

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

**AGENDA
MARCH 18, 2010**

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF FEBRUARY 18, 2010 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, 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 at LPC with a compromise. The compromise was no hearing on fee disputes unless requested and good cause shown. 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

- (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.
- (b) **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.
- (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. The new Part 7 - Dispute Resolution Provisions in Wills and Trusts was passed by SRC 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. Council members raised

concerns and asked John DeBruyn to work with those members to address these concerns. The revised draft will be presented next month to SRC.

*** See attached revised Part 7 - Dispute Resolution Provisions in Wills and Trusts for potential vote at March meeting

(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.

(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.

(f) Retention of Files (Michael Kirtland)

Status: Michael Kirtland reported 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.

(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)

Status: The members were generally in favor of such an amendment. Proposed language will be drafted for SRC to review.

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

Status: 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).

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

Status: The subcommittee is vetting with other Sections, including the Business Law Section. The subcommittee hopes to build a consensus and then will bring back for approval by SRC.

*** See attached Acknowledgment Form for Agent under Power of Attorney and amendments to C.R.S. Section 15-14-719 for review and potential vote at March 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.).

10. NEW MATTERS/ANNOUNCEMENTS

11. ATTACHMENTS*

- a. February 18, 2010 SRC Minutes.
- b. Uniform Acts Report
- c. Proposed revisions to Colorado Rules of Professional 1.15, 3.8 and new rule Colo. RPC 1.16A
- d. Revised ADR in Wills & Trusts Part 7 (version 8)
- e. Revised Acknowledgment Form for Agent under Power of Attorney and Amendments to C.R.S. 15-14-719

*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.