

Council of the Trust and Estate Section, Colorado Bar Association

Notice of and Agenda for the January 6, 2021 Meeting

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

From: Molly T. Zwerdlinger
Secretary/Treasurer
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Notice of Meeting

The next monthly meeting of the 2020-2021 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: ***Wednesday, January 6, 2021, 3:15 p.m.***
Place: ***THIS MEETING WILL BE CALL-IN ONLY DUE TO COVID 19***

Call-In Instructions

Call-in instructions are as follows: 1.425.436.6390
Access Code: 420360

Minutes of Previous Meeting, Financial Reports & Attachments

1. Minutes of the December 2, 2020 meeting of the Council
2. Financial spreadsheets as of November 30, 2020
3. Living Will Statute Changes (Health Law Section Email; Kirtland Email; Proposed Amendment)
4. POA Brochure Drafts
5. C.R.S 24-33.5-704

**Trust and Estate Section Council Agenda
January 6, 2021**

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 December 2, 2020, meeting of the Council
2. Chair's Report and Administrative Matters (Spencer Crona)
3. Secretary/Treasurer's report (Molly Zwerdinger)
4. Tax Section Liaison (Georgine M. Kryda)
5. Elder Law Section Liaison (Patrick Thiessen)
6. Real Estate Section Liaison (Chad Rounds)
7. Family Law Section Liaison (Kim Willoughby)
8. Statutory Revisions Committee (Lauren DaCunha)
9. Legislative Liaison (Darla Daniel & Steve Brainerd)
10. Council Notes (Kristin Dittus)
11. CLE/Estate Planning Retreat (Tim Bounds)
12. Orange Book Forms Committee (Lisa Hardin)
13. Rules and Forms Committee (Gordon Williams)
14. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
15. Equity, Diversity, and Inclusivity Committee (Melissa Schwartz)
16. Probate Trial and Procedures Committee (Kathy Seidel & Norv Brasch)
17. Colorado Estate Planning Handbook (David Johns)
18. Green Book (Josie Faix)
19. Trust & Estate Practice Support Committee (Jennifer Hazelton & William Ellison)

20. The Colorado Lawyer (Emily Bowman)
21. Communications Representative/Ambassador Program (Lindsay Andrew)
22. Board of Governors Representative (Jonathan Haskell)
23. Miscellaneous/FYI
24. Adjournment

**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of December 2, 2020, Meeting**

Council met on Wednesday, December 2, 2020 via audio-visual conference due to the ongoing COVID19 situation. The meeting was called to order at approximately 3:15p.m. by Spencer Crona, Chair.

The following members of Council participated by Zoom/phone and constituted a quorum:

Spencer Crona, Chair
Tim Bounds, Vice Chair
Molly Zwerdlinger, Secretary
Charles Spence (2nd year member)
Georgine Kryda (1st year member), Tax Section Liaison
Amy Symons (1st year member)
Simon Tolbert (1st year member)

Also in attendance were:

Andy White, CBA Legislative Liaison
Katie Roberts, CBA Staff
Lauren Da Cunha
Kristin Dittus
Louisa Ritsick
Leia Ursery
Josie Faix
Kathy Seidel
Chad Rounds
Darla Daniel
Sal Quintana

1. Approval of Minutes of Prior Meeting

The Minutes of the November 4, 2020, Council meeting were approved unanimously.

2. Chair's Report (Spencer Crona)

No announcements. Legislative special section has begun. Spencer read the nominating committee confidentiality report from CBA.

3. Secretary/Treasurer Report (Molly Zwerdlinger)

Molly reviewed the financial reports for October and year-to-date. No changes in the reports from last month.

4. Tax Section Liaison (Georgine M. Kryda)

Did not meet in November, so no report.

5. Elder Law Section Liaison (Patrick Thiessen)

There was no report.

6. Real Estate Section Liaison (Chad Rounds)

Memo was provided to members. No additional report.

7. Family Law Section Liaison (Kim Willoughby)

There was no report.

8. Statutory Revisions Committee (Lauren Da Cunha)

SRC approved proposed changes to POA statute.

Did not form subcommittee to address decision in *In re Estate of Rabin*.

Subcommittee created to address 15-11-404 family allowance issues of the word “and” as it is interpreted in the statute.

9. Legislative Liaison (Stephen M. Brainerd & Darla Daniel)

UFIPA, Electronic Wills and CUTC Part 5 are all on LPC agenda. Weekly LPC meetings will begin again in January. UPC 2019 revision committee is not ready to move forward yet, but hopefully next session.

10. Legislative Update (Andy White)

Legislature met in special session and adjourned this morning. Focused on economic support to Colorado economic sectors which were impacted by the pandemic. Now in a 5 week pause before regular session on 1/13/2020.

T&E and Elder Law are driving the majority of the Bar’s agenda (UFIPA, Electronic Wills and CUTC Part 5). LPC will review drafts of these bills on 12/16/2020. Once

approved, it advances them to Colorado general Assembly when they convene. There are some corporate and family law issues being brought for consideration as well.

Everyone is bracing for a unique upcoming session as the pandemic continues (written testimony, virtual attendance, etc.).

The joint budget committee convened in November and will review upcoming budget requests, including from the judiciary.

11. Council Notes (Kristin Dittus)

Looking for more articles. Need article for December.

