

CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES – April 5, 2023

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.

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. Kevin Millard made a motion to approve the minutes. Lauren De Cunha made a second motion.

II. Chairperson’s Report. No Report.

III. Legislative Liaison’s Report. No Report.

- a. Governor signed Uniform Disposition of Community property Rights at Death Act. No additional changes. Shelly Merrit testified.

IV. Announcements

- a. Betty Heller is looking for a co-author re joint rev trusts in Orange Book Handbook. Contact Betty directly if you are interest.
- b. Estate Planning Retreat – June 8-10 in Santa Fe, NM.

V. Subcommittee Reports

- a. *Active Matters Pending Approval*
 - i. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster). Legislation was signed into law.
 - ii. Electronic Estate Planning Documents Act (Chair: none). Steve Brainerd provided the report. The subcommittee met a couple of times to divide labor to review the Act. They hope to give feedback on the Act to committee by end of May. The subcommittee meets the second Tuesday at 8am. Contact Steve Brainerd if you would like to join.
 - iii. UTC Termination of Trust 15-5-411. No Report.
 - iv. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams). No Report.

- v. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster). Indefinitely on hold until taken up by the legislature.
- vi. Beneficiary Deeds Statute Update (Chair: Carl Stevens). Inactive.
- vii. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3) (Chair: Letitia Maxfield). No report.
- viii. Revisions to 15-5-411, C.R.S. Modification or Termination of Trust
 1. Elder Law has approved the proposed language and sent it up to LPC.
 2. It was the intent of the creation of the termination provision that a court created trust was not subject to the termination provisions. However, a court of appeals case applied the relevant statute to disability trusts, including those disability trusts created by a third parties.
 3. HCPF will likely disagree to 4(b) regarding collection of recovery prior to death. Persons no longer eligible for Medicaid, HCPF can seek to terminate trust. Federal law states that no benefits can be recovered prior to death except for those benefits wrongfully paid.
 4. Under (5) court has discretion to make determination whether or not the termination of the trust is in the best interest of a beneficiary, so the court will still have discretion under proposed regulations to terminate disability trusts.
 5. Betty made a motion to support the revisions as approved by the Elder Law Section. Vote – approved. No opposition.
 6. Will need to consider how it is presented to CO legislator. This will be separate legislation.
 7. Eric Solem has legislators interested in the proposed legislation.

VI. Section Reports

- a. *Elder Law*. No Report.
- b. *Other*

VII. New Matters

Meeting was adjourned 2:00pm.

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

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

The Next Meeting will be August 2, 2023 - 1:30 – 3:15 p.m. in person and via Zoom. Please join us in person, if possible.

AGENDA – May 3, 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: April 5, 2023 Meeting*

II. Chairperson’s Report.

III. Legislative Liaison’s Report

IV. Announcements

V. Subcommittee Reports

- a. *Active Matters Pending Approval*
 - i. Electronic Estate Planning Documents Act (Chair: none)
 - ii. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams)
 - iii. 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. Gordon 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.**

1. Child Support in Probate (Chair: Pat Mellen)
2. Beneficiary Deeds Statute Update

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.
- c. Proposed change to UTC Termination of Trust §15-5-411 – Elder Law will advance.