

**Council of the Trust and Estate Section, Colorado Bar Association**

**Notice of and Agenda for the October 7, 2020 Meeting**

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

From: Molly T. Zwerdinger  
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, October 7, 2020, 3:15 p.m.***  
Place: ***THIS MEETING WILL BE CALL-IN ONLY DUE TO COVID 19***

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**Call-In Instructions**

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

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**Minutes of Previous Meeting, Financial Reports & Attachments**

1. Minutes of the September 2, 2020 meeting of the Council
2. Financial spreadsheets as of August 31, 2020
3. Memorandum from Real Estate Section meeting

**Trust and Estate Section Council Agenda**  
**October 7, 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 September 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. Diversity & 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 September 2, 2020, Meeting**

Council met on Wednesday, September 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 Zwerdinger, Secretary  
Louisa Ritsick (2<sup>nd</sup> year member)  
Charles Spence (2<sup>nd</sup> year member)  
Georgine Kryda (1<sup>st</sup> year member), Tax Section Liaison  
Amy Symons (1<sup>st</sup> year member)  
Simon Tolbert (1<sup>st</sup> year member)

Also in attendance were:

Patrick Thiessen, Elder Law Section Liaison  
Herb Tucker, Legislative Liaison  
Lisa Hardin, Orange Book Forms Committee  
Andy White, CBA Legislative Liaison  
Katie Roberts, CBA Staff  
Lauren Da Cunha, Statutory Revisions Committee Chair  
Connie Eyster  
Sandra Sigler  
Leia Ursery  
Kathy Seidel  
Letty Maxfield  
Chad Rounds  
Chelsea Ziegler  
Kayla Nelson  
Stan Kent  
Mark Masters

**1. Approval of Minutes of Prior Meeting**

The Minutes of the August 5, 2020, Council meeting were approved unanimously.

**2. Chair's Report (Spencer Crona)**

A joint elder law and T&E panel is being convened to address CAPS issues. A subcommittee is created to clean up amendments to SB 129. Concerns about resources for judiciary are circulating in the practice.

**3. Secretary/Treasurer Report (Molly Zwerdinger)**

Molly reviewed the financial reports for July and year-to-date. Senior Law Handbook requested \$2,500. Request approved. May not do the silent auction this year at the Retreat. We need to be aware that auction revenue may not be available to the section.

**4. Tax Section Liaison (Georgine M. Kryda)**

Does not meet until end of September. No report.

**5. Elder Law Section Liaison (Patrick Thiessen)**

Presentation done on electronic wills and CUTC Part 5. Discussion of enactment of SB 129 and virtual elder law retreat success.

**6. Real Estate Section Liaison (Chad Rounds)**

Met on 8/18/20 with new Chair. Discussion about annual real estate symposium that was virtual in July and second part will be held today and tomorrow. Attendance down 25% from previous years. Discussed removal of race based restrictive covenants from public records. Discussion opened about real estate forms presented last meeting: Darla had questions about the life estate deed forms – who is the target audience for these forms and are they going to be released for public use? Chad said these forms were reviewed by real estate attorneys over a few years and approved by the real estate section. These forms are to be published in the Green Book. Motion to approve all real estate forms with the exception of the life estate deeds. Approved.

**7. Family Law Section Liaison (Kim Willoughby)**

There was no report from the Family Law Section.

**8. Statutory Revisions Committee (Lauren Da Cunha)**

Approved Electronic Wills and UFIPA at the meeting.

Letty Maxfield and Herb Tucker presented on Electronic Wills. The vote is for willingness to support concept of e-wills as proposed in the uniform act. The act tracks

well with current probate statutes as the act is merely about execution. Three other states have e-will acts pending. Remote notarial act related to e-wills and makes the e-will tamper proof. Anticipate this will be active conversation at the capital. Not taking up qualified custodians as that will create a fiscal note and do not anticipate that will sit well during this legislative session. Motion to support Colorado Uniform Electronic Wills Act as proposed by Subcommittee in concept. Approved.

Connie Eyster presented on CUTC Part 5. Part 5 deals with creditor rights issues and consensus was reached quickly on these issues. Seven Sections dealing with spendthrift clauses and creditors ability to get access to trust assets. An exception creditor includes child support obligations and people who provide benefit to trust in enforcing the trust. Exempted SNT from the exemption creditor part of the statute. No creditor can force a trustee to exercise their discretion even if they abuse discretion. Irrevocable trust exceptions to creditor access: lifetime QTIP with settlor reversionary interest, settlor's interest is only cause by intervening event, defective grantor trust and trustee can reimburse settlor for taxes. If distribution is overdue, creditors can attach. Personal creditor of trustee cannot reach trust assets. Some other small adjustments were made. Modification of trusts now include SNTs with court approval, agreement of all beneficiaries and does not violate material purpose of trust. Motion for approval of Part 5 and amendments. Approved.

