

**REPORT
OF THE ILLINOIS DELEGATION TO
THE NATIONAL CONFERENCE
OF COMMISSIONERS
ON UNIFORM STATE LAWS**



DECEMBER 2016



State of Illinois
LEGISLATIVE REFERENCE BUREAU
112 State House, Springfield, Illinois 62706-1300
Phone: 217/782-6625

December 12, 2016

The Honorable Bruce Rauner
Governor
207 State House
Springfield, Illinois 62706

Dear Governor Rauner:

On behalf of the Illinois delegation to the National Conference of Commissioners on Uniform State Laws, I submit the enclosed annual report for 2016.

Respectfully,

James W. Dodge
Executive Director

Enclosure

Copy to:

President of the Senate
Senate Minority Leader
Secretary of the Senate
Legislative Research Unit
Members of the Legislative Reference
Bureau Board
Illinois Commissioners on Uniform
State Laws

Speaker of the House
House Minority Leader
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Uniform State Laws

STATE OF ILLINOIS
REPORT OF THE ILLINOIS DELEGATION TO
THE NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS (NCCUSL)
December 2016

PREAMBLE

To the Honorable Bruce Rauner, Governor, and members of the Ninety-Ninth General Assembly. The Legislative Reference Bureau, on behalf of the Illinois Commissioners on Uniform State Laws, respectfully submits this annual report.

OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators and other state officials, most are practitioners, judges, and law professors. Uniform law commissioners serve for specific terms and receive no salaries or fees for their work with the ULC.

Commissioners study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The ULC may only propose uniform laws—no uniform law is effective in a state until the state legislature adopts it.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, the ULC is a genuine coalition of state interests. It has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions and has done so with significant success.

HISTORY

On August 24, 1892, representatives from seven states (Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania) met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commissioners in 1988.

Very early on, the ULC became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This,

of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members: former Justices Brandeis, Rutledge and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, and the Uniform Child Custody Jurisdiction and Enforcement Act.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute, the UCC took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the ULC.

Today, the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The ULC arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The ULC has no appointing authority. The ULC, however, does encourage the appointing authorities to consider, among other factors, diversity of membership in their uniform law commissions, including race, ethnicity, and gender in making appointments. The Commission does its best work when the commissioners are drawn from diverse backgrounds and experiences.

PROCEDURES

The ULC is convened as a body once a year. It meets for a period of eight days, usually in late July or early August. In the interim period between these annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the ULC is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, which is composed of the officers, certain ex-officio members, and members appointed by the ULC President. Certain activities are conducted by the standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangement, publication, legislative liaison, and general administrative services for the ULC.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes a small amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an on-going and as-needed basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

ILLINOIS STATUTORY AND OTHER AUTHORITY

Support of the uniformity of legislation is included as a function of the Legislative Reference Bureau. The law provides for a delegation to the ULC consisting of 5 members appointed by the Governor, 4 members appointed one each by the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate, and the Executive Director of the Legislative Reference Bureau, ex-officio. In addition, Section 2.4 of the Constitution of the ULC provides for the election of life members. Commissioners who, for example, have served for at least 20 years may become life members and continue to serve even if not appointed. Section 2.5 of that Constitution requires that each commissioner be a member of the Bar.

ILLINOIS LAW GOVERNING PARTICIPATION IN THE COMMISSION

Section 5.07 of the Legislative Reference Bureau Act:

(25 ILCS 135/5.07) (from Ch. 63, par. 29.7)

Sec. 5.07. Uniform State Laws. The Legislative Reference Bureau shall examine all subjects on which uniformity is desirable with the laws of other states to ascertain the best means to effect uniformity in the laws of the States. The Legislative Reference Bureau shall supervise the participation of the State of Illinois in the National Conference of Commissioners on Uniform State Laws. To represent the State of Illinois on the National Conference of Commissioners on Uniform State Laws, there shall be 9 persons: 5 persons appointed by the Governor and one each by the President of the Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader, who shall hold office for the term of 4 years, respectively, and until their successors are appointed, and the Executive Director of the Legislative Reference Bureau, who shall be an ex-officio member of the National Conference. The Legislative Reference Bureau shall report to the Governor by December 31 of each year, and the Governor shall submit the report to the General Assembly with his or her recommendations, if any, in reference to the report. The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act and paragraph (t) of Section 7 of the State Library Act.

(Source: P.A. 87-918.)

