Colorado Statutes/Colorado Revised Statutes
TITLE 15 PROBATE, TRUSTS, AND FIDUCIARIES/COLORADO PROBATE CODE
ARTICLE 11 INTESTATE SUCCESSION AND WILLS
PART 5 WILLS AND WILL CONTRACTS AND CUSTODY AND DEPOSIT OF WILLS

15-11-501. Who may make a will.

An individual eighteen or more years of age who is of sound mind may make a will.

History
Source: L. 94: Entire part R&RE, p. 997, § 3, effective July 1, 1995.

Annotations
Editor's note: This section was contained in a part that was repealed and reenacted in 1994. Provisions of this section, as it existed in 1994, are similar to those contained in 15-11-501 as said section existed in 1993, the year prior to the repeal and reenactment of this part.

Annotations
ANNOTATION

Annotations
Am. Jur.2d. See 79 Am. Jur.2d, Wills, §§ 47-49, 62.

C.J.S. See 95 C.J.S., Wills, §§ 2-4.

Law reviews. For note, "A Survey of the Colorado Torrens Act", see 5 Rocky Mt. L. Rev. 149 (1933). For note, "Some Problems Relating to Testamentary Witnesses", see 23 Rocky Mt. L. Rev. 458 (1951). For article, "Transmissibility of Future Interests in Colorado", see 27 Rocky Mt. L. Rev. 1 (1954). For article on will drafting, see 27 Rocky Mt. L. Rev. 306 (1955). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Will Execution Ceremonies: Securing a Client's Last Wishes", see 23 Colo. Law. 47 (1994). For article, "Legal Guidelines and Methods for Evaluating Capacity", see 32 Colo. Law. 65 (June 2003).

Annotator's note. Since § 15-11-501 is similar to repealed § 152-5-2, CRS 53, CSA, C. 176, § 36, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A testator's soundness of mind may be evaluated under either the test set forth in Cunningham v. Stender, 127 Colo. 293, 255 P.2d 977 (1953), or the insane delusion test. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

The test of testamentary capacity is a positive showing that at the time of executing the will, the testator understood the nature and extent of his property, understood the effect of the proposed testamentary disposition, knew the natural objects of his bounty, and that the proposed will represented his wishes. Lehman v. Lindenmeyer, 48 Colo. 305, 109 P. 956 (1910); Cunningham v. Stender, 127 Colo. 293, 255 P.2d 977 (1953); In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Testamentary capacity consists of mentality and memory sufficient to understand intelligently the nature and purpose of the transaction, to comprehend generally the nature and extent of property to be disposed of, to remember who are the natural objects of the testator's bounty, and to understand the nature and effect of the desired disposition. Columbia Sav. & Loan Ass'n v. Carpenter, 33 Colo. App. 360, 521 P.2d 1299 (1974), rev'd on other grounds sub nom. Judkins v. Carpenter, 189 Colo. 95, 537 P.2d 737 (1975).

An individual lacks testamentary capacity under the insane delusion test when he or she suffers from an insane delusion that materially affects the disposition of the will. Breeden v. Stone, 992 P.2d 1167 (Colo. 2000); In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

An insane delusion is a persistent belief in something that has no existence in fact, which belief is adhered to in spite of all evidence to the contrary. Breeden v. Stone, 992 P.2d 1167 (Colo. 2000); In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

A contestant may challenge a testator's soundness of mind based on both or either of the Cunningham and insane delusion tests. Breeden v. Stone, 992 P.2d 1167 (Colo. 2000).

Testamentary capacity is a matter of fact to be determined by the trial court. Scott v. Leonard, 117 Colo. 54, 184 P.2d 138 (1947).

Testator held to be of sound mind when evidence reveals he had not been drinking at time will executed. In re Piercen's Estate, 118 Colo. 264, 195 P.2d 725 (1948).

