

Uniform Law Commission Acts (And Amendments To ULC Acts) Completed In 2008

The Revised Uniform Unincorporated Nonprofit Association Act

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996), addressed a key problem in common law – that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many characteristics of a business partnership. The 1996 Uniform Act reformed the common law in three basic areas – authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Act improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The revised act extends nature of unincorporated nonprofit associations as distinct entities by allowing qualified association to exist in perpetuity where necessary or convenient to carry out its purposes. The RUUNAA distinguishes itself from its predecessor in that it greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, the RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, the RUUNAA modernizes the 1996 Uniform Act by addressing popular internal and external issues that would face an unincorporated nonprofit association today. Significantly, the project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adopt of the revised act will have the added benefit of functional cross-border harmonization.

Uniform Unsworn Foreign Declarations Act

The Uniform Unsworn Foreign Declarations Act, promulgated by the Uniform Law Commission at its Annual Meeting in 2008, affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and may not have access to a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the Act provides a model form that unsworn declarations must substantially follow. Under the Act, unsworn declarations could not be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. This project was initiated at the request of the ABA, which referred this issue to NCCUSL in Report 110, adopted by the House of Delegates on February 13, 2006.

2008 Amendments to the Uniform Common Interest Ownership Act (and) the Uniform Common Interest Owners' Bill of Rights Act

The 2008 amendments to the Uniform Common Interest Ownership Act (UCIOA) update and revise the 1994 version of the act. The original 1982 version of UCIOA had previously been adopted in five jurisdictions, and the 1994 revised version in two. This act contains provisions for the formation, management, and termination of any common interest community, including condominiums, planned communities, and real estate cooperatives.

The 2008 UCIOA amendments seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. Importantly, UCIOA gives greater flexibility to association governing boards with regard to enforcement of the declaration, bylaws, and rules of the association. The 2008 amendments also modernize UCIOA with respect to electronic commerce and

practice.

In addition to amendments to UCIOA, a new Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA) was also drafted that can be enacted by states as part of UCIOA or as a stand-alone act. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 act.

2008 Amendments to the Uniform Interstate Family Support Act

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments, approved by the Uniform Law Commission, serve as the implementing language for the Convention within U.S. States and Territories.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction by 2010, as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments by 2010 will result in the loss of this important federal funding.

2008 Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC), which is fully adopted in 19 states (and partially adopted as various stand-alone acts in many others) provides an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records, and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate inheritance rights to a broader group of potential heirs based on the existence of a “parent-child relationship” as defined therein. This last change significantly modernizes the UPC’s treatment of non-marital children (and children of new forms of marriage), adoptive children, and children of assisted reproduction. Finally, the process and standards under which a will can be reformed or corrected are clarified to be consistent with the Restatement (Third) of Property: Wills and other Transfers, and the Uniform Trust Code.

2008 Amendments to the Uniform Principal and Income Act

The Uniform Law Commission, in July 2008, approved a set of two amendments to the Uniform Principal and Income Act that update the act to current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy a 2006 IRS ruling regarding marital deductions. The new language comports with the ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to Section 505, which addresses the amount of money which must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.

Current ULC Drafting and Study Committee Projects

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UNIFORM LAW COMMISSION

Drafting Committee on a Certificate of Title Act for Boats (new)

E.M. Miller, **Chair**, 910 Capitol St., 2nd Fl., Richmond, VA, 23219
David McIntosh Williams, **ABA Advisor**, Business Law Section

This committee will draft an act establishing a certificate of title system for boats. Many states do not have certificate of title laws governing watercraft, and those that do have considerable differences in terms. The committee will coordinate its work with the United States Coast Guard and developments concerning the Coast Guard's vessel identification and documentation systems.

Joint Review Committee for UCC Article 9 (new)

Edwin E. Smith, **Chair**, Bingham McCutchen LLP, 150 Federal Street, 21st Floor, Boston, MA 02110
Stephen L Sepinuck, **ABA Advisor**, Business Law Section, additional section advisor John Francis Hilson (Business Law)

This joint ALI/ULC committee will draft specific revisions of UCC Article 9 to address specific issues that a study committee has already identified as needing statutory revision. The issues that the committee will address are those as to which ambiguities have been discovered in existing statutory language, where there have been substantial problems in practice in applying current statutory provisions, or as to which there have been significant judicial decisions or non-uniform amendments that suggest the need to consider statutory revisions.