ILLINOIS COMMISSIONERS (year appointed) (appointed by)

Harry D. Leinenweber (1976) (House Republican Leader—life member)
 Howard J. Swibel (1976) (Senate Democrat Leader—life member)
 Michael B. Getty (1977) (House Democrat Leader—life member)
 Thomas J. McCracken, Jr. (1989) (Senate Republican Leader)
 Steven G. Frost (2001) (Governor)
 Dimitri Karcazes (2004) (Governor)
 J. Samuel Tenenbaum (2004) (House Republican Leader)
 James W. Dodge (2011) (ex-officio)
 John G. Mulroe (2013) (Governor)
 Paul Miller (2013) (Governor)
 Susan Snyder (2015) (Governor)

ORGANIZATION AND MEETINGS OF THE ILLINOIS DELEGATION

The Illinois Delegation met in 2016 at the National Conference in Stowe, Vermont. Howard J. Swibel is Chair of the Delegation, and James W. Dodge is Secretary. The National Conference in 2017 will be in San Diego, California.

UNIFORM AND MODEL ACTS ENACTED IN ILLINOIS

As of this writing, the National Conference of Commissioners on Uniform State Laws reports that 115 Uniform and Model Acts have been enacted by the State of Illinois.

FINANCIAL INFORMATION

The expenses of the participation by this State in NCCUSL consist of 2 components. One is the State's allocated contribution to the National Conference of Commissioners on Uniform State Laws, and the other is the expense of attendance at the annual meeting of the conference by the Illinois Commissioners. The combined contribution amount allocated by the NCCUSL to the State of Illinois for Fiscal Year 2016 is \$105,900.

SHORT SUMMARIES OF ULC-APPROVED UNIFORM ACTS AND AMENDMENTS

Note: these summaries indicate Uniform Acts and amendments to Uniform Acts approved for presentation to the States by the Uniform Laws Commission at its annual National Conference for the current year and the preceding years indicated. Information on the enactment of Uniform Acts by the State of Illinois during the 2016 calendar year appears after these summaries as “Illinois Legislative Activity in 2016.”

Complete texts and detailed summaries of listed Acts are available at: www.uniformlaws.org

2016 ACTS AND AMENDMENTS

Uniform Employee and Student Online Privacy Protection Act

Today, most individuals have online accounts of some type. These include social media accounts, bank accounts, and email accounts, among others. Generally, when someone asks for access to the login information for, or content of, a personal online account, an individual is free to say no. But that is less true in the employment and educational contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers’ access to employees or prospective employees’ social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions’ access to students’ or prospective students’ similar online accounts.

Uniform Family Law Arbitration Act

States’ laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act, though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. It is an overlay statute meant to work together with the state’s existing choice-of-law rules and contractual arbitration law.

Revised Uniform Unclaimed Property Act

The ULC first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors. The Revised Act provides a comprehensive and extensive set of revisions, including provisions related to: when property is presumed abandoned; which state has custody of property; the recovery of unclaimed property from states by owners; the powers and responsibilities granted to

state unclaimed property administrators; and the rights of holders to seek administrative and judicial review of examinations conducted by administrators.

Uniform Unsworn Domestic Declarations Act

The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made *outside* the United States. This new Uniform Act permits the use of unsworn declarations made under penalty of perjury in state courts when the declaration was made *inside* the U.S. States that have already enacted the Uniform Unsworn Foreign Declarations Act (UUFDA) should enact this act.

Uniform Unsworn Declarations Act

The Uniform Unsworn Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the boundaries of the United States, and the Uniform Domestic Declarations Act (UDDA), which covers unsworn declarations made inside the U.S.

States that have not enacted the Uniform Unsworn Foreign Declarations Act should enact this Act, which essentially combines both the UUFDA and the UDDA into one comprehensive Act.

Uniform Wage Garnishment Act

Currently, every state has a different wage garnishment law and process. This means that employers who do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If employers make processing errors calculating garnishments, they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms. The UWGA creates a standard system for wage garnishments that is largely removed from the courts, operates efficiently thereby reducing costs, and provides employees with plain-language notification of their rights and obligations as well as providing them with other protections. The UWGA applies only to what is sometimes called a “debt garnishment,” meaning a garnishment by a creditor with a money judgment.

Amendment to Revised Uniform Law on Notarial Acts (2016)

The Amendment to the Revised Uniform Law on Notarial Acts authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio- and video-technologies for real-time communication, and requires the notary to record the interaction. It authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record must not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign country.

