

REPORT OF THE
VIRGINIA COMMISSIONERS TO
NATIONAL CONFERENCE ON UNIFORM STATE LAWS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



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**Report of the
Virginia Commissioners to National Conference on Uniform State Laws
To
The Governor and the General Assembly of Virginia
Richmond, Virginia**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

July 1, 1981 - June 30, 1982

Virginia has adopted twenty-seven uniform acts promulgated by the National Conference. Among them are the Uniform Commercial Code, Child Custody Jurisdiction Act, Reciprocal Enforcement and Support Act, Anatomical Gift Act, Partnership and Limited Partnership Act, and Gift to Minors Act. Other conference proposals have been used in part in Virginia enactments or proposed bills. The past session of the General Assembly adopted the Uniform Disposition of Community Property Rights at Death Act and the ULC Model Real Estate Cooperative Act.

The Commissioners from various states include practicing attorneys, law professors, state legislators, and state and federal judges. All Commissioners serve without compensation, with reimbursement of their expenses only. The process by which uniform acts are developed is thorough, involving frequent meetings of the drafting committee, oversight by review committees, consideration line by line by the entire conference at least twice, and a vote by the states; and consideration and approval of the ABA House of Delegates.

Activities of the Virginia Commissioners

The Virginia Commissioners have served on the following committees during the past year:

Brockenbrough Lamb, Jr. - Chairman, Standby Committee on Uniform Limited Partnership Act; Member, Drafting Committee on Uniform Gifts to Minors Acts.

William G. Thomas - Chairman, Federal-State Relationship Committee; Member, Standby Committee on Uniform Condominium Act; Member, Standby Committee on Model Real Estate Cooperative Act; Member, Standby Committee on Uniform Planned Community Act; Member, Committee on Uniform Conservation and Preservation Agreement Act.

Carlyle C. Ring, Jr. - Chairman, Executive Committee; Member, drafting Committee on Uniform Payments Code—Amendments to Uniform Commercial Code Articles 3 and 4; Member, Standby Committee on Uniform Audio-Visual Deposition Act; Ex-officio Member of all other Committees.

Andrew W. McThenia, Jr. - Reporter, Drafting Committee on Uniform Health Care Consent Act; Member, Study Committee on Proposed Natural Death Act; Member, Standby Committee on Uniform Unclaimed Property Act; Member, Drafting Committee on Preliminary Injunctive Relief Act.

The Conference was held in New Orleans, Louisiana on July 30-August 7, 1981. Commissioners Lamb, Thomas, McThenia and Ring were in attendance.

Report of Proceedings of Annual Conference in New Orleans, Louisiana

The Annual Conference in New Orleans, Louisiana adopted the following Uniform Acts for consideration by the states:

Uniform Conservation Eastment Act
Model Real Estate Cooperative Act
Revised Model State Administrative Procedure Act

Uniform Unclaimed Property Act

In addition, the Conference considered on first reading the Transboundary Pollution Remedies Act; Uniform Health Care Consent Act; Marital Property Act; Uniform Protective Proceedings Act; Uniform Notarial Acts Act; Uniform Succession Without Administration Act and Uniform Choice of Statute of Limitations Law.

A full report of the activities of the National Conference in New Orleans, Louisiana is attached, along with summaries of the Acts promulgated referenced above.

Recommendation for Enactment

The Virginia Commissioners recommend that the following Uniform and Model Acts should be considered in the legislative session, beginning in January, 1983:

Revised Limited Partnership Act
Revised Uniform Federal Lien Registration Act
Revised Article VIII of Uniform Commercial Code
Uniform Condominium Act or
Uniform Common Interest Ownership Act
Uniform Planned Community Act
Uniform Audio Visual Deposition Act
Uniform Probate Code *
Uniform Trade Secrets Act
Uniform Extradition and Rendition Act
Uniform Post Conviction Procedure Act
Model Periodic Payments Act
Uniform Conservation Easement Act
Uniform Unclaimed Property Act

New Drafting Committees

During the past year, the Conference has appointed various new drafting committees which will be reporting to the Conference this summer and at future meetings including:

Uniform Antenuptial Agreements Act
Uniform Common Interest Ownership Act
(combining Uniform Condominium Act,
Model Real Estate Cooperative Act,
Uniform Planned Community Act)
Uniform Payments Code
Uniform Personal Property Leasing Act
Revised Uniform Securities Act
Uniform Succession Without Administration Act
Uniform Statutory Wills Act

Request for Topics Appropriate for Consideration as Uniform Acts

The Conference welcomes suggestions from the General Assembly, Governor, Executive agencies, and the Attorney General as to topics that might be appropriately considered by the conference where there exists a need for uniformity in the law among the states and it can be anticipated that a majority of the states would likely adopt the Act.

