF ANY STATE DEALING WITH GIFTS OR DISTRIBUTIONS TO OR FOR MINORS OR PERSONS UNDER DISABILITY; AND

5. TO ANY SUITABLE INDIVIDUAL WITH WHOM THE DISABLED PERSON RESIDES OR WHO HAS THE CARE OR CUSTODY OF SUCH PERSON.

6. TO ANY GUARDIAN OR CONSERVATOR FOR THE DISABLED PERSON APPOINTED BY A COURT OF COMPETENT JURISDICTION

- b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will. Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.

TAB A
General and Administrative Provisions

	N O T E S	P O W E R	N T W I T H	N T W I T H S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T
DISTRIBUTION ALTERNATIVES: My personal representative may make any payments under my will: a) Directly to the beneficiary; b) In any form allowed by applicable state law for gifts or transfers to minors or persons under disability; c) To the beneficiary’s guardian, conservator, or caregiver for the benefit of the beneficiary; and d) By direct payment of the beneficiary’s expenses. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my personal representative’s fiduciary duties hereunder, shall fully discharge my personal representative .	7	✓												
DISTRIBUTION ALTERNATIVES: My fiduciaries may make any payments under my will or any trust under my will: a) Directly to the beneficiary; b) In any form allowed by applicable state law for gifts or transfers to minors or persons under disability; c) To the beneficiary’s guardian, conservator, or caregiver for the benefit of the beneficiary; and d) By direct payment of the beneficiary’s xpenses. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries’ duties hereunder, shall fully discharge my fiduciaries .	7		✓	✓	✓	✓	✓	✓						
DISTRIBUTION ALTERNATIVES: Should trustee, in its reasonable discretion, determine that it would not be in the best interests of a disabled person described in paragraph __.1 (Continued Retention in Trust) of this article for trustee to retain in trust any property set aside for, or otherwise payable to, such person, such property may be distributed by trustee, in any of the ways authorized by this paragraph, without continuing court supervision or the intervention of a guardian or conservator or other personal representative, and without giving or requiring any bond. Any distribution so made shall be without obligation on the part of trustee to see to the further application thereof. A receipt by the recipient for any such distribution, if such distribution is	7									✓	✓	✓	✓	✓

*Language in this form is slightly altered from language in Tab A.

TAB A
General and Administrative Provisions

	N O T E S	P O W	N T W	N T W S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T
made in a manner consistent with the proper exercise of trustee's fiduciary duties hereunder, shall fully discharge trustee. Such distributions may be made: a) Directly to or on behalf of the disabled person; b) To an account in a banking or savings institution, either in the name of the disabled person or in a form reserving title, management, and custody of such account to a suitable person for the use of the disabled person; c) In any form of annuity; d) To any person or financial institution, including trustee, as custodian or custodial trustee, and in all other ways provided by the statutes of any state dealing with gifts or distributions to or for minors or persons under disability; and e) To any suitable individual with whom the disabled person resides or who has the care or custody of such person.														
DISTRIBUTION OF INCOME AND PRINCIPAL: Trustee shall distribute to or apply for the benefit of settlor's spouse and settlor's descendants as much of the net income and principal of the Family Trust as trustee deems necessary or advisable for their health, education, support, or maintenance; provided, however, that no distribution of income or principal shall be made to settlor's children which would operate to discharge or relieve settlor's spouse of any legal obligation the spouse may have to support settlor's children. Any net income of the Family Trust not so distributed shall be accumulated and added to principal.										✓	✓			
DISTRIBUTION OF INCOME AND PRINCIPAL: Subsequent to settlor's death, if settlor's spouse is then living, trustee shall distribute to or apply for the benefit of settlor's spouse and settlor's descendants as much of the net income and principal of the trust as trustee deems necessary or advisable for their health, education, support, or maintenance; provided, however, that no distribution of income or principal shall be made to settlor's children which would operate to discharge or relieve settlor's spouse of any legal obligation the spouse may have to support settlor's children. Any net income of the trust not so distributed shall be accumulated and added to principal.												✓		

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TAB A
General and Administrative Provisions

