

Living Will statute proposed modifications to allow execution with or without witnesses.

- 15-18-106 modified to allow execution with OR without witnesses in same manner as last will and testament statute 15-11-502.
- 15-18-104(5) modified to be consistent with the proposed modification of 15-18-106.

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
DECLARATIONS - FUTURE MEDICAL TREATMENT
ARTICLE 18. COLORADO MEDICAL TREATMENT DECISION ACT

C.R.S. 15-18-106 (2013)

15-18-106. Witnesses

(1) Except as otherwise provided in [section 15-18-105](#), a declaration shall be signed by the declarant in the presence of two witnesses. The witnesses shall not include any person specified in [section 15-18-105](#).

(2) A declaration may be notarized. The absence of notarization shall have no impact on the validity of a declaration.

HISTORY: Source: L. 2010: Entire article R&RE, [\(HB 10-1025\)](#), ch. 113, p. 379, § 1, effective August 11.

PROPOSED MODIFICATION:

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 who are not persons specified in section 15-18-105 (a), (b), (c) or (d); 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 (a), (b), (c) or (d).

***** Statute modified to allow execution with OR without witnesses in same manner as last will and testament statute 15-11-502.**

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
DECLARATIONS - FUTURE MEDICAL TREATMENT
ARTICLE 18. COLORADO MEDICAL TREATMENT DECISION ACT

C.R.S. 15-18-105 (2013)

15-18-105. Inability of declarant to sign

(1) In the event that the declarant is physically unable to sign the declaration, it may be signed by some other person in the declarant's presence and at the declarant's direction. The other person shall not be:

(a) The attending physician or any other physician;

(b) An employee of the attending physician or health care facility in which the declarant is a patient;

(c) A person who has a claim against any portion of the estate of the declarant at his or her death at the time the declaration is signed; or

(d) A person who knows or believes that he or she is entitled to any portion of the estate of the declarant upon the declarant's death either as a beneficiary of a will in existence at the time the declaration is signed or as an heir at law.

HISTORY: Source: L. 2010: Entire article R&RE, [\(HB 10-1025\), ch. 113, p. 379, § 1](#), effective August 11.

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
DECLARATIONS - FUTURE MEDICAL TREATMENT
ARTICLE 18. COLORADO MEDICAL TREATMENT DECISION ACT

C.R.S. 15-18-104 (2013)

15-18-104. Declaration as to medical treatment

(1) Any adult with decisional capacity may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he or she has a terminal condition or is in a persistent vegetative state, and lacks decisional capacity to accept or reject medical or surgical treatment. It shall be the responsibility of the declarant or someone acting for the declarant to provide the declaration to the attending physician or advanced practice nurse for entry in the declarant's medical record.

(2) In the case of a declaration of a qualified patient known to the attending physician to be pregnant, a medical evaluation shall be made as to whether the fetus is viable. If the fetus is viable, the declaration shall be given no force or effect until the patient is no longer pregnant.

(3) (a) A declaration may contain separate written statements regarding the declarant's preference concerning life-sustaining procedures and artificial nutrition and hydration if the declarant has a terminal condition or is in a persistent vegetative state.

(b) The declarant may provide in his or her declaration one of the following actions:

- (I) That artificial nutrition and hydration not be continued;
 - (II) That artificial nutrition and hydration be continued for a specified period; or
 - (III) That artificial nutrition and hydration be continued.
- (4) Notwithstanding the provisions of subsection (3) of this section and [section 15-18-103 \(10\)](#), when an attending physician or advanced practice nurse has determined that pain results from a discontinuance of artificial nutrition and hydration, the physician or advanced practice nurse may order that artificial nutrition and hydration be continued to the extent necessary to provide comfort and alleviate pain.
- (5) A declaration executed before two witnesses by any adult with decisional capacity shall be legally effective for the purposes of this article.

PROPOSED MODIFICATION to only section 5:

(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.

***** Statute modified to be consistent with the proposed modification of 15-18-106.**

(6) A declaration executed pursuant to this article may include a document with a written statement as provided in [section 12-34-105 \(a\), C.R.S.](#), or a written statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S.

(7) A declaration executed pursuant to this article may be combined with a medical power of attorney to create a single document. Such a document shall comply with all requirements of this title and in accordance with the provisions of the "Colorado Patient Autonomy Act", [sections 15-14-503](#) to [15-14-509](#).

(8) A declaration executed pursuant to this article may include a written statement in which the declarant designates individuals with whom the declarant's attending physician, any other treating physician, or another medical professional may speak concerning the declarant's medical condition prior to a final determination as to the withholding or withdrawal of life-sustaining procedures, including artificial nutrition and hydration. The designation of such individuals in the document shall be considered to be consistent with the privacy requirements of the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d to 1320d-8, as amended, referred to in this section as "HIPAA", regarding waiver of confidentiality.