12. Continuing Legal Education & Estate Planning Retreat (Tim Bounds)

Brown bag lunches booked through February. Presentation on law practice and COVID went well. ADR provisions under CUTC is upcoming. Spring update will likely be third week of March – it will be a hybrid agenda between Medicaid and basic estate planning. Will look at feedback from past Retreat to make necessary changes for the upcoming Retreat on the virtual platform. Kendra Yates is new direct contact for CBA CLE. Likely going to have hybrid in person and virtual for upcoming Retreat. May have silent auction again if there is an in-person component to the Retreat.

13. Orange Book Forms Committee (Lisa Hardin)

For 2021 supplement hopeful to have new advance directive that includes a dementia directive. May include a handout to provide additional information on how to include and discuss this with client. In light of SECURE and the pandemic, many items got put on hold and are behind. Nothing will be ready until fall 2021.

14. Rules & Forms Committee (Gordon Williams)

There was no report.

15. Civic & Community Affairs (Sandra Sigler)

Hoping to have final language for power of attorney brochures over the next month.

16. Equity, Diversity & Inclusivity Committee (Melissa Schwartz)

Two items need a vote: 1. Section Executive Counsel Task Lists; 2. Committee Composition and Responsibilities. The Committee reviewed and decided on “will” vs “should” on task list – each item was read at the meeting. Going to see if a vote is

needed at January meeting to adjust Bylaws (Section 8) to comply with the task list and responsibilities. Motion made to approve EDI recommendations by Simon, approved by Council. Council members should take 3 tests of the Harvard implicit bias test to comply with EDI requests.

17. Probate Trial & Procedures Committee (Kathy Seidel & Norv Brasch):

SRC approved proposed changes to POA statute. Changes were made to 15-14-708 and 15-14-416. These statutes are ambiguous. They need to make it clear that agent under POA is subject to conservatorship and should not take action without approval from conservatorship. Question became whether or not agent powers under POA should be terminated upon conservatorship. The answer was no. The two statutes need to reference each other to be more clear. Motion by Molly to approve of these changes to the POA statute, approved by Council.

No subsequent meeting with DHS regarding CAPS. Hope to have meeting in December. Idea to have CLE with someone from DHS. Any issues that have not been addressed regarding DHS, please contact Kathy.

Many members are concerned how virtual hearings and proceedings are being conducted and whether they are working. Some have had positive experiences, some have had terrible experiences. The Committee is going to come up with basic procedures for virtual hearings as this is still going to be the norm for some time. There is no continuity from jurisdiction to jurisdiction.

18. Colorado Estate Planning Handbook (David Johns)

There was no report.

19. Green Book (Josie Faix)

The deed forms will be included in next publication. David turned in the materials for this most current publication. JDF forms have been removed from publication to reduce size. Tittle standards have been put back in. Planned to come out on time. Indexing will be assisted by the Bar which has not been the case in the past.

20. New T&E Practice Support Committee (Jennifer Hazelton & William Ellison)

There was no report. Spencer would like this Committee to report to Council at some point during the year. Spencer also wants to know what is going on at DU and CU as it relates to interest in T&E.

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

Emily Bowman is following up with Retreat presenters to see if they want to write an article.

22. Communications Representative & Ambassador Coordinator (Lindsey Andrew)

There was no report.

23. Board of Governors Representative (Jonathan Haskell)

There was no report.

24. Other Business

None.

ADJOURNMENT

The meeting was adjourned at 4:41p.m. The next Council meeting will be held in January 2020.

Respectfully submitted

/s/ Molly T. Zwerdinger, Secretary

Colorado Bar Association
Trust & Estate
For the Five Months Ending November 30, 2020

		November	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		\$28,848.32		\$28,848.32	0%	\$22,262.87
Trust & Estate Section							
Revenue							
Dues Income Section	01-4050-31600	255.00	32,775.00		32,775.00	0%	31,440.00
Total Revenue Trust & Estate Sect		255.00	32,775.00		32,775.00	0%	31,440.00
Expenses							
AWARDS	01-5007-31600					0%	(338.94)
Travel	01-5102-31600					0%	(60.44)
Internet/E-Mail Access	01-5413-31600		(356.51)		(356.51)	0%	(544.99)
Meals (Not travel related)	01-5491-31600					0%	(2,879.28)
Administration Fee	01-5494-31600	(1,020.00)	(5,100.00)		(5,100.00)	0%	(2,520.85)
Grants/Contributions	01-5500-31600					0%	(7,500.00)
Total Expenses Trust & Estate Sec		(1,020.00)	(5,456.51)		(5,456.51)	0%	(13,844.50)
Statutory Revisions Committee							
Revenue							
Rev. Elderlaw Joint Task Force							
Rev. Uniform POA Act							
Rev. Uniform Trust Code							
<hr/>							
Expenses							
Other Expense	01-5000-31603			(1,000.00)	1,000.00	0%	
Exp. Elderlaw Joint Task Force							
Exp. Uniform POA Act							
Exp. Uniform Trust Code							
<hr/>							
Total Expenses Statutory Revisio				(1,000.00)	1,000.00	0%	
CLE							
Revenue							
Revenue Joint CLE							

Colorado Bar Association
Trust & Estate
 For the Five Months Ending November 30, 2020