Drafting Committee on a Presidential Electors Act (new)

Susan Kelly Nichols, **Chair**, NC Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629
John Hardin Young, **ABA Advisor**, Administrative Law Section

This committee will draft an act providing a state statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state.

Committee to Implement the UN E-Commerce Convention (new)

Henry Deeb Gabriel, Jr., **Chair**, 526 Pine St., New Orleans, LA 70118
Thomas J Smedinghoff, **ABA Advisor**, Science and Technology Section

The E-Commerce Convention impacts the Uniform Electronic Transactions Act and the federal E-Sign legislation. This committee will recommend the most appropriate methods for implementing the Convention, including whether any federal or uniform state legislation is necessary, and then will work with the United States Departments of State and Commerce, and other interested entities, in preparing any necessary uniform state or federal legislation and in seeking to obtain United States Senate advice and consent to the Convention.

Drafting Committee on Electronic Recordation of Custodial Interrogations (1st meeting)

David A. Gibson, **Chair**, P.O. Box 1767, Brattleboro, VT 05302
Paul Giannelli, **ABA Advisor**, Criminal Justice Section

This committee will draft an act addressing the issue of the use of audio and/or video electronic devices to record law enforcement officers' interviews of criminal suspects who are in custody.

Drafting Committee to Revise the Uniform Law on Notarial Acts (1st meeting)

Patricia Brumfield Fry, **Chair**, University of Missouri-Columbia School of Law, Missouri Ave. & Conley Ave., Columbia, MO 65211

James C. Wine, **ABA Advisor**, Real Property, Trust and Estate Law Section; additional section advisor from Science and Technology (David Ewan)

The purpose of this drafting committee is to revise the 1982 Uniform Law on Notarial Acts. The charge is limited to drafting revisions with respect to notary responsibilities, electronic recording, interstate recognition, and remedies.

Drafting Committee on the Regulation of Charities (1st meeting)

K. King Burnett, **Chair**, P.O. Box 910, Salisbury, MD 21803-0910

Betsy Buchalter Adler, **ABA Advisor**, Section of Taxation; additional section advisor from Real Property, Trust and Estate Law (Susan N. Gary)

This committee will draft an act to address the state regulation of charities. The committee will focus on state attorneys general authority with regard to the protection of charitable assets, notice requirements, remedies, and principles to guide attorneys general in interstate and multi-state cases.

Drafting Committee on a Relocation of Children Act (stakeholder meeting planned)

Debra H. Lehrmann, **Chair**, Family Law Center, 200 E. Weatherford St., Civil Courts Bldg., 4th Floor, Fort Worth, TX 76196-0282

Joseph W. Booth, **ABA Advisor**, Family Law Section; additional section advisor from Litigation (Ann Barker)

This committee will draft an act on the relocation of children from one jurisdiction to another in the context of custody disputes. Relocation involves a parent who wants to move with a child over the objections of the other parent; it is one of the fastest-growing kinds of custody litigation in the country.

Drafting Committee on a Business Organizations Act

Timothy Berg, **Chair**, 3003 N. Central Ave., Suite 2600, Phoenix, AZ 85012

William H. Clark, Jr., **ABA Chair**, (joint project w/ **Business Law**)

The purpose of this committee is to draft common provisions of business organization law such as definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; and administrative powers of the Secretary of State; and incorporate Model Entity Transactions Act provisions on merger, interest exchanges, conversions, domestications and divisions.

Drafting Committee on a Collaborative Law Act

Peter K. Munson, **Chair**, 123 S. Travis St., Sherman, TX 75090

Carlton D. Stansbury, **ABA Advisor**, Family Law; additional section advisors from Section of Dispute Resolution (Lawrence R. Maxwell, Jr.), Litigation (Charla Bizios Stevens), and Family Law (Gretchen Walther)

This committee will draft an act on collaborative law, a new kind of alternative dispute resolution framework used in many states today, particularly in a family law context, i.e., divorce, custody, and support proceedings. The core idea is that lawyers (and parties) to a dispute agree in advance that the lawyers will withdraw if the dispute goes to trial. The committee will also consider whether the act should be limited to family law cases or expanded to other areas of the law such as estate planning.