2015 ACTS AND AMENDMENTS

The Revised Uniform Athlete Agents Act (2015)

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

The Uniform Commercial Real Estate Receivership Act

Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.

The Revised Uniform Fiduciary Access to Digital Assets Act (2015)

A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person’s best interest. Common types of fiduciaries include executors of a decedent’s estate, trustees, conservators, and agents under a power of attorney. The Revised Uniform Fiduciary Access to Digital Assets Act (2015) is an update of the 2014 Uniform Fiduciary Access to Digital Assets Act, and extends the traditional power of a fiduciary to manage tangible property to include management of a person’s digital assets. The Act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, in the same manner as more traditional forms of property, but restricts a fiduciary’s access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

The Uniform Home Foreclosure Procedures Act

The recent wave of residential foreclosure actions revealed flaws in the foreclosure system, particularly in states where court systems were overwhelmed. The Uniform Home Foreclosure Procedures Act provides a balanced set of rules and procedures to standardize and streamline the foreclosure process. The Act protects homeowners by requiring adequate notice and documentation before a foreclosure action can proceed. The Act protects lenders by precluding contrary municipal ordinances and expediting foreclosure of abandoned properties. Finally, the Act includes rules for pre-foreclosure resolutions and negotiated transfers to encourage non-judicial solutions.

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against

victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act. By this Act, enacting states accord similar recognition to protection orders from Canada.

The Revised Uniform Residential Landlord and Tenant Act (2015)

The Revised Uniform Residential Landlord and Tenant Act is an updated version of the Uniform Residential Landlord and Tenant Act, which was first promulgated in 1972 and last amended in 1974. The purpose of the original Act was to eliminate all elements of outmoded common law from the landlord-tenant relationship and base all phases of the rental agreement on contract law. The Revised Act includes new articles covering the disposition of tenant property, lease termination in case of domestic violence or sexual assault, and security deposits. The Revised Act also includes an appendix for states that only want to enact the updated provisions.

The Uniform Trust Decanting Act

“Decanting” is the term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the intent of the settlor (the creator of the trust). The Uniform Trust Decanting Act allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The Act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

2014 ACTS AND AMENDMENTS

The Uniform Fiduciary Access to Digital Assets Act

The Uniform Fiduciary Access to Digital Assets Act is an important update for the Internet age. A generation ago, files were stored in cabinets, photos were stored in albums, and mail was delivered by a human being. Today, we are more likely to use the Internet to communicate and store our information. This act ensures account-holders retain control of their digital property and can plan for its ultimate disposition after their death. Unless the account-holder instructs otherwise, legally appointed fiduciaries will have the same access to digital assets as they have always had to tangible assets, and the same duty to comply with the account-holder’s instructions.

The Uniform Recognition of Substitute Decision-Making Documents Act

The Uniform Recognition of Substitute Decision-Making Documents Act is a joint endeavor of the Uniform Law Commission and the Uniform Law Conference of Canada. The project was undertaken to promote the portability and usefulness of substitute decision-making documents for property, health care, and personal care, without regard to whether the documents are created within or outside of the jurisdiction where a substitute decision is needed. Common examples of substitute decision-making documents include powers of attorney and proxy delegations for personal decision making.

2014 Amendments to the Uniform Voidable Transactions Act

The Uniform Voidable Transactions Act, formerly named the Uniform Fraudulent Transfer Act, strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. The 2014 amendments to the Uniform Voidable Transactions Act address a small number of narrowly-defined issues, and are not a comprehensive revision of the act.

2014 Amendments to the Uniform Common Interest Ownership Act

The 2014 amendments to Section 3-116 of the Uniform Common Interest Ownership Act are narrowly focused, and concern only the six-month "limited priority" lien for unpaid common expense assessments owed to community associations.

2013 ACTS AND AMENDMENTS

The Uniform Act on Prevention of and Remedies for Human Trafficking

The 2013 Uniform Act on Prevention of and Remedies for Human Trafficking is a comprehensive new law directed against human trafficking. The federal Trafficking Victims Protection Act of 2000 identifies two primary forms of human trafficking: sex trafficking and labor trafficking. The Uniform Act provides the three components necessary for ending human trafficking: comprehensive criminal provisions; provisions for victim services; and the establishment of a coordinating body to help government and non-government organizations coordinate their human trafficking activities. A comprehensive uniform act will enable federal, state, and local agencies to better identify victims, provide needed services, and facilitate prosecution.