	November	YTD	Budget	Variance	%	Last FY
Revenue CLE Retreat						
Revenue CLE Section Only						
Expenses						
Other Expense 01-5000-31611			(\$6,250.00)	\$6,250.00	0%	
Expenses Joint CLE						
Expenses CLE Retreat						
Expenses CLE Section Only						
Total Expenses CLE			(6,250.00)	6,250.00	0%	
Council Notes						
Revenue						
Expenses						
Community & Civic Affairs						
Revenue						
Expenses						
Other Expense 01-5000-31613			(2,750.00)	2,750.00	0%	
Total Expenses Community & Civi			(2,750.00)	2,750.00	0%	
Rules & Forms Committee						
Revenue						
Expenses						
Orange Book Forms						
Revenue						
Expenses						
Other Expense 01-5000-31607			(500.00)	500.00	0%	
Total Expenses Orange Book For			(500.00)	500.00	0%	
Local Liaison						
Revenue						

Colorado Bar Association
Trust & Estate
 For the Five Months Ending November 30, 2020

	November	YTD	Budget	Variance	%	Last FY
Expenses						
Uniform Trust Code						
Revenue						
Expenses						
Transfer Deposits						
Revenue						
Expenses						
Admin. Chair						
Revenue						
Expenses						
Estate Planning Handbook						
Revenue						
Expenses						
Admin Council Dinner						
Revenue						
Meal Income	01-4051-31612				0%	\$1,560.00
Total Revenue Admin Council Din					0%	1,560.00
Expenses						
Other Expense	01-5000-31612		(4,500.00)	4,500.00	0%	
Travel	01-5102-31612				0%	(25.00)
Meals (Not travel related)	01-5491-31612				0%	(5,173.20)
Total Expenses Admin Council Di			(4,500.00)	4,500.00	0%	(5,198.20)
Legislative Liaison						
Revenue						
Expenses						
Internet Editor						
Revenue						

Colorado Bar Association
Trust & Estate
 For the Five Months Ending November 30, 2020

	November	YTD	Budget	Variance	%	Last FY
Expenses						
Technology Committee						
Revenue						
Expenses						
Real Estate Liaison						
Revenue						
Expenses						
Green Book						
Revenue						
Expenses						
The Colorado Lawyer						
Revenue						
Expenses						
T&E Diversity Committee						
Revenue						
Expenses						
Other Expense	01-5000-31628		(\$1,000.00)	\$1,000.00	0%	
Total Expenses Diverstiy Comm.			(1,000.00)	1,000.00	0%	
Judicial Liaison						
Revenue						
Expenses						
Member Vouchers						
Expenses						
T&E Young Lawyer Society						
Revenue						
Expenses						
Beginning Balance	01-3160-31600	28,848.32		28,848.32	0%	22,262.87

Colorado Bar Association

Trust & Estate

For the Five Months Ending November 30, 2020

		<u>November</u>	<u>YTD</u>	<u>Budget</u>	<u>Variance</u>	<u>%</u>	<u>Last FY</u>
Total Revenue All Sources	01-4???-316??	\$255.00	\$32,775.00		\$32,775.00	0%	\$33,000.00
Total Expense All Sources	01-5???-316??	(1,020.00)	(5,456.51)	(16,000.00)	10,543.49	34%	(19,042.70)
Ending Balance		(765.00)	56,166.81	(16,000.00)	72,166.81	-351%	36,220.17

Colorado Bar Association
Trust & Estate Summary
 For the Five Months Ending November 30, 2020

		November	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		\$28,848.32		\$28,848.32	0%	\$22,262.87
Trust & Estate Section- General							
Revenue	01-4???-31600	255.00	32,775.00		32,775.00	0%	31,440.00
Expenses	01-5???-31600	(1,020.00)	(5,456.51)		(5,456.51)	0%	(13,844.50)
Statutory Revisions Committee							
Expenses	015???3160...			(1,000.00)	1,000.00	0%	
CLE							
Expenses	015???3161...			(6,250.00)	6,250.00	0%	
Council Notes							
Community & Civic Affairs							
Expenses	01-5???-31613			(2,750.00)	2,750.00	0%	
Rules & Forms Committee							
Orange Book Forms							
Expenses	01-5???-31607			(500.00)	500.00	0%	
Local Liaison							
Uniform Trust Code							
Admin. Chair							
Estate Planning Handbook							
Admin Council Dinner							
Revenue	01-4???-31612					0%	1,560.00
Expenses	01-5???-31612			(4,500.00)	4,500.00	0%	(5,198.20)
Legislative Liaison							
Internet Editor							
Technology Committee							
Real Estate Liaison							
Green Book							
The Colorado Lawyer							
Diversity Committee							
Expenses	01-5???-31628			(1,000.00)	1,000.00	0%	
Judicial Liaison							
Member Vouchers							
Uniform Trust Code							
Transfer Deposit							
Young Lawyer Society							
Beginning Balance	01-3160-31600		28,848.32		28,848.32	0%	22,262.87
Total Revenue All Sources	01-4???-316??	255.00	32,775.00		32,775.00	0%	33,000.00
Total Expenses All Sources	01-5???-316??	(1,020.00)	(5,456.51)	(16,000.00)	10,543.49	34%	(19,042.70)
Ending Balance		(765.00)	56,166.81	(16,000.00)	72,166.81	-351%	36,220.17