State Appropriation

Virginia's contribution to the operations of the Conference is relatively modest, which includes a contribution of \$10,800 for the fiscal year 1983 and travel expenses for the Commissioners totalling

\$21,500. The contribution from each state is based upon population.

The time and energy of the prominent members of the bench, law faculties and practicing bar who comprise the membership of the Conference is contributed fully without charge. The Conference estimates that each Commissioner devotes approximately 200 hours a year to the Conference work, including work on various drafting committees and attendance at the Annual Meeting. The cumulative value of this donated time and the development of uniform and model acts averages about \$5,000,000 a year on a conservative estimate. The total cost to the states for this effort was a little over \$400,000 in 1980-1981. The smallest contribution from a state was \$2,800 and the largest was \$36,000. Since in many areas of the law to which the Conference devotes itself, uniformity is either required or highly desirable, obviously the work product of the Conference guarantees a very substantial return on each dollar invested. The average number of current uniform model acts adopted in all states is 31. Virginia has adopted 27 uniform and model acts.

The work of the conference also has been useful because it strengthens the state and Federal system of government. In many areas of the law, either the states must solve the problems, or the issues are preempted by Congress. The Conference is one of the few institutions that pursues solutions to problems on a uniform or cooperative basis by the states. Without the Conference, more and more legislative activities could shift from state capitols to the Capitol Hill in Washington, D. C.

The full-time staff of the Conference is comprised of four people, located in Chicago, namely, an Executive Secretary, Legislative Director and two office personnel. Reporters to the drafting committees either contribute their time or receive a very modest honorarium (base rate \$150 per day).

Respectfully submitted,
Carlyle C. Ring, Jr.
William G. Thomas
Andrew W. McThenia, Jr.
Brockenbrough Lamb, Jr.
John B. Boatwright, Jr.

June 30, 1982

*Commissioners Lamb and Boatwright believe that the current Virginia Law with minor amendments would be superior to the Uniform Probate Code.

information

AN OUTLINE OF:

Uniform Conservation Easement Act

Simpler law could make it easier to preserve open land and historic buildings. That's why the National Conference of Commissioners on Uniform State Laws drafted the Uniform Conservation Easement Act and urges every state to adopt it.

Uniform Law Commissioners (ULC) uses the term "conservation easement" to denote "a non-possessory interest of a holder...in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, or maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

The Uniform Act would permit owners to grant conservation easements only to governmental units or "charitable" groups with an interest in preservation of the property.

Unless a time limit was included in an agreement, its duration would be unlimited.

"This latitude is consistent with the philosophical premise of the act," drafters commented. "However, there are also safeguards in that easements may be created only for certain purposes and may be held only by certain 'holders.' These limitations find their place comfortably within similar limitations applicable to charitable trusts, whose duration may also have no limit. Allowing the parties to create such easements also enables them to fit within federal tax law requirements that the interest be 'in perpetuity' if certain tax benefits are to be derived."

Some states, such as Massachusetts, have enacted legislation subjecting conservation agreements to review by a public planning agency.

"There are both practical and philosophical reasons for not subjecting conservation easements to a public ordering system," drafters said. "The act has the relatively narrow purpose of sweeping away certain common law impediments which might otherwise undermine the easements' validity...If it is the intention to facilitate private grants that serve the ends of land conservation and historical preservation, moreover, the requirement of public agency approval adds a layer of complexity which may discourage private actions. Organizations and property owners may be reluctant to become involved in the bureaucratic, and sometimes political, process which public agency participation entails. Placing such a requirement in the act may dissuade a state from enacting it for the reason that the state does not wish to accept the administrative and fiscal responsibilities of such a program."

ULC believes controls built into the proposed draft plus existing federal and state requirements would assure that conservation easements "serve the public interest." Federal tax rules define

donations qualify for favorable tax treatment and state regulations can be used to limit the loss of property taxes.

Drafters point out that the proposal does not deal with a number of important issues it “considered extraneous to its primary objective of enabling private parties to enter into consensual arrangements with charitable organizations or governmental bodies to protect land and buildings without the encumbrance of certain potential common law impediments.” These “extraneous” issues include: how to record a conservation easement; potential impact of marketable title laws which in some states could limit its duration to 30 years; the proposal’s effect on local real property assessment and taxation practices; income, estate and gift tax considerations; and eminent domain practices.

