

Council of the Trust and Estate Section of the Colorado Bar Association

Notice of and Agenda for the September 7, 2022, Meeting

To: Council Members
Trust and Estate Section of the Colorado Bar Association

From: Dylan Metzner
Secretary/Treasurer
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Denver, CO 80202
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Notice of Meeting

The next monthly meeting of the 2022-2023 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: ***Thursday, October 6, 2022, 3:15 p.m.***

Place: VIRTUAL ONLY via Call-In/Zoom

<https://cba-cle.zoom.us/j/83843741966?pwd=NXVOTEExdUxuQ0FrV0VXV3ZrU3hVQT09>

Meeting ID: 838 4374 1966

Passcode: 534100

Call-in: 16694449171

Minutes of Previous Meetings & Attachments

1. Minutes of the September 7, 2022 meeting of the Council
2. August 31, 2022 Financial Statements
3. Memorandum regarding the September 20, 2022 CBA Real Estate Section Council Meeting
4. Statutory Revisions Committee Lodged Wills Packet
 - a. SRC Approved Version
 - b. Current Statute vs. SRC Approved Version
 - c. Current Statute

Trust and Estate Section Council Agenda
October 6, 2022

In an attempt to adhere to the allotted meeting duration of one (1) hour and thirty (30) minutes, the Chair will exercise his/her prerogative to limit the time for any report or discussion on a topic to ten (10) minutes. This conforms to Robert's Rules of Order.

1. Review/approval of Minutes of the May 4, 2022 meeting of the Council
2. Succession Items re: Council Member Vacancy, Committee Chair; Liaisons and Representative
 - a. Vacancy- Executive Council First Year Member
 - b. Succession Planning- Legislative Liaison
 - c. Succession Planning- Trust & Estate Practice Support Committee
 - d. Appointment- Communications Representative/Ambassador Program
 - e. Discussion- re Possible Creation of Liaison to ADR Section
3. Chair's Report and Administrative Matters (Molly Zwerdinger)
4. Secretary/Treasurer's report (Dylan Metzner)
5. Tax Section Liaison (Aaron Burton)
6. Elder Law Section (Patrick Thiessen)
7. Real Estate Section Liaison (Chad Rounds)
8. Family Law Section Liaison (Kim Willoughby)
9. Statutory Revisions Committee (Jonathan Haskell)
 - a. Discussion on Whether to Approve SRC's Recommended Changes to CRS § 15-10-305.5 (Lodged Wills)
10. Legislative Liaison (Steve Brainerd)
11. Legislative Update (Tyler Mounsey)

12. Council Notes (Kristin Dittus)
13. CLE/Estate Planning Retreat (Lauren da Cunha)
14. Orange Book Forms Committee (Rikke Liska)
15. Supreme Court's Rules and Forms Committee (Leia Ursury)
16. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
17. Equity, Diversity, and Inclusivity Committee (Amber Marchlowska)
18. Probate Trial and Procedures Committee (Marcie McMinimee & Lindsay Andrew)
19. Colorado Estate Planning Handbook (David Johns)
20. Green Book (Josie Faix)
21. Trust & Estate Practice Support Committee (Jessica Hazleton)
22. The Colorado Lawyer (Emily Bowman & David Kirch)
23. Communications Representative/Ambassador Program (Kayla Nelson)
24. Board of Governors Representative (Jonathan Haskell)
25. Miscellaneous/FYI
26. Adjournment

**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of the August 3, 2022, Meeting**

Council met on Wednesday, September 7, 2022 in person and via audio-conference. The meeting was called to order at approximately 3:15 p.m. by Molly Zwerdinger, Chair.

The following member of Council participated by Zoom/phone or in-person and constituted a quorum:

In attendance were:

Molly Zwerdinger, Chair
Lauren da Cunha, Vice Chair
Dylan Metzner, Secretary/Treasurer
Tim Bounds, (Immediate Past Chair)Marianne Luu-Chen (2nd year member)
Kristin Piñeiro (2nd year member)
Kelianna Chamberlain (1st year member)
Tristan Younghaus (2nd year member)
Lindsay Andrew (1st year member)

Also in attendance were:

Emma Baxter, CBA Staff
Tyler Mounsey, CBA Legislative Liaison
Robin Rosenfeld (Program coordinator and Treasurer of ADR Section
Elle Bryram (ADR Section)
Caroline Young
Bette Heller
Rikke Liska
Kristin Dittus
Steve Brainard
Kim Willoughby
Chad Rounds
Jonathan Haskell
Leia Ursury
Kayla Nelson

1. Review/approval of August 3, 2022 Minutes.

The minutes were approved unanimously

2. Review/approval of Slate of Liaisons to other CBA Sections.

The Slate of Liaisons to other CBA Sections was approved unanimously.

