

MINUTES FROM UPC SUBCOMMITTEE MEETING 11/6/2019

1. First meeting 2 weeks ago—Colorado Uniform Law Commissioners have UPC 2019 on agenda to push for some reason
 - a. Darla supposed to report in December back to Commissioners on progress of subcommittee
2. Looked at big picture of revisions
 - a. Update language so that more modernized—e.g., remove gender-specific terms
 - b. Bring parent-child definitions in line with Uniform Parentage Act 2017
 - i. Try to simplify and make more uniform, we want to spend a lot of time looking at this because Colorado doesn't have UPA 2017
3. Decided we should go through the suggested revisions and compare to existing Colorado law
 - a. Presumption of 2 parents vs. could have more than 2 parents
4. Prepared memorandum to present to ULC
 - a. Darla gave overview of process at ULC meeting
 - i. Testimony goes on record –must relate to agenda item
 1. Darla will give testimony as individual giving report as status of subcommittee--Not as the official position of T&E Section
 2. Darla gives oral feedback to ULC using bullet points on progress, no paper —would be in ULC best interest to not run it, because we're looking at it and family law needs to look at it
 - b. Darla will take the memos and make into some talking points to ULC and she will share with us
 - i. Put on back-burner is our hope
5. Reviewed Sante Fe Style handout for 15-11-802
 - a. Changes to 15-11-802(1)—subcommittee voted to accept changes made by uniform revisions
 - b. Changes to 15-11-802(2)—subcommittee voted to reject changes made by uniform revisions
6. 15-11-803
 - a. Changes to C.R.S. 15-11-803(1)(e)—subcommittee voted to accept changes made by uniform revisions
 - b. 15-11-803(2)—subcommittee voted to put other changes on hold for now—there may be changes to killer statute based on the recent Supreme Court case, that committee could evaluate whether the changes “under this article” and to the statutory reference to the homestead allowance
 - i. Exception: subcommittee voted to accept change “his or her” to “the” in last section of 803(2).

- c. 15-11-803(6)—
 - i. UPC 2019 proposed change: Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section ~~shall~~ **MUST** be treated in accordance with the principle that a killer cannot profit from ~~his or her~~ **A** wrong.
 - ii. Subcommittee discussed and voted to use this language instead: Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section ~~shall~~ **MUST** be treated in accordance with the principle that a killer cannot profit from **THE KILLER'S WRONGDOING**.
 - 1. Accepted this version
7. Changes to 15-11-804
- a. 15-11-804(1)(b)—Subcommittee voted to accept changes made by uniform revisions
 - b. 15-11-804(1)(d)— Subcommittee voted to accept changes as revised (change “a” to “the”):
 - i. “Governing instrument” means a governing instrument executed by the divorced individual before the divorce or annulment of ~~A~~ **THE MARRIAGE** to **THE DIVORCED INDIVIDUAL'S** former spouse.
 - c. 15-11-804(1)(e)—Subcommittee voted to put this on hold - need to revisit when discuss parent-child relationship changes
 - d. 15-11-804(1)(f) –Subcommittee voted to accept changes made by uniform revisions
 - e. 15-11-804(2) –Subcommittee voted to accept changes made by uniform revisions

CHANGES APPROVED 11/6/2019

1. 15-11-802.

15-11-802(1)

(1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, ~~he or she~~ **THE INDIVIDUAL** is married to the decedent at the time of death. A decree of separation that does not terminate the ~~status of husband and wife~~ **MARRIAGE** is not a divorce for purposes of this section.

2. 15-11-803.

15-11-803(1)(e)

(e) “Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate ~~himself or herself~~ **THE DECEDENT** in place of ~~his or her~~ **THE** killer and **WHETHER or NOT** the decedent then had capacity to exercise the power.

15-11-803(2) – change to the last sentence only.

If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed ~~his or her~~ **THE** intestate share.

15-11-803(6)

A wrongful acquisition of property or interest by a killer not covered by this section ~~shall~~ **MUST** be treated in accordance with the principle that a killer cannot profit from ~~his or her wrong~~ **THE KILLER’S WRONGDOING**.

3. 15-11-804.

15-11-804(1)(b)

“Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 15-11-802. A decree of separation that does not terminate the ~~status of husband and wife~~ **MARRIAGE** is not a divorce for purposes of this section.

15-11-804(1)(d)

“Governing instrument” means a governing instrument executed by the divorced individual before the divorce or annulment of ~~his or her~~ **THE** marriage to ~~his or her~~ **THE DIVORCED INDIVIDUAL’S** former spouse.