	N O T E S	P O W	N T W	N T W S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T	
<p>DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If any beneficiary to whom my personal representative is directed to distribute any share of my probate estate is under the age of 21 years or is, in the opinion of that fiduciary, under any disability which renders such beneficiary unable to administer distributions properly when the distribution is to be made, such fiduciary, in its discretion, acting as trustee, may continue to hold such beneficiary's share as a separate trust until he or she reaches the age of 21 or overcomes the disability, when my trustee shall distribute such beneficiary's trust to him or her.</p> <p>a) While any trust is being held under this paragraph, my trustee may distribute to, or apply for the benefit of, the beneficiary for whom the trust is held such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any agreement with any representative of a medical or public assistance program or governmental entity which compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.</p> <p>b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will. Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is</p>	8		✓	✓											

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TAB A
General and Administrative Provisions

	N O T E S	P O W	N T W	N T W S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T
not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.														
<p>DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If any beneficiary to whom my personal representative or trustee is directed to distribute any share of trust income or principal is under the age of 21 years or is, in the opinion of that fiduciary, under any disability which renders such beneficiary unable to administer distributions properly when the distribution is to be made, such fiduciary, in its discretion, may continue to hold such beneficiary's share as a separate trust until he or she reaches the age of 21 or overcomes the disability, when my trustee shall distribute such beneficiary's trust to him or her.</p> <p>a) While any trust is being held under this paragraph, my trustee may distribute to, or apply for the benefit of, the beneficiary for whom the trust is held such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any agreement with any representative of a medical or public assistance program or governmental entity which compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.</p> <p>b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will.</p>	8				✓	✓								

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TAB A
General and Administrative Provisions

	N O T E S	P O W	N T W	N T W S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T
Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.														
<p>DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If any beneficiary, other than my spouse, to whom my personal representative or trustee is directed to distribute any share of trust principal is under the age of 21 years or is, in the opinion of that fiduciary, under any disability which renders such beneficiary unable to administer distributions properly when the distribution is to be made, such fiduciary, in its discretion, may continue to hold such beneficiary's share as a separate trust until he or she reaches the age of 21 or overcomes the disability, when my trustee shall distribute such beneficiary's trust to him or her.</p> <p>a) While any trust is being held under this paragraph, my trustee may distribute to, or apply for the benefit of, the beneficiary for whom the trust is held such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any agreement with any representative of a medical or public assistance program or governmental entity which compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's</p>	8						✓	✓						

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TAB A
General and Administrative Provisions

	N O T E S	P O W	N T W	N T W S C	W C T	W C T S C	D W	M D W	2 5 0 3 (c)	R M D T	R D T	S I L I T	J I L I T	N T P R T
<p>discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.</p> <p>b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will. Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.</p>														
<p>DISTRIBUTIONS AS SETTLOR DIRECTS: During settlor's lifetime, trustee shall dispose of the net income and principal of the trust in such manner as settlor may direct from time to time. Unless otherwise directed by settlor, the net income shall be paid to settlor no less frequently than quarter-annually.</p>										✓	✓			✓
<p>DISTRIBUTIONS FREE FROM TRUST: Any property of my estate or of any separate trust created under my will which, by reason of a person's attained age, death, or otherwise, would have become distributable before the establishment of a separate trust, may be distributed directly by my fiduciaries without requiring that a separate trust be established or that distribution be made by the trustee of such separate trust.</p>	9				✓	✓	✓	✓						
<p>DISTRIBUTIONS FREE FROM TRUST: Any property of the trust estate or of any separate trust created under this agreement which, by reason of a person's attained age, death or otherwise, would have become distributable before the establishment of a separate trust, may be</p>	9									✓	✓	✓	✓	✓

*Language in this form is slightly altered from language in Tab A.

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Form 10B is a suggested will for use in conjunction with a revocable trust. This will is for an unmarried person and presumes there are minor children who are beneficiaries of the trust.

Before this form is used, the caveats at the beginning of this book and all Notes on Use for this form should be carefully read. The Notes on Use for the general and administrative provisions of this form are located in Tab A.

WILL
OF

I, _____, also known as _____, a resident of _____ County, Colorado, revoke any prior wills and codicils made by me and declare this to be my will.

ARTICLE 1 – FAMILY INFORMATION

~~I am married to _____.~~ ~~Any reference in my will to my spouse is to such person.~~ I am not currently married. My children now living are _____, born _____, and _____, born _____. Any reference in my will to my children is to such children as well as any children subsequently born to or legally adopted by me.

