

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE**

**MINUTES  
DECEMBER 18, 2008**

**1. WELCOME AND INTRODUCTIONS.**

**2. APPROVAL OF NOVEMBER 20, 2008 MINUTES.**

Motion by David Johns, second by Gene Zuspahn, approved by committee.

**3. LEGISLATIVE REPORT. (Michael Valdez)**

(a) **Omnibus Bill** Michael reminded us that this bill needs to be done as soon as possible. Shelly and Bob will help put this together. Bob would like each chairperson to send him the final draft of whatever has been approved. He will send the chairperson instructions on format for the bill.

(b) **Medical Orders for Scope of Treatment (“MOST”)**. This non-CBA sponsored legislation may come forward this year – Ellen Roberts is the sponsor. Department of Health will be going forward with pilot projects. EMT’s brought this up in response to CPR directives based on the reasoning that our current directives often have practical implementation problems. Dept. of Health is behind revisions along with Colorado Medical Society, a few CBA members and other stakeholders. Originally it was thought that these changes could be handled by regulation, but the current thinking is that statutory changes are needed. The proposed statute would establish physician orders rather than advance directives for critically ill individuals, especially those in nursing homes. Orders would be put on brightly colored cardstock – so that they are easily identifiable. Other proposed changes to the statute include allowing a fax or copy to be recognized, as well as verbal orders. (POLST and MOLST are acronyms used in other states for similar statutes). The committee is considering how this new law might impact other advance directives. Carl Glatstein is working on drafting the legislation.

(c) NCCUSL members haven’t met – but plan to meet with Michael and Shelly in January.

**4. SRC APPROVED AND SPONSORED PROPOSALS (Not currently in active bill form)**

**Active**

**(a) Amendments to the UPIA including C.R.S. § §15-1-421.5, 435, 464.5, 468, and 505. (Eugene Zuspahn, Ch.).**

Status: This will be included in the Omnibus Bill.

1. In January of 2007, the SRC approved the reenactment of the 1955 UPIA for trusts, estates and life estates that were not governed by the 2001 UPIA.
2. In November, 2007, the SRC approved further modification of both the 1955 and the 2001 statutes regarding natural resources to return to a 15% rule for

depletion and to use the 1962 version of the UPIA regarding natural resources. SRC also voted to change the effective date statutes.

3. In November, 2008, the SRC approved the NCCUSL amendments to UPIA 505.

**(b) NCCUSL Amendments to §15-1-419 (UPIA 409) (Gene Zuspann, Ch.)**

Status: This is not a part of the Omnibus Bill, but will stand alone.

1. In January, 2007, SRC approved a new §15-1-419 to deal with Rev. Rul. 2006-26. This section (drafted by Barbara Dalvano) deals just with QTIP trusts and not all trusts. Other trusts are still subject to the 90/10 rule.
2. In November, 2008, the SRC approved the NCCUSL amendments to UPIA 409 (our 419), which substantively address the same changes made in January of 2007.

**(c) Guardian Appointments: C.R.S. §15-14-202(2). (Kevin Millard, Ch.)**

Status: This will be included in the Omnibus Bill.

On September 20, 2007, SRC voted to approve changes. Council Approved on September 20, 2007.

**(d) Joint Taskforce of Statutory Revisions and Elder Law Sections to consider Advance Directives for Medical/Surgical Treatment. (Michael Kirkland, Susan Fox Buchanan, Co-Chs.)**

Status: This is not a part of the Omnibus Bill, but will stand alone.

On September 20, 2007, SRC voted to approve proposed revisions to Section 15-18-101 et. seq. Approved by Council on September 20, 2007.

**(e) Change to Entry Into Safe Deposit Box C.R.S. §15-10-111(2)(b) (Gordon Williams, Ch.)**

Status: This will be included in the Omnibus Bill.

On November 15, 2007, SRC approved proposed changes to C.R.S. §15-10-111(2)(b) as amended at meeting. Approved by Council on November 15, 2007.

**(g) Testamentary Exception to Doctor Patient and Attorney Client Privileges. (Spencer Crona and Herb Tucker, Co-Chs.)**

Status: This will be included in the Omnibus Bill.

SRC approved on February 20, 2008. Amendments approved at March 20, 2008 SRC meeting. Council approved on March 20, 2008.