Contractual capacity and testamentary capacity are the same. Hanks v. McNeil Coal Corp., 114 Colo. 578, 168 P.2d 256 (1946); Breeden v. Stone, 992 P.2d 1167 (Colo. 2000); In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

Symptoms of senile dementia prior to making a will are not conclusive of incapacity. Hanks v. McNeil Coal Corp., 114 Colo. 578, 168 P.2d 256 (1946).

Likewise, an adjudication of unsoundness of mind and the appointment of a guardian is not conclusive evidence of testamentary incapacity, although the guardianship existed at the time the will was executed. In re McGrove's Estate, 106 Colo. 69, 101 P.2d 25 (1940).

Findings that warrant appointment of a guardian or conservator do not equate to a determination of testamentary incapacity. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

Effect of § 15-14-409, appointment of a conservator or guardianship, on testamentary capacity. Section 15-14-409 specifically provides that the appointment of a conservator or the entry of another protective order is not a determination of decedent's testamentary capacity. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

In addition, § 28-5-219 provides that neither the fact that a person has been rated incompetent by the veterans administration nor the fact that a guardian has been appointed for the person shall be construed as a legal adjudication of insanity or mental incompetency. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

Testator held not to be mentally incapacitated at time will executed by reason of drugs administered. In re Rentfro's Estate, 102 Colo. 400, 79 P.2d 1042 (1938).

Disinheritance of son by virtue of will does not indicate lack of testamentary capacity. Since one making a will is not bound to dispose of his property according to the rules of intestate succession, the fact that a testatrix practically disinherited her son in her will is no reason for regarding her as lacking testamentary capacity. In re Cole's Estate, 75 Colo. 264, 226 P. 143 (1924).

Burden of proving want of testamentary capacity is on proponent of will. In re Roeber's Estate, 70 Colo. 196, 199 P. 481 (1921).

Burden of proof of lack of testamentary capacity. Once the proponent of a holographic will has offered prima facie proof that it was duly executed, the contestant must bear the burden of introducing prima facie evidence that the person who executed the will lacked testamentary capacity. Nunez v. Jersin, 635 P.2d 231 (Colo. App. 1981).

Effect of § 15-12-407 on burden of proof. Enactment of § 15-12-407 changes the long-established Colorado rule that the proponent of a will has the burden of proof and persuasion with regard to testamentary capacity. Nunez v. Jersin, 635 P.2d 231 (Colo. App. 1981).

For testatrix's mental capacity to direct making and execution of will, see In re Stitzer's Estate, 100 Colo. 521, 68 P.2d 561 (1937).

The fact that the testator believed the will contestant was not his son does not justify a conclusion of mental incompetency, even though for years the testator treated and recognized him as a son. Miller v. Weston, 67 Colo. 534, 189 P. 610 (1920).

A testator's preference to a niece or nephew, or even to a stranger, creates no suspicion as to his mental capacity despite the fact that he thereby disinherits brothers and sisters or even children. Nelson v. Nelson, 27 Colo. App. 104, 146 P. 1079 (1915).

Decedent's lack of knowledge of the actual value of estate is not, by itself, proof of lack of testamentary capacity. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

Decedent's failure to accurately estimate the value of estate does not, in itself, amount to an insane delusion. The court found that decedent would not have left a larger bequest to the contestants even if decedent had been aware of the actual value of his or her estate. In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

Evidence of testamentary capacity. If the testamentary disposition is consistent with the testator's situation and in congruity with his affections and previous declarations and if the disposition might have been expected from one so situated, this is rational and legal evidence of testamentary capacity. In re Shapter's Estate, 35 Colo. 578, 85 P. 688 (1905).

In order to prove that a testator is not possessed of sufficient mental capacity to execute a valid will, evidence offered has to be calculated to establish his mental incapacity at the time of the will's execution. In re Estate of Southwick v. First Nat'l Bank, 33 Colo. App. 86, 515 P.2d 484 (1973).