Georgine presented on UFIPA. A few additions made to uniform act: includes life tenant as a fiduciary, adding new section to regarding UPIA, added default ordering rule on distributions, declined to recommend enactment requiring fiduciary to pay same rate of interest on pecuniary amount (avoid statutory rate of interest being incentive on delaying distributions), for existing trusts electing to be administered under UPIA this will not undermine what has been decided by the trustee. Motion to approve UFIPA as proposed. Approved.

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

No report.

**10. Legislative Update (Andy White)**

ULC announced first meeting of the year: they are looking at updates to UFIPA and CUTC Part 5 and electronic wills. First meeting is usually just information gathering. We are on track to ULC process. CAPS update: worried about misinformation held in the system not reflective of an individual's actions. DHS acknowledges there are things they still need to work out with process and procedures. Want to hear Bar's perspective on modifications.

**11. Council Notes (Kristin Dittus)**

No report. Spencer asked committees to send Kristin changes to committee descriptions.

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

Tim reported that the 2020 Retreat will be virtual. CLE programs moving forward are going to be virtual for 2020-2021 year. A tutorial will be sent to attendees on how to navigate the virtual platform. Planning on in-person for Retreat in 2021 in Aspen. Case law and legislative update went well and was well attended. Fall update November 19<sup>th</sup> dealing with insolvent estates. Spring update will likely deal with Medicaid planning for estate planning attorneys.

**13. Orange Book Forms Committee (Lisa Hardin)**

Working on adding dementia options in advanced directives. Subcommittee for trust for qualified retirement benefits is going to meet again. Subcommittee to review CUTC provision inclusions. Form 1520 in light of directed trust act.

**14. Rules & Forms Committee (Gordon Williams)**

There was no report.

**15. Civic & Community Affairs (Sandra Sigler)**

Mark did a plug in the media letting people know that estate planning attorneys are available and ready to help people with their plans during this time.

Senior Law Handbook is now available. Three events coming up: El Paso county 9/12; Grand Junction series over 6 weeks period, Boulder 9/8-10/1 every Tues and Thurs.

Request to approve new brochure. Approved.

**16. Diversity & Inclusivity Committee (Melissa Schwartz)**

Mark is looking for people to get involved in helping our section become more diverse. Want to create another spot or two for diversity purposes through changes in the bylaws of the section.

Spencer gave Melissa's report: section summit for 9/30. Equity, diversity and inclusivity will be a part of the summit as a presentation. Proposal to rename

committee to Equity Diversity, and Inclusivity. First year council members are to work with EDI committee on reaching goals.

**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. Spencer urges and encourages one of the Chairs to join us for the Executive Council meeting as they are valued members of our community.

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

There was no report.

**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 5:18p.m. The next Council meeting will be held in October 2020.

Respectfully submitted

/s/ Molly T. Zwerdinger, Secretary

Colorado Bar Association  
**Trust & Estate Summary**  
 For the Two Months Ending August 31, 2020

|  |               | August     | YTD         | Budget | Variance    | %  | Last FY     |
|--|---------------|------------|-------------|--------|-------------|----|-------------|
| Beginning balance                          | 01-3160-31600 |            | \$28,848.32 |        | \$28,848.32 | 0% | \$22,262.87 |
| <b>Trust &amp; Estate Section- General</b> |               |            |             |        |             |    |             |
| Revenue                                    | 01-4???-31600 | 4,830.00   | 28,440.00   |        | 28,440.00   | 0% | 29,820.00   |
| Expenses                                   | 01-5???-31600 | (1,376.51) | (2,396.51)  |        | (2,396.51)  | 0% | (10,492.97) |
| <b>Statutory Revisions Committee</b>       |               |            |             |        |             |    |             |
| CLE  |               |            |             |        |             |    |             |
| Council Notes                              |               |            |             |        |             |    |             |
| Community & Civic Affairs                  |               |            |             |        |             |    |             |
| Rules & Forms Committee                    |               |            |             |        |             |    |             |
| Orange Book Forms                          |               |            |             |        |             |    |             |
| Local Liaison                              |               |            |             |        |             |    |             |
| Uniform Trust Code                         |               |            |             |        |             |    |             |
| Admin. Chair                               |               |            |             |        |             |    |             |
| Estate Planning Handbook                   |               |            |             |        |             |    |             |
| Admin Council Dinner                       |               |            |             |        |             |    |             |
| Legislative Liaison                        |               |            |             |        |             |    |             |
| Internet Editor                            |               |            |             |        |             |    |             |
| Technology Committee                       |               |            |             |        |             |    |             |
| Real Estate Liaison                        |               |            |             |        |             |    |             |
| Green Book                                 |               |            |             |        |             |    |             |
| The Colorado Lawyer                        |               |            |             |        |             |    |             |
| Diversity Committee                        |               |            |             |        |             |    |             |
| 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?? | 4,830.00   | 28,440.00   |        | 28,440.00   | 0% | 29,820.00   |
| Total Expenses All Sources                 | 01-5???-316?? | (1,376.51) | (2,396.51)  |        | (2,396.51)  | 0% | (10,492.97) |
| Ending Balance                             |               | 3,453.49   | 54,891.81   |        | 54,891.81   | 0% | 41,589.90   |

