

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Hayley Lambourn, Marianne Luu-Chen

The next meeting will be October 4, 2023 - 1:30 – 3:15 p.m. in person and via Zoom. Please join us in person.

AGENDA – September 6, 2023

I. Welcome and Call to Order.

- a. *Attendance and Introductions*
- b. *Reminders.* Please let Marianne Luu-Chen know if you did not receive meeting materials or if you would like to be removed from the email list.
(marianne.luuchen@hbcboulder.com)
- c. *Approval of Minutes:* August 2, 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) Report.
 - ii. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3) (Chair: Letitia Maxfield)
 - iii. Uniform Health-Care Decisions Act (Chair: Leia Ursery)
 - iv. Amendment to C.R.S. § 15-12-203(4), Personal Representative Priority Statute (Chair: Gordon Williams)

- 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 standalone 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.

NOTICE OF MEETING
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Please join us in person, if possible.

MINUTES – August 2, 2023

- I. Welcome and Call to Order.
 - A. Attendance and Introductions.
 - B. Reminders. Please let Marianne Luu-Chen know if you did not receive meeting materials or if you would like to be removed from the email list.
(marianne.luuchchen@hcboulder.com)
 - C. Approval of Minutes of May 3, 2023 meeting. Darla Daniel moved to approve, and Amy Symons seconded the motion. The minutes were approved with no objection.
- II. Chairperson’s Report
- III. Legislative Liaison’s Report
 - A. The report was made by Steve Brainerd.
 - 1. Uniform Health-Care Decisions Act was approved by the Uniform Law Commission (ULC) this year, but we are waiting on what uniform laws the Colorado commissioners will submit. The act addresses advance health-care directives. Motion to permit group to provide initial feedback to Colorado commissioners passes. People who expressed interest in participating in a subcommittee: Kevin Millard, Michelle Mieras, Steve Brainerd, Marianne Luu-Chen, and Leia Ursery (Chair: lursery@goodspeedmerrill.com)
 - 2. Trying to consolidate three bills from last year to submit to the legislature in the upcoming session and find a legislator to sponsor our approved statutory changes.
- IV. Announcements

V. Subcommittee Reports

A. Active Matters Pending Approval

1. Amendment to CRS § 15-12-203(4) Personal Representative Priority Statute
 - a. Chair: Gordon Williams
 - b. No report.
2. Colorado Uniform Electronic Wills Act, conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3)
 - a. Chair: Letitia Maxfield (lmaxfield@wadeash.com)
 - b. Subcommittee is identifying statutes that need conforming amendments and opportunities for new statutes to address infrastructure with e-wills. (*e.g.*, evidence needed by a proponent to validate an electronic will, whether witnessed, notarized, or self-proved)
3. Uniform Non-Testamentary Electronic Estate Planning Documents Act
 - a. Chair: Vacant (Steve Brainerd reporting)
 - b. Designed to validate a limited list of electronic estate planning documents that are not wills or codicils (examples: appointment of guardian, powers of appointment, advance health-care directives, trust agreements, and durable powers of attorney)
 - c. Two fundamental changes: types of documents considered and a section explicitly authorizing that certain non-testamentary documents may be electronic and electronically signed (assuming conforming to other state requirements as to the execution of the documents)
 - d. Considered whether the definition of “person” should conform to the UPC or leave the general ULC definition.
 - e. Considered Section 211, which was added to the act.
 - f. Discussion on reconsideration of broad language, and it was decided that it may be revisited in the future.

g. Motion made by Kevin Millard, seconded by Dylan Metzner to discuss with Colorado ULC Commissioners passed.