Testamentary incapacity to execute a valid will on a given day may be proven by evidence of incompetency at times prior to the date of execution. In re Estate of Southwick v. First Nat'l Bank, 33 Colo. App. 86, 515 P.2d 484 (1973).

Expert opinion evidence describing mental incapacity at a time prior to the execution of a will, if not too remote in time, provides an inference, the weight of which is left to the trier of fact, that the testator continued to be incompetent at the date of the will's execution, and the admissibility of such evidence is largely within the discretion of the trial court. In re Estate of Southwick v. First Nat'l Bank, 33 Colo. App. 86, 515 P.2d 484 (1973).

Probate court erred when it denied proponent's motion for partial summary judgment regarding the decedent's testamentary capacity at the time he or she executed the second codicil since decedent's testamentary capacity was a question of fact that needed to be determined by application of the Cunningham test. Proponent's pleadings submitted evidence that satisfied each element of the Cunningham test. The physician's letter submitted by the objector referred to a remote time 21 months prior to the execution of the second codicil and did not address any of the elements of the Cunningham test and therefore was insufficient to create a genuine issue of material fact. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

For evidence of lack of testamentary capacity, see In re D'Avignon's Will, 12 Colo. App. 489, 55 P. 936 (1899).

For cases in which undue influence by proponent of will is submitted as grounds for will's invalidity, see Gehm v. Brown, 125 Colo. 555, 245 P.2d 865 (1952); Igo v. Marshall, 140 Colo. 560, 345 P.2d 724 (1961).

At common law a feme covert was incapable of disposing of a freehold estate by will. Mitchell v. Hughes, 3 Colo. App. 43, 32 P. 185 (1893).

Applied in In re Hayes' Estate, 55 Colo. 340, 135 P. 449 (1913).

15-11-502. Execution; witnessed or notarized wills; holographic wills.

(1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a will shall be:

(a) In writing;

(b) Signed by the testator, or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) Either:

(I) Signed by at least two individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will as described in paragraph (b) of this subsection (1) or the testator's acknowledgment of that signature or acknowledgment of the will; or

(II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.

(2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

(4) For purposes of this section, "conscious presence" requires physical proximity to the testator but not necessarily within testator's line of sight.

(5) For purposes of this part 5, "will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.

Source: L. 94: Entire part R&RE, p. 997, § 3, effective July 1, 1995. L. 2001: (1)(c) amended, p. 886, § 1, effective June 1. L. 2009: (1) amended, (HB 09-1287), ch. 310, p. 1683, § 12, effective July 1, 2010. L. 2010: (5) added, (SB 10-199), ch. 374, p. 1750, § 9, effective July 1.

Editor's note:
(1) This section is similar to former §§ 15-11-502 and 15-11-503 as they existed prior to 1995.

(2) Section 17 of chapter 310, Session Laws of Colorado 2009, as amended by section 24 of chapter 374, Session Laws of Colorado 2010, provides that the act amending subsection (1):

(a) Applies on or after July 1, 2010, to governing instruments executed by decedents who die on or after July 1, 2010; and to any proceedings in court then pending or thereafter commenced regardless of the time of death of the decedent except to the extent that, in the opinion of the court, the former statute should be made applicable in a particular case in the interest of justice or because of infeasibility of application of a provision of the act; and

(b) Does not apply to an action performed before July 1, 2010, in any proceeding; an accrued right; a right that is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 1, 2010; or a provision of a governing instrument that was executed before July 1, 2010, and includes a clear indication of a contrary intent.

(3) Section 25 of chapter 374, Session Laws of Colorado 2010, provides that the act adding subsection (5):

(a) Applies to governing instruments executed by decedents who die on or after July 1, 2010; and any proceeding in court then pending or thereafter commenced regardless of the time of death of the decedent except to the extent that, in the opinion of the court, the former statute should be made applicable in a particular case in the interest of justice or because of infeasibility of application of a provision of the act; and

(b) Does not apply to an action performed before July 1, 2010, in any proceeding; an accrued right; a right that is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 1, 2010; or a provision of a governing instrument that was executed before July 1, 2010, and includes a clear indication of a contrary intent.