The Uniform Powers of Appointment Act

The objective of the 2013 Uniform Powers of Appointment Act is to codify the law of powers of appointment. A power of appointment is the authority, acting in a non-fiduciary capacity, to designate recipients of beneficial ownership interests in, or powers of appointment over, the appointive property. An owner, of course, has this authority with respect to the owner's property. By creating a power of appointment, the owner typically confers this authority on someone else. The power of appointment is a staple of modern estate-planning practice.

The Harmonization of Business Entity Acts

The objective of the 2013 Harmonization of Business Entity Acts is to harmonize, to the extent possible, the language in the ULC's business entity acts (including the Model Entity Transactions Act, Uniform Partnership Act, Uniform Limited Partnership Act, Uniform Limited Liability Company Act, Uniform Statutory Trust Entity Act, Uniform Limited Cooperative Associations Act, Uniform Unincorporated Nonprofit Association Act, and the Model Registered Agents Act) so that the language in the provisions that are common in one or more of the acts are identical. Amendments to the various Business Entity Acts include some technical corrections which need to be made since the Harmonization of Business Entity Acts' initial promulgation in 2011.

2013 Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings

The 2013 Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Pertaining to International Proceedings were drafted as part of the effort to implement the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children. Although the ULC approved the Amendments to the UCCJEA Pertaining to International Proceedings at its annual meeting in 2013, because federal implementing legislation has not yet been drafted, the ULC does not intend to present the Amendments for state enactment at this time.

2012 ACTS AND AMENDMENTS

The Uniform Asset Freezing Orders Act

The 2012 Uniform Asset Freezing Orders Act creates a uniform process for the issuance of asset freezing orders, which are *in personam* orders freezing the assets of a defendant, and imposing collateral restraint on nonparties such as the defendant's bank, in order to preserve assets from dissipation, pending judgment. The Act provides clarity in the aftermath of the U.S. Supreme Court's decision in Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999), which called into question the viability of asset-freezing orders. In the wake of that decision, some state supreme courts concluded that courts in their state lacked the authority to issue asset freezing orders, while at least one state supreme court concluded the opposite. This Act is designed to remedy this current lack of uniformity on the question of whether courts have the power to issue and recognize asset-freezing orders by providing states with a uniform act that authorizes the issuance of asset-freezing orders and provides for the recognition and enforcement of asset-freezing orders by other states and courts outside the United States.

Uniform Deployed Parents Custody and Visitation Act

The 2012 Uniform Deployed Parents Custody and Visitation Act addresses the difficult child custody issues raised by the deployment of service members that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort and can impact the ability for service members to complete assigned missions. The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act ("SCRA"), which governs the general legal rights of a deploying service member. Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings. Such stays are mandatory only for the first 90 days after deployment. After that time passes, entry of such stays are discretionary and are often overridden by the interests of the affected children in having custody issues resolved. While some states have attempted to address these problems, the current situation varies considerably among states when it comes to the treatment of deploying parents, with deploying parents being at times penalized for their service without clear gains for their children. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that custody issues relating to the child of a service member will involve two or more states.

Uniform Manufactured Housing Act

The 2012 Uniform Manufactured Housing Act gives clarity to the often confusing status of manufactured homes as person or real property, by providing that manufactured homes are personal property until the owner follows a simple procedure to reclassify the home as real property: 1) “locate” the home on a particular parcel of land, and 2) file a certificate of location with the county recorder’s office in the county where the home is located. By definition, the home is “located” when the towing hitch, wheels, and axles have been removed, and the home is connected to utilities. If the home is subsequently moved, it becomes personal property by operation of law, and the owner is required to file a certificate of relocation with the same recorder’s office.

Premarital and Marital Agreements Act

Currently every state allows at least some divorce-focused premarital agreements to be enforced, though the standards for regulating those agreements vary greatly from state to state. The Uniform Premarital Agreement Act was promulgated in 1983, and has been adopted by twenty-six jurisdictions. The 2012 Uniform Premarital and Marital Agreements Act replaces the 1983 Act, and brings clarity and consistency regarding the enforceability and interstate recognition of a range of agreements between spouses and those who are about to become spouses. The focus of the 2012 Act is on agreements that purport to modify or waive rights that would otherwise arise at the time of the dissolution of the marriage or the death of one of the spouses. The general approach of this Act is that parties should be free, within certain broad limits, to choose the financial terms of their marriage. Those limits are due process in formation, on the one hand, and certain minimal standards of substantive fairness, on the other. Because a significant minority of states authorize some form of fairness review based on the parties’ circumstances at the time the agreement is to be enforced, states can choose to insert an option refusing enforcement based on a finding of substantial hardship at the time of enforcement. And because some states put the burden of proof on the party seeking enforcement of these agreements, the Act also presents alternative language to reflect that burden of proof. The Act also allows for terms waiving or modifying rights at divorce and for terms waiving or modifying rights at the death of the other spouse.