B. Inactive Matters. None.

VI. Section reports

A. Elder law. No report.

B. Other. No report.

VII. New Matters

VIII. Announcements

A. Colorado Lawyer – David Kirsch solicited articles, including one related to *Estate of Everhart* and Part 5 of the Colorado Uniform Trust Code

B. Probate Trial & Procedure Subcommittee

1. Colorado Personal Representatives Bringing Action for Wrongful Death (Chair: Aaron Evans)

2. Facilitating opportunities for judicial districts to meet with practitioners

3. Court Visitor Protocols and Notice Requirements

4. Unauthorized Practice of Law in Probate by Professional Fiduciaries (see *Tucker v. Town of Minturn (In re Application for Water Rights of Town of Minturn)* 359 P.3d 29 (Colo. 2015))

Adjourned at 2:35 pm

Respectfully submitted by Marianne Luu-Chen

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(luuchen@hcboulder.com)
- c. *Approval of Minutes:* May 3, 2023 Meeting

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V. Subcommittee Reports

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VIII. Approved Proposals

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

Uniform Electronic Estate Planning Documents Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR
PHILADELPHIA, PENNSYLVANIA
JULY 8–13, 2022



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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 28, 2022

Uniform Non-Testamentary Electronic Estate Planning Documents Act

[Article] 1

General Provisions and Definitions

Section 101. Title

This [act] may be cited as the Uniform Non-Testamentary Electronic Estate Planning Documents Act.

Section 102. Definitions

In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(3) “Electronic signature” means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(4) “Information” includes data, text, images, codes, computer programs, software, and databases.

(5) “Non-testamentary estate planning document” means a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will. ~~The term:~~

(A) In this Act, the term is limited to ~~includes~~ a record ~~readable as text at the time of signing~~ that creates, exercises, modifies, releases, or revokes any of the following:

(i) a trust instrument;

(ii) a trust power that under the terms of the trust requires a signed record;

(iii) a certification of a trust under [cite to Uniform Trust Code Section 1013];

(iv) a power of attorney that is durable under [cite to Uniform Power of Attorney Act];

(v) an agent's certification under [cite to Uniform Power of Attorney Act Section 302] of the validity of a power of attorney and the agent's authority;

(vi) a power of appointment;

(vii) an advance directive, including a [health-care power of attorney], directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment;

(viii) a record directing disposition of an individual's body after death;

(ix) a nomination of a guardian for the signing individual;

(x) a nomination of a guardian for a minor child or disabled adult child;

(xi) a mental health treatment declaration; and

(xii) ~~a community property survivorship agreement;~~

(xiii) a disclaimer under [cite to Uniform Disclaimer of Property Interests Act Section 2(3)]; ~~and~~

~~(xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and~~

(xiv) a separate writing or memorandum under C.R.S. 15-11-513.

(B) ~~does not include~~ In this Act, the term excludes all other non-testamentary eestate planning documents, including:

(i) a marital or premarital agreement [section 14-2-301 et seq.];

(ii) a designated beneficiary agreement [section 15-22-101 et seq.]

(iii) a beneficiary designation pursuant to an retirement plan, life insurance policy, annuity contract, individual retirement account, or similar contractual arrangement [unless an electronic record or signature are authorized by the plan, policy, contract, or other governing instrument]

(iv) a pay on death (POD) designation for an account with a financial institution [section 15-15-201, et seq] [unless an electronic record and signature are authorized by the financial institution

(v) a transfer on death (TOD) registration for a security account with a registering entity [section 15-15-301 et seq] [unless an electronic record and signature are authorized by the registering entity];

(vi) a contact concerning succession including a contract to make a will [section 15-11-514];

(vii) a contractual arrangement [other than a trust instrument] between two or more parties that governs disposition of property at the death of a party;

(viii) a record creating, severing, or altering community property [section 15-20-109];

(ix) a community property survivorship agreement; and

(x) a deed of real property, including a beneficiary deed [section 15-15-401 et seq][,][, or] certificate of title for a motor vehicle, watercraft, or aircraft[, or [list other documents the state intends to exclude from Article 2]];

~~a deed of real property[,][, or] certificate of title for a motor vehicle, watercraft, or aircraft[, or [list other documents the state intends to exclude from Article 2]];~~

~~(6) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.~~

(7) “Power of attorney” means a record that grants authority to an agent to act in place of the principal, even if the term is not used in the record.