Annotations
Am. Jur.2d. See 79 Am. Jur.2d, Wills, §§ 19-24, 170, 178, 197, 200, 240, 247, 256-259.

C.J.S. See 95 C.J.S., Wills, §§ 166, 199-203, 217-221, 226-231.

Law reviews. For note, "Control of Trust Property by the Settlor", see 11 Rocky Mt. L. Rev. 42 (1938). For article, "Family Law, Probate Law, and Constitutional Law", see 31 Dicta 471 (1954). For comment on In re McLaughlin's Will, appearing below, see 26 Rocky Mt. L. Rev. 337 (1954). For article on the necessity of attestation clause or proof of attestation, see 29 Rocky Mt. L. Rev. 475 (1957). For article, "The Sight and Sense Tests in Colorado", see 35 Dicta 114 (1958). For article, "Holographic and Nonconforming Wills: Dispensing With Formalities--Part I", see 31 Colo. Law. 57 (December 2002). For article, "Holographic and Nonconforming Wills: Dispensing With Formalities--Part II", see 32 Colo. Law. 53 (January 2003).

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

The requirements of this section are plain. They are, to reiterate: The will must be written; it must be signed by the testator, or someone for him in his presence and by his direction; it must be signed or acknowledged by the testator in the presence of two or more witnesses; and the testator must request two persons to sign the instrument as witnesses. McGary v. Blakely, 127 Colo. 495, 258 P.2d 770 (1953).

A will not meeting the requirements of this section is void for all purposes. McGary v. Blakeley, 127 Colo. 495, 258 P.2d 770 (1953).

The formalities required for valid will execution require strict adherence in order to prevent fraud because statutes governing execution are designed to safeguard and protect the decedent's estate. In re Estate of Royal, 826 P.2d 1236 (Colo. 1992).

For a will, so far as execution goes, is an entirety, and if defective because not executed in accordance with the requirements of law, it is void for all purposes. Twilley v. Durkee, 72 Colo. 444, 211 P. 668 (1922).

With reference to wills made by residents of the state, the provisions of this section are mandatory. Reed v. McLaughlin, 128 Colo. 581, 265 P.2d 691 (1954).

Where testamentary capacity, sufficient witnessing, and a valid bequest are shown, a refusal to probate a will held error, regardless of whether a testamentary trust therein was valid or not. Frazier v. Frazier, 83 Colo. 188, 263 P. 413 (1927).

Court has duty as matter of law to hold will properly executed. Where proof of due execution has been made and no evidence presented to the contrary, it is the duty of the court to hold as a matter of law that the will was properly executed, and to remove that question from the jury's consideration. O'Brien v. Wallace, 145 Colo. 291, 359 P.2d 1029 (1961).

A will must be reduced to writing but its continued existence as a will should not be held to depend at all events upon the production and exhibition of the writing. Estate of Eder, 94 Colo. 173, 29 P.2d 631 (1934).

Attempted creation of a trust by will held invalid as depending on oral instructions for its execution, since such instructions given before or after the execution of a will are in violation of this section requiring wills to be in writing. Frazier v. Frazier, 83 Colo. 188, 263 P. 413 (1927).

What constitutes "presence". If in the act of attesting the will the witnesses are where the testator can see them if he desires, they are in his presence within the meaning of this section. Burnham v. Grant, 24 Colo. App. 131, 134 P. 254 (1913).

This section requires that the witnesses shall sign the will. This means that something more is required of witnesses than the mere placing of their names on the document. It requires an observation by the witnesses

to see that the will was executed by the testator and that the testator had capacity to make the will. McGary v. Blakeley, 127 Colo. 495, 258 P.2d 770 (1953).

Witnesses must actually sign the will and may not substitute oral testimony to affirm testator's signature. In re Estate of Royal, 813 P.2d 790 (Colo. App. 1991), aff'd, 826 P.2d 1236 (Colo. 1992).