(9) A declaration executed pursuant to this article may include a written statement providing individual medical directives from the declarant to the attending physician or any other treating medical personnel.

HISTORY: Source: L. 2010: Entire article RRE, [\(HB 10-1025\), ch. 113, p. 377, § 1](#), effective August 11.L. 2011: (7) amended, [\(SB 11-083\), ch. 101, p. 317, § 26](#), effective August 10.

ANNOTATION

Law reviews. For article, "Anticipating Disabilities: Voluntary Planning Opportunities in Colorado", see 17 Colo. Law. 437 (1988).

The state's living will statute requires that two physicians must certify as to a patient's incapacitation for a period of seven consecutive days before such patient's declaration regarding medical treatment can be given effect. *The Living Will Center v. NBC Subsidiary (KCNC-TV), Inc.*, 857 P.2d 514 (Colo. App. 1993) (decided prior to 2010 repeal and reenactment).

CBA TRUST & ESTATE SECTION
STATUTORY REVISIONS COMMITTEE

Subcommittee Composition and Connections

A. At Inception of Subcommittee.

1. Initial Subcommittee Chairs and Members.

Please consider soliciting the participation of T&E Section members who may have a perspective that is not otherwise represented on the Subcommittee.

Bette Heller,
Carolyn Wiley,
Gordon Williams,
Lori Kalata,
Darla Daniel,
Lisa Wilcox,
Lindsay Andrew.

2. Please review the list of CBA Sections and Committees attached to this form and identify those that may have some interest in the subject or results of your Subcommittee's work.

Not sure yet if any other section will be impacted.

Probably Elder Law – will contact them once the sub-committee is approved and ask if any of their members are interested in joining.

3. Please consult with the CBA's Legislative Liaison (Jeremy Schupbach) and note any other legislative efforts within or outside the CBA that may be related to or affected by your Subcommittee's work.

Will do once there is a replacement for Jeremy. In meantime will consult with Amy Redfern

COLORADO BAR ASSOCIATION COMMITTEES

ACCESS TO JUSTICE COMMISSION
AMICUS BRIEF COMMITTEE
ANIMAL LAW COMMITTEE
AWARDS COMMITTEE
BUDGET COMMITTEE
CANNABIS LAW COMMITTEE
COLORADO BAR LEADERSHIP TRAINING COMMITTEE (COBALT)
COMMITTEE FOR BALANCED LEGAL CAREERS
DIVERSITY IN THE LEGAL PROFESSION COMMITTEE
ENVIRONMENTAL SUSTAINABILITY COMMITTEE
ETHICS COMMITTEE
INTERPROFESSIONAL COMMITTEE
JOINT MANAGEMENT COMMITTEE
LAWYERS' PROFESSIONAL LIABILITY COMMITTEE
LEGAL FEE ARBITRATION COMMITTEE
LEGISLATIVE POLICY COMMITTEE
MOCK TRIAL COMMITTEE
MODERN LAW PRACTICE INITIATIVE
NOMINATING COMMITTEE
PLANNING AND BUDGET COMMITTEE
PROFESSIONALISM COORDINATING COUNCIL
SPANISH LAWYERING COMMITTEE
TRANSITIONS COMMITTEE

COLORADO BAR ASSOCIATION SECTIONS

AGRICULTURE LAW SECTION

ALTERNATIVE DISPUTE RESOLUTION SECTION

BUSINESS LAW SECTION

Antitrust Subsection

Bankruptcy Subsection

E-Commerce Law Subsection

Financial Institutions Subsection

Franchise Law Subsection

International Transactions Subsection

Law School Liaisons

Mergers & Acquisitions Subsection

New Lawyers Subsection

Nonprofit Entities Subsection

Privately Held Businesses Subsection

Securities Subsection

CIVIL RIGHTS SECTION

COMMUNICATIONS & TECHNOLOGY SECTION

CONSTRUCTION LAW SECTION

CRIMINAL LAW SECTION

DISABILITY LAW SECTION

ELDER LAW SECTION

ENVIRONMENTAL LAW SECTION

FAMILY LAW SECTION

GOVERNMENT COUNSEL SECTION

HEALTH LAW SECTION

IMMIGRATION SECTION

INTELLECTUAL PROPERTY SECTION

INTERNATIONAL LAW SECTION

JUDICIAL LIAISON SECTION

JUVENILE LAW SECTION

LABOR & EMPLOYMENT LAW SECTION

LITIGATION SECTION

MILITARY AND VETERANS' AFFAIRS SECTION

NATURAL RESOURCES AND ENERGY LAW SECTION

REAL ESTATE SECTION

SOLO SMALL FIRM SECTION

SPORTS & ENTERTAINMENT LAW SECTION

TAXATION LAW SECTION

TRUST & ESTATE SECTION

WATER LAW SECTION

WORKERS' COMPENSATION SECTION

YOUNG LAWYERS DIVISION

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

September 4, 2019

1. Introductions

Chair Molly Zwerdinger called the meeting to order at 1:38p.m. There were introductions from those in attendance and on the phone/online (Clara Brown Schaffer and Kelly Copper).

