

Council of the Trust and Estate Section, Colorado Bar Association

Notice of and Agenda for the November 4, 2020 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, November 4, 2020, 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 October 7, 2020 meeting of the Council
2. Financial spreadsheets as of September 30, 2020
3. Memorandum from Real Estate Section meeting
4. What is a Power of Attorney and So Now you are an Agent Under Financial Power of Attorney Brochures
5. Equity, Diversity and Inclusivity Materials
 - i. Recommendations Timeline
 - ii. Definition of EDI
 - iii. Committee Areas of Responsibility
 - iv. Toolkit
 - v. Individual Leadership Action Plan
 - vi. Mission Statement

**Trust and Estate Section Council Agenda
November 4, 2020**

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 October 7, 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 October 7, 2020, Meeting**

Council met on Wednesday, October 7, 2020 via audio-visual conference due to the ongoing COVID19 situation. The meeting was called to order at approximately 2:45p.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 Zwerdinger, Secretary
Louisa Ritsick (2nd year member)
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:

Patrick Thiessen, Elder Law Section Liaison
Herb Tucker, Legislative Liaison
Andy White, CBA Legislative Liaison
Katie Roberts, CBA Staff
Lauren Da Cunha, Statutory Revisions Committee Chair
Kristin Dittus
Sandra Sigler
Leia Ursery
Kathy Seidel
Chad Rounds
Steve Brainerd
Darla Daniel
Melissa Schwartz
David Kirch

1. Approval of Minutes of Prior Meeting

The Minutes of the September 2, 2020, Council meeting were approved unanimously.

2. Chair's Report (Spencer Crona)

Update on Retreat: encourage attendees to attend the social events even though they are virtual. There will likely be an ambassador virtual event with new attendees.

3. Secretary/Treasurer Report (Molly Zwerdinger)

Molly reviewed the financial reports for September and year-to-date. MTZ to look into Colorado Lawyer publication for Sterling Ambler award winner.

4. Tax Section Liaison (Georgine M. Kryda)

CLE offered next Wednesday about trust planning.

5. Elder Law Section Liaison (Patrick Thiessen)

Executive Council meeting was canceled for today. Executive Council voted to approve UTC Part 5 previously. Need a liaison for LPC. Trying to coordinate a potential appeal for NAELA Colorado for situations where judges have ruled that a spouse is not entitled to family allowance unless there is a minor child is also needing support.

Sandra presented on meeting with Department of Health re CAPS. It was a good meeting to explore issues and make connections. DHS representatives work in legislative affairs. Helped us to understand CAPS process. Many state employees are overwhelmed, and the social workers are doing the best they can. Bar presented concerns about due process. The audience was receptive to this. Do not recommend formal subcommittee creation at this point, going to wait to see what happens at the next meeting with stakeholders. Copy of 122 page report available if anybody would like it.

6. Real Estate Section Liaison (Chad Rounds)

Life estate deeds have not been addressed yet by Council. This will be a topic of discussion for a study group next month. Want to defer a vote until November meeting so we get input from study group. David Kirch will give feedback next month.

7. Family Law Section Liaison (Kim Willoughby)

There was no report from the Family Law Section.

8. Statutory Revisions Committee (Lauren Da Cunha)

Hope to have presentation regarding witness requirements in advance directives next month. UPC 2019 revisions are being worked on. Going to work with Andy White on disclosure of fiduciary fees as standalone legislation this year (approved 2015-2016).

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

No report.

10. Legislative Update (Andy White)

ULC moved electronic wills forward and the presentation was very well received. UFIPA presentation was wonderful as well. There was a thanks given to Georgine, Connie, and Letty for their hard work. Bringing these measures to LPC for November meeting. Legislature is ready to reconvene on January 13, 2021. Could have another temporary delay. LPC will also be meeting in October.

Questioning how CBA plays a role in the budgeting process. How do we make sure the judiciary survives during a challenging year? Reallocating funds. There are two measures that can decrease the amount of money the legislature has available and depends on voter response (Amendment B and Proposition 116).

11. Council Notes (Kristin Dittus)

Last publication went out and had engagement letter article. Looking for more articles.

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

No silent auction for the retreat this year. Plan is to do 2021 silent auction in Aspen for the retreat. 75 more people signed up for the retreat. Box of goodies has gone out in the mail to attendees. Lunch program is filled through February. Spring update in March (3 morning sessions focused on Medicaid for estate planners; afternoon is focused on a combination of topics including ethics).