Will is valid despite failure of witnesses to sign on same page as testator. Although the witnesses' signatures do not appear on the same page as the signature of the testator, the witnesses did "subscribe" their names to the will and the will is valid. Additionally, all three witnesses testified as to the proper execution of the will in every essential element, therefore the will was properly admitted to probate. Brock v. Erickson, 28 Colo. App. 555, 475 P.2d 346 (1970).

Witnesses may attest to a will after the testator's death but only upon a showing of exceptional circumstances which made it impossible or extremely impractical for the witnesses to have signed the will before the testator's death. In re Estate of Royal, 813 P.2d 790 (Colo. App. 1991), aff'd, 826 P.2d 1236 (Colo. 1992).

Witnesses' signatures should be affixed to the document at least by the time the will becomes operative, namely the death of the testator. If the will speaks as of the date of the testator's death, it follows that the document should be complete at that time. In re Estate of Royal, 826 P.2d 1236 (Colo. 1992).

An attestation clause is prima facie evidence of the facts stated in such clause. Butcher v. Butcher, 21 Colo. App. 416, 122 P. 397 (1921); Lenahan v. White, 79 Colo. 347, 245 P. 711 (1926); Wehrkamp v. Burnett, 82 Colo. 5, 256 P. 630 (1927); Aquilini v. Chamblin, 94 Colo. 367, 30 P.2d 325 (1934); McGary v. Blakeley, 127 Colo. 495, 258 P.2d 770 (1953); Brock v. Erickson, 28 Colo. App. 555, 475 P.2d 346 (1970).

In the absence of an attestation clause, no presumption may be indulged as to due execution simply by the proof of signatures. If there is no attestation clause the facts of the execution may be shown by other evidence. McGary v. Blakeley, 127 Colo. 495, 258 P.2d 770 (1953).

Sufficient publication. The testator said that he understood and asked them to sign as witnesses to his will. That constituted a publication of the will in compliance with this section. Wehrkamp v. Burnett, 82 Colo. 5, 256 P. 630 (1927); Aquilini v. Chamblin, 94 Colo. 367, 30 P.2d 325 (1934).

Acknowledgment sufficient if testator clearly indicates that the instrument is his last will and testament. There was no evidence that the testator acknowledged that the writing was his last will and testament, as required by this section. But it is not necessary for testators to use the very words of this section, and they seldom do. If the testator, by word or deed, clearly indicates that the instrument is his last will and testament, it is sufficient. Aquilini v. Chamblin, 94 Colo. 367, 30 P.2d 325 (1934).

A will is void and not entitled to probate where it appears that the testator did not declare the writing to be his last will and testament, did not know its contents, and did not request the subscribing witnesses to attest the same. Wagner v. Heldt, 93 Colo. 442, 26 P.2d 813 (1933).

The provisions of this section, by force of the following section, are extended to codicils of wills. Int'l Trust Co. v. Anthony, 45 Colo. 474, 101 P. 781 (1909).

Thus a codicil attested by only one witness is without effect. Freeman v. Hart, 61 Colo. 455, 158 P. 305 (1916).

And the same is true where one witness did not sign in the presence of the testator. A codicil, the execution of which was witnessed by two witnesses, one of whom signed it in the testator's presence and the other at a later day, and not in his presence, will be rejected. Int'l Trust Co. v. Anthony, 45 Colo. 474, 101 P. 781 (1909).

No requirement that deed comply with statutory requirements of a will. First Nat'l Bank v. Groussman, 29 Colo. App. 215, 483 P.2d 398 (1971).

Testamentary intent required. To be a holographic will, the evidence must establish that the decedent intended the writing itself to make a testamentary disposition of decedent's property. In re Estate of Fegley, 42 Colo. App. 47, 589 P.2d 80 (1978); Matter of Estate of Olschansky, 735 P.2d 927 (Colo. App. 1987).