(8) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(9) “Security procedure” means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. The term includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

(10) “Settlor” means a person, including a testator, that creates or contributes property to a trust.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic signature.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) “Terms of a trust” means:

(A) except as provided in subparagraph (B), the manifestation of the settlor’s intent regarding a trust’s provisions as:

(i) expressed in the trust instrument; or

(ii) as may be established by other evidence ~~that would be admissible~~ in a judicial proceeding or in a nonjudicial settlement agreement pursuant to Section 15-5-111 or by alternative dispute resolution pursuant to Section 15-4-113; or

~~(B) the trust’s provisions as established, determined, or amended by:~~

~~(i) a trustee or other person in accordance with applicable law; [or]~~

~~(ii) a court order[; or]~~

~~(iii) a nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111]].~~

(14) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments.

(15) “Will” includes a codicil and a testamentary instrument that merely appoints

an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. [\[This is the UPC definition of Will\]](#)

Legislative Note: *In paragraph (5), the definition of “non-testamentary estate planning document” may be expanded or contracted to conform with the state’s substantive, administrative, or regulatory law or practices. A signature on a non-testamentary estate planning document and on a document excluded from the definition may still be effective under other state law. Likewise, an audio or audio-visual record still may be effective under other state law. This act is designed to validate a signature that is in electronic form when other state law has not addressed the issue.*

In paragraph (5), a state should conform the name of the documents to match other state law. For example, in subparagraph (A)(vii), a state that uses the term “medical power of attorney”, “health-care proxy”, or other term should revise the bracketed text accordingly.

In paragraph (5), if a state does not authorize a particular non-testamentary estate planning document, that document should be omitted from the enumerated list. For example, a state following a common-law marital property system would delete subparagraph (A)(xii) referring to a community property survivorship agreement.

Section 103. Construction

[This act authorizes non-testamentary estate planning documents to be in electronic form and electronically signed. This act does not negate other state law requirements that must be satisfied to validate a non-testamentary estate planning document. Accordingly, ~~F~~this \[act\] must be construed and applied to:](#)

(1) facilitate [the creation of ~~electronic~~ non-testamentary](#) estate planning documents [in electronic form](#) and [the electronic signing of such documents](#)~~signatures consistent with other law~~; and

(2) be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

[Article] 2

Electronic Non-Testamentary Estate Planning Documents

Section 201. Scope

(a) Except as provided in subsection (b), this [article] applies to an electronic non-testamentary estate planning document and an electronic signature on a non-testamentary estate planning document.

(b) This [article] does not apply to a non-testamentary estate planning document if the document precludes use of an electronic record or electronic signature.

(c) This [article] does not affect the validity of an electronic record or electronic signature that is valid under:

(1) [cite to Uniform Electronic Transactions Act]; [or]

(2) [[Article] 3] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust][; or

(3) [cite to other state law relating to non-testamentary estate planning documents the state excludes from this [article]]].

Section 202. Principles of Law and Equity

The law of this state and principles of equity applicable to a non-testamentary estate planning document apply to an electronic non-testamentary estate planning document except as modified by this [article].

Section 203. Use of Electronic Record or Signature Not Required

(a) This [article] does not require a non-testamentary estate planning document or signature on a non-testamentary estate planning document to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) A person is not required to have a non-testamentary estate planning document in

electronic form or signed electronically even if the person previously created or signed a non-testamentary estate planning document by electronic means.

(c) A person may not waive the provisions of this section.

Section 204. Recognition of Electronic Non-Testamentary Estate Planning

Document and Electronic Signature

(a) A non-testamentary estate planning document or a signature on a non-testamentary estate planning document may not be denied legal effect or enforceability solely because it is in electronic form.

(b) If other law of this state requires a non-testamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c) If other law of this state requires a signature on a non-testamentary estate planning document, an electronic signature satisfies the requirement.

Section 205. Attribution and Effect of Electronic Record and Electronic Signature

(a) An electronic non-testamentary estate planning document or electronic signature on an electronic non-testamentary estate planning document is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including by showing the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of attribution to a person under subsection (a) of a document or signature is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption and as provided by other law.