Discussion was held that the Council should consider appointing a Liaison to the ADR Section.

3. Chair's Report and Administrative Matters (Molly Zwerdlinger)

There is a vacancy in the office of 1st year Council Member. Emma Baxter will send out an email to the Section asking for applications/nominations.

October Probate Day is set on Wednesday, October 5th which is Yom Kippur. CBA will be moving October's Probate Day to Thursday, October 6th.

Presentation by ADR Resolution Corps regarding Fundraising for their Access to Mediation Project. Presenters: Elle Bryram and Robin Rosenfeld.

ADR Section helped form the ADR Resolution Corps (ADRC). The ADRC was formed to bring remote mediation services throughout the State and especially in locations that do not have mediators nearby. The panel of mediators who will be working with ADRC has agreed to take on 1 pro-bono case per year. ADRC is hopeful that it will be self-sufficient within a few years.

ADRC is currently seeking around \$20,000 funding so that it may hire a CBA staff member part time to assist with administration. The ADRC is seeking funding from various CBA Sections and Divisions, local bar associations and the Board of Governors.

4. Secretary/Treasurer's report (Dylan Metzner)

Most recent financials are for the Month Ending July 31, 2022. The Section had a beginning balance of \$43,092.16, revenue from dues was \$17,880 and an administration fee expense of \$1,110.38. The Section's ending balance as of July, 31, 2022 was \$59,861.78, which is approximately \$1,791 less than the ending balance on July 31, 2021. The decrease can be attributed to lower revenue from dues. In July of 2021 revenue from dues was 25,995.00. Expenses we approved to be paid in August were as follows:

- \$1,000 to the Equity, Diversity and Inclusivity Committee (this will be paid this month and shown on the September report);
- \$3,500 to Civic and Community Affairs Joint Committee of the Elder Law Section.

Financials for August were finalized but not intime to include them in today's Agenda. The Treasurer has looked at the financials and we received an additional \$7,905 in revenue from dues, our expenses included the \$3,500 to Civic and Community Affairs and the \$1,110.38 administrative expense. Ending Balance on August 31 was \$66,656.40 so we are in good shape.

R. Sterling Ambler Awards Dinner will be held on November 2, 2022.

Bar Fellows Dinner is this Saturday at History Colorado. The Section is a Sponsor and we received a table with 10 spots. Attendees are Molly (Chair) and her husband, Lauren (Vice Chair), Dylan (Treasurer/Secretary), Chad Rounds (Real Estate Section Liaison) and his spouse, Josie Faix (Green Book) and Aaron Burton (Tax Section Liaison). We have two open spots.

Discussion of ADRC's request. A motion was made and duly seconded to provide \$1,000 in funding. The motion passed unanimously.

5. Statutory Revisions Committee (Jonathan Haskell)

Presentation on Lodged Wills Recommendation. It came to SRC's attention that some courts were returning original wills to the lodgers or attorneys before the probate ended without any direction has been given as to what is to be done with the wills.

- Objectives. Uniformity on electronic recording, returning and what is to be done with the returned wills
- Operating stature 15-10-305
 - Rules of Civ Procedure
- Also talked with Connie Lynd of the state's court administrators office which gave recommendations not directions.
- Discussion- Council members have experienced the issue first hand an uniformity will be great.
- Motion to approve passed unanimously.

Next Steps Procedurally

- SRC Approved, if Council Approves we send to Tyler who takes it to LPC for approval by Bar

UCERA lost sponsor and that is going to back burner.

6. Tax Section Liaison (Aaron Burton)

No report

7. Elder Law Section (Patrick Thiessen)

No report

8. Real Estate Section Liaison (Chad Rounds)

Attached to Chad's Memo is the example of the new release of deed of trust form that can now be used by anyone when the original promissory note cannot be found. Public Trustees' websites should now have this form.

