

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

**AGENDA
DECEMBER 17, 2009**

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF NOVEMBER 19, 2009 MINUTES.**
3. **LEGISLATIVE REPORT. (Michael Valdez)**
4. **PENDING NCCUSL STUDIES AND UNIFORM ACTS (Stan Kent)**
5. **SRC APPROVED AND SPONSORED PROPOSALS (Not currently in active bill form)**

Active

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

Status: On September 20, 2007, SRC voted to approve proposed revisions to Section 15-18-101 et. seq. Approved by Council on September 20, 2007. On February 19, 2009, SRC voted to put on agenda to take back to LPC in 2010. An interim committee in the legislature met on September 1, 2009 to talk about Living Wills and end of life issues. In October, Michael Kirtland reported that the interim committee will run their own bill. This will not be a CBA bill.

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

Status: Approved by SRC and Council in 2005. The subcommittee is diligently working with the Real Estate Section to reach a consensus. Hope to have a final product by December meeting.

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

Status: Approved by SRC and Council on September 17, 2009. Marc Darling reported passed with compromise at LPC. The compromise was no hearing on fee disputes unless requested and good cause shown.

- (d) **Transfer of real property by domiciliary foreign personal representative. C.R.S. §§15-12-102 and 15-12-901 (John DeBruyn, Ch.).**

Status: Approved by SRC and Council on October 15, 2009.

- (e) **Proposed Amendment to C.R.S. §15-14-420(2) to accommodate simplified Conservator's Report (Sandie Franklin, Ch.)**

Status: Approved by SRC and Council on November 19, 2009.

Inactive

- (a) **Uniform Trust Code (Stan Kent, Ch.)**

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

- (c) **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 13th 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.

- (d) **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.

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

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

(LPC has not approved this bill and has asked the T&E Section to discuss it with other relevant CBA sections before asking for approval again).

* Moved to Inactive at August 2009 meeting.

6. **ACTIVE MATTERS UNDER CONSIDERATION**

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

Status: Highlights of the proposed Act provided at November 2009 meeting. A full presentation will be made at the December meeting.

*** See attached proposed Act for review and potential vote at December meeting.

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

Status: Seeking comments from the Litigation Section.

(c) Business Trusts (John DeBruyn, Ch.)

Status: Joint subcommittee (Business Law and T & E Section) considering the business trust both in the context of a proposed Colorado business trust act side by side with the Uniform Statutory Trust Entity Act. The joint subcommittee is currently reviewing series entities.

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

Status: On February 19, 2009, SRC agreed to support the NCCUSL amendments with small changes made to conform that Act with our Colorado version of the UPC. Delayed effective date of July, 2010. Subcommittee will present to SRC at December meeting. Subcommittee intends for technical amendments to be included in omnibus bill and UPC III amendments as part of a uniform law bill.

(e) Alternative Dispute Resolutions Committee (John DeBruyn, Ch.).

Status: Joint Elder Law/T&E/Dispute Resolution group reviewing the Uniform Collaborative Law Act for consideration. Formerly known as the Arbitration provisions in wills committee until recent name change.

(f) Amendments to the Slayer Statute. (Bob Steenrod, Ch.)

Status: Draft of proposed amendments to Slayer Statute presented at November meeting. Comments and improvements to proposed language requested. A revised draft will be presented at December meeting.

*** See attached proposed statutory changes for review and potential vote at December meeting.

(g) Beneficiary Designation Agreement Amendments (Elizabeth Bryant, Ch.)

Status: This subcommittee is working with the NCCUSL Amendments to Probate Code subcommittee and will be presenting the technical corrections and conforming language at the December meeting.

(h) Proposed Decanting Statute (Greg Densen Ch.)

Status: Greg Densen reported that the subcommittee is re-evaluating the breadth of the power, the beneficiary/trustee and required notice. The subcommittee has decided not to introduce the proposed statute this legislative session but hopes to have a Decanting Statute ready for the 2011 legislative session.

(i) Real Property Transfer on Death Act Subcommittee (Carl Stevens Ch.)

Status: Carl Stevens reported that the joint committee, comprising of members from the T & E, Real Estate and Elder Law Sections, has completed its section by section review of the proposed Act. The subcommittee's recommendation is that we should maintain Colorado version and oppose adoption of uniform Act. Significant revisions would be necessary to conform to Colorado law. Uniform Act likely to draw fiscal note without HCPF amendment that has been criticized by NCCUSL. **A motion was made to oppose the uniform Act. The motion passed without opposition.**

(j) Death of Trustee with Title in Trustee's Name, §15-16-501. (John DeBruyn, Ch.)

Status: Several years ago was referred to the real estate section. This last year the proposal was revised and the revision was attached to the minutes of the May meeting. This proposal is on hold while joint committee reviews Uniform Real Property Transfer on Death Act. Moved to inactive list at October 2009 meeting. Moved back to active list November 2009.

(k) Retention of Files (Michael Kirtland)

Status: Michael Kirtland reported at the September 2009 meeting that the Colorado Supreme Court is looking at passing some new rules on file retention. It is unsure if the Court will publish for comments prior to adoption. This matter was not discussed at October or November 2009 meetings.

7. REPORT FROM ELDER LAW SECTION (Marcie McMinimee).

8. REPORT FROM POWER OF ATTORNEY ABUSE PREVENTION COMMITTEE (Spencer Crona, Ch.).

9. **TABLED MATTERS**

(a) **Graduated filing fees for Conservatorship Estates (John DeBruyn, Ch.).**

Status: Courts are considering graduated fees in conservatorship cases, but nothing has been decided yet.

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

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

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

Status: On hold while Merry Balson is on leave.

(d) **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.

(e) **Real Estate Section Proposed Amendments to C.R.S. §38-31-202 (community property). (Carl Stevens/Shelly Merritt Ch.).**

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

10. **NEW MATTERS/ANNOUNCEMENTS**

(a) **Proposed amendment in response to Rev. Ruling 2004-64 - Reimbursement of grantor's income taxes won't subject trust assets to grantor's creditors (Shelly Merritt & Laura Hundley)**

11. **ATTACHMENTS***

- a. November 19, 2009 SRC Minutes.
- b. Uniform Acts Report
- c. Uniform Estate Tax Apportionment Act
- d. Amendments to Slayer Statute C.R.S. §15-11-803
- e. Article on Rev. Ruling 2004-64 & NY amendment to statute

*These attachments are available with this Notice and last month's meeting minutes on the Statutory Revisions Committee page of the CBA's T&E website. Other postings may be made after the date of this notice and before the meeting.