

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
AGENDA**

**February 2, 2022**

**1. Introductions**

**2. Approval of January 5, 2022 Minutes**

**3. Announcements**

a. *Email List.* If you did not receive the SRC materials in an email from Katie then you are not on the SRC email list. Email Jonathan (JHaskell@wadeash.com.) and he'll add you to the email list.

b. *Adoption of Notary Program Rules*

i. See attached Notice of Permanent Adoption of Notary Program Rules 8 CCR 1505-11

**4. Legislative Report**

**5. SRC Approved Proposals**

a. **Active Matters**

- (i) **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams);**

Probate Trial and Procedure has no objections. Information of Appointment form needs to be updated by Supreme Court. Dylan will coordinate with PTP on the form.

- (ii) **Amendment to Visitor Reporting Statute, C.R.S. § 15-14-113.5 (Gordon Williams);**

Elder Law opposes the proposed language.

- (iii) **Amendment to Personal Representative Priority Statute, C.R.S. § 15-12-203(4) to include Agent under power of attorney who is granted “hot power” to remove and appoint fiduciaries (Gordon Williams);**

*Proposed language: 15-12-203(4.5)* If no conservator or guardian is acting, then an agent who is authorized under a financial power of attorney to nominate a fiduciary in accordance with 15-14-724(1)(g)(ii), C.R.S., may exercise the same right to nominate, to object to another's appointment, or to participate in

determining the preference of a majority in interest of the heirs and devisees that the principal would have if qualified for appointment.

The above is new language that SRC needs to approve which takes into account the possibility that a Conservator or Guardian is serving and the protected person also has a financial power of attorney that is still effective.

**b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

**(i) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)**

- a. The language that SRC approved was much broader (7 categories of estate planning documents) than the State Court Administrator was able to achieve (one category-Wills). Essentially 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 only deal with Wills.
- b. This matter will remain on Inactive Matters until the pilot program is complete so that SRC can readdress whether to attempt to reincorporate the broader definition and whether the 6 other categories should be restored to the Act by amendment.

**6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees**

- a. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**
- c. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**
- d. **Lodged Wills- Investigate issues with lodging wills and the return of lodged wills. (Bette Heller)**
- f. **Beneficiary Deeds Statute Update re Named Insureds for Casualty Coverage (Carl Stevens)**
- g. **Uniform Cohabitants Economic Remedies Act (Connie Eyster)**

**7. Inactive Matters**

**8. Report from Elder Law Section**

**9. Report from Other Sections of the Bar**

**10. New Matters**

**a.**

**11. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**



## Notice of Permanent Adoption

### Office of the Secretary of State Notary Program Rules 8 CCR 1505-11

January 14, 2022

#### I. Adopted Rule Amendments

As authorized by Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Notary Program Rules<sup>3</sup> are adopted on a permanent basis.

The following rules were considered at the January 6, 2022 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>4</sup>.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions
<i>[Italic blue font text]</i>	Annotations and publication notes

*Current 8 CCR 1505-11 is amended as follows:*

*Amendments to Rule 3 concerning vendors and course providers:*

*[Current Rule 3.6.5 and 3.6.5(a) are amended. New Rule 3.6.5(b). Current Rule 3.6.5(b) is renumbered as New Rule 3.6.5(c).]*

- 3.6.5 Right to ~~appeal termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND RIGHT TO HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON accreditation or approval. ~~If the Secretary of State proposes to terminate an approved vendor's accreditation status or approval of a course provider, the vendor or course provider has the right to request a hearing as provided in the State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)~~

<sup>1</sup> Article 21 of Title 24, Part 5, C.R.S. (2021).

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2021).

<sup>3</sup> 8 CCR 1505-11.

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2021).

- (a) ~~If the approved vendor or the course provider does not request a hearing, termination will be effective 30 days after the mailing date of the termination notice.~~ EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER TO THE PUBLIC HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A VENDOR OR COURSE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND IN WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING ACCREDITATION OF A VENDOR OR APPROVAL OF A COURSE PROVIDER BEFORE INSTITUTING SUCH PROCEEDINGS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).
- (B) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING ACCREDITATION OF A VENDOR OR APPROVAL OF A COURSE PROVIDER UNTIL AFTER HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).
- (b)(c) Termination does not bar the Secretary of State from beginning or continuing an investigation concerning the vendor or course provider.

*Amendments to Rule 5 concerning remote notarization system and storage providers:*

*[New Rule 5.3.5. Current Rules 5.3.5, 5.3.6, and 5.3.7 are renumbered as Rules 5.3.6, 5.3.7, and 5.3.8.]*

5.3.5 DEFICIENT PROVIDER APPLICATION. IF THE SECRETARY OF STATE DENIES APPROVAL OF AN APPLICANT, THE SECRETARY OF STATE WILL NOTIFY THE APPLICANT OF ANY APPLICATION DEFICIENCIES. A REJECTED APPLICANT MAY REQUEST A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.)

