

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

MINUTES
NOVEMBER 19, 2009

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF OCTOBER 15, 2009 MINUTES.** Motion by Mike Holder, second by David Johns, approved by SRC.
3. **LEGISLATIVE REPORT.** (Michael Valdez)

Deadlines for 2010 legislative bills:
 - Trust & Estate Section Omnibus Bill and Stand-Alone bills– December 2009
 - Uniform Law Bills – February 2010
4. **PENDING NCCUSL STUDIES AND UNIFORM ACTS** (Stan Kent)

No report.
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.

Current Report: The subcommittee is working diligently with the Real Estate Section to reach a consensus. Issues being addressed are lifetime gifts and 2006 amendment. 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.

Current Report: 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.

Current Report: John DeBruyn reported that a minor change was made to add another exception for determination of heirship based on Gene Zuspann's comments.

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

(f) 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 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.

6. ACTIVE MATTERS UNDER CONSIDERATION

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

Dennis Whitmer provided highlights of the proposed Act and directed members to focus on Section 3 which is the guts of the Act. 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.

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 beginning review of 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 to present to SRC at December meeting.

Current report: Marc Darling reported that the subcommittee is trying to get technical amendments in omnibus bill and UPC III amendments as part of a uniform law bill. The subcommittee is communicating with Stan Kent and NCCUSL to disclose that one section (beneficiary designation agreements) is not uniform and confirmation that this will not be a problem or cause late bill status.

(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.

No report.

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

Bob Steenrod presented draft of proposed amendments to Slayer Statute. General objective to provide time limit but flexible on what that time limit should be. Lively discussion among members as to appropriate time limit, affect of suicide, affect of acquittal and recovery of assets. Bob welcomes comments and improvements to proposed language and will bring back next month.

*** 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.)

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.)

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) 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).

Marcie McMinimee reported that the Elder Law Section also voted to oppose the Uniform Real Property Transfer on Death Act.

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

Spencer Crona reported that the subcommittee is trying to finish the acceptance of duties form for agents.

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.

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

Status: On hold.

(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 C.R.S. §15-14-420(2) to accommodate simplified Conservator's Report (Sandie Franklin)

Sandie Franklin presented the proposed amendment to C.R.S. §15-14-420(2) to accommodate simplified Conservator's Report. After a short discussion, a motion was made to approve the proposed amendment. The motion passed without opposition.

Meeting adjourned at 2:53