2. Approval of August 7, 2019 Minutes

The minutes from the August 7, 2019 meeting were unanimously approved.

3. Announcements

There will be no change to SRC meeting dates. Future meetings will have the table set in a round-table configuration. Please help breakdown the room after our meeting.

4. Legislative Report

The legislative report was given by Amy Redfin-Larson, COO of the Colorado Bar Association. Jeremy Schupbach is no longer with the CBA and the CBA will be hiring a new legislative liaison. The CBA will work hard to eliminate any gaps in coverage and the legislative team that supported Jeremy is still in place. We will still be able to move forward with bills but the sooner we are ready, the better it will be.

5. SRC Approved Proposals

a. Active Matters - Work to Finalize Required

(i) UTC Subcommittee (Connie Eyster, Co-Chair)

The subcommittee discussed sections 5.03 and 5.05 and should be able to present to SRC around December.

(ii) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Frank Hill)

The bill as it was originally proposed is now on the website. This active matter will remain on the agenda as a reminder to use the original bill's language regarding included categories in the future.

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

None at this time.

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

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

No report at this time.

b. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)

No report at this time.

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

No report at this time.

d. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda)

The subcommittee is making good progress on Section 4.

e. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Brooke Brestel)

No report at this time.

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

No report at this time.

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

The subcommittee held their second meeting and discussed the definitions section and general philosophy. There was discussion on how this would affect the Abandoned Estate Planning Documents Act.

h. Witness Requirements in Advanced Directives (Carl Stevens)

A question of whether the new witness requirements can be applied retroactively was presented to Carl Stevens. Carl will take this question back to the subcommittee for review and will come back next month with an answer.

7. **Inactive Matter**

None at this time.

8. **Report from Elder Law Section**

None at this time.

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

There is a formal ethics opinion on conflicts of interest that will come out in a month or two that may affect our section.

10. **New Matters**

a. **Changes to Conservator's Report (Lindsay Andrew)**

The proposal to create this subcommittee was passed unanimously. If you are interested in joining, please contact Lindsay Andrew. They already have draft language and would like to bring it to SRC for a vote in October or November.

b. **Psychiatric Advance Directive (Jonathan Culwell)**

No report at this time.

c. **Statutory changes in response to Feldman Ruling (Kathy Seidel)**

No report at this time.

d. **Uniform Probate Code Update (Bette Heller)**

Would like to create a subcommittee to review changes to the Uniform Probate Code before the Uniform Law Commission brings the changes to the legislature. The changes are already in final form from UPC. If you are interested in joining, please contact Bette Heller.

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)**

Gordon Williams will present to Executive Council

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

Molly Zwerdinger adjourned the meeting.

Respectfully submitted,
/s/ Lauren Da Cunha

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

October 2, 2019

- 1. Introductions**
- 2. Approval of September 4, 2019 Minutes**
- 3. Announcements**
 - Please rearrange tables when meeting is over
- 4. Legislative Report**
- 5. SRC Approved Proposals**
 - a. Active Matters - Work to Finalize Required**
 - (i) UTC Subcommittee (Connie Eyster, Co-Chair)
 - (ii) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Frank Hill)
 - b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**
- 6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees**
 - a. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**
 - b. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)**
 - c. ADR Legislation (C. Jean Stewart, Chair)**
 - d. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspahn, Chair and Georgine Kryda)**
 - e. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Brooke Brestel)**
 - f. Child Support in Probate Subcommittee (Pat Mellen, Chair)**
 - g. Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**

- h. Witness Requirements in Advanced Directives (Carl Stevens)**
 - i. Changes to Conservator's Report (Lindsay Andrew)**

- 7. Inactive Matters**

- 8. Report from Elder Law Section**

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

- 10. New Matters**
 - a. Psychiatric Advance Directive (Jonathan Culwell)**
 - c. Statutory changes in response to Feldman Ruling (Kathy Seidel)**
 - d. Uniform Probate Code (UPC) 2019 Revisions (Bette Heller)**

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