~~5.3.5~~ 5.3.6 Notifications

- (a) If a remote notarization system provider or storage provider becomes aware of a possible security breach involving its data, the provider must give notice to both the Secretary of State and each Colorado remote notary public using its services no later than 30 days after the date of determination that a security breach occurred. The provider must comply with any other notification requirements of Colorado's data privacy laws.
- (b) No later than 30 days before making any changes to the remote notarization system or storage system used by Colorado remote notaries that would impact any previously provided answer in its application about its system that would affect the provider's eligibility for approval, a provider must both request approval from the Secretary of State and notify each Colorado remote notary public using its services. Changes to the system or storage must conform to statutory and rule requirements.
- (c) For non-system or storage-related changes to the provider's information on file with the Secretary of State, the provider must notify and update information provided to the Secretary of State no later than 30 days after changes to the provider's previously supplied information. This requirement includes changes to the disclosures required by Rule 5.3.2(b)(2).

~~5.3.5~~ 5.3.7 Complaints. A person may file a complaint with the Secretary of State against an approved provider. The complaint must allege a specific violation of Colorado's Revised Uniform Law on Notarial Acts or these rules. The person must submit the signed and dated complaint on the Secretary of State's standard form.

- ~~5.3-75.3.8~~ 5.3.8 Grounds for termination of approval. The Secretary of State may terminate approval of a provider for any of the following reasons:
- (a) Violation of any provision of Colorado's Revised Uniform Law on Notarial Acts or these rules;
  - (b) Making representations that the Secretary of State endorses, recommends, or mandates use of any of the provider's products, goods, or services;
  - (c) If the provider sustains a data breach; and
  - (d) Failure to timely respond to the Secretary of State's request for information or otherwise cooperate with an investigation, including providing requested information.

*[Current Rule 5.3.8 is renumbered as Rule 5.3.9. Current Rule 5.3.9(a) is amended. New Rule 5.3.9(b). Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).]*

- ~~5.3-85.3.9~~ 5.3.9 ~~Right to appeal denial or termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND RIGHT TO HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON approval. ~~If the Secretary of State denies or proposes to terminate an approved provider's status, the provider has the right to request a hearing as provided in the State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)~~
- (a) ~~If the provider does not request a hearing, termination of approval will be effective 30 days after the mailing date of the termination notice.~~ EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER TO THE PUBLIC HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A REMOTE NOTARIZATION SYSTEM OR STORAGE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND IN WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING APPROVAL BEFORE INSTITUTING SUCH PROCEEDINGS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).
  - (b) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING APPROVAL OF A REMOTE NOTARIZATION SYSTEM OR STORAGE PROVIDER UNTIL AFTER HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).
  - (b)(c) Termination does not bar the Secretary of State from beginning or continuing an investigation concerning the provider.

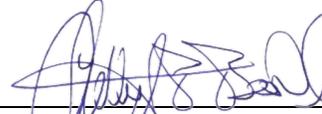
## **II. Basis, Purpose, and Specific Statutory Authority**

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

## **III. Effective Date of Adopted Rules**

The rules will become permanently effective twenty days after publication in the Colorado Register.<sup>5</sup>

Dated this 14<sup>th</sup> day of January, 2022,

A handwritten signature in blue ink, appearing to read "Chris Beall", written over a horizontal line.

Christopher P. Beall  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

---

<sup>5</sup> Section 24-4-103(5), C.R.S. (2021).



## Statement of Basis, Purpose, and Specific Statutory Authority

### Office of the Secretary of State Notary Program Rules 8 CCR 1505-11

January 14, 2022

#### I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Notary Program Rules. The Secretary adopted amendments to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>1</sup> and to answer questions arising under the Act.

Specific changes include:

- Amendments to Rule 3.6.5 and 3.6.5(a) clarify that, unless an exception applies, the Secretary of State will provide a vendor or course provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a provider before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Amendments to Rule 3.6.5 and New Rule 3.6.5(b) clarify that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a course provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rule 3.6.5(b) is renumbered as Rule 3.6.5(c).
- New Rule 5.3.5 clarifies that if the Secretary of State denies approval of the application of a provider (defined in Rule 5.1.2 as a remote notarization system provider or a remote notarization storage provider), the rejected applicant has the right to request a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rules 5.3.5 and 5.3.6 are renumbered as Rules 5.3.6 and 5.3.7.

---

<sup>1</sup> Article 21, Title 24 of the Colorado Revised Statutes.

- Current Rule 5.3.7 is renumbered as Rule 5.3.8 and a typographical error is corrected in subsection (a).
- Current Rule 5.3.8 is renumbered as Rule 5.3.9. Rule 5.3.9(a) is amended to clarify that, unless an exception applies, the Secretary of State will provide a remote notarization system or storage provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose condition on an existing approval before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- New Rule 5.3.9(b) clarifies that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing approval of a remote notarization system or storage provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

Written comments received during the formal rulemaking are available online at: [https://www.coloradosos.gov/pubs/rule\\_making/hearings/2022/NotaryRulesHearing20220106.html](https://www.coloradosos.gov/pubs/rule_making/hearings/2022/NotaryRulesHearing20220106.html). All comments are incorporated into the official rulemaking record.