Drafting Committee on a Uniform Act on the Collateral Consequences of Conviction

Richard T. Cassidy, **Chair**, 100 Main St., P.O. Box 1124, Burlington, VT 05402

Margaret C. Love, **ABA Advisor**, Criminal Justice Section; additional section advisors from Business Law (Thomas Earl Patton), Taxation (Charles M. Ruchelman), and Judicial Division (Rodger Drew)

This committee is drafting a statute addressing the various penalties and disqualifications that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, etc. The act is intended to be narrow in scope, applying only to the procedures surrounding collateral sanctions, not defining or limiting what those sanctions are.

Drafting Committee on the Hague Convention on Choice of Court Agreements

Rex Blackburn, **Chair**, P.O. Box 70 (83707), 1221 W. Idaho St., Boise, ID 83702
Keith McLennan, **ABA Advisor**, General Practice Solo, and Small Firm Section

This drafting committee, at the request of the U.S. State Department, will draft uniform state legislation and appropriate declarations and understandings to assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements.

Drafting Committee on Insurable Interests Relating to Trusts Act

Roger C. Henderson, **Chair**, 1201 Speedway, P.O. Box 210176, Tucson, AZ 85721
David S. Neufeld, **ABA Advisor**, Real Property, Trust and Estate Law Section; additional section advisor from Taxation (Donald O. Jansen)

This committee will draft an act to address concerns regarding the purchase of life insurance trusts by trustees as it relates to insurable interest law. Life insurance trusts are a standard estate planning tool because proceeds of an irrevocable life insurance trust are not subject to estate taxes. Recent case law has raised the possible need for uniform law on insurable interests. The scope of the project is narrow and might be drafted within the Uniform Trust Code or as a free-standing act.

Drafting Committee on a Genetic Information in Employment and Insurance Act

D. Joe Willis, **Chair**, 549 SW Mill View Way, Suite 100, Bend, OR 97702
Robyn S. Shapiro, **ABA Advisor**, Individual Rights and Responsibilities Section; additional section advisor from Science and Technology (Roger L. Jansson)

This committee will draft uniform or model legislation on the misuse of genetic information in the context of employment and health insurance.

Drafting Committee to Revise the Model State Administrative Procedure Act

Francis Pavetti, **Chair**, 18 The Strand, Goshen Point, Waterford, CT 06385
Ronald M. Levin, **ABA Advisor**, Administrative Law; additional section advisors from National Conference of Administrative Judiciary (Edward J. Schoenbaum), State and Local Government (Rose Mary Bailly), and Judicial Division (Edwin L Felter, Jr., and Larry Craddock)

This committee is revising the 1980 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated.

Drafting Committee on a Record Owners of Business Act

Harry J. Haynsworth, IV, **Chair**, 2200 IDS Center, Minneapolis, MN 55402
Allan G. Donn, **ABA Advisor**, Business Law Section; additional section advisors from Business Law (Eric Feldman) and Real Property, Trust and Estate Law (Robert R. Keatinge)

This committee will draft an act to conform uniform entity laws, including the Uniform Partnership Act (1997), Uniform Limited Partnership Act (2001), Uniform Limited Liability Act (2006) and the Uniform Unincorporated Nonprofit Association Act (1996), to address the availability of information regarding the owners of entities established under state law. The act would help address some national security concerns relating to companies operating for the purpose of organized crime, terrorist financing, securities fraud, tax evasion and other misconduct, while at the same time balancing important privacy concerns.

Drafting Committee on a Real Property Transfer on Death Act

Nathaniel Sterling, **Chair**, 4180 Oak Hill Ave., Palo Alto, CA 94306

Dennis M. Horn, **ABA Advisor**, Real Property, Trust and Estate Law Section; additional section advisor from Real Property, Trust and Estate Law (Susan N. Gary)

This committee will draft an act that will permit real property to be transferred outside of probate upon death by beneficiary designation, similar to current beneficiary designations now used on securities accounts. At least eight states now permit this kind of real estate transfer on death.

