

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

**January 4, 2021**

**1. Introductions**

As we are still meeting via Zoom, the introductions will be limited to those who are visitors, new members or members who are looking for a mentor, study group or to join a practice. Please feel free to look through your Zoom galleries to find old and new friends.

**2. Approval of December 2, 2020 Minutes**

**3. Announcements**

**a. *Virtual Meetings.*** Expect virtual meetings through at least the end of the winter and to this end there are a couple of procedural points.

i. Handling questions/comments - Message the word "question" to the zoom group during a presentation. At the end of the presentation, Chair will open the floor for folks who messaged in the order the messages were received.

ii. Please make sure if you are not speaking you are muted. If you are speaking make sure you are not muted.

**b. *Email List.*** If you did not receive the SRC materials in an email from Katie then you are not on the SRC email list. Email Dylan (dmetzner@joneskeller.com) and he'll add you to the email list.

**4. Legislative Report**

**5. SRC Approved Proposals**

**a. Active Matters**

**b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

(i) **Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)<sup>i</sup>**

**6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees**

**a. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**

- b. **ADR Legislation (C. Jean Stewart, Chair)**
  - c. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**
  - d. **Witness Requirements in Advanced Directives (Carl Stevens, Chair)**
  - e. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**
  - f. **Family Allowance (Michael Kirtland, Chair)**
7. **Inactive Matters**
- a. **UTC Subcommittee Part 5 (Connie Eyster, Chair)**
  - b. **Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda, Co-Chairs)**
  - c. **Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**
8. **Report from Elder Law Section**
9. **Report from Other Sections of the Bar**
10. **New Matters**
- a. **Proposed Statutory Chnages to Sections 12-14-708(2) and 15-14-421(6)(a) (Kathy Seidel)**
  - b. **In Re Estate of Rabin 2020 CO 77**
  - c. **Family Allowance Issue (CRS § 15-11-404)**
11. **Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**
- a. **Bankruptcy/Inherited IRAs (approved in 2015-2016)**
  - b. **Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
  - c. **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
  - d. **~~Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)~~**

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<sup>i</sup> Judicial (State Court Administrator) would only agree to become the sponsoring agency of this legislation if the seven separate categories under the definition of “original estate planning document” was pared down to the single category of “will documents.” This was insisted upon to minimize the size of the “pilot program” Judicial envisioned would be needed to initially implement the legislation in partnership with (and utilizing the technological resources of) the Colorado State Archives office. Once Judicial has completed its pilot program and the electronic document upload, storage, and retrieval system for “will documents” is operating as intended under the statute, the other six categories of “original estate planning documents” as they appear in § 15-23-103(14) in HB19-1229 as originally introduced on March 8, 2019 should be restored to the Act by amendment. See <https://leg.colorado.gov/bills/hb19-1229>.

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

**December 2, 2020**

**1. Introductions**

~~Chair, Lauren DaChunha, called the meeting to order at \_\_\_\_\_1:31 p.m. As this was a zZoom meeting, introductions were limited to new members or those seeking a mentor or a practice.~~

~~As we are still meeting via Zoom, the introductions will be limited to those who are visitors, new members or members who are looking for a mentor, study group or to join a practice. Please feel free to look through your Zoom galleries to find old and new friends.~~

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**2. Approval of November 4, 2020 Minutes**

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~~2. The minutes from the November 4, 2020 meeting were unanimously \_\_\_\_\_approved. Eugene Zuspahn\_\_\_\_\_ moved to approve and Carl Stevens \_\_\_\_\_seconded.~~

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**3. Announcements**

**a. *Virtual Meetings.*** Expect virtual meetings through at least the end of the winter and to this end there are a couple of procedural points.

i. Handling questions/comments - Message the word "question" to the zoom group during a presentation. At the end of the presentation, Chair will open the floor for folks who messaged in the order the messages were received.

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**b. *Email List.*** If you did not receive the SRC materials in an email from Katie then you are not on the SRC email list. Email Dylan (dmetzner@joneskeller.com) and he'll add you to the email list.

**4. Legislative Report**

~~Andy White\_\_\_\_\_ presented the legislative report.~~

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Priority issues from SRC have been the uniform law commission bills. These have been drafted and Andy wished to thank the drafting committee. These bills are UPC Part 5, Electronic Wills and UFIPA.

Legislature's emergency session was focused on COVID emergency relief.