Section 206. Notarization and Acknowledgment

If other law of this state requires a signature or record to be notarized, acknowledged,

verified, or made under oath, the requirement is satisfied with respect to an electronic non-testamentary estate planning document if an individual authorized to perform the notarization, acknowledgment, verification, or oath attaches or logically associates the individual's electronic signature on the document together with all other information required to be included under the other law.

Section 207. Witnessing and Attestation

[(a)] If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual, the signature, witnessing, or attestation of that individual may be electronic.

[(b) In this subsection, "electronic presence" means that two or more individuals in different locations are able to communicate in real time to the same extent as if the individuals were physically present in the same location. If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence.]

***Legislative Note:** Optional subsection (b) provides the state the opportunity to authorize electronic presence, or remote, witnessing. If a state has enacted the Uniform Electronic Wills Act, the state should consider making the "presence" rules the same for a non-testamentary as for a testamentary document.*

Section 208. Retention of Electronic Record; Original

(a) Except as provided in subsection (b), if other law of this state requires an electronic non-testamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

(1) accurately reflects the information in the document after it was first generated in final form as an electronic record or under Section 209; and

(2) remains accessible to the extent required by the other law.

(b) A requirement under subsection (a) to retain a record does not apply to information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person.

(d) If other law of this state requires a non-testamentary estate planning document to be presented or retained in its original form, or provides consequences if a non-testamentary estate planning document is not presented or retained in its original form, an electronic record retained in accordance with subsection (a) satisfies the other law.

(e) This section does not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to those in this section. In this section, "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

Section 209. Certification of Paper Copy

An individual may create a certified paper copy of an electronic non-testamentary estate planning document by affirming under penalty of perjury that the paper copy is a complete and accurate copy of the document.

Section 210. Admissibility in Evidence

Evidence relating to an electronic non-testamentary estate planning document or an electronic signature on the document may not be excluded in a proceeding solely because it is in electronic form.

[Section 211. Protection of Persons Without Knowledge of Non-Testamentary Estate Planning Documents.](#)

If a person acting in good faith has no actual knowledge of an electronic non-testamentary estate planning document, then the person is not liable for acts performed in good faith and may presume that the document does not exist.

[[Article] 3

Uniform Electronic Wills Act]

Legislative Note: *A state that wishes to expand state law to include electronic creation and execution of a testamentary document, including a will, testamentary trust, or codicil, has two options:*

(1) The state may insert the Uniform Electronic Wills Act or similar statute as Article 3 in this act, making adjustments to this act or to the incorporated act as appropriate. If the Uniform Electronic Wills Act is the statute being included, the only definition in Section 2 of that act necessary is “electronic will.” If remote witnessing is desired for an electronic will, the definition of “electronic presence” in Section 207(b) of this act also is necessary in this article. Sections 10 (uniformity of application and construction), 11 (transitional provision), and 12 (effective date) should be deleted from the Uniform Electronic Wills Act.

(2) The state may omit Article 3 and enact the Uniform Electronic Wills Act as a freestanding act.

[Article] 4

Miscellaneous Provisions

Section 401. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 402. Relation to Electronic Signatures in Global and National Commerce

Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future*

amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.

Section 403. Transitional Provision

[(a)] This [act] applies to an electronic non-testamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after [the effective date of this [act]].

[(b) This [act] applies to the will of a decedent who dies on or after [the effective date of this [act]].]

Legislative Note: *A state that enacts this act with optional Article 3 (Uniform Electronic Wills Act) should adopt this section in its entirety, including all of the bracketed text. A state that enacts this act without Article 3 should adopt this section omitting both the bracketed text “[a)” and the entirety of bracketed subsection (b).*

[Section 404. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 405. Repeals; Conforming Amendments

(a). . .

(b). . .]

Legislative Note: *A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the execution of testamentary and non-testamentary estate planning documents.*

Section 406. Effective Date

This [act] takes effect . . .