Colorado Bar Association  
**Trust & Estate**  
For the Two Months Ending August 31, 2020

|  |                      | August            | YTD                | Budget | Variance           | %         | Last FY            |
|--|----------------------|-------------------|--------------------|--------|--------------------|-----------|--------------------|
| <b>Beginning balance</b>                     | <b>01-3160-31600</b> |                   | <b>\$28,848.32</b> |        | <b>\$28,848.32</b> | <b>0%</b> | <b>\$22,262.87</b> |
| <b>Trust &amp; Estate Section</b>            |                      |                   |                    |        |                    |           |                    |
| <b>Revenue</b>                               |                      |                   |                    |        |                    |           |                    |
| Dues Income Section                          | 01-4050-31600        | 4,830.00          | 28,440.00          |        | 28,440.00          | 0%        | 29,820.00          |
| <b>Total Revenue Trust &amp; Estate Sect</b> |                      | <b>4,830.00</b>   | <b>28,440.00</b>   |        | <b>28,440.00</b>   | <b>0%</b> | <b>29,820.00</b>   |
| <b>Expenses</b>                              |                      |                   |                    |        |                    |           |                    |
| Internet/E-Mail Access                       | 01-5413-31600        | (356.51)          | (356.51)           |        | (356.51)           | 0%        | (544.99)           |
| Meals (Not travel related)                   | 01-5491-31600        |                   |                    |        |                    | 0%        | (1,439.64)         |
| Administration Fee                           | 01-5494-31600        | (1,020.00)        | (2,040.00)         |        | (2,040.00)         | 0%        | (1,008.34)         |
| Grants/Contributions                         | 01-5500-31600        |                   |                    |        |                    | 0%        | (7,500.00)         |
| <b>Total Expenses Trust &amp; Estate Sec</b> |                      | <b>(1,376.51)</b> | <b>(2,396.51)</b>  |        | <b>(2,396.51)</b>  | <b>0%</b> | <b>(10,492.97)</b> |
| <b>Statutory Revisions Committee</b>         |                      |                   |                    |        |                    |           |                    |
| <b>Revenue</b>                               |                      |                   |                    |        |                    |           |                    |
| Rev. Elderlaw Joint Task Force               |                      |                   |                    |        |                    |           |                    |
| Rev. Uniform POA Act                         |                      |                   |                    |        |                    |           |                    |
| Rev. Uniform Trust Code                      |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                              |                      |                   |                    |        |                    |           |                    |
| Exp. Elderlaw Joint Task Force               |                      |                   |                    |        |                    |           |                    |
| Exp. Uniform POA Act                         |                      |                   |                    |        |                    |           |                    |
| Exp. Uniform Trust Code                      |                      |                   |                    |        |                    |           |                    |
| <b>CLE</b>                                   |                      |                   |                    |        |                    |           |                    |
| <b>Revenue</b>                               |                      |                   |                    |        |                    |           |                    |
| Revenue Joint CLE                            |                      |                   |                    |        |                    |           |                    |
| Revenue CLE Retreat                          |                      |                   |                    |        |                    |           |                    |
| Revenue CLE Section Only                     |                      |                   |                    |        |                    |           |                    |

Colorado Bar Association  
**Trust & Estate**  
 For the Two Months Ending August 31, 2020

|                                      | August | YTD | Budget | Variance | % | Last FY |
|--------------------------------------|--------|-----|--------|----------|---|---------|
| <b>Expenses</b>                      |        |     |        |          |   |         |
| <b>Expenses Joint CLE</b>            |        |     |        |          |   |         |
| Expenses CLE Retreat                 |        |     |        |          |   |         |
| Expenses CLE Section Only            |        |     |        |          |   |         |
| <b>Council Notes</b>                 |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Community &amp; Civic Affairs</b> |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Rules &amp; Forms Committee</b>   |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Orange Book Forms</b>             |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Local Liaison</b>                 |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Uniform Trust Code</b>            |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |
| Expenses                             |        |     |        |          |   |         |
| <b>Transfer Deposits</b>             |        |     |        |          |   |         |
| Revenue                              |        |     |        |          |   |         |