Molly will email Josie to get this new form added to Green Book

9. Family Law Section Liaison (Kim Willoughby)

No report

10. Legislative Liaison (Steve Brainerd)

Darla Daniel, who was Co-Liaison with Steve Brainerd, is not able to serve at this time and will look at revisiting her involvement in 2023. Steve is happy to pick this up during Darla's absence. Steve would like Executive Council to think about succession planning for next liaison for Steve and Darla to train and mentor. Institutional knowledge is helpful for Legislative Liaisons to have.

Chair of Statutory Revisions Committee will check with SRC members to see if any member is interested to serve as Co-Liaison. its m to see if there is any interest.

11. Legislative Update (Tyler Mounsey)

Legislative Agenda: We are in a weird time because entire house is up for re-election so focus is very Split and there is a lot of vacuum and wholes in leadership. UCERA is gone. Judicial Discipline is still focus. Bill created independent funding for commission and also created interim committee that was created and met over the summer. Possible proposal of a Constitutional Amendment that addresses Judicial Discipline.

12. Council Notes (Kristin Dittus)

No report

13. CLE/Estate Planning Retreat (Lauren da Cunha)

On track everything is looking good. On Monday there will be an email blast requesting proposals for breakout sessions at the retreat and more kid friendly.

14. Orange Book Forms Committee (Rikke Liska)

Looking at beneficiary deed to trust and make amendments to engagement agreements based on ethics opinion 133.

15. Supreme Court's Rules and Forms Committee (Leia Ursury)

Committee is meeting 9/8/2022 to discuss various forms including the Information of Appointment to discuss disclosure of fees form needs to be adjusted to account for compensation disclosure requirements. Leia will have an update next month.

16. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)

Kayla Nelson reported- Senior law day is coming up. Senior Law Handbooks (May of 2023) they are going to start ramping up for sponsorships on this and they will reach out to us. If anyone has updates to Brochure let Kyla or Sandra know. Revised version will be brought to Council in October.

17. Equity, Diversity, and Inclusivity Committee (Amber Marchlowska)

Kelianne Chamberlain reported- Bridge Building with Law Schools. Judge Jean Stewart has made great inroads at DU to restart their T&E and Elder Law interest group. The subcommittee is trying to do the same at CU. Committee would like to have tools in place to allow the Committee to reach as many options as possible and they would like to have a pamphlet that would explain the T&E and Elder Law Sections to Students. Working group is being formed.

18. Probate Trial and Procedures Committee (Marcie McMinimee & Lindsay Andrew)

No report

19. Colorado Estate Planning Handbook (David Johns)

No Report

20. Green Book (Josie Faix)

No Report

21. Trust & Estate Practice Support Committee (Jessica Hazleton)

Need to find successor chair for this Committee.

22. The Colorado Lawyer (Emily Bowman & David Kirch)

No report

23. Communications Representative/Ambassador Program (Lindsay Andrew)

Need to find successor for this Committee. Kyla Nelson indicated that may be interested in this.

24. Board of Governors Representative (Jonathan Haskell)

The next meeting is on October 18 in Denver and Jonathan will plan to attend. If anyone has issues they want Jonathan to bring to the Board of Governors, please reach out to Jonathan.

25. Other Business

Council will add Successorship Issues to the Agenda in October.

ADJOURNMENT

The meeting was adjourned at 4:35 p.m. The next Council meeting will be held October 6, 2022.

Respectfully submitted

/s/ Dylan Metzner, Secretary

Colorado Bar Association
Trust & Estate Summary
 For the Two Months Ending August 31, 2022