Drafting Committee on a Uniform Statutory Trust Entity Act

Justin L. Vigdor, **Chair**, 2400 Chase Sq., Rochester, NY 14604

Ellisa Opstbaum Habbart, **ABA Advisor**, Real Property, Trust and Estate Law Section; additional section advisors from Business Law (William H. Clark, Jr., and Thomas E. Rutledge)

The business trust format – often used in mutual funds, ERISA pension funds, and various types of regulatory compliance trusts – is increasingly used as an alternative to other business entities such as a corporation and limited partnership. Business trusts are special purpose vehicles, the closest equivalent being limited partnerships. Although there are few business trusts compared to other types of business forms, trillions of dollars of assets are invested in this business format. This committee is drafting an act that will apply to business trusts and other analogous statutory trusts. It will not apply to the kind of trusts used in estate planning.

Drafting Committee on a Partition of Tenancy in Common Real Property Act

Robert L. McCurley, **Chair**, Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL 35486

Phyllis Craig-Taylor, **ABA Advisor**, Litigation Section; additional section advisor from Real Property, Trust and Estate Law Section and State and Local Government (Steven J. Eagle)

The purpose of this committee is to draft a uniform act that will address the issue of tenancy-in-common land ownership. Tenancy in common is a type of joint ownership without right of survivorship. When there is no right of survivorship, the death of a tenant in common can trigger an action to partition the land to satisfy the deceased tenant's heirs. In a partition, the land is sold to satisfy tenant in common interests, often in a sale that does not meet market value. This committee will draft a new law to protect vulnerable landowners by providing a buy-out option; balancing factors for judges on partition of real property; sale price minimums if dispossession occurs; and a waiting period of up to three years for strangers to title.

Joint Drafting Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit

Edwin E. Smith, **Chair**, 150 Federal St., 21st Floor, Boston, MA 02110-1726

Kathryn Sabo, **Canadian Chair**, International Private Law Section, 284 Wellington St., 284 rue Wellington, Ottawa, ON K1A0H8

Elias Mansur, **Mexican Chair**, Socrates 207, Polanco 11560 Mexico City, Mexico

Peter Winship, **ABA Advisor**, International Law Section; additional section advisors from Real Property, Trust and Estate Law (Luis F. Moreno) and Business Law (James E. Byrne)

This committee will work with the American Law Institute, the Uniform Law Conference of Canada and the Mexican Center for Uniform Laws to draft language to implement the UN Convention on Independent Guarantees and Stand-by Letters of Credit, and to assist Canada in developing letter-of-credit law consistent with UCC Article 5. The Convention is designed to facilitate the use of independent guarantees and stand-by letters of credit, in particular where only one or the other of these instruments may be traditionally in use.

STUDY COMMITTEES

Study Committee on Revisions of the Uniform Division of Income for Tax Purposes Act (reconstituted as study committee)

Charles A. Trost, **Chair**, Nashville City Center, 511 Union St., Suite 2700, Nashville, TN 37219
Ethan D. Millar, **ABA Advisor**, Business Law Section, additional section advisor from State and Local Tax Committee
(Stephanie Lipinski Galland)

This committee will study the possibility of revising the Uniform Division of Income for Tax Purposes Act, last amended in 1966. Twenty-five states have adopted UDITPA and a number of others have effectively done so by joining the Multistate Tax Commission. The committee will develop recommendations as to the potential scope of a revision and the feasibility of drafting and enacting such a revision.

Study Committee on a Military Services and Overseas Civilian Absentee Voters Act (new)

Steve Wilborn, **Chair**, 306 Tower Drive, Shelbyville, KY 40065

This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation that would simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient.

Study Committee on Regulation of Financial Institutions and Payment Systems (new)

Fred H. Miller, **Chair**, University of Oklahoma College of Law, 300 Timberdell Road, Norman, OK 73019

This committee will monitor developments at the federal level, particularly with respect to the Federal Reserve Board, Treasury Department, and Congress, concerning the regulation of financial institutions and payment systems, represent the Uniform Law Commission before those entities, present the advantages of maintaining a balance of state and federal regulation in these areas, and make appropriate recommendations concerning possible ULC, or joint ULC/ALI, projects in these areas.