ARTICLE 2 – SPECIFIC AND GENERAL GIFTS

~~2.1 — GIFT TO SPOUSE: I give all my household goods, personal effects, and other articles of tangible personal property, together with any insurance policies covering such property and claims under such policies, to my spouse, if my spouse survives me.~~

~~2.22.1~~ SEPARATE MEMORANDUM: ~~If my spouse does not survive me,~~ I give such property all my household goods, personal effects, and other articles of tangible personal property, together with any insurance policies covering such property and claims under such policies, in accordance with any memorandum directing the disposition of such property signed by me or in my handwriting which I

may leave at my death.

2.32.2 CONTINGENT GIFT: If ~~my spouse does not survive me, and if~~ for any reason no such memorandum is in existence at my death, or to the extent such memorandum fails to dispose of all of such property effectively, I give such property not disposed of, except such property used in any business in which I may have an interest, to my children who survive me, but not to their descendants, in shares of substantially equal value, to be divided among them as they and such other person as my personal representative may select to represent any child of mine believed by my personal representative to be incapable of acting in his or her own best interest, shall agree. In case my children and such other person do not agree upon the division of such property within three months after the appointment of my personal representative, my personal representative shall make the division. Notwithstanding the foregoing, should my personal representative determine that it would not be in the best interest of my children to receive possession of any item of such property, my personal representative may sell such item and add the proceeds to my residuary estate. All reasonable expenses of storage, packing, shipping, delivery, insurance or sale shall be paid as expenses of administration.

ARTICLE 3 – REMAINDER OF ESTATE

3.1 POUROVER TO TRUST: All of the rest and remainder of the property which I shall own at my death, other than property over which I have a power of appointment, and after payment of expenses and taxes which are paid pursuant to this will, I give to the trustee of the _____ Trust dated _____, and executed prior to this will by and between me as settlor, and _____ as trustee, to be added to the property of that trust and disposed of in accordance with its terms and any amendments prior to my death.

3.2 ALTERNATIVE DISPOSITION: If the trust referred to in the foregoing paragraph, which I specifically and completely incorporate in this will by reference, is not in effect at my death, or if there is any other reason the pourover cannot be accomplished, I direct my personal representative to establish a trust in accordance with the provisions of such trust. I give the remainder of my estate, excluding any property over which I might have a power of appointment, to the trustee of said trust.

ARTICLE 4 – DESIGNATION AND SUCCESSION OF FIDUCIARIES

4.1 PERSONAL REPRESENTATIVE: I nominate ~~my spouse as my personal representative~~ _____ of _____ as my personal representative. If ~~my spouse~~ _____ fails or ceases to act as my personal representative, I nominate _____ of _____ as my personal representative.

4.2 GUARDIAN: If appointment of a guardian of a minor child of mine becomes necessary, I appoint as guardian the individual or individuals designated in a separate writing signed by me in the presence of two witnesses. If no such separate writing exists, I appoint _____ 6 _____ as guardian.

4.3 CONSERVATOR: I nominate the guardian of any minor child of mine as conservator of the estate of such child if such appointment becomes necessary.

ARTICLE 5 – POWERS OF FIDUCIARIES

5.1 GRANT: My personal representative may perform every act reasonably necessary to administer my estate. Specifically, my personal representative may hold, retain, invest, reinvest and manage real or personal property, including interests in any form of business entity including, but not limited to, limited partnerships and limited liability companies, and policies of life, health and disability insurance, without diversification as to kind, amount, or risk of non-productivity and without limitation by statute or rule of law but in all other respects in accordance with the Colorado Uniform Prudent Investor Act. It may partition, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, mortgage, pledge, abandon, borrow, loan, contract, distribute in cash or kind or partly in each at fair market value on the date of distribution, without requiring pro rata distribution of specific property and without requiring pro rata allocation of the tax basis of such property. It may hold in nominee form, continue businesses, carry out agreements, deal with itself, other fiduciaries and business organizations in which my personal representative may have an interest. It may establish reserves, release powers, and abandon, settle, or contest claims. It may employ attorneys, accountants, investment advisors, and other agents or assistants as deemed

advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

5.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, my personal representative may exercise those powers set forth in the Colorado Fiduciaries' Powers Act as amended after the date of this instrument. I incorporate such Act as it exists today by reference and make it a part of this instrument.

