

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
COLORADO PROBATE CODE
ARTICLE 10. GENERAL PROVISIONS, DEFINITIONS, JURISDICTION
PART 5. FIDUCIARY OVERSIGHT, REMOVAL, SANCTIONS, AND CONTEMPT

15-10-501. Court powers - definitions - application

(1) Court powers. A court, incident to a court proceeding, possesses and may employ all of the powers and authority expressed in the provisions of this part 5 to maintain the degree of supervision necessary to ensure the timely and proper administration of estates by fiduciaries over whom the court has obtained jurisdiction. Nothing in this part 5 shall be interpreted to limit a court's powers under Colorado law. The powers of a court as described in this part 5 do not confer jurisdiction over the fiduciaries of nonsupervised trusts, private trusts, agencies created by powers of attorney, and custodial accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., except as provided in paragraph (c) of subsection (2) of this section.

(2) Definitions. As used in this part 5, unless the context otherwise requires:

(a) "Court" means a district court of Colorado and the probate court of the city and county of Denver.

(b) "Estate" means the estate of a decedent; a guardianship; a protective proceeding; a trust, including an implied trust; an agency created by a power of attorney; or a custodial account created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

(c) "Jurisdiction" means, and is restricted to, the personal jurisdiction obtained by a court over a fiduciary as a result of the filing of a proceeding concerning the estate. The filing of a trust registration statement, by itself, shall not constitute a proceeding for the purposes of this part 5.

(3) Application. The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

15-10-502. Initial investigation

(1) If, during the administration of an estate, a court desires to be informed about the current status of the administration, then the court, on its own motion or the request of an interested person, and without the need to state any reason for its actions, may:

(a) Send a letter to the fiduciary of the estate directing the fiduciary to file with the court one or more of the following documents on or before a date to be determined by the court:

- (I) A status report;
- (II) An inventory of the current assets of the estate;
- (III) An up-to-date interim accounting; or
- (IV) A financial report concerning the estate;

(b) Order the fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1) on or before a date to be determined by the court.

(2) When a court has directed a fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1), the fiduciary may request that the documents be placed under security pursuant to rule 20 of the Colorado rules of probate procedure.

15-10-503. Power of a court to address the conduct of a fiduciary - emergencies - nonemergencies

(1) Emergency situations - court action without the requirement of prior notice or hearing. If it appears to a court that an emergency exists because a fiduciary's actions or omissions pose an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may, on its own motion or upon the request of an interested person, without a hearing and without following any of the procedures authorized by section 15-10-502, order the immediate restraint, restriction, or suspension of the powers of the fiduciary; direct the fiduciary to appear before the court; or take such further action as the court deems appropriate to protect the ward or protected person or the assets of the estate. If a court restrains, restricts, or suspends the powers of a fiduciary, the court shall set a hearing and direct that notice be given pursuant to section 15-10-505. The clerk of the court shall immediately note the restraint, restriction, or suspension on the fiduciary's letters, if any. Any action for the removal, surcharge, or sanction of a fiduciary shall be governed by this section.

(2) Nonemergency situations - court action after notice and hearing. Upon petition by a person who appears to have an interest in an estate, or upon the court's own motion, and after a hearing for which notice to the fiduciary has been provided pursuant to section 15-10-505, a court may order any one or more of the following:

(a) Supervised administration of a decedent's estate, as described in part 5 of article 12 of this title. The degree and extent of the supervision shall be endorsed upon the fiduciary's letters, if any.

(b) A temporary restraint on the fiduciary's performance of specified acts of administration, disbursement, or distribution; a temporary restraint on the fiduciary's exercise of any powers or discharge of any duties of the office of the fiduciary; or any other order to secure proper performance of the fiduciary's duty if it appears to the court that, in the absence of such an order, the fiduciary may take some action that would

unreasonably jeopardize the interest of the petitioner or of some other interested person. The court may make persons with whom the fiduciary may transact business parties to any order issued pursuant to this paragraph (b). The restraint shall be endorsed upon the fiduciary's letters, if any.