		August	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		\$43,092.16		\$43,092.16	0%	\$37,066.81
Trust & Estate Section- General							
Revenue	01-4???-31600	7,905.00	25,785.00		25,785.00	0%	29,325.00
Expenses	01-5???-31600	(4,610.38)	(5,720.76)		(5,720.76)	0%	(2,293.78)
Statutory Revisions Committee							
CLE							
Council Notes							
Community & Civic Affairs							
Revenue	01-4???-31613	3,500.00	3,500.00		3,500.00	0%	
Rules & Forms Committee							
Orange Book Forms							
Local Liaison							
Uniform Trust Code							
Admin. Chair							
Estate Planning Handbook							
Admin Council Dinner							
Legislative Liaison							
Internet Editor							
Technology Committee							
Real Estate Liaison							
Green Book							
The Colorado Lawyer							
Diversity Committee							
Judicial Liaison							
Member Vouchers							
Uniform Trust Code							
Transfer Deposit							
Young Lawyer Society							
Beginning Balance	01-3160-31600		43,092.16		43,092.16	0%	37,066.81
Total Revenue All Sources	01-4???-316??	11,405.00	29,285.00		29,285.00	0%	29,325.00
Total Expenses All Sources	01-5???-316??	(4,610.38)	(5,720.76)		(5,720.76)	0%	(2,293.78)
Ending Balance		6,794.62	66,656.40		66,656.40	0%	64,098.03

KIRCH ROUNDS BOWMAN & DEFFENBAUGH PC
MEMORANDUM

TO: CBA Council of the Trust and Estate Section

FROM: Chad Rounds

RE: Summary of 09/20/22 CBA Real Estate Section Council Meeting

DATE: 09/21/22

I attended the CBA Real Estate Section Council ("RESC") meeting on 09/20/22 by Zoom. The following is my report on matters addressed which the CBA Trust and Estate Section Council ("TESC") might find of interest:

Resolution Corps:

There was a request for money from the Real Estate Section to help finance the Resolution Corps which would provide remote mediation to underserved communities. The donation would help to pay for the program's administrator. There is already a panel of ADR Section mediators willing to participate in the program. They will handle FED and HOA matters in the real estate area. Like the Trust and Estate Section, the Real Estate Section agreed to donate \$1,000.

CBA-CLE Library:

The CBA is looking for volunteers to update the real estate forms such as standard leases found in the CBA-CLE library. They have not been updated since CBA took over the old Bradford forms.

Colorado Voidable Transaction Act Proposal for the 2023 Colorado General Assembly:

The Colorado Uniform Fraudulent Transfer Act was adopted in 1991. It provides relief to creditors by making voidable those transfers by debtors when there was an intent to hinder collection by the creditors. There have not been many amendments to the act since it was adopted in Colorado. The revisions from last year were supported by the CBA, but did not pass the legislature. The CBA Business Law Section hopes to introduce the Colorado Voidable Transaction Act in the upcoming legislative session to update the law. The proposal was voted on and is supported by the Real Estate Section Council.

Statutory Revisions Committee Approved

§ 15-10-305. Records and certified copies.

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

Article 10. General Provisions, Definitions, Jurisdiction

Part 3. SCOPE, JURISDICTION, AND COURTS

Current through 2021 Legislative Session

§ 15-10-305. Records and certified copies

The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

§ 15-10-305.5 LODGED WILLS:

(1) DEFINITIONS:

AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(B) "ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL" HAS THE MEANING SET FORTH IN SECTION 15-23-102 (8) AND (13).

(C) "ELECTRONIC WILL" HAS THE MEANING SET FORTH IN SECTION 15-12-1502 (3).

(D) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(E) "WILL" MEANS:

(I) AN INSTRUMENT IDENTIFIED IN SECTION 15-10-201 (59);

(II) A COPY OF AN ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL PREPARED BY THE STATE COURT ADMINISTRATOR AS REQUIRED BY SECTION 15-23-120 (2)(B);

(III) A PAPER COPY OF AN ELECTRONIC WILL THAT IS CERTIFIED BY AN INDIVIDUAL PURSUANT TO SECTION 15-12-1509; AND

(IV) A SEPARATE WRITING OR MEMORANDUM THAT IS CREATED BY THE TESTATOR OF A WILL PURSUANT TO SECTION 15-11-513.

(2) ACCEPTING A WILL FOR LODGING: THE CLERK OF A COURT SHALL ACCEPT A WILL THAT IS DELIVERED FOR LODGING PURSUANT TO §15-11-516.

(3) PRESERVATION OF LODGED WILL:

(A) THE CLERK OF THE COURT SHALL:

(i) PRESERVE A LODGED WILL IN THE CLERK'S RECORDS; AND

(ii) MAKE AND RETAIN AN ELECTRONIC RECORD OF THE LODGED WILL IN ACCORDANCE WITH RULES ADOPTED BY THE STATE COURT ADMINISTRATOR'S OFFICE.