~~4. Legislature is scheduled to convene its general session on January 13, 2021.~~

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5. **SRC Approved Proposals**

a. **Active Matters**

b. **Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

(i) **Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)<sup>i</sup>**

6. **Unapproved Matters under Consideration by SRC - Reports from Subcommittees**

a. **UTC Subcommittee Part 5 (Connie Eyster, Co-Chair)**

Approved and has gone to LPC committee and has been approved at LPC.

~~a. This will be moved in inactive matters.~~

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b. **Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**

No Report

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c. **ADR Legislation (C. Jean Stewart, Chair)**

No Report

e. **Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda, Co-Chairs)**

Approved and has gone to LPC committee.

~~This will be moved in inactive matters.~~

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f. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**

No Report

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g. **Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**

Approved and has gone to LPC committee.

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~~This will be moved to inactive matters.  
Approved and has gone to LPC committee. Will be moved to inactive matters.~~

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**h. Witness Requirements in Advanced Directives (Carl Stevens, Chair )**  
Carl Reported

~~During the November meeting a Straw Poll was taken which indicated support to a change to 15-18-106. The Straw Poll was based on the following three options:~~

- ~~- Option A- Consistent with Wills (two independent witnesses or notary)~~
- ~~- Option B- Only requirement is that it be signed (no witness or notary requirement).
  - ~~o This is consistent with the uniform act.~~~~
- ~~- Option C- Recommend that Option A be the statutory language but provide the Option B language to the Governor's office in the event that the Governor chooses to make an emergency declaration to remove the witness/notary requirements.~~

~~The result of the Straw Poll showed the majority of SRC members in attendance liked Option C to authorize either the use of a notary only or two witnesses and a notary. with an~~

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~~After Carl's November Presentation to SRC he was asked to take this to Elder Law and Health Care Law for their input.~~

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~~Carl presented to Elder Law on December 2<sup>nd</sup>, which approved the Option C option to either the use of a notary only or two witnesses or just a notary. Carl believes this was a vote of the Elder Law Section but the Executive Committee may still need to approve.~~

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~~Carl will report to Health Care Law Section at it's December meeting and will update SRC in January.~~

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**i. Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**

~~Darla Presented- Subcommittee had a meeting and will have another meeting on December 28<sup>th</sup> if anyone would like to join.~~

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**7. Inactive Matters**

**8. Report from Elder Law Section**

None

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9. **Report from Other Sections of the Bar**

None

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10. **New Matters**

a. **Proposed Statutory Changes to Sections 12-14-708(2) and 15-14-421(6)(a)**  
**(Kathy Seidel and Norv Brash- Probate Trial and Procedure Committee)**

Kathy Seidel reported.

The suggested revisions to the statutory language are intended to be a point of clarification as opposed to substantive changes. The issue is that 15-14-708 is inconsistent with 15-14-421 because the latter provides that once a conservator is appointed an agent under power of attorney shall take no action, while the former provides that the agency relationship is not affected unless "limited, suspended, or terminated by the court".

Proposed fix would be to cross reference the two statutes and make clear that an agent under a financial power of attorney would need to report and account to the conservator and cannot act unless authorized by the conservator and is subject to the supervision and authority of the conservator. The PTPC committee believes it important to allow for a power of attorney to remain in effect in the event of a conservatorship and the court could always decide to terminate the agency relationship.

Kathy presented this to Elder Law but due to technical difficulties they did not receive the draft changes. Elder Law will let PTPC know within a week of Elder Law's provision. PTPC will present to T&E Council today and would like SRC's vote as to whether SRC is in agreement that a change should be made.

Frank Hill moved to approve PTPC's suggested language and Mark Masters seconded. The motion passed by unanimous vote of the SRC. Unanimous vote that SRC is comfortable with PTPC's suggested changes.

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b. **In Re Estate of Rabin 2020 CO 77**

Dylan presented a brief overview of ruling.

(1) The legal files of a decedent are the property of the attorney and not the estate. This is not a property law issue.

(2) Attorney-Client Privilege survives the death of a client but the estate does not necessarily stand in the shoes of the decedent with respect to the attorney-client privilege.

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Question as to whether a subcommittee should be formed to examine this case and whether proposed legislation should be considered to address this issue.

Mark Masters- Is there a difference between a testate decedent and intestate decedent? What happens if we have a revocable trust and there is no probate estate.

No motion was made to start a subcommittee. Lauren recommended that anyone who is interested in forming a sub-committee reach out to her or Dylan or contact the Orange Book Committee to discuss potential form to include in the orange book for clients who wish to allow their fiduciaries to have access to privileged material.