The informal character of the decedent's letter as well as the statement she would leave something for her granddaughter reflected that the decedent did not intend the letter to make a testamentary disposition. Matter of Estate of Olschansky, 735 P.2d 927 (Colo. App. 1987).

Circumstantial evidence used in proving testator's signature. Where owing to the failure of the memory of the subscribing witnesses it is impossible to obtain direct testimony that the testator's signature was upon the paper when the witnesses subscribed it, circumstances may be resorted to. In re Carey's Estate, 56 Colo. 77, 136 P. 1175 (1913).

Burden is on contestants to overthrow will duly admitted to probate. The weight of authority is to the effect that, in a contest of a will which has theretofore been duly admitted to probate, the burden of proof is on the contestant to establish his grounds of contest. The probate is held to be prima facie evidence of the due attestation, execution, and validity of the will, and the burden is upon the contestants to overthrow the will. Aquilini v. Chamblin, 94 Colo. 367, 30 P.2d 325 (1934).

Burden is on proponent who presents will for probate to show due execution. Upon the proponent who presents a will for probate rests the burden of proof to show its execution in accordance with the requirements of the law. Snodgrass v. Smith, 42 Colo. 60, 94 P. 312 (1908); Twilley v. Durkee, 72 Colo. 444, 211 P. 668 (1922); O'Brien v. Wallace, 145 Colo. 291, 359 P.2d 1029 (1961).

Onus of proof. Where a will has been executed and witnessed under such circumstances that it is presumed the testator knew its contents, the onus of proving the contrary is upon him who alleges it. In re Shapter's Estate, 35 Colo. 578, 85 P. 688 (1906); Kavanagh v. Jamison, 79 Colo. 115, 244 P. 476 (1926).

Testator's signature creates presumption of his awareness of its contents. Ordinarily, where the will has been executed under the formalities prescribed by law, and proof thereof has been made by the witnesses, the testator's bare signature to the will is taken as proof thereof, and it will be presumed that the will had been read by or to him, and that he was aware of its contents. Snodgrass v. Smith, 42 Colo. 60, 94 P. 312 (1908); Kavanagh v. Jamison, 79 Colo. 115, 244 P. 476 (1926).

Agreement as to disposition of joint bank account. Where testator placed money in joint bank account with another with agreement that at testator's death the other would withdraw money and give it to testator's

beneficiaries, this agreement failed to comply with provisions of this section and testator's executor could recover money in action for conversion. Urbancich v. Jersin, 123 Colo. 88, 226 P.2d 316 (1950).

Probate not denied where portions are illegible or missing. A holographic will may not be denied probate merely because portions of the date not at issue are abbreviated, missing, or illegible, where the critical elements of the date are certain and unambiguous. Nunez v. Jersin, 635 P.2d 231 (Colo. App. 1981).

Handwritten list found in safe deposit box of deceased may be found to be a valid holographic codicil to will if signature and material provisions are in handwriting of deceased, but evidence must show the writing was executed with testamentary intent and evidence failed to make such showing. Matter of Estate of Harrington, 850 P.2d 158 (Colo. App. 1993).

Applied in Friedholm v. Fegley, 42 Colo. App. 47, 589 P.2d 80 (1978); Nunez v. Jersin, 635 P.2d 231 (Colo. App. 1981).

15-11-503. Writings intended as wills.

(1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(a) The decedent's will;

(b) A partial or complete revocation of the will;

(c) An addition to or an alteration of the will; or

(d) A partial or complete revival of the decedent's formerly revoked will or a formerly revoked portion of the will.

(2) Subsection (1) of this section shall apply only if the document is signed or acknowledged by the decedent as his or her will or if it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse.

(3) Whether a document or writing is treated under this section as if it had been executed in compliance with section 15-11-502 is a question of law to be decided by the court, in formal proceedings, and is not a question of fact for a jury to decide.

