

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

MINUTES
OCTOBER 15, 2009

1. **WELCOME AND INTRODUCTIONS.**
2. **APPROVAL OF SEPTEMBER 17, 2009 MINUTES.** Motion by Connie Wood, second by Bob Steenrod, approved by SRC.
3. **LEGISLATIVE REPORT.** (Michael Valdez)
 - The Colorado Uniform Law Commissioners met with members of the CBA (including appropriate members of T & E Section) on October 2, 2009. The purpose of the meeting was to discuss a preliminary list of uniform acts that they would like to see introduced and adopted in the 2010 and 2011 Colorado legislative session.

Deadlines for 2010 legislative bills:
 - Trust & Estate Section Omnibus Bill and Stand-Alone bills– December 1, 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.

Current Report: 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 consensus. The Chair with a stern stare directed Gordon

Williams and David Kirch to “get this done.” 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.

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) **Revised Uniform Power of Attorney Act. (Josie Faix, Ch.)**
Status: This Act has been introduced to the legislature without the support or objection of SRC. The subcommittee will continue to engage in a virtual discussion regarding possible amendments that can be made after enactment.

Instructions for joining the on-line discussion:

Go to the following webpage: <http://groups.google.com/group/colopoa>
Follow the links and instructions to “Join This Group”

- (f) **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) **Transfer of real property by domiciliary foreign personal representative. C.R.S. §§15-12-102 and 15-12-901 (John DeBruyn, Ch.).**

John DeBruyn discussed the proposed changes. After discussion, it was recommended that SRC approve the proposed changes to C.R.S. §§15-12-102 and 15-12-901. The motion passed with only one member voting in opposition.

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

Dennis Whitmer reported that the subcommittee has completed its work and will be presenting at the November meeting.

(c) **Revision to Deadman's Statute. C.R.S. §13-90-102. (Marc Darling, Herb Tucker, Co-Chs.)**

Mark Darling reported that the subcommittee is making some minor revisions to the language (tweaking) and seeking approval from Litigation Section. This would be a stand-alone bill.

(d) **Business Trusts (John DeBruyn, Ch.)**

John DeBruyn reported that the Business Law Section entity drafting committee held a meeting in June where it was decided to consider the business trust both in the context of a proposed Colorado business trust act side by side with the Uniform Statutory Trust Entity Act. A couple of real estate section representatives have joined this effort and some more volunteers from Trusts and Estates are welcome. The subcommittee meets at 3:15pm. The Uniform Law Commissioners are ok with delaying introduction until 2011.

(e) **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 the Act with our Colorado version of the UPC. Delayed effective date of July, 2010 will allow this subcommittee the opportunity to suggest more substantive amendments before the Act becomes effective.

Current Report: Marc Darling reported that the subcommittee hopes to present to SRC in December 2009.

(f) **Alternative Dispute Resolutions Committee (John DeBruyn, Ch.).**

Status: John DeBruyn reported that the Joint Elder Law/T&E/Dispute Resolution group is reviewing the Uniform Collaborative Law Act for consideration. John also requested changing the name from Arbitration Provisions in Wills to the "Alternative Dispute Resolutions Committee"

- (g) **Death of Trustee with Title in Trustee's Name, §15-16-501. (John DeBruyn, Ch.)**
Status: John DeBruyn requested that this be moved to the inactive list.
 - (h) **Amendments to the Slayer Statute. (Bob Steenrod, Ch.)**
 This matter was not discussed at October meeting but is expected to be voted upon at the November meeting.
 - (i) **Beneficiary Designation Agreement Amendments (Elizabeth Bryant, Ch.)**
 No report.
 - (j) **Proposed Decanting Statute (Greg Densen Ch.)**
 Greg Densen reviewed the latest version of the proposed Decanting Statute. A straw vote was also taken on whether the trustee should be required to give notice to the qualified beneficiaries. The members voted overwhelmingly to require notice. There also was debate on the notice period, the amount of discretion required, the addition or elimination of beneficiaries, the granting of powers of appointment, savings clauses, protection of powers of withdrawal or appointment held by settlor or settlor's spouse and respecting settlor's intent. As Greg Densen stated to the members it becomes a question of whether the perceived benefit of the Decanting Statute outweighs the possible harm. Should the proposed statute be very broad and powerful to assist more trusts or very narrow to prevent abuse? The subcommittee plans to meet to review the concerns and issues raised by the members and will report back to the committee at the November meeting.
 - (k) **Real Property Transfer on Death Act Subcommittee (Carl Stevens Ch.)**
 Carl Stevens reported that the Uniform Law Commissioners wants to introduce the Uniform Real Property Transfer on Death Act in 2010 and wants a uniform bill. The subcommittee is preparing a written report and hopes to have it ready by December 1, 2009.
 - (l) **Retention of Files (Michael Kirtland)**
 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 2009 meeting but will be addressed at next month's meeting in November.
7. **REPORT FROM ELDER LAW SECTION (Marcie McMinimee).**
 No report.
8. **REPORT FROM POWER OF ATTORNEY ABUSE PREVENTION COMMITTEE (Spencer Crona, Ch.).**
 No report.

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

This matter was not discussed at October meeting but is expected to be voted upon at the November meeting.

Meeting adjourned at 3:16