2011 ACTS AND AMENDMENTS

Certificate of Title for Vessels Act

The 2011 Certificate of Title for Vessels Act provides a standardized certificate of title (similar to the certificate of title for motor vehicles) covering all boats and other vessels of at least 16 feet in length and all vessels propelled by an engine of at least 10 horsepower. The Act is applicable to vessels used principally on the waters of the State of Illinois, but does not apply to seaplanes, amphibious vehicles for which a certificate of title is issued pursuant to a motor vehicle titling act, watercraft that operate only on a permanently fixed, manufactured course, certain houseboats, lifeboats used on another vessel, and watercraft owned by the United States, a State, or a foreign government. The Act includes a novel branding requirement: where the integrity of a vessel’s hull has been compromised by an accident, the certificate will note “hull damaged.” The Act also provides a framework for the perfection and enforcement of security interests, consistent with those in Article 9 of the Uniform Commercial Code.

Uniform Electronic Legal Materials Act

The 2011 Uniform Electronic Legal Material Act (UELMA) provides standards for the authentication and preservation of electronic legal material published by state government. UELMA provides outcome-based standards for records storage and access, to ensure the integrity and continuing usability of the material, but does not require the use of any particular technology. The Act has no special requirements if a state chooses to preserve its legal material in print format, and it allows each state to determine which categories of legal information will be included in the Act's coverage. The UELMA is designed not to interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material, and tracks with the record-keeping requirements of the Uniform Commercial Code.

Model Protection of Charitable Assets Act

The 2011 Model Protection of Charitable Assets Act will articulate and confirm the broad role of the state Attorney General in protecting charitable assets. The Act will provide the Attorney General with at least an inventory of basic information without overburdening the charities or the Attorney General with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the Attorney General and provides for registration and annual reports for some charities. The Act does not cover governmental entities and businesses, except to the extent that those non-charities hold charitable assets. A charity covered by the registration section must register with the Attorney General within a specified period of time after the charity receives property, and provide basic information about the charity (name, address, statutory agent, federal identification number, and contact person) and a copy of the charity's organizing documents (articles of incorporation and bylaws or trust instrument). Charities with assets above a minimum amount will file an annual report with the Attorney General. The annual report will provide basic information and will require that the charity attach a copy of any report the charity files with the Internal Revenue Service (e.g., a Form 990 or a Form 990-EZ).

Harmonized Uniform Business Organizations Code

The primary purposes of the 2011 Harmonized Uniform Business Organizations Code (also known as the Harmonization of Business Entity Acts) are to (1) harmonize the language of all of the uniform unincorporated entity acts (Uniform Partnership Act, Uniform Limited Partnership Act, Uniform Limited Liability Company Act, Model Entity Transactions Act, Model Registered Agents Act, Uniform Limited Cooperative Association Act, Uniform Unincorporated Nonprofit Association Act, and Uniform Statutory Trust Entity Act) and (2) revise the language of each of those Acts in a manner that permits their integration into a single code of entity laws. The only substantive changes to the constituent Acts within the Code were made to facilitate their harmonization.

2010 ACTS AND AMENDMENTS

Uniform Military and Overseas Voters Act

The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots, and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The Act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and it expands use of the Federal Post Card

Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these Acts to voting in applicable state and local elections.

2010 Amendments to Article 9 of the Uniform Commercial Code

The 2010 amendments to Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1998 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

Uniform Electronic Recordation of Custodial Interrogations Act

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the Act promotes truth-finding and judicial efficiency and further protects the rights of law enforcement and those under investigation. The Act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The Act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules among the states and improve the administration of justice.

Uniform Faithful Presidential Electors Act

The Uniform Faithful Presidential Electors Act (UFPEA) addresses the problem of a presidential elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that assures that states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process. Under the UFPEA, electors take a pledge of faithfulness. A vote in violation of that pledge constitutes resignation from the office of elector. Correspondingly, the Act provides a mechanism for filling a vacancy created because of this constructive resignation. The UFPEA disallows faithless voting and assures that faithful votes are substituted for faithless ones. In doing so, it provides the voters of the state with the confidence that the votes they have cast will be honored when the Electoral College meets.