**Inactive**

**(a) Uniform Trust Code (Stan Kent and Clifton B. Kruse, Jr., Co Chs.)**

**(b) Standing of Personal Representative to Litigate (*Risbry*), C.R.S. §15-12-720 (Walt Kelly, Ch.)**

(c) **Modification of C.R.S. §15-12-1201. (Elizabeth Tulloch, Ch.)**

Summary: Collection of personal property by affidavit to include collection of personal health information for decedents who do not need a probate estate opened.

(d) **Uniform Anatomical Gift Act. This subcommittee will review the Uniform Anatomical Gift Act passed last session and now in effect. (Michael Kirtland and Spencer Crona, Co-Chs.)**

Status: On December 13, 2007, SRC approved proposed changes to this Act. Council voted at its December 13<sup>th</sup> meeting not to approve these changes. Legislation may come back on SRC's active agenda if the subcommittee wants to try to address the concerns of Council.

(e) **HCPFA-Colorado Fiscal Accountability, Integrity and Responsibility Act of 2007 ("FAIR" Act). Proposed Modification to C.R.S. §§15-12-801 and 803, Creditor's Claims. Proposed C.R.S. 38-35-127 and 25.5-4-305.5: Notice to Department of Human Services of transfer or encumbrance of real property by title companies. Proposed Modification of C.R.S. 25.5-4-302 Medicaid Recovery of Assets. (Melissa Schwartz, Ch.)**

Status: Legislation proposed during the 2008 session by HCPFA was unsuccessful. HCPFA shelved estate recovery portion and Trust provisions.

(f) **Springing Foundations (John DeBruyn, Ch.)**

Status: On hold while Merry Balson is on leave.

(g) **Joint Tenancy Subcommittee to Study New C.R.S. §§38-31-100.1 and 101 proposed by the Real Estate Section. (John DeBruyn, Ch.)**

Status: Revisions to C.R.S. §38-31-101 were made in 2008, but the statute is in need of technical revisions.

5. **SRC APPROVED AND SPONSORED PROPOSALS (Currently in active bill form)**  
None

6. **ACTIVE MATTERS UNDER CONSIDERATION**

(a) **Transfer of real property by domiciliary foreign personal representative. C.R.S. §§15-12-102 and 15-12-204 (John DeBruyn, Ch.).**

Short committee meeting was held in which a repeal of 15-12-102 was considered. This statute says you have to probate a will before a will is valid – but this is duplicative of 15-12-901 and could cause concern if people start thinking there must be a reason for the duplication. Bob Steenrod suggests that the committee should keep claims in mind when looking at this statute.

(b) **Real Estate Section Proposed Amendments to C.R.S. §38-31-202 (community property). (Carl Stevens/Shelly Merritt Ch.).** No report.

(c) **Uniform Estate Tax Apportionment Act. (Dennis Whitmer, Ch.)**

Committee is growing – now considering Section 6 of the statute.

(d) **Revised Uniform Power of Attorney Act. (Mike Holder, Ch.)**

Committee met today. Spencer Crona attended on behalf of the Elder Law Committee to address elder abuse issues that Elder Law would like to see addressed in the statute. Elder Law has suggested forming a subcommittee in order to address elder abuse concerns while at the same time providing the flexibility that is typical in the use of a power of attorney. Spencer looking for volunteers interested in serving on this subcommittee. Review of the act will not be finished this year. Mike Holder has heard rumors that the Attorney General's office is interested in submitting their own bill to address power of attorney issues.

(e) **Revision to Deadman's Statute. C.R.S. §13-90-102. (Marc Darling, Herb Tucker, Co-Chs.)**

Committee engaged in a debate over changes with Litigation Section. They are not supportive of our proposed changes. They would prefer a total repeal of the statute or in any event limiting the Dead Man's Statute to probate matters. This is not the current view of the T&E Section and disagreement may prevent anything from going forward. This bill will probably not be ready for this year.

(f) **Trustee's Duty to Inform Beneficiaries, Accounting Duties, Beneficiary Representation and Limitation on Contests of Trust: C.R.S. §§15-10-403 through 410, 15-16-303 through 308 , and 15-16-501 (Eugene Zuspann, Ch.)**

Carl Stevens had some concerns, but Gene has not been able to get in touch with him.