(B) UPON THE APPLICATION OR PETITION FOR ADMISSION TO PROBATE OF A WILL THAT HAS BEEN LODGED PURSUANT TO THIS SECTION, THE WILL SHALL BE TRANSFERRED TO THE PROBATE CASE WITHOUT FURTHER REQUIREMENTS.

(4) RETAINING ORIGINAL WILLS: THE CLERK OF THE COURT SHALL RETAIN AN ORIGINAL LODGED WILL AS FOLLOWS:

(A) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE CLERK OF THE COURT SHALL RETAIN THE ORIGINAL WILL FOR THREE (3) YEARS AFTER THE DATE THE WILL IS ACCEPTED FOR LODGING PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(B) IF A PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE COURT SHALL RETAIN THE ORIGINAL WILL FOR TWO (2) YEARS AFTER THE DATE THAT THE ESTATE IS CLOSED INFORMALLY, FORMALLY, OR BY ORDER OF THE COURT.

(5) RETURNING OR DESTROYING ORIGINAL WILL:

UPON EXPIRATION OF THE TIME THAT THE CLERK OF THE COURT MUST RETAIN AN ORIGINAL WILL PURSUANT TO SUBSECTION (4) OF THIS SECTION, IF THE CLERK NO LONGER WISHES TO RETAIN THE ORIGINAL WILL:

(A) THE CLERK SHALL SEND NOTICE IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION TO THE PERSON SPECIFIED BELOW THAT IT WILL NO LONGER RETAIN THE ORIGINAL WILL, AS FOLLOWS:

(i) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO THE PARTY WHO DELIVERED THE WILL TO THE COURT.

(ii) IF A PROCEEDING WAS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO EITHER THE ATTORNEY OF RECORD FOR THE LAST-APPOINTED PERSONAL REPRESENTATIVE OR THE LAST-APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE; AND

(B) AFTER THE CLERK HAS SENT THE NOTICE,

(i) IF THE PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION TAKES POSSESSION OF THE ORIGINAL WILL, THEN THE PERSON MAY DESTROY THE ORIGINAL WILL.

(ii) IF A PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION DOES NOT TAKE POSSESSION OF THE ORIGINAL WILL WITHIN THIRTY (30) DAYS OF THE NOTIFICATION, THEN THE CLERK MAY DESTROY THE ORIGINAL WILL.

(6) NOTICE – METHOD AND TIME OF GIVING.

(A) THE CLERK OF THE COURT SHALL GIVE NOTICE TO THE PERSON ENTITLED TO NOTICE UNDER SUBSECTION (5) BY SENDING A RECORD IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT. PERMISSIBLE METHODS OF SENDING THE RECORD INCLUDE:

- (I) MAILING A LETTER BY CERTIFIED, REGISTERED, OR ORDINARY FIRST-CLASS MAIL ADDRESSED TO THE PERSON'S LAST ADDRESS OF RECORD; AND
- (II) A PROPERLY DIRECTED ELECTRONIC MESSAGE.

(B) NOTICE IS DEEMED GIVEN ON THE DATE OF MAILING OR SENDING.

(7) AUTHENTICITY OF ELECTRONIC RECORD OF A LODGED WILL: AN ELECTRONIC RECORD OF A LODGED WILL THAT IS CERTIFIED BY THE CLERK OF THE COURT WHERE THE WILL IS LODGED IS DEEMED TO BE THE ORIGINAL OF THE WILL FOR ALL PURPOSES UNDER COLORADO LAW.

(8) PRESERVATION OF ELECTRONIC RECORD OF A LODGED WILL: THE ELECTRONIC RECORD OF A LODGED WILL SHALL BE RETAINED IN THE RECORDS OF THE COURT FOR ONE HUNDRED (100) YEARS FROM THE DATE THAT IT IS LODGED.

SECTION 3. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 15-12-304 as follows:

15-12-304. Informal probate - unavailable in certain cases.

(1) Applications for informal probate that relate to any of the following must be declined:

- (a) one or more of a known series of testamentary instruments, other than a will and one or more codicils thereto, the latest of which does not expressly revoke the earlier;
- (b) a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15; or
- (c) An electronic record of the decedent's original will certified by the clerk of the court pursuant to CRS 15-10-305.5.