5.3 DISTRIBUTION ALTERNATIVES: My personal representative may make any payments under my will:

- a) Directly to the beneficiary;
- b) In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;
- c) To the beneficiary's guardian, conservator, or caregiver for the benefit of the beneficiary; and
- d) By direct payment of the beneficiary's expenses. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my personal representative's fiduciary duties hereunder, shall fully discharge my personal representative.

ARTICLE 6 – ADMINISTRATIVE PROVISIONS

6.1 NO BOND: I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

6.2 COMPENSATION: Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

6.3 ANCILLARY FIDUCIARY: In the event ancillary administration shall be required or desired

and my domiciliary personal representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary personal representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary personal representative may delegate to such ancillary fiduciary such powers granted to my original personal representative as my personal representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary personal representative.

ARTICLE 7 – TAX PROVISIONS

7.1 DEATH TAXES AND PAYMENT OF EXPENSES: The trustee of the trust referred to in this will is authorized to pay my funeral and burial expenses, claims against my estate, and expenses of estate administration. Accordingly, I direct my personal representative to consult with the trustee to determine the preferable source for payment of such amounts and which, if any, should be requested from the trust. I direct that all taxes imposed by reason of my death, with respect to property passing under my will or otherwise, including but not limited to estate, inheritance, gift, generation-skipping transfer, and income taxes, together with interest and penalties thereon, shall be apportioned among my beneficiaries in a manner which fairly reflects the share of my estate which each beneficiary receives, under this will or otherwise, taking into consideration:

- a) The value of all property includible in my estate for purposes of the tax imposed which passes to such beneficiaries other than pursuant to the provisions of this will; and
- b) In the case of each beneficiary, the share of all such taxes which is attributable to the share of my estate receivable by such beneficiary. My personal representative shall charge each such tax against the property which gives rise to liability for such tax, whether or not such property passes pursuant to the provisions of this will, and to the extent practicable, shall recover from the beneficiaries of property passing other than pursuant to the provisions of this will their allocable share of such tax, unless my personal representative in its discretion determines that the cost of recovery is greater than such recovery warrants. In no event shall any of such taxes be allocated to or paid from property which is not included in my gross estate for federal estate tax

purposes or which qualifies for the federal estate tax ~~marital or~~ charitable deductions. Notwithstanding the foregoing, if any property is included in my gross estate for federal estate tax purposes under I.R.C. § 2044, as amended, as “qualified terminable interest property,” because of the previous allowance of a federal estate tax or gift tax marital deduction, my personal representative shall recover from the persons receiving such property, or, if applicable, from the trust estate of which such property comprises all or a part, that maximum amount to which my estate is entitled pursuant to I.R.C. § 2207A; and shall pay that portion of the federal estate tax imposed by reason of my death which is attributable to the inclusion of such property in my gross estate out of my residuary estate as an expense of administration, without apportionment and without right of contribution from any person.

7.2 TAX AND ADMINISTRATIVE ELECTIONS: My personal representative may exercise any available election under any applicable income, estate, inheritance, succession, gift, or generation-skipping transfer tax law. This authority specifically includes the power to select any alternate valuation date for death tax purposes and the power to determine whether any or all of the administration expenses of my estate are to be used as estate tax deductions or as income tax deductions, and no compensating adjustments need be made between income and principal as a result of such determinations unless my personal representative shall determine otherwise, in the discretion of my personal representative, or unless required by law. My personal representative shall not be liable to any beneficiary of my estate for tax consequences occasioned by reason of the exercise or non-exercise of any such elections or by reason of the allocation and distribution of property in kind in full or partial satisfaction of any beneficiary’s interest in my estate.

ARTICLE 8 – GENERAL PROVISIONS

8.1 ADOPTED CHILDREN: A child adopted by any person and the descendants by blood or adoption of such child shall be considered the descendants of such adopting person and of such person’s ancestors if the adoption is by legal proceeding while the child is under the age of 21 years.

8.2 APPLICABLE LAW: The validity and construction of my will shall be determined by the

laws of Colorado. Questions of administration of any trust established under my will shall be determined by the laws of the situs of administration of such trust.

