

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

**MINUTES
DECEMBER 17, 2009**

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF NOVEMBER 19, 2009 MINUTES.** Motion by Robert Steenrod, second by Constance Wood, approved by SRC.
3. **LEGISLATIVE REPORT.** (Michael Valdez)

Michael Valdez reported on status on omnibus bill and sponsors.
4. **PENDING NCCUSL STUDIES AND UNIFORM ACTS** (Stan Kent)

Stan Kent submitted Memorandum summarizing Uniform Law Commission Projects.
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, but is the work product of this section.

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

Status: Approved by SRC and Council in 2005.

Current Report: The subcommittee continues to work diligently with the Real Estate Section to reach a consensus.

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

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

Current Report: Ellen Roberts will be the sponsor of the stand alone bill.

(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. This will be part of omnibus bill.

(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. This will be part of omnibus bill.

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.)**

After last month' highlights of the proposed Act, Dennis Whitmer, Barbara Dalvano and Steve Brainerd provided a detailed description the key sections of the Act and responded to questions. It was also discussed that the comments would be included in the statute. **A motion was made to approve the uniform Act. The motion passed without opposition.**

- (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.

No report.

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

Status: The 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.

Current report: The joint subcommittee is reviewing mixed purpose entities and mixed purpose trusts.

- (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. Subcommittee trying to get technical amendments in omnibus bill and UPC III amendments as part of a uniform law bill.

Current report: Marc Darling reported that subcommittee has been meeting twice a month with the objective of having ready for vote at February meeting

(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.

Current Report: John DeBruyn provided newest version of Dispute Resolution Provisions in Wills and Trusts. Gordon Williams and Michael Kirtland voiced strong concerns about imposing arbitration and its constitutionality.

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

Bob Steenrod presented the fourth draft of the amendments. The general concept of imposing a time limit was acceptable to most members but there remained questions about the actual language. Spencer Crona also raised issues as to the accrual of action provisions and appropriate references to be made in the statute. Bob will work with Spencer and others to address concerns and will bring back next month for a vote.

(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 January meeting.

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

Status: 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.

No Report.

(i) 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. The proposal was revised and the revision was attached to the minutes of the May 2009 meeting. In October of 2009, the proposal was placed on hold and moved to the inactive list while joint committee reviewed the Uniform Real Property Transfer on Death Act. In November 2009, the proposal was moved back to active list.

No report.

(j) 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.

No report.

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

No report.

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

Spencer Crona reported that the subcommittee has drafted, revised and approved the acceptance of duties form for agents to sign. This will require amendments to uniform Act and could be added as part of omnibus bill. The subcommittee will work on proposed language to submit to SRC for review and vote in January or February.

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)**

This matter was not discussed at December meeting.

Meeting adjourned at 3:17