SECTION 4. In Colorado Revised Statutes, 15-12-402, **amend** (1) introductory portion, (1)(c), and (2) as follows:

15-12-402. Formal testacy or appointment proceedings - petition - contents.

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will must:

- (c) State whether the original of the last will of the decedent, or a copy of the decedent's original will certified by the state court administrator pursuant to article 23 of this title 15, or an electronic record of the decedent's original will certified by the clerk of the court pursuant to CRS 15-10-305.5, is in the possession of the court or accompanies the petition.

(2) If the original will, or a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15, or an electronic record of the decedent's original will certified by the clerk of the court pursuant to CRS 15-10-305.5, is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

Compare: Existing Statutes vs. Statutory Revisions approved changes to 15-10-305, C.R.S. and Related Statutes

§ 15-10-305. Records and certified copies.

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

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Article 10. General Provisions, Definitions, Jurisdiction

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Current through 2021 Legislative Session

§ 15-10-305. Records and certified copies

~~(1)~~ The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

~~(2) All instruments purporting to be the original wills, upon presentation for probate thereof, shall be recorded by the clerk of the court, in a well-bound book, to be provided by him for that purpose, or photographed, microphotographed, or reproduced on film as a permanent record, and shall remain and be preserved in the office of the clerk of the court. Upon admission of such will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.~~

§ 15-10-305.5 LODGED WILLS:

(1) DEFINITIONS:

AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(B) "ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL" HAS THE MEANING SET FORTH IN SECTION 15-23-102 (8) AND (13).

(C) "ELECTRONIC WILL" HAS THE MEANING SET FORTH IN SECTION 15-12-1502 (3).

(D) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(E) "WILL" MEANS:

(I) AN INSTRUMENT IDENTIFIED IN SECTION 15-10-201 (59);

(II) A COPY OF AN ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL PREPARED BY THE STATE COURT ADMINISTRATOR AS REQUIRED BY SECTION 15-23-120 (2)(B);

(III) A PAPER COPY OF AN ELECTRONIC WILL THAT IS CERTIFIED BY AN INDIVIDUAL PURSUANT TO SECTION 15-12-1509; AND

(IV) A SEPARATE WRITING OR MEMORANDUM THAT IS CREATED BY THE TESTATOR OF A WILL PURSUANT TO SECTION 15-11-513.

(2) ACCEPTING A WILL FOR LODGING: THE CLERK OF A COURT SHALL ACCEPT A WILL THAT IS DELIVERED FOR LODGING PURSUANT TO §15-11-516.

(3) PRESERVATION OF LODGED WILL:

(A) THE CLERK OF THE COURT SHALL:

(i) PRESERVE A LODGED WILL IN THE CLERK'S RECORDS; AND

(ii) MAKE AND RETAIN AN ELECTRONIC RECORD OF THE LODGED WILL IN ACCORDANCE WITH RULES ADOPTED BY THE STATE COURT ADMINISTRATOR'S OFFICE.

(B) UPON THE APPLICATION OR PETITION FOR ADMISSION TO PROBATE OF A WILL THAT HAS BEEN LODGED PURSUANT TO THIS SECTION, THE WILL SHALL BE TRANSFERRED TO THE PROBATE CASE WITHOUT FURTHER REQUIREMENTS.

(4) RETAINING ORIGINAL WILLS: THE CLERK OF THE COURT SHALL RETAIN AN ORIGINAL LODGED WILL AS FOLLOWS:

(A) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE CLERK OF THE COURT SHALL RETAIN THE ORIGINAL WILL FOR THREE (3) YEARS AFTER THE DATE THE WILL IS ACCEPTED FOR LODGING PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(B) IF A PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE COURT SHALL RETAIN THE ORIGINAL WILL FOR TWO (2) YEARS AFTER THE DATE THAT THE ESTATE IS CLOSED INFORMALLY, FORMALLY, OR BY ORDER OF THE COURT.

(5) RETURNING OR DESTROYING ORIGINAL WILL:

UPON EXPIRATION OF THE TIME THAT THE CLERK OF THE COURT MUST RETAIN AN ORIGINAL WILL PURSUANT TO SUBSECTION (4) OF THIS SECTION, IF THE CLERK NO LONGER WISHES TO RETAIN THE ORIGINAL WILL:

(A) THE CLERK SHALL SEND NOTICE IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION TO THE PERSON SPECIFIED BELOW THAT IT WILL NO LONGER RETAIN THE ORIGINAL WILL, AS FOLLOWS:

(i) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO THE PARTY WHO DELIVERED THE WILL TO THE COURT.