Study Committee on Mental Health Advance Directives (new)

Suzanne Brown Walsh, **Chair**, Cummings & Lockwood, LLC, PO Box 271820, West Hartford, CT 06127

Mental health advance directives are a special type of advance directive often used by persons who have been diagnosed with serious mental disorders. This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation concerning the use and regulation of mental health advance directives.

Study Committee on Model Tribal Legislation on Collateralization of Interests in Real Property

Dale G. Higer, **Chair**, 1302 Warm Springs Ave., Boise, ID 83712 (new)

This committee will investigate the need for and feasibility of drafting model tribal legislation that would enhance the ability to collateralize interests in real property on tribal lands.

Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence (new)

Candace Zierdt, **Chair**, Stetson University College of Law, 1401 61st Street South, Gulfport, FL 33707

This committee, with the advice of the Joint Editorial Board on Family Law, will investigate the need for and feasibility of drafting model tribal legislation concerning child custody and domestic violence issues affecting American Indians.

Study Committee on Authentication of Online State Legal Materials

Michele L. Timmons, **Chair**, Office of the Revisor of Statutes, 700 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul, MN 55155

This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation providing for the authentication of state online legal materials and for the preservation of records of those materials.

Study Committee on Administrative Procedures for Interstate Compact Entities

Francis Pavetti, **Chair**, 18 The Strand, Goshen Point, Waterford, CT 06385

This committee will study administrative procedures for interstate compact entities governed by state, rather than federal law, upon completion of its ongoing project to revise the Model State Administrative Procedures Act.

Study Committee to Revise Model Drug Dependence Treatment and Rehabilitation Act

John J. McAvoy, **Chair**, 3110 Brandywine St., NW, Washington, D.C. 20008

The UDDTRA was approved in 1973 and was intended to complement the Uniform Controlled Substances Act with procedures to substitute treatment for incarceration. The fundamental principle of the act was fostering social and economic reintegration of drug dependent persons into society. The committee will investigate the need for and feasibility of drafting and enacting a revision of the 1973 Act.

Study Committee on Environmental Controls and Hazards Notice Systems

Larry L. Ruth, **Chair**, 530 S.13th St., Suite 110, Lincoln, NE 68508-2820
Roger D. Schwenke, **ABA Advisor**, Real Property, Trust and Estate Law Section

This committee will study the feasibility of an act to include notice of environmental use controls and hazards in existing “one-call” systems (which allow landowners, contractors, and other workers to call prior to breaking ground in order to determine if underground utilities are present).

Study Committee to Revise Uniform Federal Lien Registration Act

William H. Henning, **Chair**, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382

This committee will study the need to revise the Uniform Federal Lien Registration Act to better harmonize the filing requirements for notices of federal liens with those applicable to security interests under UCC Article 9. Security interests and tax liens should be readily discoverable by third parties because lenders and buyers are concerned with both encumbrances. The committee also will monitor proposed federal legislation, such as the proposed federal Tax Lien Simplification Act, and suggest appropriate revisions to such federal legislation to ensure appropriate coordination between federal and existing uniform state legislation.

Study Committee on the 1996 Hague Convention on the Protection of Children

Battle Robinson, **Chair**, 104 W. Market St., Georgetown, DE 19947

This committee will examine, at the request of the U.S. Department of State, whether becoming a party to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded in 1996 under the auspices of the Hague Conference on Private International Law, is in the best interests of the United States and possible mechanisms for its implementation, including amendments to the Uniform Child Custody Jurisdiction and Enforcement Act.

Study Committee on Health Care Information Interoperability

W. Grant Callow, **Chair**, 425 G. St., Suite 610, Anchorage, AK 99501

This Committee will study various state law impediments to the effective exchange of health care information (electronic and otherwise) between and among health care providers, insurers, government entities, and other actors within the health care system, and in coordination with ongoing state and federal efforts in this area will assess whether state statutory reform is needed.