

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

MINUTES

Colorado Commission on Uniform State Laws

October 20, 2015, 10:00 a.m.

Committee Room: HCR 0112

1. Roll was taken and Commissioner Keyser was excused. Commissioners Gardner, Grimshaw, Levy, Mielke, Morris, Pike, Shaffer, Steadman, and McGihon were present.
2. Proposed 2016 legislative agenda
 - a. **Uniform Fiduciary Access to Digital Assets, LLS 16-0126.** *Victoria Bantz, CBA Business Law Section*, stated that the section and the CBA Trusts & Estates Section are close to finalizing some of the applicability language in the act. The commission discussed concerns raised in an Independent Bankers letter received by the CCUSL and suggested that these concerns may be addressed by publishing the Uniform Law Commission's (ULC) comments with the act. *Steve Brainerd, CBA Trusts and Estate Section*, concurred with Ms. Bantz regarding the finalization of language changes. He added that the language changes will also need to be signed off on by the CBA Legislative Policy Committee. *Stanley Kent, former CCUSL Commissioner and member of the act's drafting committee*, stated that there seems to be some misunderstanding regarding what this act currently does, possibly due to the previous version of the act being referenced. The current act allows a fiduciary access to digital information only with the user's authorization. It allows the fiduciary to discover that the user may have digital assets, but not specific information about those assets unless permission has been given.
 - b. **Uniform Voidable Transactions Act Amendments (2014), LLS 16-0127.** *Andy Toft, CBA Real Estate Section*, indicated that the section remains concerned with sections 10 (governing law) and 11 (series organizations) and illustrated his concerns with an example case. The commission asked questions regarding choice of law and discussed some alternate choice of law language for the section to consider. *Victoria Bantz, CBA Business Law Section*, stated that this section is aligned with the CBA Real Estate Section regarding their objections to sections

10 and 11 of the act. This section is concerned that the series organization provisions could create de facto law or other application inconsistencies with other states. The commission asked how series organizations from other states are currently handled under Colorado law and whether there is suggested language to address application inconsistencies.

- c. **Uniform Recognition of Substitute Decision-Making Documents Act, LLS 16-0128.** *Stanley Kent, former CCUSL Commissioner and testifying for himself*, proposed that Colorado enact only the medical decision-making portion of the act as Colorado already has uniform laws enacted regarding financial powers. *Steve Brainerd, CBA Trusts and Estate Section*, stated that the section has some concerns regarding enforcement of current documents versus documents created under this act. He also indicated that, based on feedback that the section has received, health care facilities are not aware of any current problems with the recognition of medical documents. The commission consensus was to only pursue the medical documents portion of the act and verified with the CBA Representatives present that the CBA Trusts and Estates, Business Law, and Real Estate sections do not oppose the uniform act as long as it does not include financial documents. *Jeremy Schupbach, CBA Director of Legislative Relations*, added that the sections of the bar practicing in health law may have objections to the act.
- d. **Revised Uniform Athlete Agents Act, LLS 16-0129.** There was no public testimony on this act. The commission explained that this act would repeal the former uniform act and include the revised act in existing statute. In addition, there should be a legislative note regarding the enactment of the uniform law and the application of compact provisions.
- e. **Uniform Commercial Real Estate Receivership Act, LLS 16-0131.** *Charles Calvin, CBA Real Estate Section*, reported that the section continues to have concerns regarding some of the powers granted in the act and that the act may create a second layer of time and expense. However, there are some provisions in the act that could be useful in Colorado. The commission asked if this act was preferable to having no guidance for courts regarding receiverships. Colorado courts have commented on the lack of guidance in the statutes for such cases and other states have adopted laws to make this area of law fairer. In addition, the comments portion of the act includes examples that would make the application of the law clearer. There was also some discussion of enacting portions of the act versus the entire act.
- f. **Revised Uniform Residential Landlord and Tenant Act, LLS 16-0132.** *Erin Goff, on behalf of the Colorado Apartment Association*, read a letter from the association illustrating its concerns and stating its opposition to this uniform act.

Jeremy Schupbach, CBA Director of Legislative Relations, summarized the CBA Real Estate Section's concerns with adopting new laws that conflict with current laws. *Charles Calvin, CBA Real Estate Section*, indicated that the section is working on an analysis of how this act would change Colorado law. The section does not necessarily object to the act, but does want to be completely aware of what it changes. The commission expressed interest in seeing the final analysis and proceeding from there and discussed enacting portions of the act versus the entire act.

- g. **Uniform Trust Decanting Act, LLS 16-0133.** *Jessica Broderick, CBA Trusts & Estates Section*, reported that the section is working on minor language changes to help the act better conform to Colorado law. The section expects to finish in time for the 2016 Session, but is also working with other bar sections and there may yet be more substantial issues to consider. *Marie Moses, CBA Family Law Section*, stated the section does not want the fact that decanting is allowed to change the property nature of certain trusts in dissolution of marriage proceedings or be used as a divorce planning tool to remove property from the marital estate, and are working on solutions to these concerns. *Stanley Kent, former CCUSL Commissioner and testifying for himself*, concurred with CBA comments regarding this act being ready for the 2016 Session and is working with the Family Law Section to address concerns without affecting longstanding trust law.
- h. **Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, LLS 16-0134.** *Marie Moses, CBA Family Law Section*, reported that the section likes this act but is concerned that the act allows the police to make an arrest without verifying the protection order. Current Colorado law requires police officers to see the protection order or an electronic copy and the section does not want Canadian orders to be treated different from Colorado orders. In addition, the section suggests that, for Colorado, the optional section F would be a good inclusion into the act. The commission asked if there was a CBA language preference for section 5, regarding the registration of Canadian orders. Ms. Moses was not aware of any preference but would check with the section and report back to the commission.

3. **Next CCUSL meeting.** The next meeting will be on Monday, November 30, at 1:00 p.m.

4. **Other business and public comment.** The commission discussed making the inclusion of the Uniform Law Commission (ULC) comments the standard policy on all uniform acts. Commissioner Morris moved that uniform law bills include a section directing the Revisor of Statutes to print ULC comments unless there was specific direction to do otherwise. The motion passed without objection.