8.3 CONSTRUCTION: Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

8.4 HEADINGS AND TITLES: The headings and paragraph titles are for reference only.

8.5 I.R.C.: I.R.C. shall refer to the Internal Revenue Code of the United States. Any reference to specific sections of the I.R.C. shall include sections of like or similar import which replace the specific sections as a result of changes to the I.R.C. made after the date of this instrument.

8.6 OTHER DEFINITIONS: Except as otherwise provided in this instrument, terms shall be as defined in the Colorado Probate Code as amended after the date of this instrument and after my death.

8.7 SURVIVORSHIP: For purposes of this will, ~~if my spouse in fact survives me by any period of time or if the order of our deaths is not known, then my spouse shall be deemed to have survived me. Any other~~ beneficiary shall be deemed to have predeceased me if such beneficiary dies within 30 days after the date of my death.

8.8 SEVERABILITY: If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

I, [testator's name], sign my name to this instrument on _____, 20____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

NOTES ON USE

- 1) So that it will be clear under UPC II that the residuary gift to the revocable trust is to include all lapsed gifts, consider using the following alternative language:

3.1 POUROVER TO TRUST: All of the rest and remainder of the property which I shall own at my death, including all lapsed or failed devises, but excluding any property over which I might have a power of appointment, and after payment of expenses and taxes which are paid pursuant to this will, I give to the trustee of the _____ Trust dated _____, and executed prior to this will by and between me as settlor, and _____ as trustee, to be added to the property of that trust and disposed of in accordance with its terms and any amendments prior to my death.

- 2) Consider republishing the pourover will by codicil when a revocable trust is amended to incorporate such amendment by reference. See C.R.S. § 15-11-510 and Chapter 9, *Colorado Estate Planning Handbook (Orange Book Handbook)* (David K. Johns *et al.* eds., CLE in Colo., Inc. Supp. 2009). *Republishing* a will on or after July 1, 1995 will cause the new rules of construction in UPC II to be applicable to the will, even if it was executed before July 1, 1995. Of course, the rules of construction only apply if they are needed because there is an ambiguity or undefined term in a will. The specific terms of the will control over any rules of construction. The rules of construction under prior law will continue to apply to the will if specifically so provided in the codicil.

- 3) Article 7 of the pourover will, like paragraph 4.3 of ~~both the Revocable Marital Deduction Trust (Form 13A) and the Revocable Disclaimer Trust (Form 16)~~ Non-Tax Planning Revocable Trust (Form 23), the counterparts to this document, provides for equitable apportionment of death taxes. For other approaches to tax apportionment, see General and Administrative Provisions (Tab A). The drafter should be cognizant of the importance, should the decision be made to apportion tax in a different manner, of modifying the Non-Tax Planning Revocable Trust (Form 23) ~~Revocable Marital Deduction Trust (Form 13A) or the Revocable Disclaimer Trust (Form 16), as the case may be,~~ to reflect the change accordingly. If the testator has never been married, the drafter should consider removing the last sentence in Section 7.1 b) regarding qualified terminable interest property.

Orange Book Forms – Adoptee and Directed Trustee Issues

1. The following forms and Articles/Sections should be reviewed to determine whether an amendment should be made. In many, perhaps most, cases, an additional section may be added to a form that defines terms such that the remaining articles sections will be governed by the definitions and need not be amended.
2. Adoptees
 - a. Adoptees take from and through terminated parents. *C.R.S. § 15-11-119*. So, grandparents may leave property to grandchildren who were adopted away, but who remain heirs pursuant to *§ 15-11-119*.
 - b. Adoptees are included in class gifts. *C.R.S. § 15-11-705(2)*. There are exceptions. *See C.R.S. § 15-11-705(2), (5)-(6)*.

Form	Articles/Sections	Issues
6A – Nontrust Will	1, 2, 3, and 8.1	<p>If the term “children” is not defined, then adoptees will be included (I will not go into the exceptions of <i>C.R.S. § 15-11-705</i>, but can explain them to the committee).</p> <p>If the term “children” is defined as e.g., “Joe and Jane and any children subsequently born to or legally adopted by me,” then future adoptees will be included (pending exceptions).</p> <p>Section 8.1 could include language including or excluding adoptees. Or, a new section that defines “Issue and Class Designations” could be included. I use the following language if clients do not want to include adoptees as takers:</p> <p>“The word 'issue' shall mean all lineal descendants of all generations with the relationship of parent and child at each generation being determined by the definitions of 'parent' and 'child' contained in the Colorado Probate Code at the date of my Will. Notwithstanding the foregoing, although the words 'children,' issue,' and 'nieces,' 'nephews,' and any other class designations shall include legally adopted persons, they shall not include adoptees who otherwise would be considered heirs or devisees of class gifts under Subpart 2 of Part 11 of Title 15, C.R.S. (<i>C.R.S. §§ 15-11-115 - 15-11-122</i>), regardless of whether I was the adoptee's genetic parent.”</p>