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Colorado Revised Statutes Title 24. Government State § 24-33.5-704. The governor and disaster emergencies--response--duties and limitations

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(1) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(2) Under this part 7, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(3) Repealed by [Laws 2014, Ch. 11, § 2, eff. Feb. 27, 2014.](https://1.next.westlaw.com/Link/Document/FullText?findType=I&originatingContext=document&transitionType=DocumentItem&pubNum=1077005&refType=SL&originatingDoc=I3b677a81e85d11e8aa99df4e28f83ffE311E39CA09-896B3120C7E) (<https://1.next.westlaw.com/Link/Document/FullText?findType=I&originatingContext=document&transitionType=DocumentItem&pubNum=1077005&refType=SL&originatingDoc=I3b677a81e85d11e8aa99df4e28f83ffE311E39CA09-896B3120C7E>).

(4) A disaster emergency shall be declared by executive order or proclamation of the governor if the governor finds a disaster has occurred or that this occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat of danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty days unless renewed by the governor. The general assembly, by joint resolution, may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection (4) shall indicate the nature of the disaster, the area threatened, and the conditions that brought it about or that make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, shall be promptly filed with the office of emergency management in the division of homeland security and emergency management, the secretary of state, the county clerk and recorder, and emergency management agencies in the area to which it applies.

(5) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this part 7 or any other provision of law relating to disaster emergencies.

(6) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing in this section restricts the governor's authority to do so by orders issued at the time of the disaster emergency.

Latest Blog Posts

- Amazon Alleged to Spy on Its Workers Even More Than Its Consumers (https://blogs.findlaw.com/greedy_associate_alleged-to-spy-on-its-workers-even-more-than-its-consumers.html)
 - Betting Money Is Now on Supreme Court Keeping ACA Largely Intact (https://blogs.findlaw.com/supreme_court/21_money-is-now-on-supreme-court-keeping-aca-largely-intact.html)
 - Are We Opening a Pandora's Box in Criticizing Law Firms Challenging the 2020 Election? (<https://blogs.findlaw.com/strategist/2020/11/we-opening-a-pandoras-box-in-criticizing-law-firms-challenging-the-2020-election.html>)
 - FCC Again Rejects Net Neutrality Even as Controversy Reignites (<https://blogs.findlaw.com/technologist/2021/01/fcc-again-rejects-net-neutrality-even-as-controversy-reignites.html>)
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(6.5)(a) During the response to or recovery from any state of disaster emergency, the governor may convene a disaster policy group if needed to effectively and efficiently coordinate policy-level decision-making and to advise the governor on the response to and recovery from the event. The policy group must include a representative from the department of local affairs and appropriate state agencies involved in the response and recovery effort.

(b) If the governor convenes a disaster policy group pursuant to subsection (6.5)(a) of this section, the governor shall appoint a chair and shall delegate to the chair the authority to manage cross-departmental and interjurisdictional coordination for recovery efforts.

(7) In addition to any other powers conferred upon the governor by law, the governor may:

(a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) Subject to any applicable requirements for compensation under [section 24-33.5-711](#)

([https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000517&refType=LQ&originatingDoc=l3b67efb0e85d11e89374f60334d233.5-711)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000517&refType=LQ&originatingDoc=l3b67efb0e85d11e89374f60334d233.5-711](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000517&refType=LQ&originatingDoc=l3b67efb0e85d11e89374f60334d233.5-711)), commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency;

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, or combustibles;

(i) Make provision for the availability and use of temporary emergency housing; and

(j) Determine the percentage at which the state and a local government will contribute moneys to cover the nonfederal cost share required by the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", as amended, [42 U.S.C. sec. 5121 et seq.](#), ([https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e0e85d11e89374f60334d2)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e0e85d11e89374f60334d2](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e0e85d11e89374f60334d2) required by the federal highway administration pursuant to [23 U.S.C. sec. 125](#)

([https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e1e85d11e89374f60334d2)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e1e85d11e89374f60334d2](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=l3b6864e1e85d11e89374f60334d2)

, or required by any other federal law in order to receive federal disaster relief funds. After making such a determination, the governor may amend the percentage at which the state and local government will contribute moneys to the nonfederal cost share based on the needs of the individual local governments. As soon as practicable after making or amending such a determination, the governor shall notify the joint budget committee of the source and amount of state moneys that will be contributed to cover a nonfederal cost share pursuant to this paragraph (j).

(8) Repealed by [Laws 2018, Ch. 234, § 21, eff. August 8, 2018.](#)

([https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1077005&refType=SL&originatingDoc=l3b688bf1e85d11e8aa99df4e28f83fbE211E89248F-7F9EDBDECCD)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1077005&refType=SL&originatingDoc=l3b688bf1e85d11e8aa99df4e28f83fbE211E89248F-7F9EDBDECCD](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1077005&refType=SL&originatingDoc=l3b688bf1e85d11e8aa99df4e28f83fbE211E89248F-7F9EDBDECCD)).

(9) Repealed by [Laws 2018, Ch. 234, § 21, eff. August 8, 2018.](#)

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Read this complete Colorado Revised Statutes Title 24. Government State § 24-33.5-704. The governor and disaster emergencies—response—duties and limitations on Westlaw

([https://1.next.westlaw.com/Document/I0837A76025EE11E9AAF4ED39C6050DF4/View/FullText.html?](https://1.next.westlaw.com/Document/I0837A76025EE11E9AAF4ED39C6050DF4/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

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that your authority as agent under that document has ended; or

- You resign as agent.