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#### **c. Family Allowance Issue (CRS § 15-11-404)**

Michael Kirkland refreshed summarized the issue- Case There is a case before the Colorado Court of Appeals (Estate of Doughty) in which the probate judge declared that the widow cannot have the family allowance because there are no minor children. This is contrary to precedent but is based on the current statute 404 which says the family allowance is for the surviving spouse and minor children. Jefferson County and El Paso County courts have ruled that and means you must have both.

Michael is willing to chair this subcommittee and volunteered Gordon Williams to the committee. Any SRC members who wish to participate on the subcommittee please reach out to Lauren.

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### **11. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**

#### **a. Bankruptcy/Inherited IRAs (approved in 2015-2016)**

Strong opposition going forward from other sections.

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#### **b. Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**

Strong opposition going forward from other sections.

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

Dylan Reported

Andy is waiting on the summary of the proposal and the bill language. Once Andy has these items then he can put it on the LPC agenda for December but Andy cautions that we would still need to find a sponsor.

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Dylan and Lauren will reach out to Gordon for guidance and will also look through the minutes of the committee to figure out who were the members of the subcommittee to put this together and the subcommittee deliberated brought materials to the committee.

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Dylan and Lauren will look into this and try and connect with Gordon regarding

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e.

**d. Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)**

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Lauren DaCunha adjourned the meeting at 2:15 p.m.  
Respectfully Submitted

/s/ Dylan Metzner

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(<https://lp.findlaw.com/>).

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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.

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- [Amazon Alleged to Spy on Its Workers Even More Than Its Consumers \(https://blogs.findlaw.com/greedy\\_associate\\_alleged-to-spy-on-its-workers-even-more-than-its-consumers.html\)](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 \(https://blogs.findlaw.com/supreme\\_court/21\\_money-is-now-on-supreme-court-keeping-aca-largely-intact.html\)](https://blogs.findlaw.com/supreme_court/21_money-is-now-on-supreme-court-keeping-aca-largely-intact.html)
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  - [FCC Again Rejects Net Neutrality Even as Controversy Reignites \(https://blogs.findlaw.com/technologist/2021\\_again-rejects-net-neutrality-even-as-controversy-reignites.html\)](https://blogs.findlaw.com/technologist/2021_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)

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, 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.

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

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**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](mailto:matthew.r.ullrich@kp.org)  
Cell: 720-955-3928  
Executive Assistant: Vanessa Garcia ([Vanessa.C.Garcia@kp.org](mailto: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](mailto:matthew.r.ullrich@kp.org)  
Cell: 720-955-3928  
Executive Assistant: Vanessa Garcia ([Vanessa.C.Garcia@kp.org](mailto:Vanessa.C.Garcia@kp.org); 303-344-7940)

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**From:** Carl Stevens <[carl@cgstevens.com](mailto:carl@cgstevens.com)>  
**Sent:** Friday, November 27, 2020 3:24 PM  
**To:** Matthew R Ullrich <[Matthew.R.Ullrich@kp.org](mailto: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.

[https://cgstevensllc-my.sharepoint.com/:f:/g/personal/carl\\_cgstevensllc\\_onmicrosoft\\_com/EsTcqquzp4hHvL7moUMkW4MBgNQir6UuC3xMZ5p\\_1Uskbg?e=nCHLkc](https://cgstevensllc-my.sharepoint.com/:f:/g/personal/carl_cgstevensllc_onmicrosoft_com/EsTcqquzp4hHvL7moUMkW4MBgNQir6UuC3xMZ5p_1Uskbg?e=nCHLkc)

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

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**From:** Matthew R Ullrich <[Matthew.R.Ullrich@kp.org](mailto:Matthew.R.Ullrich@kp.org)>  
**Date:** Wednesday, November 25, 2020 at 4:07 PM  
**To:** Jess Ham <[jham@cobar.org](mailto:jham@cobar.org)>, Carl Stevens <[carl@cgstevens.com](mailto: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](mailto:matthew.r.ullrich@kp.org)  
Cell: 720-955-3928  
Executive Assistant: Vanessa Garcia ([Vanessa.C.Garcia@kp.org](mailto:Vanessa.C.Garcia@kp.org); 303-344-7940)

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**From:** Jess Ham <[jham@cobar.org](mailto:jham@cobar.org)>  
**Sent:** Wednesday, November 25, 2020 4:00 PM

**To:** Matthew R Ullrich <[Matthew.R.Ullrich@kp.org](mailto: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**  
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**From:** Carl Stevens <[carl@cgstevens.com](mailto:carl@cgstevens.com)>  
**Sent:** Wednesday, November 25, 2020 12:25 PM  
**To:** Jess Ham <[jham@cohar.org](mailto: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**



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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\*  
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(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.