The Uniform Act imposes no restrictions or duties, but “merely allows the parties to do so within a consensual arrangement freed from common law impediments.” The committee said lawyers and courts were “most comfortable” with easements and easement doctrine.” This avoids confusion which could result from use of such doctrines as “restrictive covenants” and “equitable servitudes” or through creation of a “hybrid fourth interest.”

In order to remove possible “common law impediments,” the proposal includes a section making a conservation easement valid even though: “(1) it is not appurtenant to an interest in real property; (2) it can be or has been assigned to another holder; (3) it is not of a character that has been recognized traditionally at common law; (4) it imposes a negative burden; (5) it imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder; (6) the benefit does not touch or concern real property; or (7) there is no privity of estate or of contract.”

information

AN OUTLINE OF:

Uniform Disposition of Unclaimed Property Act

An astonishing number of Americans treat their financial assets rather casually. They deposit money in banks and forget about it. Or they buy stock and move without leaving the company an address for their dividend checks.

Billions of dollars lie abandoned in such financial pockets, as well as in insurance companies, utilities and pension funds – even in gambling houses and race tracks. Many times the rightful owner has died and the heirs do not know that a windfall – whether large or small – could be theirs.

All states, except Colorado, have laws providing for state takeover of abandoned property at the end of varying dormancy periods (a period during which the property has been ignored by the owner). But these statutes have been widely disregarded. Further, conflict had arisen among the states over which one should be entitled to a particular sum of money.

The U.S. Supreme Court entered the picture in 1965 when four states claimed about \$26,000 in small debts owed by Sun Oil Co. to about 1,730 small creditors over periods ranging from seven to 40 years. Texas claimed on the ground that most of the amounts were on the books of Sun's offices in that state or were owed to persons whose last known address was in Texas. Florida claimed on behalf of persons whose last known address was there; and New Jersey and Pennsylvania, because Sun was incorporated and had its main office in those states, respectively.

The Supreme Court decided that the state of the property owner's last known address was entitled to the funds.

This rule required revision of a Uniform Disposition of Unclaimed Property Act drawn up by the National Conference of Commissioners on Uniform State Laws and adopted by 31 states since 1954. Now Uniform Law Commissioners (ULC) have developed a new proposal designed to reunite owners with their property and in the process to streamline its transfer to state custody.

Rightful owners may claim their funds at any time from either the holder or the state, but if no one comes forward, taxpayers reap a benefit.

Some states, notably Minnesota, Massachusetts, California and New York, already have undertaken aggressive programs of this kind. The District of Columbia recently enacted a new statute using early drafts of the Uniform Act as a model.

The proposal applies to a broad array of property, ranging from stocks, bonds, dividends, travelers checks, money orders and the contents of safe deposit boxes to utility deposits, uncashed airline tickets, gift certificates and parimutuel tickets.

State dormancy periods can now be as high as 10, 15 or even 20 years. Drafters chose five years, with exceptions of 15 years for travelers checks and one year for unpaid wages.

After first attempting to notify owners in writing, all property owners would be required to file annually with a state administrator a list of property which has become dormant. The administrator would then advertise the property which has a value of \$25, or more, for two consecutive weeks in an appropriate local newspaper. For amounts of more than \$50, the administrator would mail the owner a notice that his property was slated for state custody. Six months from the date of filing, amounts still unclaimed would go to the state administrator.

Holders are given considerable economic incentive to obey. Although states would be free to fix an interest penalty for non-compliance, drafters suggest 18 per cent. For willful non-reporting, a penalty ranging from \$100 to \$5,000 a day is mentioned; and for willful failure to pay or deliver property, 25 per cent of its value. States also could impose criminal penalties.

The new Uniform Act mandates that after enactment, a property holder must report property as if the new law had been in effect 10 years earlier, but penalties would not be retroactive.

A prime concern is a prevalent practice by banks to ignore the outdated uniform law and help themselves to millions of dollars in dormant accounts simply by discontinuing interest and imposing service charges on them. Small deposits are wiped out. As in the past, banks are forbidden to proceed in this way unless the depositor is informed in writing.

Besides imposing record-keeping obligations on property holders, the Uniform Act also:

- * Provides that upon reasonable notice an administrator may examine any holder's records, regardless of a holder's claim to have no reportable property.

- * Requires an administrator to hold most property for a year before selling it at public auction within the second year. Stocks will generally be held three years, with missing owners entitled to dividends and interest for this period.

- * Recommends that a state maintain a separate trust fund of not less than \$100,000 to insure payment of belated claims.

- * Bars activity by heir finders (who for a fee locate owners of dormant funds) for two years after state receipt of property.

- * Provides for lawsuits by owners aggrieved at an administrator's decision.

