

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

**MINUTES**  
**JANUARY 21, 2009**

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF DECEMBER 17, 2009 MINUTES.** Motion by Constance Wood, second by Elizabeth Bryant, approved by SRC.
3. **LEGISLATIVE REPORT.** (Michael Valdez)

Michael Valdez submitted a spreadsheet summarizing the bills of importance to the Section. Michael reported on the status of various bills. HB 1025 Colorado Medical Treatment Act is up for hearing on February 5<sup>th</sup>. HB 1105 Colorado Probate Code Compensation sponsored by Ellen Roberts is up for hearing on February 4<sup>th</sup>. The Elder Law Section voted to support HB 1122 Medical Orders Scope of Treatment Bill.

4. **PENDING NCCUSL STUDIES AND UNIFORM ACTS** (Stan Kent)

No report. Memorandum summarizing Uniform Law Commission Projects was attached to the minutes.

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. 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.

**(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.

**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.

No report.

- (c) **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.

Marc Darling provided a brief history and background of UPC III. Thereafter, Gordon Williams, David Johns, Kevin Millard, Kim Willoughby, Connie Eyster, Jennifer Spitz, Constance Woods and Stan Kent reported on the significant changes proposed by the subcommittee. **After discussion, a motion was made to approve the proposed amendments. The motion passed without opposition.**

**(d) 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.

No report.

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

Bob Steenrod provided a brief history and background of the proposed amendments to the Slayer Statute. The purpose of the amendments is to limit the period to bring such an action to 3 years or 1 year after the criminal proceedings have concluded. The latest revisions incorporate the tolling provisions suggested by Spencer Crona. **After discussion, a motion was made to approve the proposed amendments to the Slayer Statute. The motion passed without opposition.**

**(f) 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.

Elizabeth Bryant provided a brief history and background of the proposed Beneficiary Designation Agreement Amendments. The amendments include additional language on the form to clarify if powers are left blank then they are deemed granted. The other amendments are conforming amendments and the correction of an incorrect statutory cite. Elizabeth Bryant also reported that they are still working on creating a central depository with the Secretary of State. There may be filing fees to avoid a fiscal note. **After discussion, a motion was made to approve the proposed Beneficiary Designation Agreement Amendments. The motion passed without opposition.**

**(g) 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.

**(h) 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.

**(i) 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.

**(j) 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 January meeting.

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

No report.

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

Spencer Crona presented a draft of Acknowledgement Form for Agent under Power of Attorney. The purpose of the form is to put agents on notice of their duties and assist with the prosecution of agents who abuse their powers. The subcommittee also has prepared amendments to C.R.S. Section 15-14-719. As amended, to receive the protections under C.R.S. Section 15-14-719 and 720, the power of attorney would need to be: (1) signed and notarized; (2) accompanied by an Agent's Acknowledgement; (3) no actual knowledge that the signature on the power of attorney is not genuine. Questions were raised as to whether signing the form creates fiduciary liability for the agent even if has not otherwise acted. Suggestions were also made to include additional statements such as being able to consult with counsel at principal's expense and agent not allowed to commingle principal's and agent's assets. Spencer Crona indicated that it is a strong desire of the subcommittee to keep the form to one page. If you have comments, please forward them to Spencer Crona prior to the February meeting.

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 to Uniform Power of Attorney Act (John DeBruyn, Ch.)**

John DeBruyn presented proposed Amendments to the Uniform Power of Attorney Act. The first amendment added language to the definitions section in C.R.S. Section 15-14-702. The second amendment amended the statutory form to match C.R.S. Section 15-14-741. The third amendment replaced inconsistent references to adult protective services agency with “a governmental agency having authority to protect the welfare of the principal” to bring consistency to the Act. The fourth amendment undoes the retroactive application of the annual exclusion limitation on gifts and amends C.R.S. Section 15-14-740(2) so that gifts being limited to the annual exclusion amount only applies prospectively. A minor correction was made to a statutory cite. **After discussion, a motion was made to approve the proposed Amendments to Uniform Power of Attorney Act. The motion passed without opposition.**

**(b) Statutory Rule of Construction for Formula Clauses in 2010 (John DeBruyn, Ch.)**

John DeBruyn provided the background behind the proposed Virginia statutory rule for formula clauses in 2010. The question was then posed whether we should evaluate doing something similar or different in Colorado. After discussion of the advantages and disadvantages, it became apparent that there is no consensus on the right course of action or if any action should be taken. No further action is expected on this matter at the present time.

Meeting adjourned at 3:25