13. Orange Book Forms Committee (Lisa Hardin)

There was no report.

14. Rules & Forms Committee (Gordon Williams)

There was no report.

15. Civic & Community Affairs (Sandra Sigler)

The 2020 Senior Law Handbooks are available and are being distributed throughout the state. Had several events virtually and El Paso alone had over 100 registrants. There are 2 more virtual events coming up in 2020. Waiting to see what happens in 2021 for more events. 2 more brochures are going to be reviewed and circulated for November meeting. Committee meetings are at 1:30pm.

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

Met twice on how to proceed with changes to action plan. It is up to sections to implement the plan. Guidance was given on how to do this through their toolkit for leaders. Would like approval from council to approve of EDI forms. Committee working on ideas to update procedures and bylaws to comply with action plan and will present to council at a later meeting.

Georgine suggested a mandatory bar membership as a way to get demographic information to ensure we can effectively address EDI concerns and topics. Colorado has concluded that a mandatory bar is not something we want, but not sure if it could be reconsidered. Melissa said we are trying to take a broad view to bring diverse members into the bar without outwardly pointing someone out for EDI.

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

There was no report.

18. Colorado Estate Planning Handbook (David Johns)

There was no report.

19. Green Book (Josie Faix)

There was no report.

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

There was no report.

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

There was no report.

22. Communications Representative & Ambassador Coordinator (Lindsey Andrew)

Several requests have been made for an ambassador and there are none. Melissa recommends we become ambassadors and request others to do it. Also attendance at first attendee happy hour for the retreat is requested.

23. Board of Governors Representative (Jonathan Haskell)

There was no report.

24. Other Business

Simon asked if we could update our website to request ambassadors. No objection.

ADJOURNMENT

The meeting was adjourned at 4:43p.m. The next Council meeting will be held in November 2020.

Respectfully submitted

/s/ Molly T. Zwerdinger, Secretary

Colorado Bar Association
Trust & Estate Summary
 For the Three Months Ending September 30, 2020

	September	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	3,030.00	31,470.00	31,470.00	0%	30,660.00
Expenses	01-5???-31600	(1,020.00)	(3,416.51)	(3,416.51)	0%	(11,716.96)
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%	600.00
Expenses	01-5???-31612		(4,500.00)	4,500.00	0%	
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??	3,030.00	31,470.00	31,470.00	0%	31,260.00
Total Expenses All Sources	01-5???-316??	(1,020.00)	(3,416.51)	(16,000.00)	21%	(11,716.96)
Ending Balance		2,010.00	56,901.81	(16,000.00)	-356%	41,805.91

KIRCH ROUNDS BOWMAN & DEFFENBAUGH PC
MEMORANDUM

TO: CBA Council of the Trust and Estate Section

FROM: Chad Rounds

RE: Summary of 10/20/20 CBA Real Estate Section Council Meeting

DATE: 10/21/20

I attended the CBA Real Estate Section Council ("RESC") meeting on 10/20/20. It was conducted on Zoom. The following is my report on matters addressed which the CBA Trust and Estate Section Council ("TESC") might find of interest:

#1) Diversity Survey

RESC members were encouraged to take the CBA diversity survey. The link to the survey is <https://www.surveymonkey.com/r/Y8TZV6Q>.

#2) Application vs. Nomination

The CBA is changing the leadership election process from a nomination to an application. This is in hopes of expanding the pool of CBA members for leadership positions by removing the stigma of self-nominations. The CBA Real Estate Section will need to amend its bylaws accordingly. The application form will be found on the CBA website.

#3) CBA Real Estate Section Diversity Statement

The CBA has adopted a diversity statement and the wording is now being officially incorporated by each section into its mission and value statements.

#4) Updates to Acknowledgment Statute (CRS § 38-35-101)

The RESC is still trying to find a sponsor for a revised acknowledgement statute (CRS § 38-35-101). These revisions were drafted a few years ago so as to conform the statute to the changes

due to the adoption of the uniform notary act. An analysis was done and no additional changes to the acknowledgment statute are needed to comply with the newly enacted Colorado remote notarization law.

#5) Partition of Heirs Property Act

It was reported that the Colorado Uniform Law Commission shelved the Partition of Heirs Property Act at its September 2020 meeting. There is a concern that such a law addresses abuses not found here in Colorado.