Uniform Partition of Heirs Property Act

The Uniform Partition of Heirs Property Act (UPHPA) establishes a hierarchy of remedies for use in those partition actions involving heirs' property. The remedies are designed to help those who own heirs' property to maintain ownership of that property when possible or to

ensure at the very least that any court-ordered sale of the property is conducted under commercially reasonable circumstances that will protect the owners from losing substantial wealth upon the sale of their property. Courts use the Act's guideline to determine if tenancy in common property is heirs property that must be partitioned in accordance with the Act. UPHPA provides the procedures by which notice is provided to cotenants, and appraisers and brokers are hired. The Act also mandates that any commissioners, referees, or partitioners that are appointed by the court must be disinterested. Importantly, UPHPA incorporates an option and statutory procedure for cotenants to buy-out the interests of those other cotenants seeking partition by sale. In those instances in which a buy-out does not resolve the action, the Act retains the widespread current preference for a partition in kind but outlines specific criteria a court must consider in determining whether a partition by sale may be justified. The UPHPA provides a supplementary mechanism for existing state partition law to help preserve the character and integrity of family-owned property and to protect a family's property-based wealth while still allowing a fair partition action to proceed.

Uniform Protection of Genetic Information in Employment Act

The need for regulation of genetic information and the desirability of uniformity in the area was recognized at the federal level with the enactment of the Genetic Information Nondiscrimination Act (GINA) of 2008. However, much in the same way that states have supplemented federal employment nondiscrimination Acts with their own fair employment Acts, there is a role for states in the regulation of genetic information in the workplace. The Uniform Act is designed to eliminate the preemption problems created by GINA for existing state statutes. It thus incorporates the key definitions and concepts of GINA. It also complements and supplements GINA with additional provisions that are more protective of employees, following the pattern of many state fair employment laws that supplement Title VII and other federal statutes. The Act comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the employment setting.

Model State Administrative Procedure Act

The Model State Administrative Procedure Act (MSAPA) was first promulgated by the ULC in 1946. The MSAPA has since been revised three times: 1961, 1981 and the most recent revision was completed and adopted by the ULC in July of 2010. The 2010 MSAPA maintains continuity with the provisions of the 1961 Act and, to a lesser degree, the 1981 Act. This Act returns to the external hearing rights approach followed in the 1961 Act, but also includes constitutionally required hearings in the mix of sources of hearing rights law. This Act is designed especially for adoption by states that currently have the 1961 Act, but would like to replace that Act with a more modern up to date Administrative Procedure Act. The Act is composed to ensure fairness in administrative proceedings, increase public access to the law administered by agencies, and promote efficiency in agency proceedings by providing for extensive use of electronic technology by state governments. The Act has been drafted to be less detailed and less comprehensive than the 1981 Act. Consistent with both the 1961 MSAPA and the 1981 MSAPA, the Act provides for a uniform minimum set of procedures to be followed by agencies subject to the Act. The Act creates only procedural rights and imposes only procedural duties. Throughout the Act there are provisions that refer generally to other state laws governing related topics. When specific state laws are inconsistent with the provisions of the Act, those specific state laws will be controlling.

Revised Uniform Law on Notarial Acts

The 2010 Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and replaces the earlier 1982 Uniform Law on Notarial Acts (ULONA). Since the original

promulgation of ULONA, society and technology have advanced considerably, requiring notarial officers and their practice to adapt. In particular, RULONA recognizes the ascendance of electronic commerce and electronic transactions in the public and private sectors, and it brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. RULONA continues to focus on preservation of the integrity of the notarial transaction, whether tangible or electronic. References to the notarial seal are replaced with an “official stamp”, and RULONA provides for affixing an official stamp to a notarial certificate for tangible documents or logically associating it with an electronic one. RULONA provides minimal standards for commissioning notarial officers and handles recognition of notarial acts from other states and certain foreign equivalents. Finally, the revised Act addresses deceptive and fraudulent practices and advertising, transactions in which the notary or a spouse is a party or has an interest, and prohibitions on unauthorized practice of law.