Colorado Bar Association  
**Trust & Estate**  
 For the Two Months Ending August 31, 2020

|                                 | August | YTD | Budget | Variance | % | Last FY |
|---------------------------------|--------|-----|--------|----------|---|---------|
| <b>Expenses</b>                 |        |     |        |          |   |         |
| <b>Admin. Chair</b>             |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Estate Planning Handbook</b> |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Admin Council Dinner</b>     |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Legislative Liaison</b>      |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Internet Editor</b>          |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Technology Committee</b>     |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Real Estate Liaison</b>      |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |
| Expenses                        |        |     |        |          |   |         |
| <b>Green Book</b>               |        |     |        |          |   |         |
| Revenue                         |        |     |        |          |   |         |

Colorado Bar Association  
**Trust & Estate**  
For the Two Months Ending August 31, 2020

|                                     |                      | August            | YTD                | Budget | Variance           | %         | Last FY            |
|-------------------------------------|----------------------|-------------------|--------------------|--------|--------------------|-----------|--------------------|
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>The Colorado Lawyer</b>          |                      |                   |                    |        |                    |           |                    |
| Revenue                             |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>T&amp;E Diversity Committee</b>  |                      |                   |                    |        |                    |           |                    |
| Revenue                             |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>Judicial Liaison</b>             |                      |                   |                    |        |                    |           |                    |
| Revenue                             |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>Member Vouchers</b>              |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>T&amp;E Young Lawyer Society</b> |                      |                   |                    |        |                    |           |                    |
| Revenue                             |                      |                   |                    |        |                    |           |                    |
| <b>Expenses</b>                     |                      |                   |                    |        |                    |           |                    |
| <b>Beginning Balance</b>            | <b>01-3160-31600</b> |                   | <b>\$28,848.32</b> |        | <b>\$28,848.32</b> | <b>0%</b> | <b>\$22,262.87</b> |
| <b>Total Revenue All Sources</b>    | <b>01-4???-316??</b> | <b>4,830.00</b>   | <b>28,440.00</b>   |        | <b>28,440.00</b>   | <b>0%</b> | <b>29,820.00</b>   |
| <b>Total Expense All Sources</b>    | <b>01-5???-316??</b> | <b>(1,376.51)</b> | <b>(2,396.51)</b>  |        | <b>(2,396.51)</b>  | <b>0%</b> | <b>(10,492.97)</b> |
| <b>Ending Balance</b>               |                      | <b>3,453.49</b>   | <b>54,891.81</b>   |        | <b>54,891.81</b>   | <b>0%</b> | <b>41,589.90</b>   |

**KIRCH ROUNDS BOWMAN & DEFFENBAUGH PC**  
MEMORANDUM

**TO: CBA Council of the Trust and Estate Section**

**FROM: Chad Rounds**

**RE: Summary of 9/15/20 CBA Real Estate Section Council Meeting**

**DATE: 9/17/20**

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I attended the CBA Real Estate Section Council ("RESC") meeting on 9/15/20. 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) Creation of Diversity Liaison Position**

The RESC voted to create and fill a diversity liaison position. Among other duties, this liaison will report back from the affinity bars.

**#2) Proposed New Title Standard 1.4.1 Regarding Quitclaim Deeds**

This proposed title standard addresses the question of whether the mere fact that there is a quitclaim deed in the chain of title causes the property to be unmarketable. The conclusion is it does not.

**#3) Partition Heirs Property Act**

The Colorado Uniform Law Commission will be addressing the Partition Heirs Property Act at its September meeting. The purpose of the act is to protect heirs from being swindled out of their fractional interests in a decedent's real estate. This is a problem in the Southeast part of the country. There appears to be a consensus with the RESC that such legislation is not needed here in Colorado. In the past 9 months, RESC members solicited feedback on whether this type of exploitation occurs in Colorado. No examples of this have come to light.

#### **#4) Federal Order Temporarily Halting Evictions Due to COVID-19**

Earlier in September, the Center for Disease Control issued a nationwide order prohibiting evictions for the rest of the year in certain situations. Tenants must sign a declaration that they meet certain criteria as it relates to the COVID-19 pandemic. Some feel this federal action has just muddied the waters as to evictions here in Colorado.

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

The RESC is pushing to try 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.