If you continue to act or make decisions with respect to the principal's finances and assets after receiving notice of your revocation or the principal's death, you may be subject to criminal prosecution and/or civil liability.

This brochure is published as a public service by the Colorado Bar Association and was authored and is reviewed and updated as needed by the Civic and Community Affairs Committee, a Subcommittee of the Trusts and Estates Section. Its purpose is to provide general information about the topic contained herein, which is a common legal issue that may come up in estate planning, probate, and/or elder law cases. The information in this brochure is current as of October 2020. You should ensure that there have not been any changes in the law that may affect your matter, which may require consulting with an attorney.

So Now You Are An Agent Under Financial Power of Attorney

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An agent or attorney-in-fact is someone who has the authority under a power of attorney document to make decisions for or act on behalf of the person who signed the power of attorney document (the “principal”). When you act as someone’s agent under financial power of attorney, you have specific legal duties and responsibilities under the laws of Colorado. For additional information about other types of powers of attorney, please see the brochure *What is a Power of Attorney?*

What is a Financial Power of Attorney?

A financial power of attorney may also be known as a General Durable Power of Attorney or a GDPOA. Under a financial power of attorney, the principal gives their nominated agent the authority to act on the principal’s behalf with respect to the principal’s finances, property and assets. A financial power of attorney is usually intended to assist the principal to manage his finances when he is living but unable to do so himself.

When does my authority as a nominated Agent begin?

The language of the power of attorney document will tell you when your authority as an agent begins. Power of attorney documents are either springing or standing.

- A springing power of attorney gives an agent the authority to act after a specific event occurs. In the instance of medical or financial powers of attorney, the springing event may be that two doctors certify in writing that the principal no longer has the ability to make his own medical or financial decisions. Only after that certification is provided would the agent be able to act on behalf of the principal.
- A standing power of attorney takes effect immediately when the principal signs the document. When the principal signs a standing power of attorney, the principal continues to have the authority to make his own decisions until he needs

assistance from his agent. An agent is required to consult with the principal about decisions and consider his wishes whenever possible. A principal is also entitled to information about his assets and finances after the agent has started acting on his behalf.

What authority do I have as an Agent?

An agent’s authority to make decisions or act on behalf of the principal depends on the terms of the power of attorney document and the laws of Colorado. It is important to read the power of attorney document to make sure you understand your authority. You cannot use ignorance of the law as a defense if you act inappropriately as someone’s agent. An agent who misuses or abuses their authority under a power of attorney document may face criminal prosecution and/or civil liability. If you have any questions about your authority or responsibilities as an agent, you should seek legal advice from an attorney.

What are the responsibilities and duties of an Agent under Financial Power of Attorney?

Generally, an agent under financial power of attorney has the following responsibilities and duties:

- Act in accordance with the principal’s reasonable expectations, to the extent actually known; otherwise, always act in the principal’s best interest.
- Duty of Loyalty to the Principal. As an agent, you must put the principal’s interest ahead of your own. You cannot engage in actions that would impair your ability to act loyally to the principal. If you make a decision that benefits yourself over the interests of the principal, or even has the appearance of a benefit to yourself, may cause a breach this duty.
- Duty to Act Prudently. In your role as agent, you are responsible for the management of the principal’s funds and assets. As his or her agent, you cannot manage the principal’s funds as you might ordinarily manage your own. You should

not take risks with the investment of the principal’s assets even if you would ordinarily allow those risks with your own.

- Duty to Keep Your Personal Property Separate. When you are acting as agent of the principal’s assets, you must not commingle your personal assets with the principal’s assets.
- Duty to Account and Keep Records. You must account and keep records of all transactions for the principal’s assets and financial accounts.

If you breach any of the above duties, you may be at risk of criminal prosecution and/or civil liability. If you have any questions about your duties and responsibilities as an agent, you should seek advice from an attorney.

Can I be paid for serving as someone’s Agent?

An agent can be reimbursed for out-of-pocket expenses incurred on behalf of the principal and for reasonable compensation for time spent assisting the principal, unless the power of attorney document prohibits it. Your actions as an agent can be scrutinized at any time, so it is recommended that you keep receipts for every expense you reimbursed yourself for. If you wish to be compensated for your time from the principal’s assets, you must keep a detailed time log of the work you performed. A Court can review an agent’s compensation for reasonableness, which may examine the rate charged, the time spent performing the work, the skill required to perform the work, and the circumstances of the work when it was performed.

When does my authority as Agent end?

Your authority to act on behalf of the principal ends when one of the following events occur:

- The principal dies;
- The principal delivers a revocation of your agency to you to notify you that you are no longer their agent;
- The principal delivers a revocation of their power of attorney document to you to notify you

Subject: RE: [EXTERNAL] Agenda Item for Health Law Section
Date: Thursday, December 3, 2020 at 3:32:24 PM Mountain Standard Time
From: Matthew R Ullrich
To: Carl Stevens, Jess Ham
CC: Meghan Pound, Ann McCullough, 'Alison Sorkin', Sarah Orrange, 'reneemarr@gmail.com'

Hi Carl,

Thank you for joining our meeting this morning to discuss the proposed changes. The CBA Health Law Section discussed this further, and we are comfortable with the option where either a notary or witnesses are utilized for the Living Will. Please let us know if you have any questions or need anything else. Thanks again!