## **II. Rulemaking Authority**

The statutory authority is as follows:

- Section 24-21-527(1), C.R.S., (2021), which authorizes the Secretary of State to “adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act].”
- Section 24-21-527(1)(h), C.R.S., (2021), which authorizes the Secretary of State to “[p]rescribe requirements for the approval and use of remote notarization systems and storage systems.”

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
MINUTES**

**January 5, 2022**

**1. Introductions**

Chair, Dylan Metzner, called the meeting to order at 1:33 pm.

Happy New Year. If anyone was affected by the fires the T&E Section is supportive of you and please reach out to Dylan (dmetzner@joneskeller.com) or Jonathan (jhaskell@wadeash.com). Our thoughts and prayers are with you.

We are still meeting via Zoom, there is an option to meet in person or virtual for 2022. Please participate however you feel most comfortable. Dylan and Jonathan will plan to be here in person.

**2. Approval of December 3, 2021 Minutes**

Motion passed unanimously.

**3. Announcements**

a. *Email List.* If you did not receive the SRC materials in an email from Emma then you are not on the SRC email list. Email Jonathan (jhaskell@wadeash.com) and he'll add you to the email list.

b. Rulemaking Hearing – Colorado Secretary of State Meeting is being held tomorrow at 1pm. If interested in attending contact Dylan. Georgina Kryda will attend on behalf of T&E and will report in February regarding hearing.

**4. Legislative Report**

Andy White is no longer with CBA. The T&E section wishes him well. A new CBA legislative person will be announced by Council today.

**5. SRC Approved Proposals**

**a. Active Matters**

- (i) **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams);**

Probate Trial and Procedure has no objections. Information of Appointment form needs to be updated by Supreme Court. Dylan will coordinate with PTP on the form.

Mr. Williams is not available to attend January meeting. Hold until February meeting.

**(ii) Amendment to Visitor Reporting Statute, C.R.S. § 15-14-113.5 (Gordon Williams);**

Elder Law opposes the proposed language. See November minutes that outline their position.

Mr. Williams is not available to attend January meeting. Hold until February meeting.

**(iii) Amendment to Personal Representative Priority Statute, C.R.S. § 15-12-203(4) to include Agent under power of attorney who is granted “hot power” to remove and appoint fiduciaries (Gordon Williams);**

*Proposed language: 15-12-203(4.5)* If no conservator or guardian is acting, then an agent who is authorized under a financial power of attorney to nominate a fiduciary in accordance with 15-14-724(1)(g)(ii), C.R.S., may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the principal would have if qualified for appointment.

The above is new language that SRC needs to approve which takes into account the possibility that a Conservator or Guardian is serving and the protected person also has a financial power of attorney that is still effective.

Mr. Williams is not available to attend January meeting. Hold until February meeting.

**b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

**(i) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)**

- a. The language that SRC approved was much broader (7 categories of estate planning documents) than the State Court Administrator was able to achieve (one category-Wills). Essentially 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 only deal with Wills.
- b. This matter will remain on Inactive Matters until the pilot program is complete so that SRC can readdress whether to attempt to reincorporate the broader definition and whether the 6 other categories should be restored to the Act by amendment.

6. **Unapproved Matters under Consideration by SRC - Reports from Subcommittees**

a. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**

No report

c. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**

Approved by SRC and Council. This is ready to go to LPC.

d. **Lodged Wills- Investigate issues with lodging wills and the return of lodged wills. (Bette Heller)**

Meeting on Thursday 1/13 at 9am. Thereafter, meeting will occur every month on the 2<sup>nd</sup> Wednesday moving forward 9am. Issue is lodged Wills are being sent back by some counties after probate has opened and in cases before probate has closed.

f. **Beneficiary Deeds Statute Update re Named Insureds for Casualty Coverage (Carl Stevens)**

Mr. Stevens reports that the subcommittee is considering whether we need to amend a statute based upon a Minnesota court that held insurance coverage a decedent purchased to cover the decedent's home did not insure the property after decedent's death because the property passed to a third party pursuant to a beneficiary deed.

g. **Uniform Cohabitants Economic Remedies Act (Connie Eyster)**

Ms. Eyster has been in contact with Family Law and will meet on the first Wednesday each month. It will be a joint committee with family law. This is a potential change in policy to give cohabitants more rights regarding economic relief options. Ms. Willoughby brought up that family law does not want to get rid of common law marriage.

h. . **Uniform Community Property Disposition at Death Act (Connie Eyster)**

17 Sections to be reviewed. Goal is to review by end of 2023. Meeting occurs at 11am to 12:30 on the first Wednesday of each month.

7. **Inactive Matters**

8. **Report from Elder Law Section**

Ms. Blattner reported that the Elder Law retreat is scheduled August 25-27 in Vail, CO. It will be a hybrid event. The next meeting is on 1/20 and reach out to Kayla Nelson with any questions you may have.

9. **Report from Other Sections of the Bar**

Ms. Kryda – Case law update is on 1/12. Mr. Patrick Thiessen will report on behalf of T&E.

10. **New Matters**

a. None

11. **Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**