#6) Petition for Writ of Certiorari Granted in Adverse Possession Case

It was brought to the attention of the RESC that the Colorado Supreme Court has granted the petition for writ of certiorari in *Lo Viento Blanco, LLC v. Woodbridge Condominium Association, Inc.* (18CA2250). The question at issue is whether, under Colorado law, an adverse occupier's recognition of the owner's title during the claimed prescriptive period interrupts the prescriptive use and defeats the presumption that any use was adverse and so fails the elements of adverse possession. Here, the adverse occupier sent a letter to the owner offering to purchase the land.

WHAT IS A POWER OF ATTORNEY?

A power of attorney is a document often created as part of an estate plan. As the principal, you can authorize 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 from the principal 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 behalf of a principal 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 the incapacity of the principal. Most financial and medical powers of attorney created by attorneys are durable because they are intended to ensure the principal has assistance in making decisions about himself or his assets after the principal is no longer able to make those decisions himself.

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. 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 under the power of attorney.
- A power of attorney that is standing takes effect immediately when the principal signs 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 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 if 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 either need to sign an entirely 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 easier and less expensive to sign power of attorney documents that include a successor agent while the principal is mentally capable to do so.

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?

A principal can revoke a power of attorney document or an agent's authority at any time as long as the principal has 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 the principal becomes incapacitated. A durable power of attorney terminates when one of the following events occurs:

- The principal revokes his 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 cannot continue to act after the principal dies.

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.

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

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.

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 deed form is most appropriate to transfer an interest in a primary residence, if the client does not have significant other assets. For example, a life estate for a primary residence may be appropriate for Medicaid planning and/or second marriage situations. Use of a trust will often be more appropriate when dealing with income producing assets, assets requiring future capital improvements, and estates with significant other assets, as well as if other complications exist, such as payments relating to leases and grants of easements.

**If in Denver or Broomfield, insert "City and."

***Update the address in the conveyance if Grantees are not paying property taxes during Grantor's lifetime.

****Strike as required.

***** There is some uncertainty regarding whether or not mineral and water rights are "appurtenances." Generally, mineral rights are not considered "appurtenances" and will be conveyed whether or not this phrase is included in the deed unless expressly reserved. Water rights may or may not be "appurtenant." Best practice is to specifically include in the deed known existing water rights. When dealing with known issues regarding mineral and water rights, practitioner should conduct additional legal research as these areas are complex and nuanced.

***** Practitioner may prefer to not include this information in the deed. CRS § 38-35-122(1) expressly invites its inclusion but does not require it. CRS § 38-35-122(2) states any discrepancy to be resolved in favor of the legal description. The possibility of an error in the assessor's information must be considered as it could still lead to perceived ambiguities in what property is being conveyed.

*****There is a lack of guidance under Colorado law on the definition of these terms in the context of a life estate. It is advisable for practitioner to discuss the scope and parameters of these terms with the client and potentially include more detailed information in the deed, as to the allocation of income generated by the real property and the responsibilities for payment of expenses relating to the real property, to avoid disputes in the future. Where appropriate, such specifics as which interest holder shall receive payment for a grant of an easement or which interest holder shall be responsible for capital improvements should be addressed in the deed.

***** See CRS § 24-21-516 for alternative acknowledgement language. Both the state and the county in which the notarial act is performed should be stated. If the notarial act is performed using statutorily authorized remote notarization, the certification should also include all additional language prescribed by the remote notarization rules, e.g. that the act was done remotely using audio-visual communication.

*****If the notary stamp does not include the expiration date, include the date on this line.

DEED TO DIFFERENT LIFE ESTATE AND REMAINDER GRANTEES*

Grantor, _____, for the consideration of _____
_____ DOLLARS, (\$ _____), in hand paid, hereby sells and conveys a life estate in the real property,
including without limitation the appurtenances,** unto _____
_____, Life Estate Grantee, whose legal address is _____, of the
_____ ***County of _____, State of _____,**** and a
remainder unto _____, Remainder Grantee[s], whose legal address
is _____, of the _____ ***County of
_____, State of _____, (in joint tenancy),***** upon the death of Life Estate Grantee, in and
to the following real property, including without limitation the appurtenances,** situate in the _____
***County of _____ and State of Colorado, to wit:

[Legal Description]

also known by street address as:
assessor's schedule or parcel number:*****

As used herein, the singular includes the plural and the plural the singular.