15-11-804(1)(f)

“Revocable,” with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of ~~his or her~~ **THE DIVORCED INDIVIDUAL’S** former spouse or former spouse’s relative, whether or not the divorced individual was then empowered to designate ~~himself or herself~~ **THE DIVORCED INDIVIDUAL** in place of the divorced individual’s former spouse or in place of ~~his or her~~ the divorced individual’s former spouse’s relative and whether or not the divorced individual then had the capacity to exercise the power.

15-11-804(2)

Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable

(i) disposition or appointment of property made by a divorced individual to ~~his or her~~ **THE DIVORCED INDIVIDUAL’S** former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual’s former spouse,

Colorado T&E Section Statutory Revisions Committee Subcommittee

UPC 2019 Proposed Revisions

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| UPC 2019 Section | 2-802 |
| Section Title | EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION |
| Statutory Language | <p align="center">(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the marriage is not a divorce for purposes of this section.</p> <p align="center">(b) For purposes of [Parts] 1, 2, 3, and 4 of this [article], and of Section 3-203, a surviving spouse does not include:</p> <p align="center">(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as spouses;</p> <p align="center">(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or</p> <p align="center">(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.</p> |
| Uniform Law Commission Comments | |
| Current Colorado Law | <p>UPC 2019 would change C.R.S. 15-11-802(1) as follows:</p> <p align="center">(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she THE INDIVIDUAL is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife MARRIAGE is not a divorce for purposes of this section.</p> |

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| | <p>UPC 2019 would change 15-11-802(2) as follows:</p> <p>For purposes of parts 1, 2, 3, and 4 of this article, and of section 15-12-203, a surviving spouse does not include:</p> <p>(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or enter into a common-law marriage OR LIVE TOGETHER AS SPOUSES;</p> <p>(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony or enters into a common-law marriage with a third individual; or</p> <p>(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.</p> |
| <p>Colorado Subcommittee Comment</p> | |
| <p>Colorado Subcommittee Recommendation</p> | <p>1. Subcommittee voted to approve the changes to 15-11-802(1):</p> <p>(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she THE INDIVIDUAL is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife MARRIAGE is not a divorce for purposes of this section.</p> <p>2. Subcommittee voted to reject the changes to 15-11-802(2).</p> |

Colorado T&E Section Statutory Revisions Committee Subcommittee

UPC 2019 Proposed Revisions

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| UPC 2019 Section | 2-803 |
| Section Title | EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE, AND BENEFICIARY DESIGNATIONS |
| Statutory Language | <p align="center">(a) [Definitions.] In this section: * * *</p> <p align="center">(3) “Revocable,” with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer and whether or not the decedent then had capacity to exercise the power.</p> <p align="center">(b) [Forfeiture of Statutory Benefits.] An individual who feloniously and intentionally kills the decedent forfeits all benefits under this [article] with respect to the decedent’s estate, including an intestate share, an elective share, an omitted spouse’s or child’s share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed the intestate share. * * *</p> <p align="center">(f) [Wrongful Acquisition of Property.] A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from a wrong.</p> |
| Uniform Law Commission Comments | |

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| <p>Current Colorado Law</p> | <p>UPC 2019 would change the definition of “revocable” in C.R.S. 15-11-803(1)(e) as follows:</p> <p>"Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself THE DECEDENT in place of his or her THE killer and WHETHER or NOT the decedent then had capacity to exercise the power.</p> <p>UPC 2019 would change 15-11-803(2) as follows:</p> <p>Forfeiture of Statutory Benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits UNDER THIS [ARTICLE] with respect to the decedent’s estate, including an intestate share, an elective share, an omitted spouse’s or child’s share, the decedent’s homestead exemption under section 38-41-204, C.R.S., A HOMESTEAD ALLOWANCE, exempt property, and a family allowance. If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed his or her THE intestate share.</p> <p>UPC 2019 would change 15-11-803(6) as follows:</p> <p>Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section shall MUST be treated in accordance with the principle that a killer cannot profit from his or her A wrong.</p> |
| <p>Colorado Subcommittee Comment</p> | |
| <p>Colorado Subcommittee Recommendation</p> | <p>1. Subcommittee voted to approve the changes to 15-11-803(1)(e):</p> <p>"Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone</p> |

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| | <p>empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself THE DECEDENT in place of his or her THE killer and WHETHER or NOT the decedent then had capacity to exercise the power.</p> <p>2. Subcommittee voted to approve ONLY these changes to the last sentence of 15-11-803(2):</p> <p>If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his or her THE intestate share.</p> <p>3. Subcommittee voted to put the other changes to 15-11-803(2) on hold (see Minutes 11-6-19).</p> <p>4. Subcommittee voted to approve the following changes to 15-11-803(6)(see Minutes 11-6-19):</p> <p>Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section shall MUST be treated in accordance with the principle that a killer cannot profit from his or her THE KILLER'S WRONGDOING wrong.</p> |
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Colorado T&E Section Statutory Revisions Committee Subcommittee