Insurable Interest Amendments to the Uniform Trust Code

Personal life insurance trusts are a key component of most modern estate plans, and trust and estate planners create them routinely. The trustee is typically designated as the owner, and usually also as the beneficiary, of one or more insurance policies held on the life of the trust’s creator (i.e., the “grantor” or “settlor”). These trusts are extremely useful devices for ensuring that life insurance proceeds are managed competently for the beneficiaries of the trust, and, in the case of irrevocable life insurance trusts (“ILITs”), for removing life insurance proceeds from an insured’s gross estate. A recent federal district court decision (*Chawla ex rel. Giesinger v. Transamerica Occidental Life Insurance Co.*, *aff’d* in part, *vac’d* in part, 440 F.3d 639 (4th Cir. 2006)) inserted doubt into the estate planning world by stating in *dicta* that a trust did not have an insurable interest in the life of the insured who was the settlor and the creator of the trust. The amendment attempt to clarify, with respect to trusts, what constitutes an “insurable interest” for purposes of insurance law, while at the same time allowing for the transfer of interest in insurance as property.

Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the ULC in 2009 and subsequently amended in 2010, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. Individuals will be advised of the particular collateral consequences associated with the offense for which they are charged at or before arraignment. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Amendments approved in 2010 responded to the Supreme Court decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). This decision mandated that defense counsel must advise a defendant of certain collateral consequences associated to the crime. The need for attorney to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The

Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

2009 ACTS AND AMENDMENTS

Uniform Collaborative Law Act

The Uniform Collaborative Law Act, promulgated by the ULC in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory framework is necessary in order to guarantee the benefits of the process and to further regulate its use. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. Additionally, the Act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

Uniform Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the ULC in 2009, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. At or before arraignment, individuals will be advised of the particular collateral consequences associated with the offense for which they are charged. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. Formal advisement promotes fairness and compliance with the law.

The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

Uniform Real Property Transfer on Death Act

Asset-specific mechanisms for the non-probate transfer of property and funds are now common – the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts, are good examples of property that have benefitted from this trend in modern property law. However, a straightforward, inexpensive, and reliable means of passing real property, which may be a decedent’s major asset, directly to a beneficiary is not generally available. The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass it to a beneficiary upon the owner’s death by a similar mechanism – simply, directly, and without probate. Under URPTODA, the property passes by means of a recorded transfer on death (TOD) deed. URPTODA sets forth the requirements for the creation and revocation of a TOD deed, and clarifies the effect of the TOD deed for all parties while the transferor is living and after they pass away. A TOD deed is effective without consideration, and without notice or delivery to the beneficiary. Beneficiaries take the property subject to allowed claims against the transferor’s estate. If the intended beneficiary wishes, they may disclaim all or part of their beneficiary interest in the property. Finally, URPTODA provides optional language for forms to create and revoke TOD deeds.

Uniform Statutory Trust Entity Act

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEA validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing state laws into uniformity.

USTEA more closely resembles a generic corporate code or unincorporated entity law than it does the Uniform Trust Code (UTC). However, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. The USTEA uses Delaware Statutory Trust Act as a starting point for the Act but adds several innovations. The USTEA will be used primarily as a business organization tool and will clarify this area of law.

Uniform Law Enforcement Access to Entity Information Act

The Uniform Law Enforcement Access to Business Entity Act (ULEAIEA) addresses the need for law enforcement to have ready access to information regarding the owners and managers of entities established under state law. ULEAIEA is designed to be a substitute for the Incorporation Transparency and Law Enforcement Assistance Act (S. 569), co-sponsored by Senators Levin, Grassley and McCaskill. ULEAIEA will 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. The Act is intended to provide a viable state law alternative to pending federal legislation. Rather than filing and updating “beneficial ownership” information, ULEAIEA provides that LLC’s, partnerships, trusts, and other entities must designate a “records contact”, which is responsible for producing information upon an appropriate request. ULEAIEA is intended to be more comprehensive and less invasive than S. 569. [Please note that at this time we are NOT recommending this act be introduced in 2010. This Act was developed as a potential alternative to pending federal legislation (s.569) and any legislative efforts are therefore on hold until the status of that bill is resolved.]

2008 ACTS AND AMENDMENTS

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 ULC, 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 Principal and Income Act

The ULC, in July 2008, approved amendments to the Uniform Principal and Income Act that update the Act to reflect 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.

2008 Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC), which is fully adopted in 18 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 so as to be consistent with the Restatement (Third) of Property: Wills and other Transfers, and the Uniform Trust Code.

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 (RUUNAA) 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 the nature of unincorporated nonprofit associations as distinct entities by allowing qualified associations to exist in perpetuity where necessary or convenient to carry out its purposes.