Sincerely,

Matt Ullrich
Colorado Permanente Medical Group, P.C.
Associate Counsel
matthew.r.ullrich@kp.org
Cell: 720-955-3928
Executive Assistant: Vanessa Garcia (Vanessa.C.Garcia@kp.org; 303-344-7940)

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From: Matthew R Ullrich
Sent: Monday, November 30, 2020 10:46 AM
To: Carl Stevens <carl@cgstevens.com>; Jess Ham <jham@cobar.org>
Cc: Meghan Pound <mpound@celaw.com>
Subject: RE: [EXTERNAL] Agenda Item for Health Law Section

Hi Carl – We have a meeting this Thursday from 9-10 AM if you would like to join us and be on the agenda to discuss this. Jess, could send you the invite and we could update the agenda to include you and this topic if you're free. Just let us know. Otherwise, we can still send it out to our group and get feedback. I'm including Meghan Pound on this email as she is our legislative liaison for the CBA Health Law Section.

Sincerely,

Matt Ullrich
Colorado Permanente Medical Group, P.C.
Associate Counsel
matthew.r.ullrich@kp.org
Cell: 720-955-3928
Executive Assistant: Vanessa Garcia (Vanessa.C.Garcia@kp.org; 303-344-7940)

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From: Carl Stevens <carl@cgstevens.com>
Sent: Friday, November 27, 2020 3:24 PM
To: Matthew R Ullrich <Matthew.R.Ullrich@kp.org>
Subject: Re: [EXTERNAL] Agenda Item for Health Law Section

Hi Matt: Thanks for getting back to me. At the OneDrive link below are two possible amendments to the Living Will statute, a memo and some related materials being considered by Statutory Revisions Committee of the Trusts & Estates section. This is a proposal to simplify the execution requirements for Living Wills. Even pre-covid it was sometimes difficult to get such documents executed in care facilities since many institutions have policies prohibiting staff or residents from acting as witnesses or notaries. Of course post-covid it has proven very problematic to even get access to clients or bring in outside witnesses or notaries.

There was a straw poll taken at last months Statutory Revisions Committee meeting. Option 1 had overwhelming support. Option 1 conforms the requirements for execution of the Living Will (Advance Medical Directive) to be the same as those a Last Will and Testament.

I am chair of the SRC subcommittee on revisions to the Living Will statute and I was asked to submit this to the Elder Law Section and the Health Law sections for review and input before SRC takes a formal vote.

Can you advise when or if this can go on your agenda? I can try to be available to discuss if you have a meeting and think that would be useful. Thanks.

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Carl G. Stevens, JD, AEP, AV Preeminent *
Attorney & Counselor at Law

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From: Matthew R Ullrich <Matthew.R.Ullrich@kp.org>
Date: Wednesday, November 25, 2020 at 4:07 PM
To: Jess Ham <jham@cohar.org>, Carl Stevens <carl@cgstevens.com>
Subject: RE: [EXTERNAL] Agenda Item for Health Law Section

Hi Jess – Thanks for forwarding the below email! Have a great Thanksgiving!

Hi Carl – My name is Matt Ullrich, and I'm the chair of the Health Law Section. It's nice to e-meet you! Yes, please feel free to send this to me, and I can distribute it to our committee for review and comment. Hope you have a great Thanksgiving!

Sincerely,

Matt Ullrich
Colorado Permanente Medical Group, P.C.
Associate Counsel
matthew.r.ullrich@kp.org
Cell: 720-955-3928
Executive Assistant: Vanessa Garcia (Vanessa.C.Garcia@kp.org; 303-344-7940)

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From: Jess Ham <jham@cohar.org>
Sent: Wednesday, November 25, 2020 4:00 PM

To: Matthew R Ullrich <Matthew.R.Ullrich@kp.org>
Subject: FW: [EXTERNAL] Agenda Item for Health Law Section

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Matt,
Please see email inquiry below.

Thank you,



JESS HAM
SECTIONS & COMMITTEES PROGRAM COORDINATOR
COLORADO & DENVER BAR ASSOCIATIONS
& COLORADO BAR ASSOCIATION CLE

1290 BROADWAY, STE. 1700
DENVER, CO 80203

303-824-5311 **D** 303-860-1115 **O**
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COBAR.ORG | DENBAR.ORG

The Colorado & Denver Bar Associations and CBA-CLE will continue to offer virtual programming until further notice. Please see our CBA, DBA & CLE websites for the latest information. If you have a specific question, feel free to email us. Thank you for your engagement with the Bar Associations!

From: Carl Stevens <carl@cgstevens.com>
Sent: Wednesday, November 25, 2020 12:25 PM
To: Jess Ham <jham@cohar.org>
Subject: [EXTERNAL] Agenda Item for Health Law Section

The Statutory Revisions Committee of the Trust and Estate Section is considering a change to the Living Will statute. We would like to submit this to the Health Section for review and comment. Can you provide me with an email address for the chair? Thanks.