UPC 2019 Proposed Revisions

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| UPC 2019 Section | 2-804 |
| Section Title | REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES |
| Statutory Language | <p align="center">(a) [Definitions.] In this section: * * *</p> <p align="center">(2) “Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the marriage is not a divorce for purposes of this section. ***</p> <p align="center">(4) “Governing instrument” means a governing instrument executed by the divorced individual before the divorce or annulment of a marriage to the divorced individual’s former spouse.</p> <p align="center">(5) “Relative of the divorced individual’s former spouse” means an individual who is related to the divorced individual’s former spouse application of the rules establishing parent-child relationship under [Subpart 2 of Part 1] or affinity and who, after the divorce or annulment, is not related to the divorced individual by application of the rules establishing parent-child relationships under [Subpart 2 of Part 1], or affinity.</p> <p align="center">(6) “Revocable,” with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual’s former spouse or former spouse’s relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual’s former spouse or in place of the divorced individual’s former spouse’s relative and whether or not the divorced individual then had the capacity to exercise the power.</p> <p align="center">(b) [Revocation Upon Divorce.] Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:</p> |

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| | <p>(1) revokes any revocable</p> <p>(A) disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,</p> |
| <p>Uniform Law Commission Comments</p> | |
| <p>Current Colorado Law</p> | <p>UPC 2019 would change the definition of "divorce or annulment" in C.R.S. 15-11-804(1)(b) as follows:</p> <p>"Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the status of husband and wife MARRIAGE is not a divorce for purposes of this section.</p> <p>UPC 2019 would change 15-11-804(1)(d) as follows:</p> <p>"Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his or her a marriage to his or her THE DIVORCED INDIVIDUAL'S former spouse.</p> <p>UPC 2019 would change 15-11-804(1)(e) as follows:</p> <p>"Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity APPLICATION OF THE RULES ESTABLISHING PARENT-CHILD RELATIONSHIP UNDER [SUBPART 2 OF PART 1] or affinity and who, after the divorce or annulment, is not related to the divorced individual BY APPLICATION OF THE RULES ESTABLISHING PARENT-CHILD RELATIONSHIPS UNDER [SUBPART 2 OF PART 1], or affinity.</p> <p>UPC 2019 would change 15-11-804(1)(f) as follows:</p> <p>"Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone</p> |

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| | <p>empowered, by law or under the governing instrument, to cancel the designation in favor of his or her THE DIVORCED INDIVIDUAL'S former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself THE DIVORCED INDIVIDUAL in place of the divorced individual's former spouse or in place of his or her the divorced individual's former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.</p> <p>UPC 2019 would change 15-11-804(2)(a)(i) as follows:</p> <p>Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:</p> <p style="padding-left: 40px;">(a) revokes any revocable</p> <p style="padding-left: 80px;">(i) disposition or appointment of property made by a divorced individual to his or her THE DIVORCED INDIVIDUAL'S former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,</p> |
| <p>Colorado Subcommittee Comment</p> | |
| <p>Colorado Subcommittee Recommendation</p> | <p>1. Subcommittee voted to approve the changes to 15-11-804(1)(b):</p> <p>“Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the status of husband and wife MARRIAGE is not a divorce for purposes of this section.</p> <p>2. Subcommittee voted to approve these changes to 15-11-804(1)(d)(see Minutes 11/6/2019):</p> |

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| | <p>“Governing instrument” means a governing instrument executed by the divorced individual before the divorce or annulment of his or her THE MARRIAGE to his or her THE DIVORCED INDIVIDUAL’S former spouse.</p> <p>3. Subcommittee voted to put the changes to 15-11-804(1)(e) on hold (see Minutes 11-6-19).</p> <p>4. Subcommittee voted to approve the changes to 15-11-804(1)(f):</p> <p>“Revocable,” with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her THE DIVORCED INDIVIDUAL’S former spouse or former spouse’s relative, whether or not the divorced individual was then empowered to designate himself or herself THE DIVORCED INDIVIDUAL in place of the divorced individual’s former spouse or in place of his or her the divorced individual’s former spouse’s relative and whether or not the divorced individual then had the capacity to exercise the power.</p> <p>5. Subcommittee voted to approve the changes to 15-11-804(2)(a)(i):</p> <p>(i) disposition or appointment of property made by a divorced individual to his or her THE DIVORCED INDIVIDUAL’S former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual’s former spouse,</p> |
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