LIFE ESTATE GRANTEE, shall have the sole use, control, benefit, and income of the described real property,
including without limitation the appurtenances,** during Life Estate Grantee's lifetime.*****

[LIFE ESTATE GRANTEE] OR [REMAINDER GRANTEES], shall pay for maintenance, repairs, taxes,
insurance, mortgage, and assessments during Life Estate Grantee's lifetime.*****

Signed this ____ day of _____, 20____.

GRANTOR

[GRANTOR'S NAME]

STATE OF COLORADO)
) ss.
_____ ***COUNTY OF _____)

This foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____
_____.*****

Witness my hand and official seal.

My commission expires***** _____

Notary Public

Name and Address of Person Creating Newly Created Legal Description (§38-35-106.5, C.R.S.)

*This deed form is most appropriate to transfer an interest in a primary residence, if the client does not have significant other assets. For example, a life estate for a primary residence may be appropriate for Medicaid planning and/or second marriage situations. Use of a trust will often be more appropriate when dealing with income producing assets, assets requiring future capital improvements, and estates with significant other assets, as well as if other complications exist, such as payments relating to leases and grants of easements.

** There is some uncertainty regarding whether or not mineral and water rights are “appurtenances.” Generally, mineral rights are not considered “appurtenances” and will be conveyed whether or not this phrase is included in the deed unless expressly reserved. Water rights may or may not be “appurtenant.” Best practice is to specifically include in the deed known existing water rights. When dealing with known issues regarding mineral and water rights, practitioner should conduct additional legal research as these areas are complex and nuanced.

*** If in Denver or Broomfield, insert “City and.”

****Update the address in the conveyance if Life Estate Grantee is not paying property taxes during Life Estate Grantee’s lifetime.

*****Strike as required.

***** Practitioner may prefer to not include this information in the deed. CRS § 38-35-122(1) expressly invites its inclusion but does not require it. CRS § 38-35-122(2) states any discrepancy to be resolved in favor of the legal description. The possibility of an error in the assessor’s information must be considered as it could still lead to perceived ambiguities in what property is being conveyed.

***** There is a lack of guidance under Colorado law on the definition of these terms in the context of a life estate. It is advisable for practitioner to discuss the scope and parameters of these terms with the client and potentially include more detailed information in the deed, as to the allocation of income generated by the real property and the responsibilities for payment of expenses relating to the real property, to avoid disputes in the future. Where appropriate, such specifics as which interest holder shall receive payment for a grant of an easement or which interest holder shall be responsible for capital improvements should be addressed in the deed.

***** See CRS § 24-21-516 for alternative acknowledgement language. Both the state and the county in which the notarial act is performed should be stated. If the notarial act is performed using statutorily authorized remote notarization, the certification should also include all additional language prescribed by the remote notarization rules, e.g. that the act was done remotely using audio-visual communication.

*****If the notary stamp does not include the expiration date, include the date on this line.

Deeds Conveying a Life Estate - Notes on Use

Colorado law allows the grant of a life estate. *See Million v. Botefur*, 9 P.2d 284 (1932); *Kendall v. Wiles*, 483 P.2d 388 (Colo. App. 1971). Any language that reflects the intent of a grantor to create a life estate is sufficient. *See Willis V. Carpenter & Holly S. Hoxeng*, *Colorado Real Estate Practice* § 3.7 (CLE in Colorado, Inc. 2015).

Two separate deeds are provided to convey either (i) the real property to a grantee reserving a life estate in the grantor (Deed Reserving Life Estate) or (ii) a life estate in the real property to a certain grantee and a remainder interest to a different grantee (Deed to Different Life Estate and Remainder Grantees). The grant language found in the Deed to Different Life Estate and Remainder Grantees could be adapted for use in a Personal Representative's Deed of Distribution to implement a testamentary devise of a separate life estate and a remainder interest.

Once the practitioner selects the appropriate deed, the practitioner should customize the text in that deed as it relates to who will be responsible for expenses related to the property. As a practical matter, it is best for the deed to identify which interest holder pays for maintenance, repairs, taxes, insurance, and assessments. The client may want to separate the obligations for maintenance or repairs from other obligations, and/or may want to have more specification of the obligations for maintenance or repairs. The practitioner should consider advising the client to confer with any title insurance company that had insured the grantor's title about adding the grantee as an additional insured on the title insurance policy and/or using a warranty deed.