Carl G. Stevens, JD, AEP, AV Preeminent *
Attorney & Counselor at Law

West Office

DTC Office By Appointment Only

Carl G. Stevens LLC
225 Union Blvd., Suite 150
Lakewood CO 80228
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Direct: (303) 238-3974
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Subject: witness requirements

Date: Wednesday, November 4, 2020 at 4:28:57 PM Mountain Standard Time

From: Michael Kirtland

To: Carl Stevens

Car: A breakdown on what states require

- 38 states require at least one of the witnesses be independent (some say one independent, some only require 1 witness but must be independent)
- 29 states require 2 witnesses, notary not required
- 14 require 2 witnesses OR a notary
- 2 require 2 witnesses AND a notary
- 1 requires only 1 witness (no notary)
- 1 requires 1 witness OR a notary
- 1 requires no witnesses and no notary required (Idaho)

Michael

Michael A. Kirtland, J.D., LL.M., CELA*
Kirtland & Seal LLC
P.O. Box 2682
Colorado Springs, CO 80901-2682
(719) 448-0734 voice
(719) 634-0485 fax
mak@kirtlandseal.com

*Certified Elder Law Attorney
by the National Elder Law Foundation

An Act to make the witnessing and notarization of Advance Medical Directives (Living Wills), Medical Powers of Attorney and Anatomical Gifts consistent with current requirements for witnessing and notarizing Last Wills.

15-18-106, Colorado Revised Statute is amended to read:

15-18-106. WITNESSED OR NOTARIZED DECLARATION

EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-18-105, A DECLARATION SHALL EITHER BE;

- (a) SIGNED BY THE DECLARANT IN THE PRESENCE OF TWO WITNESSES. THE WITNESSES SHALL NOT INCLUDE ANY PERSON SPECIFIED IN SECTION 15-18-105; OR
- (b) SIGNED BY THE DECLARANT AND ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS WHO IS NOT A PERSON SPECIFIED IN SECTION 15-18-105.

15-18-104(5), Colorado Revised Statute is amended to read:

(5) A declaration executed IN ACCORDANCE WITH SECTION 15-18-106 by any adult with decisional capacity shall be legally effective for the purposes of this article.

15-19-205(b)(1) and (b)(2), Colorado Revised Statute are amended to read:

- (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; OR
- (2) SIGNED BY THE DECLARANT AND ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS WHO IS A DISINTERESTED PERSON.
- (3) State that it has been signed and/or witnessed as provided in SUBSECTIONS (b)(1) OR (B)(2) of this section

EFFECTIVE DATE APPLICABILITY – NEW SECTION

SECTION _____. EFFECTIVE DATE - APPLICABILITY. (1) THIS ACT TAKES EFFECT ON _____.

(2) THIS ACT APPLIES ON OR AFTER _____, TO:

(A) GOVERNING INSTRUMENTS REGARDLESS OF THE TIME OF EXECUTION OF THE GOVERNING INSTRUMENT EXCEPT TO THE EXTENT THAT, IN THE OPINION OF THE COURT, THE FORMER PROCEDURE SHOULD BE MADE APPLICABLE IN A PARTICULAR CASE IN THE INTEREST OF JUSTICE;

(B) A GOVERNING INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ACT IS NOT IMPAIRED BY THIS ACT.

SO NOW YOU ARE AN AGENT UNDER FINANCIAL POWER OF ATTORNEY

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The language of the power of attorney document will tell you when your authority as an agent begins. Power of attorney documents are either springing or standing.

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What authority do I have as an Agent?

An agent's authority to make decisions or act on behalf of the principal depends on the terms of the power of attorney document and the laws of Colorado. In addition, certain powers of an agent in Colorado have to be specifically mentioned in a power of attorney document in order for the agent to have that authority. These are often referred to as "hot powers." Hot powers include the authority of an agent to make gifts, change beneficiary designations, amend or terminate a trust, or act on behalf of the principal in a business partnership.

It is important to read the power of attorney document to make sure you understand your authority. You cannot use ignorance of the law as a defense if you act inappropriately as someone's agent. An agent who misuses or abuses their authority under a power of attorney document may face criminal prosecution and/or civil liability. If you have any questions about your authority or responsibilities as an agent, you should seek legal advice from an attorney.

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What if I'm nominated as someone's Agent but I don't want to serve as their Agent?

If you are nominated as someone's agent, you are not required to serve in that role. If you do not wish to accept your nomination, notify the principal of your decision to decline the appointment in writing.

When does my authority as Agent end?

Your authority to act on behalf of the principal ends when one of the following events occur:

- The principal dies;
- The principal delivers a revocation of your agency to you to notify you that you are no longer their agent;
- The principal delivers a revocation of their power of attorney document to you to notify you that your authority as agent under that document has ended; or
- You resign as agent.

If you continue to act or make decisions with respect to the principal's finances and assets after receiving notice of your revocation or the principal's death, you may be subject to criminal prosecution and/or civil liability.

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this brochure is current as of December 2020. You should ensure that there have not been any changes in the law that may affect your matter, which may require consulting with an attorney.

WHAT IS A POWER OF ATTORNEY?

A power of attorney is a document often created as part of an estate plan. You (the “principal”) can sign a power of attorney document, which authorizes someone else (your “agent” or “attorney-in-fact”) to act or make decisions on your behalf. The types of decisions that can be made by an agent depend upon the type of power of attorney document.

Types of Power of Attorney Documents:

There are three common types of power of attorney documents.

