

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Jonathan Haskell, Hayley Lambourn

The Next Meeting will be May 3, 2023 - 1:30 – 3:15 p.m. in person and via Zoom. Please join us in person, if possible.

AGENDA – April 5, 2023

- I. **Welcome and Call to Order.**
 - a. *Attendance and Introductions*
 - b. *Reminders.* Please let Hayley Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list.
(hlambourn@wadeash.com)
 - c. *Approval of Minutes:* March 1, 2023 Meeting

- II. **Chairperson’s Report.**

- III. **Legislative Liaison’s Report**

- IV. **Announcements**

- V. **Subcommittee Reports**
 - a. *Active Matters Pending Approval*
 - i. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster). Committee will vote on proposed legislation March 2023.
 - ii. Electronic Estate Planning Documents Act (Chair: none)
 - iii. Proposed change to UTC Termination of Trust §15-5-411 (Chair: Eric Solem).
 - iv. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams)
 - v. Beneficiary Deeds Statute Update (Chair: Carl Stevens)
 - vi. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3) (Chair: Letitia Maxfield)

 - b. *Inactive Matters*
 - i. **Approved.** Disclosure of Fiduciary Fees, C.R.S. §§15-10-602 and 15-10-705. Approved in 2015-2016. Jonathan Haskell forwarded approved

language to Steve Brainerd. Gordan Williams will work with Steve Brainerd on presentation to LPC.

- ii. **Approved, but not moving forward.** Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. (Chair: Pete Bullard). The language approved by the committee was much broad (7 categories of estate planning documents) than the State Court Administrator was able to achieve (1 category, Wills). The State Court Administrator created a pilot program, which was scheduled to be implemented on February 1, 2023. This matter will remain inactive pending the pilot program. When the program is complete, the committee will consider whether to attempt to reincorporate the broader language to include the other 6 categories of estate planning documents (as described in HB 19-1229 as introduced on 3/8/2019) should be added to the Act by amendment.
- iii. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster). Indefinitely on hold until taken up by the legislature.
- iv. **Unapproved.** Child Support in Probate (Chair: Pat Mellen)

VI. Section Reports

- a. *Elder Law*
- b. *Other*

VII. New Matters

VIII. Approved Proposals for Inclusion in Omnibus Bill or stand alone legislation

- a. Lodged Wills Statutes, C.R.S. §§ 15-12-304, 15-12-402, and 15-10-305.5
- b. C.R.S. § 15-5-103(10) “Interested person” means a qualified beneficiary or other person having a property right in or claim against a trust estate, which right or claim may reasonably and materially be affected by a judicial proceeding pursuant to this code. The term also includes fiduciaries and other persons having authority to act under the terms of the trust. The meaning as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES – March 1, 2023

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Jonathan Haskell, Hayley Lambourn

The Next Meeting will be April 5, 2023 - 1:30 – 3:15 p.m. in person and via Zoom.

I. Welcome and Call to Order.

- a. Jonathan Haskell called the meeting order at 1:35pm. The committee members in attendance introduced themselves.
- b. Please let Hayley M. Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list (hlambourn@wadeash.com)
- c. Mary Lu Chen made a motion to approve the minutes of the February 1, 2023 meeting, which was seconded. The meeting minutes were approved.

II. Chairperson’s Report. The committee encourages members to attend in person.

III. Legislative Liaison Report. Tyler Mounsey does not have a report.

- a. An update was provided by Steve Brainerd via email.
 - i. Spencer Crona presented proposed change to the CUTC’s definition of “interested person” in 15-5-103(10). LPC unanimously supports the change.
 - ii. Bette Heller presented revision 15-10-305 and our proposed addition of a new 15-10-305.5 to deal specifically with “lodged wills.” Again, LPC unanimously supports the changes.
 - iii. The revisions to 15-10-602 and 15-12-705 – making it clear that the basis for an informally appointed personal representative’s compensation must be disclosed in the “Information of Appointment” – were also unanimously approved by the LPC.
 - iv. Minor correction required to 15-5-504(3)(a), noted by Connie Eyster – changing the word “obligee” to “obligor” -- will be included in the 2023 Revisor’s Bill.
 - v. The Uniform Community Property Disposition at Death Act has been introduced as SB 100. All of the comments/recommendations of the SRC Sub-Committee reviewed this Act have been incorporated in the proposed Bill. The Bill is out of the Senate and is now before the House Judiciary Committee. No other Section of the Bar has raised any issues with the Bill as modified by our SRC subcommittee.

IV. Announcements.

- a. David Kirch made a request for Colorado Lawyer articles. Articles can be shorter than the 10-12 page requirement. Articles can be co-authored. Contact David Kirch if you are interested.

V. Subcommittee Reports

- a. Uniform Community Property Disposition at Death Act. Jonathan Haskell asked if there was further comment or discussion.
 - i. Michael Kirtland asked if a form was part of the proposal. No.
 - ii. Motions Bette first, Lauren de Cuhna second.
 1. Motion to approve the Act passes.
 - iii. Jonathan will bring it to T&E Council. Connie will support presentation to LPC, may be moot if passed by the legislature.
- b. Uniform Electronic Estate Planning Documents Act
 - i. Date set to meet 3/14/2023. Will discuss catch all provisions and request removal.
- c. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams). None.
- d. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster). Move to inactive.
- e. Beneficiary Deeds Statute Update (Chair: Carl Stevens). Jonathan Haskell will reach out to Carl. May be soliciting volunteers from business and real estate section.
- f. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3) (Chair: Letitia Maxfield). None.
- g. Proposed change to UTC Termination of Trust §15-5-411 (Chair: Eric Solem). Suggested change allows for disabled people to benefit from UTC. Disabled beneficiary can have court created trust terminated by Medicaid regulations. Unanticipated result of UTC of adoption. Clarify what happens to proceeds when trust is terminated.
 - i. Legislature may be interested.
 - ii. Elder law supports the change. Lance will reach out to HCPF to vet proposed changes.
 - iii. The language in UTC now reflects what Elder law thought was the right choice when UTC was initially passed in 2005. Language may no longer be working for disabled individuals.

VI. Section Reports.

- a. Elder Law. No reports.

b. Trial and Procedure –

- i. Wrongful death statute. Who has standing to bring claim for wrongful death, expand to include personal representative.
- ii. Procedural Rules for appointing Court Visitor. Want to limit automatic appointment for Court Visitor to make process more streamlined.

c.

VII. New Matters. None.

Amend C.R.S. § 15-5-411 as follows:

(2) ~~Other than a trust established by court order under Title XIX of the federal “Social Security Act”, 42 U.S.C. sec. 1396p(d)(4),~~ A noncharitable irrevocable trust, including any trust established pursuant to C.R.S. § 15-14-412.8 or 42 U.S.C. sec. 1396p(d)(4) may:

- (a) Be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust; or
- (b) Be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

Then amend Subsection (4) as follows:

(4) Upon termination of a trust pursuant to subsection (1) or (2) of this section,

(a) Other than a trust established under C.R.S. § 15-14-412.8 or 42 U.S.C. sec. 1396p(d)(4), the trustee shall distribute the trust property as agreed by the beneficiaries;

(b) For trusts established under C.R.S. § 15-14-412.8 or 42 U.S.C. sec. 1396p(d)(4), the trustee shall distribute the trust property to or for the benefit of the disabled beneficiary of such trust, except in the case of a judgment against the disabled beneficiary for medical assistance benefits incorrectly paid to such disabled beneficiary. In such case, the amount of the judgment shall be set forth in the petition and be reimbursed to the holder of such judgment.