(c) Additional restrictions on the powers of the fiduciary. The restrictions shall be endorsed upon the fiduciary's letters, if any.

(d) The suspension of the fiduciary if the court determines that the fiduciary has violated his, her, or its fiduciary duties. If a court orders the suspension of a fiduciary pursuant to this paragraph (d), the court shall direct that the suspension be endorsed upon the fiduciary's letters, if any.

(e) The appointment of a temporary or permanent successor fiduciary;

(f) A review of the fiduciary's conduct. If a court orders a review of the fiduciary's conduct, the court shall specify the scope and duration of the review in the court's order.

(g) A surcharge or sanction of the fiduciary pursuant to section 15-10-504;

(h) The removal of the fiduciary; or

(i) Such further relief as the court deems appropriate to protect the ward or protected person or the assets of the estate.

(3) Removal of a fiduciary - procedures. A court may remove a fiduciary for cause at any time, and the following provisions apply:

(a) If a court orders the removal of a fiduciary, the court shall direct by order the disposition of the assets remaining in the name of, or under the control of, the fiduciary being removed.

(b) If a court orders the removal of a fiduciary, the court shall direct that the fiduciary's letters, if any, be revoked and that such revocation be endorsed upon the fiduciary's letters, if any.

(c) Cause for removal of a fiduciary exists when:

(I) Removal would be in the best interests of the estate;

(II) It is shown that the fiduciary or the person seeking the fiduciary's appointment intentionally misrepresented material facts in the proceedings leading to the fiduciary's appointment; or

(III) The fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(4) Petition for removal - temporary restraints on fiduciary powers. After a fiduciary receives notice of the filing of a petition for his, her, or its removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.

15-10-504. Surcharge - contempt - sanctions against fiduciaries

(1) Notice. Except as provided in subsection (3) of this section, notice to a fiduciary concerning any matters governed by the provisions of this section shall be provided pursuant to section 15-10-505.

(2) Surcharge.

(a) If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs.

(b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of part 6 of this article.

(3) Contempt proceedings against fiduciary. Nothing in this part 5 shall be interpreted to limit or restrict a court's authority to proceed against a fiduciary for direct contempt as provided in rule 107 of the Colorado rules of civil procedure. In addition, if a fiduciary fails to comply with an order of a court issued pursuant to this part 5, the court may proceed against the fiduciary for indirect contempt as provided in rule 107 of the Colorado rules of civil procedure. A court may initiate indirect contempt proceedings on its own motion or upon the filing of a motion supported by affidavit as described in rule 107 of the Colorado rules of civil procedure.

(4) Sanctions. If a court determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court, after a hearing, may order such other sanctions as the court deems appropriate.

15-10-505. Notice to fiduciary - current address on file

(1) In all actions undertaken pursuant to this part 5, the following provisions shall govern notice to fiduciaries:

(a) In emergency situations. If it appears to a court that an emergency exists because there is an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may take appropriate action and issue an order with or without prior notice to a fiduciary as the court determines appropriate based upon the nature of the emergency. If a fiduciary of an estate is not present when an emergency order is entered concerning the administration of the estate, the court shall attempt to notify the fiduciary of the court's action and mail a copy of the court's order to the fiduciary at the fiduciary's last address of record on file with the court. Notice of the court's order shall also be served, pursuant to section 15-10-

401, upon all interested persons or as the court directs. Notice of all hearings set under section 15-10-503 (1) shall be given pursuant to section 15-10-401.

(b) In nonemergency situations. In nonemergency situations, notice to a fiduciary shall be governed by section 15-10-401.

(c) Contempt. For a hearing to determine possible contempt of a fiduciary, the court shall provide notice to the fiduciary as required by rule 107 of the Colorado rules of civil procedure.

(2) Fiduciary's responsibility to keep current address in court file. Every fiduciary appointed by a court is required to keep his, her, or its current address and telephone number on file with the court. The fiduciary shall promptly notify the court of any change in the fiduciary's address or telephone number.