

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

**MINUTES
FEBRUARY 18, 2009**

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF JANUARY 21, 2009 MINUTES.** Motion by Kevin Millard, second by Mike Holder, approved by SRC.
3. **LEGISLATIVE REPORT.** (Michael Valdez)

No report. Michael Valdez was attending the hearing for HB 1105 Colorado Probate Code Compensation Bill in front of the House Judiciary Committee.
4. **PENDING NCCUSL STUDIES AND UNIFORM ACTS** (Stan Kent)

Stan Kent reported that a new drafting committee was formed for the Uniform Premarital Agreement Act. Stan Kent also mentioned the Uniform Insurable Interest Act. Kevin Millard volunteered to review and will report back to SRC.
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 its own Bill. This is not a CBA Bill, but is the work product of this section. The Bill passed out of committee 8-0 and is ready for the 3rd reading in the House.

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

Status: Approved by SRC and Council in 2005. The subcommittee continues to work diligently with the Real Estate Section to reach a consensus.

John DeBruyn reported that he had drafted language for a disclaimer involving multiple joint owners. Real Estate members came back with two proposed drafts of their own language. Some members of the Real Estate Section want a disclaimer of joint tenancy property to act as a severance. The subcommittee will propose utilizing the current language found in C.R.S. Section 15-11-801(2)(c) as a compromise.

(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: Michael Valdez and members of subcommittee were attending the hearing on HB 1105 in front of the House Judiciary Committee.

(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.

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

Status: Approved by SRC and Council on December 17, 2009. Approved by LPC on January 8, 2010. This will be Uniform Law Bill.

(g) 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. Amendments to UPC III approved by SRC and Council on January 21, 2010.

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

Status: Approved by SRC and Council on January 21, 2010. This will be part of omnibus bill.

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

Status: Approved by SRC and Council on January 21, 2010. This will be part of omnibus bill.

(j) Proposed amendment to Uniform Power of Attorney Act (John DeBruyn, Ch.)

Status: Approved by SRC and Council on January 21, 2010. 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) **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.

(b) **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.

John DeBruyn reported that the ABA approved the Uniform Statutory Trust Entity Act.

(c) **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.

John DeBruyn presented a pared down version of the proposed new Part 7 – Dispute Resolution Provisions in Wills and Trusts. The validity of the will is reserved to the court. The current draft also extends to non-probate transfers. The Committee discussed the public policy concerns. The proponents cited that arbitration provisions in insurance contracts are binding on the beneficiaries, why shouldn’t arbitration provisions in wills be binding on the beneficiaries. The opponents expressed concerns that such arbitration provisions remove the beneficiaries’ access to courts to resolve grievances and are against public policy. **After discussion, a motion was made to approve the proposed new Part 7. The motion passed 18-17. A straw vote was taken and 7 members (previously against) stated that they would change their vote if the new Part 7 did not extend to non-probate transfers.**

(d) **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.

Kevin Millard reported that the subcommittee met today and expects to have a proposed statute ready by this fall.

(e) **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.

John DeBruyn reported that this project is on hold until resolve other issues with Real Estate Section.

(f) **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.

Michael Kirtland reported that the proposed revisions to Colorado Rules of Professional 1.15, 3.8 and new rule Colo. RPC 1.16A will be considered at a hearing Thursday, June 10, 2010 at 3:00 p.m. The deadline for comments and requests to participate at the hearing must be submitted no later than Thursday, June 3, 2010 at 5:00 p.m. Rules & Forms Committee will take up and see if any concerns for Trust & Estate practitioners.

(g) **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 discussed at February meeting. A trustee's discretionary power to reimburse settlor for income taxes may cause estate tax inclusion where creditors could reach such amounts. The proposed amendment would allow practitioners to include such a discretionary power of reimbursement without risk of estate tax inclusion. The members were in favor of such an amendment if kept very narrow. Proposed language will be drafted for SRC to review.

(h) **Medicaid Efficiency False Claims Act (Melissa Schwartz, Ch.)**

Marcie McMinimee described as a whistle blower statute that creates a private cause of action. Medicaid is not going after people directly. Elder Law Section voted to take no position on the bill and their concerns have been alleviated.

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

Marcie McMinimee reported that Elder Law Section voted to take no position on the Medicaid Efficiency False Claims Act and their concerns have been alleviated.

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

Spencer Crona reported that the subcommittee was withdrawing for vote the revised draft of Acknowledgement Form for Agent under Power of Attorney. The subcommittee had received comments from the Business Law Section and will vet with other Sections before bringing back for a vote. The subcommittee hopes to build a consensus and then will bring back for approval by SRC.

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) E-Filing

It was reported that the State of Colorado is taking over E-Filing from Lexis/Nexis.

Meeting adjourned at 2:42