(ii) IF A PROCEEDING WAS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO EITHER THE ATTORNEY OF RECORD FOR THE LAST-APPOINTED PERSONAL

REPRESENTATIVE OR THE LAST-APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE; AND

(B) AFTER THE CLERK HAS SENT THE NOTICE,

(i) IF THE PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION TAKES POSSESSION OF THE ORIGINAL WILL, THEN THE PERSON MAY DESTROY THE ORIGINAL WILL.

(ii) IF A PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION DOES NOT TAKE POSSESSION OF THE ORIGINAL WILL WITHIN THIRTY (30) DAYS OF THE NOTIFICATION, THEN THE CLERK MAY DESTROY THE ORIGINAL WILL.

(6) NOTICE – METHOD AND TIME OF GIVING.

(A) THE CLERK OF THE COURT SHALL GIVE NOTICE TO THE PERSON ENTITLED TO NOTICE UNDER SUBSECTION (5) BY SENDING A RECORD IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT. PERMISSIBLE METHODS OF SENDING THE RECORD INCLUDE:

- (I) MAILING A LETTER BY CERTIFIED, REGISTERED, OR ORDINARY FIRST-CLASS MAIL ADDRESSED TO THE PERSON'S LAST ADDRESS OF RECORD; AND
- (II) A PROPERLY DIRECTED ELECTRONIC MESSAGE.

(B) NOTICE IS DEEMED GIVEN ON THE DATE OF MAILING OR SENDING.

(7) AUTHENTICITY OF ELECTRONIC RECORD OF A LODGED WILL: AN ELECTRONIC RECORD OF A LODGED WILL THAT IS CERTIFIED BY THE CLERK OF THE COURT WHERE THE WILL IS LODGED IS DEEMED TO BE THE ORIGINAL OF THE WILL FOR ALL PURPOSES UNDER COLORADO LAW.

(8) PRESERVATION OF ELECTRONIC RECORD OF A LODGED WILL: THE ELECTRONIC RECORD OF A LODGED WILL SHALL BE RETAINED IN THE RECORDS OF THE COURT FOR ONE HUNDRED (100) YEARS FROM THE DATE THAT IT IS LODGED.

SECTION 3. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 15-12-304 as follows:

15-12-304. Informal probate - unavailable in certain cases.

(1) Applications for informal probate that relate to any of the following must be declined:

(a) one or more of a known series of testamentary instruments, other than a will and one or more codicils thereto, the latest of which does not expressly revoke the earlier; ~~or~~

(b) a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15; OR

(c) AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5.

SECTION 4. In Colorado Revised Statutes, 15-12-402, **amend** (1) introductory portion, (1)(c), and (2) as follows:

15-12-402. Formal testacy or appointment proceedings - petition - contents.

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will must:

(c) State whether the original of the last will of the decedent, or a copy of the decedent's original will certified by the state court administrator pursuant to article 23 of this title 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5, is in the possession of the court or accompanies the petition.

(2) If the original will, or a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5, is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the

petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

LODGED WILLS- CURRENT STATUTES

§ 15-10-305. Records and certified copies

(1) The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

(2) All instruments purporting to be the original wills, upon presentation for probate thereof, shall be recorded by the clerk of the court, in a well-bound book, to be provided by him for that purpose, or photographed, microphotographed, or reproduced on film as a permanent record, and shall remain and be preserved in the office of the clerk of the court. Upon admission of such will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.

RELATED STATUTES - LODGED WILLS

15-12-304. Informal probate - unavailable in certain cases.

(1) Applications for informal probate that relate to any of the following must be declined:

(a) one or more of a known series of testamentary instruments, other than a will and one or more codicils thereto, the latest of which does not expressly revoke the earlier; ~~or~~

(b) a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15.

15-12-402. Formal testacy or appointment proceedings - petition - contents.

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal

representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will must:

(c) State whether the original of the last will of the decedent, or a copy of the decedent's original will certified by the state court administrator pursuant to article 23 of this title 15, is in the possession of the court or accompanies the petition.

(2) If the original will, or a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15, is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.