1. **Financial Power of Attorney:** also known as General Durable Power of Attorney or GDPOA. In a financial power of attorney, you give your agent the authority to act on your behalf with respect to your finances, property and assets during your lifetime.
2. **Medical Power of Attorney:** A medical power attorney gives authority to your agent to make health care and personal care decisions on your behalf while you are living.
3. **Limited Power of Attorney:** also known as a Special Power of Attorney. A limited power of attorney can be created for any purpose, but typically the agent’s authority is limited to a very narrow set of circumstances. For example, in a real estate transaction an agent may have a limited power of attorney to sign transaction paperwork on your behalf for the sale or purchase of the real property.

What does it mean when a Power of Attorney is durable?

A durable power of attorney is a document that survives your incapacity. Most financial and medical powers of attorney created by attorneys are durable because they are intended to ensure you have assistance in making decisions about yourself or your assets after you are no longer able to make those decisions yourself.

When does a Power of Attorney take effect?

A power of attorney can be springing or standing.

- A springing power of attorney takes effect after a specific event occurs. One example of a springing event could be that two doctors certify in writing that you no longer have the ability to make your own medical or financial decisions. In this example, your agent could not act on your behalf until that certification is provided.
- A standing power of attorney takes effect immediately when you sign the document. When you sign a standing power of attorney, you continue to have the authority to make your own decisions until you need assistance. An agent is required to consult with you about decisions and consider your wishes whenever possible. You are also entitled to information about your assets and finances after the agent has started acting on your behalf.

How can I create a Power of Attorney?

A power of attorney is a written document that can be prepared by an attorney or available as a form online. In order to sign a power of attorney, you must be at least 18 years of age and have the mental capacity to understand the nature and meaning of the document.

Exercise caution before signing a power of attorney document that you do not fully understand or that does not follow Colorado law. A power of attorney document can give your agent the authority to change beneficiary designations on your accounts, exercise your rights in a business or partnership, make gifts to others from your assets, or decide whether you live at home or in a facility when you are unable to take care of yourself. If you do not understand the document you are about to sign or do not know if it conforms to Colorado law, you should seek the advice of an attorney.

Who should I choose as my Agent?

It is very important to choose someone you trust as your agent. Your agent under a financial or medical power of attorney can access private and sensitive information, such as bank accounts, medical records, and other legal documents. Your agent may have the authority to make

decisions about how your assets are managed or what medical care you will or will not receive. If you do not trust someone to act appropriately if they were in charge of your assets or medical care, you should reconsider whether to nominate that person as your agent.

Your nominated agent under a financial power of attorney can be different than your nominated agent under a medical power of attorney. Financial and medical decisions sometimes require different skills or personality traits. It is important to choose an agent that would be most appropriate for each role.

Should I nominate alternate or successor Agents in my Power of Attorney?

An attorney will often ask you to nominate alternate or successor agents in case the first nominated agent is unable or unwilling to serve. If your power of attorney document nominates only one agent and that person is unable to serve, you would need to sign a new power of attorney document to nominate someone else. If you did not have the mental capacity to sign a new power of attorney document at that time, a court would have to appoint someone to make decisions on your behalf. In Colorado this is called guardianship or conservatorship. It is usually less expensive and easier to sign a power of attorney document that includes a successor agent, while you are mentally capable to nominate that person.

Can I nominate multiple people to serve as my Co-Agents?

You can nominate anyone you want to be your agent, but they have the ability to decline your nomination.

You can nominate multiple people to serve simultaneously as co-agents, however you should carefully consider the effect of this choice. If two individuals are nominated to serve as co-agents, banks and doctors may require that they act together in order to sign checks or make health care decisions, which may become burdensome. If co-agents cannot agree on a decision, a court may have to resolve their dispute. A power of attorney document can give your co-agents the authority to act independently of each other, but an agent can still be liable for the actions or inactions of

their co-agent. Communication and cooperation are important for co-agents to be successful at working together on your behalf.

Can I change my Power of Attorney document or Agent?

You can revoke your power of attorney document or an agent’s authority at any time as long as you have the mental capacity to do so. If an attorney drafts a new power of attorney document for you, often the attorney will insert language that the new power of attorney revokes any prior power of attorney documents you have signed.

If you change your power of attorney document or your agent, you should notify persons or companies that received a copy of the original power of attorney document, such as banks, medical providers and family members.

When does a Power of Attorney expire?

A power of attorney document that is not durable terminates when you become incapacitated. A durable power of attorney terminates when one of the following events occurs:

- You, the principal, revoke your power of attorney document;
- The agent is unwilling or unable to serve or the agent’s authority is revoked by the principal and the power of attorney document does not nominate an alternate agent to act;
- A limited power of attorney may terminate the agent’s authority after the purpose for which the power of attorney was created is completed, such as the signing of real estate documents; or
- The principal dies. An agent has no authority to act on your behalf after your death.

I just moved to Colorado. Is my Power of Attorney document still valid?

In general, financial and medical powers of attorney are intended to be effective in other states within the United States. However, different states may provide different authority to an agent under their laws. In addition, financial institutions sometimes prefer specific language in power of attorney documents in order to recognize the authority of your nominated agent. You should review your power of attorney documents every few years in case of changes in your life, in the lives of your nominated agents, or in the law necessitate changes to your powers of attorney.

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