(g) **Multi-Party Accounts: C.R.S. §15-15-212 (Merry Balson, Ch.).**

Status: On hold while Merry Balson is on maternity leave.

(h) **Business Trusts (John DeBruyn, Ch.)**

Business trusts historically include REIT, land trusts, etc . . . Under new law, business trusts will not be a trust, they will be a business entity. Majority of states have a business trust act. ULC working on a business trust act. Proposed statute structured to allow the business trust to function like an LLC. If engaged in a business – owners have liability, if strictly for investment purposes – owners do not have liability. Attraction of the business trust is that the participant in the trust has an underlying ownership interest in the property (allows owners to do like-kind exchanges, and other benefits).

This statute is being considered by the business section and John wants to apprise T&E of what is going on.

(i) **Statutory Powers Granted to a Guardian (Kelly Cooper, Ch.).**

No Report.

**(j) Compensation and Cost Recovery (Marc Darling, Ch.)**

Moved out of conceptualizing state and are getting into details of language. Making good progress. This statute will likely be available next year.

**(k) Proposed NCCUSL Amendments to Probate Code-(Including Reformation of Wills) (Marc Darling and Stan Kent, Chs.)**

Today, started addressing modifications to intestacy statute. Under current law, the search for heirs stops with descendants of grandparents (although birth children and birth parents are also included). NCCUSL amendments add stepchildren as possible heirs. Healthy debate was had in the committee about whether we should go there – but committee will be taking votes on these issues next month. Next month the committee will also be considering parent/child relationship issues. Bob Steenrod suggests that in his experience as public administrator, heirship issues are very difficult. It becomes impossible at some point to search for these individuals for very small estates. Every time you include another layer – it becomes that much more complicated. Cost of administration is horrendous.

**(l) Death of Trustee with Title in Trustee's Name. (John DeBruyn, Ch)**

Status: May keep on hold until joint tenancy issues resolved with the Real Estate Section.

**(m) The Uniform Disclaimer of Property Interest Act. (Gordon Williams, Ch.)**

Status: Approved by SRC in 2005, the real estate section has decided to revisit disclaimer recording requirements and the Uniform Law Commissioners have made recent changes to the uniform act. SRC needs to respond to Real Estate Section changes.

Met today to talk about the issues of recording, race/notice, and time for making a disclaimer – all of which are issues that have been raised by real estate. Committee is contemplating a response to the Real Estate Section. Next meeting of that Section is January 20.

**(n) Arbitration provisions in wills (John DeBruyn).**

Distributed Florida statute to ADR Section earlier this month. The section is reviewing that statute.

**(o) Graduated filing fees for Conservatorship Estates (John DeBruyn).**

Graduated filing fees are something that are being considered by the Judicial Branch in response to the audit as way to generate more money for conservatorship audits. Three tiers of flat fees are being considered. This is somewhat based on the California model. Concern was expressed by committee members that we are making it too expensive for people to comply with the guardianship and conservatorship statutes for the very small estates. Other committee members expressed that charging more fees on the larger estates will help create resources to assist the small estates by monitoring or perhaps public guardians, etc . . . Sandie Franklin indicated that she is working on creating more pro se forms, more pro se instructions – making things easier for the smaller estates.

(p) **Changes to C.R.S. §15-12-709 (T.J. Aldous)**  
No Report. WILL BE VOTED ON IN JANUARY.

(q) **HCPF Proposed Legislation. (Michael Valdez).**  
Dept. hopes to address Ahlborn decision – committee members think HCPFA’s solution misses the mark, even though there is no question that Ahlborn needs to be complied with. A subcommittee of Elder Law attorneys (including Eric Solem) will be formed to discuss issues with HCPF.

7. **REPORT FROM ELDER LAW SECTION (Marcie McMinimee).**  
No Report.

8. **TABLED MATTERS**  
None.

9. **NEW MATTERS/ANNOUNCEMENTS**

(a) **Disposition of Last Remains (Connie Eyster).** Changes to the disposition of last remains were suggested as a way to give the individual with priority for determining disposition of remains real authority.

(b) **Domiciliary foreign PR (Bruce Deacon).** There are discussions involving Kelly Cooper and Sandy Franklin, Bruce Deacon, Registrars, and Title Standards to try to fix problems with recognizing the authority of a domiciliary foreign personal representative. Bruce will keep us updated on what is happening.

**ADJOURN**