6B – Nontrust Will – Single with Children	Articles 1, 2, 3, and 8.1	Same issues
7A – Will with Contingent Trust	Articles 1, 2, 3, 4, and 10.1	Same issues
7B – Will with Contingent Trust	Articles 1, 2, 3, 4, and 10.1	Same issues
8 – Disclaimer Will	Articles 1, 2, 3, 4.2, and 10.1	Same issues
9 – Marital Deduction Will	1, 2, 5.1, 5.2 (with regard to the exercise of the power of appointment), 5.4, 5.5, 5.8, 11.1	Same issues
10 – Pourover Will	1, 2, and 8.1	Same issues
11 – Codicil.	Perhaps a note should be added to warn of the adoptee issue if a codicil is used to gift property.	
12 – Memorandum	Perhaps a note should be added to warn of the adoptee issue if a memorandum is used to gift property to a class – that the definition of the class in the will might need to be adjusted.	
13A – Revocable Marital Deduction Trust	1, 2.3, 2.4 (regarding “family”), 5.1, 7.5 (with regard to the exercise of the power of appointment), 8.4 (with regard to the exercise of the power of appointment), 9.1), 10.1, 10.2, 12, 16.1	Same issues
13B – Short Form Joint Revocable Trust	2.3	Same issues
14 – Trust Amendment	Perhaps a note should be added to warn of the adoptee issue if a gift is made to a class	
15 – Section 2503(c) Trust	4.3, 9.1	Same issues
16 – Revocable Disclaimer Trust	1, 2.3, 6.2, 7, 8, 10, 14.1	Same issues
17 – Single Life Irrevocable Life Insurance Trust	1.2, 3.1, 6, 7, 8.1, 9, 13.1	Same issues
19 – Joint Lives Irrevocable Life Insurance Trust	1.2, 3.1, 6, 7, 8.1, 9, 13.1	Same issues
23 – Non-Tax Planning Revocable Trust	1, 2.3, 5, 6, 7, 8, 12.1	Same issues

Tab A – General and Administrative Provisions	Adopted Children Beneficiaries Common trust for descendants Contingent gift Continued retention in trust Distribution of income and principal Distribution to disabled, etc. Division into separate shares Family information Remote contingent distribution Share for descendants of deceased child Share for living child Tangible personal property	Same issues
Tab B – Special Provisions	1, 2	Same issues
Tab F – Life Insurance Beneficiary Designations		Same issues

3. Directed Trustees

- a. Directed trustees will serve different functions, such as custodian/distributor/manager (non-investment decisions) of property or an investor of property (investment decisions).

7A – Will with Contingent Trust	5.4, 6.1, 7	Identify the trustees and define each trustee's duties pursuant to proposed <i>C.R.S. § 15-16-701, et seq.</i>
7B – Will with Contingent Trust	5.2, 6.1, 7	Same issues
8 – Disclaimer Will	5.2, 6.1, 7	Same issues
9 – Marital Deduction Will	6.4, 7.1, 8	Same issues
13A – Revocable Marital Deduction Trust	13.1, 14	Same issues
13B – Short Form Joint Revocable Trust	3, 4	Same issues
14 – Trust Amendment	Perhaps a note should be added to inform the drafter of the directed trustee issue	
15 – Section 2503(c) Trust	5.1, 6, 7	Same issues
16 – Revocable Disclaimer Trust	11.1, 12	Same issues
17 – Single Life Irrevocable Life Insurance Trust	10.1, 11	Same issues
19 – Joint Lives Irrevocable Life Insurance Trust	5, 6	Same issues
23 – Non-Tax Planning Revocable Trust	9.1, 10	Same issues
25 – Memorandum – Funding Revocable Living Trust	Perhaps include an explanation of directed trustees	