History
Source: L. 94: Entire part R&RE, p. 998, § 3, effective July 1, 1995. L. 2001: Entire section amended, p. 886, § 2, effective June 1.

Annotations
ANNOTATION

Annotations
Law reviews. For article, "Probating Flawed Wills: Colorado's New CRS § 15-11-503", see 25 Colo. Law. 85 (November 1996). For article, "Holographic and Nonconforming Wills: Dispensing With Formalities--Part II", see 32 Colo. Law. 53 (January 2003).

The statute does not apply to unexecuted instruments purporting to be wills. In re Estate of Sky Dancer, 13 P.3d 1231 (Colo. App. 2000).

A decedent need not both sign and acknowledge a document as his or her will for it to be admitted into probate. The language "signed or acknowledged" found in subsection (2) should be read in the disjunctive, not conjunctive. There is no restriction in the statute requiring the decedent to state, "This is my will". In re Estate of Wiltfong, 148 P.3d 465 (Colo. App. 2006).

15-11-504. Self-proved will.

(1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of ____, 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.

_____
Testator

We, _____, _____ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that [he] [she] executes it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of us, in the conscious presence of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, ____.
(SEAL)
(SIGNED)_____
_____
(Official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under

the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the conscious presence of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to, and acknowledged before me by , the testator, and subscribed and sworn to before me by and , witnesses, this day of , .
(SEAL)
(SIGNED)_____

_____
(Official capacity of officer)

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

History
Source: L. 94: Entire part R&RE, p. 998, § 3, effective July 1, 1995. L. 2001: (2) amended, p. 887, § 3, effective June 1.

Annotations
Editor's note: This section was contained in a part that was repealed and reenacted in 1994. Provisions of this section, as it existed in 1994, are similar to those contained in 15-11-504 as said section existed in 1993, the year prior to the repeal and reenactment of this part.

15-11-505. Who may witness.

(1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History
Source: L. 94: Entire part R&RE, p. 1000, § 3, effective July 1, 1995.

Annotations
Editor's note: This section was contained in a part that was repealed and reenacted in 1994. Provisions of this section, as it existed in 1994, are similar to those contained in 15-11-505 as said section existed in 1993, the year prior to the repeal and reenactment of this part.

Annotations
ANNOTATION

Annotations
Am. Jur.2d. See 79 Am. Jur.2d, Wills, §§ 275-278, 289, 290.

Law reviews. For note, "Some Problems Relating to Testamentary Witnesses", see 23 Rocky Mt. L. Rev. 458 (1951). For article, "Evidence in Estate Proceedings", see 24 Rocky Mt. L. Rev. 437 (1952). For article, "Age Requirements in Colorado: A Guide for Estate Planners", see 34 Colo. Law. 87 (August 2005).

Annotator's note. Since § 15-11-505 is similar to repealed laws antecedent to CSA, C. 176, § 42, relevant cases construing those provisions have been included in the annotations to this section.

Under this section a legatee is competent as an attesting witness; but unless sufficiently attested by other competent witnesses, the will is void as to his legacy. White v. Bower, 56 Colo. 575, 136 P. 1053 (1913).

Competency of attesting witnesses to wills must be tested by the general law relating to competency of witnesses as provided by statute, and not by the common law. The test is whether she would have been a competent witness in court, at the time of attesting the will, to testify to the facts of its execution. White v. Bower, 56 Colo. 575, 136 P. 1053 (1913).

15-11-506. Choice of law as to execution.

A written will is valid if executed in compliance with section 15-11-502 or 15-11-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

History
Source: L. 94: Entire part R&RE, p. 1000, § 3, effective July 1, 1995.

Annotations
Editor's note: This section was contained in a part that was repealed and reenacted in 1994. Provisions of this section, as it existed in 1994, are similar to those contained in 15-11-506 as said section existed in 1993, the year prior to the repeal and reenactment of this part.

NOTE: Only a few statutes are listed above.
See complete Colorado Revised Statutes for further statutes regarding wills.