The RUUNAA distinguishes itself from its predecessor in that it provides 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 adoption 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 ULC 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 who may not have access to a notary. Under the Act, unsworn declarations cannot 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. 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.

2007 ACTS AND AMENDMENTS

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the Act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the property. The objective of the new uniform Act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the Act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The Act does this by prioritizing the states which might claim jurisdiction. The state with primary jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The Act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state lines. The Act also provides transfer procedures from one state to another. In this and other respects, the new Act accomplishes for adult guardianship determinations the same certainty that has occurred in child custody law with the promulgation of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act, now the law in 48 states.

Uniform Rules Relating to the Discovery of Electronically Stored Information

The primary purpose of the new Uniform Rules Relating to the Discovery of Electronically Stored Information is to provide states with up-to-date rules for the discovery of electronic documents in civil cases. The Uniform Rules provide procedures for parties in a civil case to jointly follow relating to a number of issues, including the preservation of the electronic information; the form in which the information will be produced; and the period of time in which the information must be produced. The Uniform Rules limit the sanctions which may be imposed on a party for failure to provide electronic information that has been lost as the result of routine operation of an electronic information system. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good faith. The Uniform Rules address the unique difficulties in accessing some electronic information by providing certain restrictions on its discovery. For instance, a party may object to discovery of electronically stored information on the grounds that the information is not reasonably accessible because of undue burden or expense. However, the court may order discovery of such information if it is shown that the likely benefit of the proposed discovery outweighs the likely burden or expense, and may allocate between the parties the expense of conducting the discovery.

Uniform Interstate Depositions and Discovery Act

The Uniform Interstate Depositions and Discovery Act provides efficient and inexpensive procedures to enable a party in one state to effectuate depositions of witnesses, discover documents or inspect premises in other states. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena must comply with the rules of the state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state. The goal of the Act is to simplify and standardize the current

patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

Uniform Limited Cooperative Association Act

The Uniform Limited Cooperative Association Act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. This Act is more flexible than most current law, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes. It promotes rural development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms. The Act would, for example, allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. The Act will be equally useful in an urban setting, where the cooperative value of individuals getting together to democratically own, run, and share in the benefit of their business can be combined with modern financing techniques. For example, it might be used by an urban food coop to attract investment capital to build facilities for the operation of the cooperative's business.

Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "who should represent a child in a custody or abuse and neglect proceeding, and what is the nature of that representation?" URCANCPA, as amended in 2007, establishes three categories of representatives: a child's attorney, a best interests attorney, and a best interests advocate. A child's attorney represents the child as a traditional client-directed lawyer. A best interests attorney is also a lawyer for the child but must advocate the child's "best interests" based on applicable legal criteria and the unique circumstances and needs of the child. The best interests advocate is a non-lawyer representative appointed by the court to investigate and make recommendations regarding the child's welfare. Because of the fundamental importance of the interests at stake in child protective cases, URCANCPA requires the court to appoint either a child's attorney or a best interests attorney for every child in an abuse or neglect proceeding. For custody cases, in contrast, the appointment of any representative is a matter of court discretion. The Act identifies the many duties of legal representation that are common to both categories of attorney, and it also clarifies the distinct responsibilities of the child's attorney and the best interests attorney. URCANCPA should not only bring greater certainty to the roles and expectations of children's representatives across the United States but also improve the quality of representation by providing needed standards of conduct.

ILLINOIS LEGISLATIVE ACTIVITY IN 2016

The Revised Uniform Fiduciary Access to Digital Assets Act (2015) (HB 4648) became law as Public Act 99-775, with an effective date of August 12, 2016. The Act was codified as a new Act at 775 ILCS 70/1, *et seq.*

The 2006 Revisions to the Uniform Limited Liability Company Act (HB 4361) became law as Public Act 99-637, with an effective date of July 1, 2017. The Revisions were codified in various sections of the existing Limited Liability Company Act, 805 ILCS 180/1-5, *et seq.*

The Uniform Collaborative Law Act (SB 2735) did not pass the Senate Judiciary Committee.

The Uniform Trust Code, Powers of Appointment Act, and Uniform Trust Decanting Act were offered in a single piece of legislation in both the House of Representatives and the Senate (HB 6312/SB 3165); neither bill was acted on by a substantive committee.

Respectfully submitted,

James W. Dodge, Executive Director
Legislative Reference Bureau
On behalf of the Commissioners of the Illinois Delegation

