

NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

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

The Next Meeting will be September 7, 2022 - 1:30 – 3:15 p.m. in Person and via Zoom

AGENDA

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: May 4, 2022 Meeting*

II. Chairperson's Report

III. Legislative Liaison Report

IV. Announcements

V. Subcommittee Reports

A. *ACTIVE MATTERS PENDING APPROVAL*

1. Amendment to C.R.S. § 15-12-203(4) (Personal Representative Priority Statute) (Chair: Gordon Williams)
 - a. Report re work with Connie Eyster and Letty Maxfield.
2. Lodged Wills (Chair: Bette Heller)
 - a. Additional discussion and potential vote.
3. Beneficiary Deeds Statute Update (Chair: Carl Stevens)
4. Uniform Cohabitants Economic Remedies Act (Chair: Connie Eyster)
 - a. Letty Maxfield or Kelly Cooper to report. Distribution of materials. Presentation and vote likely September/October.
5. Uniform Community Property Disposition at Death Act (Chair: Connie Eyster)
 - a. Anticipate materials available for September meeting.
6. Colorado Uniform Electronic Wills Act. Conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3). (Letty Maxfield)

a. Potential vote

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

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 should be added to the Act by amendment.

3. Unapproved

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

VI. Section Reports

A. Elder Law

B. Other

VII. New Matters

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

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

May 4, 2022

1. Introductions

Chair, Dylan Metzner, called the meeting to order at 1:32 pm.

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 April 6, 2022 Minutes

Approved

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. Estate Planning Retreat is June 16 through June 18, 2022 in Beaver Creek, CO.

c. Enjoy your summer – next SRC meeting will be on August 3, 2022.

4. Legislative Report

a. Tyler Mounsey provided the Legislative Report. There are 7 days left in Session.

i. House Bill - 22-201 - Judicial Discipline Bill – Confidentiality and Funding issues are taking care of.

ii. House Bill - 22-1271 – Guardianship Bill. Office of public guardianship was not consulted on proposed amendment. Legislators put amendment in anyway. It does not have a senate sponsor. It has not gone to appropriations and has not heard debate in the first chamber. Likely to disappear.

iii. Mr. Crona reported regarding Senate Bill 22-1271 that the Office of Public Guardianship Commission does not have the capacity to preform those tasks contemplated and would lie beyond the statutory charge of the Commission. This message has been conveyed to legislators. Denver, Jefferson, and Arapahoe Counties opposed the amendment.

iv. General. Senate and House are both very behind and have been working late nights. Of all bills so far, only 63 have gone to Governor's office for signature. They have cleared 20-30 bills this week. Legislature is having short and rushed conversations on technical bills which is a real challenge.

v. Budget Bill Question – Status of Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee. We will need to keep an eye on this

and see if the budget has room for this in January 2023. This will be the last year of budget surplus.

5. SRC Proposals

a. Active Matters Pending SRC Approval

i. 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 under 15-14-724. (Gordon Williams)

Review of C.R.S. § 15-10-201(5) beneficiaries, and C.R.S. § 15-10-201(24) Heirs, 15-10-201(25) organization 15-10-201(38) Person

1. current language:

(4) Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person 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 protected person or ward would have if qualified for appointment.

Problem: The definition of “guardian” in C.R.S. § 15-10-201(23) “excludes one who is merely a guardian ad litem.” The use of “except a guardian ad litem” is superfluous and should be stricken.

Current proposal is to strike “except a guardian ad litem”:

(4) Conservators of the estates of protected persons or, if there is no conservator, any guardian ~~except a guardian ad litem~~ of a minor or incapacitated person 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 protected person or ward would have if qualified for appointment.

2. Addition of 15-12-203(4.5)

Problem: Agents under powers of attorney with authority to appoint a fiduciary must file formally, rather than informally, thus wasting money and time unnecessarily.

Proposed language:

(4.5) If no conservator or guardian has been appointed for a principal who has executed a financial power of attorney that is in effect, then an agent authorized under the 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.

Discussion: Ms. Eyster – Why do we need this statute because if you have a power of attorney that grants the hot power to nominate, do we need a specific provision in the code to reiterate this right. Mr. Williams response is that you need to go through formal probate because there is no priority in 12-203. This gives also gives the agent priority.

Alternative proposed by Ms. Eyster:

Conservators of the estates of protected persons or, if there is no conservator, then an agent authorized under a financial power of attorney to nominate a fiduciary in accordance with 15-14-724(1)(g)(ii), or if none, then any guardian ~~except a guardian ad litem~~ of a minor or incapacitated person 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 protected person or ward would have if qualified for appointment.

Ms. Maxfield - Just because a conservator has been appointed does not mean that a financial power of attorney is invalidated by courts necessarily.

3. Ms. Eyster and Ms. Maxfield will work with Mr. Williams to come back in August 2022 with additional language.

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

1. The subcommittee's Memo and Lodged Wills Suggestions should be reviewed over the summer. Please submit proposed changes to Ms. Heller over the summer so that a vote can be taken in August 2022. C.R.S. §15-10-305(1) is not being changed. However, we felt that §15-10-305(2) is outdated, and therefore, we decided to replace it with a new §15-10-305.5.

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

No Report.

iv. Uniform Cohabitants Economic Remedies Act. (Connie Eyster)

The subcommittee is continuing to meet over summer and may have something in fall for SRC to review.

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

The subcommittee is continuing to meet over summer and have something in fall for SRC.

b. Inactive Matters Approved by SRC and Status

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

The committee is coordinating with the Probate Trial and Procedure subcommittee to determine/address whether the information of appointment form needs to be updated. Goal is to have this resolved by the end 2022.

c. 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)

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 address Wills.

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.

d. Inactive Matters Pending SRC Approval - Reports from Subcommittees.

i. None

6. Reports from Other Sections of the Bar

a. Elder Law

Mr. Crona reported that Elder Law Executive Council established a subcommittee to examine the due process flaws in the CAPS system.

b. Other Sections of the Bar

Ms. Kryda –Tax Section Legislative Update will likely occur between June 11 – 4th.

7. New Matters

- a.** Possible formation of Subcommittee to review CRS § 15-5-103 (10) and (16) [Definition of “interested person” and “qualified beneficiary”] (suggested by

Spencer Crona) Ms. Eyster, Mr. Kent, and Mr. Brainerd met informally. This will become a formal subcommittee. Standing in the CUTC is the concern. A beneficiary of a trust was suddenly removed and as a result lost standing to examine the amendments made by the settlor.

- b.** Ms. Maxfield and Mr. Kent explained that C.R.S. 15-12-303(iii) may have issues and need to be amended. A subcommittee may be formed to review this. Ms. Maxfield will speak in August, and a subcommittee may need to be formed.

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