

CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES – SEPTEMBER 7, 2022

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

The Next Meeting will be October 6, 2022 - 1:30 – 3:15 p.m. via Zoom only.

AGENDA – September 7, 2022

I. Welcome & Call to Order

A. *Attendance & Introductions*

B. *Reminders*

1. 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: August 3, 2022 Meeting*

II. Chairperson’s Report

A. Contact Jonathan Haskell if you are interested in serving as co-legislative liaison.

III. Legislative Liaison Report

A. **Tyler Mounsey** gave his report.

1. UCERA – Representative Snyder conversation – one representative that was interested in introducing UCERA in Spring 2022. It turns out that the Uniform Law Commission (“ULC”) who was interested in bringing UCERA is no longer a ULC member, and now Rep. Snyder is not sure he is going to run this bill without a ULC supporting it. Ms. Eyster has reviewed it but it is not worth taking time for this committee to review if it is not going to be brought back up. SRC will now wait and see if someone wants to bring bill.

2. Rep. Snyder’s seat is up for re-election and as a result the House Majority has not nominated a replacement to ULC for Ms. Tipper’s spot.

3. Frank requested update re electronic storage of estate planning documents act. Mr. Mounsey is reviewing budget to determine if funds were reappropriated. No update on CEPAPDA funding. Judicial or state archives will get back to us regarding this and Tyler will report when its available. Funding Issue

4. Bette Heller reported that she received a request from state court administrator’s office re how many documents the judiciary may receive once the program to collect abandoned documents begins. Judiciary needs this information

to determine fees for uploading documents, projecting budgeting, staffing, electronic storage. She expects to receive the request next week. Needs advice re how to respond.

a. Gene Zuzpann asked if a fiscal note was attached to the program and the estimated associated cost. Yes, the legislative website re estimate of cost. Cost to get seed money up and running. \$1.1M FTE over 2 years, per Tyler Mounsey; 2,500 document, proposed fee of \$27.50 per document.

b. Mark Masters predicted the flow of documents would be slow at first as practitioners learn how to use the program then more.

c. Additional discussion – practitioners are no longer keeping original documents, so once more senior documents are submitted.

5. Interesting Legislative Time – entire house and part of senate is up for re-election. Difficult to get legislators to pay attention to non-election matters.

6. Sept 30 judicial review committee will meet – 3 draft proposals

- Constitutional amendment
- Complaint rights – operational needs of first bill
- Ombuds program, may be for judicial dept employees or public
- Waiting to listen to discuss at upcoming meeting

7. Amendment D – change appointment powers of governor to appoint judges for judicial district 19 – new 23 Douglas, Arapahoe, Lincoln

- Position – No vote leads to disruption of execution of 23rd judicial district; Yes vote – allow governor to appoint judges

8. Legislative Policy committee is still accepting application

- Interesting year – done with pandemic, have federal aid but don't actually have funds; figuring out next 5 years of legislative policy for Colorado

IV. Announcements. none

V. Subcommittee Reports

A. ACTIVE MATTERS PENDING APPROVAL

1. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster)

a. Report, Presentation of Materials, and Potential Vote.

2. Electronic Estate Planning Documents Act

a. Call for subcommittee members to review. Chair?

b. Pete Bullard – Uniform Law Commissioners approved this uniform act. Designed to deal with gap in Uniform Electronic Transactions Act, which excluded testamentary documents. Didn't clearly

exclude nontestamentary documents. Trusts aren't transaction between two people. Refers to specific documents but isn't overbroad, includes all ep documents, wills, trusts, and powers of attorney. Similar to E-Wills Act approach should be smooth.

c. Stan Kent and Frank Hill would serve on the committee.

d. The committee chair will reach out to Herb Tucker and Letty Maxfield re chairing efforts.

3. Amendment to C.R.S. § 15-12-203(4) (Personal Representative Priority Statute) (Chair: Gordon Williams)

1. Gordon Williams will discuss proposed language with Stan Kent and get back to the committee.

4. Beneficiary Deeds Statute Update (Chair: Carl Stevens)

a. No Report.

5. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster)

a. Connie. 14 sections to the Act. Reviewed nearly all of the sections, may have 2 more meetings before ready to present review. Doesn't know if will be on Uniform Law Commissioners list of interesting topics.

6. Colorado Uniform Electronic Wills Act. Conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3). (Letty Maxfield). No Report.

7. Review of C.R.S. § § 15-5-103 (10) and (16) [Definition of "interested person" and "qualified beneficiary"] (Spencer Crona)

a. Spencer Crona is working to assemble language among subcommittee, circulated. Anticipate something substantive at next month's meeting.

(1) Unintended consequences – gives trustee wide latitude to deny information to legit prior beneficiary could inquire about that beneficiary's status and whether the removal of the beneficiary was legitimate vs. concern re giving interested person status to too many prior beneficiaries that interferes with proper administration of trust. Considering 5-year statute of limitations.

(2) Steve Brainard reviewed what other states of have done who have adopted the UTC. Given what other states have done, still considers it problematic.

B. *INACTIVE MATTERS*

1. Approved

a. Disclosure of Fiduciary Fees, C.R.S. §§ 15-10-602 and 15-12-705

(1) Approved in 2015-2016. The committee is coordinating with the Probate Trial and Procedure committee to determine whether the JDF form for information of appointment should be updated. Goal is to resolve by year-end 2022.

2. Approved but not moving forward

a. Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. (Chair: Pete Bullard)

(1) The language approved by the committee was much broader (7 categories of estate planning documents) than the State Court Administrator was able to achieve (one category-Wills). The State Court Administrator created a pilot program which will be implemented on January 1, 2023 (when funding comes in) and the pilot program will address only Wills.

(2) This matter will remain inactive pending the pilot program. When the pilot program is complete, the committee will consider whether to attempt to reincorporate the broad language and whether the 6 other categories of estate planning documents (as described in HB19-1229 as introduced on March 8, 2019) should be added to the Act by amendment.

3. Unapproved

a. Child Support in Probate (Chair: Pat Mellen)

VI. Section Reports

A. Elder Law

1. Bette Heller presented approved lodged Wills proposal to Elder Law. No questions or any feedback. Elder Law executive council considered the materials this morning.

2. If passes through Council, Bette Heller to report to Probate Trial and Procedure. Spencer Crona will connect Bette Heller with Lindsey Andrew.

B. **No Other Reports.**

VII. New Matters

A. Stan Kent - Definition of Estate – property of a decedent but discussed throughout various Colorado law as an entity.

B. Guardianship Statute changes – Rose Zapor

1. Problem with agents/guardians who are arbitrarily restricting access to ward.

2. 15-14-316, C.R.S. – proposed change to move to not allow guardian to restrict for more than 30 days for family, friends 60 days for non-family member, during the time court hearing to give agent/guardian to ability to restrict access. Hearing can be requested by GAL, Guardian, Ward, person required to receive notice of guardian proceeding.

3. T&E members are able to join Elder Law subcommittee. More access to guardians/case managers through Elder Law Committee.

4. Emily McDaniel – Elder Law is far enough along that they are hoping to find a sponsor within the next month.

C. Gordon Williams – MV Realty, Zackman, based in Florida, licensed realtors are cold calling homeowners offering funds if participants agree to an exclusive listing agreement, then they record 40- year lien against property. If you don't use their realtor, sellers pay 3% sales price to the company. 200 recorded in El Paso County, CO. Mr. Williams is concerned that the company is looking to securitize this. Spencer Crona recommends

Mr. Williams reach out to EL Paso County Human Services, Real Estate Commission and CO Attorney General's office.

VIII. Approved Proposals for Inclusion in Omnibus bill or standalone legislation

1. Lodged Wills Statutes C.R.S. §§ 15-12-304 15-12-402 and 15-10-305.5

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

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

The Next Meeting will be November 2, 2022 - 1:30 – 3:15 p.m. in Person and via Zoom

AGENDA – October 6, 2022

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4. Beneficiary Deeds Statute Update (Chair: Carl Stevens)
5. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster)
6. Colorado Uniform Electronic Wills Act. Conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3). (Letty Maxfield)
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person” and “qualified beneficiary”] (Spencer Crona)

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