

COLORADO REVISED STATUTES C.R.S. 15-11-712 (2014)

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
COLORADO PROBATE CODE
ARTICLE 11. INTESSTATE SUCCESSION AND WILLS
PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS
AND OTHER GOVERNING INSTRUMENTS

15-11-712. Simultaneous death; disposition of property

The rules of construction in this section shall control in those situations not subject to the control of section 15-11-702.

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no clear and convincing evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he or she had survived, except as provided otherwise in this section.

(2) (a) If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his or her surviving another person, and both persons die, and there is no clear and convincing evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived.

(b) If there is no clear and convincing evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their deaths each of such beneficiaries would have been entitled to the property if he or she had survived the others, the property shall be divided into as many equal portions as there were beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

(3) Where there is no clear and convincing evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. For the purposes of this section, the term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

(4) Where a husband and wife have died leaving community property and there is no clear and convincing evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived, and as if said one-half were his separate property, and the other one-half thereof shall pass as if the wife had survived, and as if said other one-half were her separate property.

(5) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no clear and convincing evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary; except that, if the policy is community property of the insured and his or her spouse, and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representative of the insured, the proceeds shall be distributed as community property.

(6) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance or any other situation where provision is made for distribution of property different from the provisions of this section or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

HISTORY: Source: L. 94: Entire part R&RE, p. 1022, § 3, effective July 1, 1995.

Editor's note: This section is similar to former § 15-11-613 as it existed prior to 1995.

ANNOTATION

Law reviews. For article, "The Will in Estate Planning", see 29 Dicta 367 (1952). For comment, "Lovato v. District Court: The Dilemma of Defining Death", see 58 Den. L.J. 627 (1981).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section is inapplicable if there is evidence as to which one of the parties survived the other or if there are particular circumstances from which the fact of survivorship may be inferred. The presumption of simultaneous death of the parties was not intended to take the place of competent, positive and direct evidence, and the fact of survivorship requires no higher degree of proof than any other fact in the case. *Sauers v. Stolz*, 121 Colo. 456, 218 P.2d 741 (1950).

Provisions of separate trust not controlling over subsection (5). In cases when the beneficiary and insured die simultaneously, and where there are no words in the contract of insurance in any way reversing the statutory presumption of subsection (5), nor is there anything said in the beneficiary's will pertaining to simultaneous death, a presumption as to survivorship contained in the insured's trust does not result in a distribution of property different from that provided for by use of the statutory presumption. *Estate of Ohre v. State Dept. of Rev.*, 41 Colo. App. 113, 585 P.2d 920 (1978).

Applied in *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979); *In re Estate of Whittman*, 220 P.3d 961 (Colo. App. 2009), *aff'd*, 233 P.3d 697 (Colo. 2010).