



Probate and Trusts and Fiduciaries

During the 2019 legislative session, the General Assembly considered a number of measures related to estate documents, public guardians, and trusts.

Electronic Access to Estate Documents

Historically, a person's estate documents (i.e. a will or trust, beneficiary and guardianship designation, durable power of attorney, advanced medical directive) were stored in a folder at an office or home. Currently, many of these records are instead digitized, and in the absence of organizing and centralizing these accounts, accessing or finding them has proven to be difficult for family members and other professionals. Two measures enacted in the 2019 legislative session created centralized document management systems specifically for abandoned estate documents and advanced medical directives.

House Bill 19-1229 created the "Colorado Electronic Preservation of Abandoned Estate Planning Documents Act." Specifically, it outlines a procedure to determine if an original estate planning document is abandoned by its creators, and, if so, the process to create an electronic planning document. The State Court Administrator within the Judicial Department is charged with developing guidelines related to access, storage, and the deletion of these documents.

Health care providers often need to quickly access advanced medical directives in emergency or transition-of-care situations, and *Senate Bill 19-073* creates a statewide registry for this purpose. Specifically, the bill requires the Department of Public Health and Environment to create and administer the system, promulgate related rules, and contract with a health organization for this service. It also places the responsibility on the individual to upload personal directives to the system, and provides civil or criminal immunity for health care personnel for actions that comply with the advanced medical directive.

Office of Public Guardianship

A public guardian is a court-appointed surrogate or decision-maker for an incompetent or incapacitated person when no private person or agency is available to act in that capacity. Many states have a state-funded office to perform these functions, and Colorado established an Office of Public Guardianship (OPG) in 2017 as a pilot program in certain judicial districts. However, the implementation of the pilot program was conditional upon securing \$1.75 million in gifts, grants, and donations. Fund-raising for this purpose proved to be difficult, and *House Bill 19-1045* removes the requirement that the OPG wait to carry out duties of the office until it receives the specified amount in gifts, grants, and donations. The bill allows OPG to begin operating in the Second Judicial District

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(Denver) when it receives sufficient funding to begin operations in that district alone. Finally, the bill creates a partial funding source by increasing probate fees.

Directed Trusts

In a directed trust, a person other than the trustee is allowed or has been hired to administer some aspect of the trust, such as investment management or disbursement of distributions to beneficiaries. While directed trusts are not new to Colorado, they are increasingly used across the state. As a result, a number of legal concerns have been raised about the lack of guidelines and safeguards in regard to the division of authority between the involved parties. *Senate Bill 19-105* creates a "Colorado Uniform Directed Trust Act," which defines fiduciary duties, provides rules that govern information sharing, addresses errors and oversights in existing laws, and includes provisions concerning judicial proceedings.