- * Presumes that proceeds of a life insurance policy are abandoned if the company knows the insured has died. Under the old act, proceeds usually were not reportable until the 103rd anniversary of the decedent's death.

information

AN OUTLINE OF:

Model State Administrative Procedure Act

Wrestlers and ranchers, miners and merchants, barbers and birdwatchers, all are affected by decisions of state government agencies. Everyone feels the impact of state regulatory power which has expanded to deal with the complexity of an increasingly interrelated society.

Almost all states have adopted "administrative procedure acts" to prevent arbitrary decision-making by state agencies. Most states have based their statutes on Model State Administrative Procedure Acts developed by the National Conference of Commissioners on Uniform State Laws. Uniform Law Commissioners (ULC) completed the first version in 1946 and revised it completely in 1961. The new version amounts to an entirely new act.

Drafters said an "entirely new" act was necessary because growth of state administrative agencies over the past 20 years was accompanied by "vast social changes" which altered the functions of state government.

"For example, in 1961 issues such as environmental preservation, energy conservation, and safety in the workplace were rarely even considered by the legislatures of the states," drafters said in a prefatory note to the revision. "Yet today, these issues are so important that most states have separate agencies to deal with them. The number and extent of public welfare programs have also grown since 1961. States now usually have several large agencies administering such benefactory programs, which raise some new and difficult procedural questions."

In addition, drafters noted that state and federal judicial decisions also have made complete revision necessary.

Drafters worked on the assumption of earlier versions that "there are certain basic principles of common sense, justice, and fairness that can and should prevail universally. The 1981 act retains the general structure of the 1961 version of the act dealing with "four main subjects: freedom of information, rule making, adjudication and judicial review." The new Model is more detailed.

"Yet, that somewhat greater detail...is drafted so as to assure a fair balance between the urgent need for efficient, economical and effective government on the one hand, and a responsible administrative process in which persons may adequately protect their interests against improper or unwise government action on the other," drafters said.

Like the 1961 version, the 1981 proposal concerns only procedure.

"It seeks to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their functions," drafters noted. "Further, this act seeks to increase public access to all of the sources of law used by agencies, and to facilitate and encourage the issuance of reliable advice by agencies as to the applicability to particular circumstances of law within their primary jurisdiction. In addition, it attempts to facilitate public participation in the formulation of law adopted by agencies, ensure accountability of agencies to the public, and enhance legislative and gubernatorial oversight of agencies. An effort is also made...to simplify the

process of judicial review and civil enforcement of agency action, and to increase its availability.”

The Model State Administrative Procedure Act (1981) will be used as a source for a new generation of administrative procedure acts.

New approaches to solving problems common to all state agencies can be found in all five articles of the act — general provisions; public access to agency law and policy; rule making; adjudicative proceedings; and judicial review and civil enforcement.

For example, drafters included a provision calling for a “regulatory analysis” of a proposed agency rule in specified circumstances which would be set by each legislature. A regulatory analysis would include: who would be affected by a rule; its impact; probable benefits and costs balanced against the costs and benefits of other action or no action at all; and the reasons for rejecting alternative proposals.

Drafters admit that preparation of such an analysis could be “very burdensome.” But they said when it was required by the legislated criteria, a regulatory analysis could prove to be “an important device with which to assure sound agency consideration of the desirability of a rule. It is also a useful device to help assure public support for, or opposition to, a rule, to the extent either is warranted, based upon a full public description of its potential costs and benefits.”

Drafters also included an optional provision that would permit a special legislative committee to object to a rule that its members felt was beyond the legal authority of the issuing agency. When the committee filed an objection, the agency would have the special burden of establishing the validity of the rule in subsequent litigation. This would aid court challenges of those affected by the rule. The draft also offers an option which would permit a governor to veto agency rules in order to assure the political accountability of agency rulemaking.

In the article on adjudication, drafters propose creation of a flexible three-tiered approach that would include: “formal adjudicative hearings” which represent an elaborate development of provisions in the 1961 act plus two new “models” called “conference adjudicative hearings” and “summary adjudicative proceedings.”

“A justification for providing a variety of procedures is that, without them, many agencies will either attempt to obtain enactment of statutes to establish procedures specifically designed for such agencies, or proceed ‘informally’ in a manner not spelled out by any statute,” drafters commented. “As a consequence, wide variations in procedure will occur from one agency to another and even within a single agency from one program to another, producing complexity for citizens, agency personnel and reviewing courts, as well as for lawyers.”

Drafters have prepared a list of factors to be considered in the choice of the tier for each dispute. “Conference” hearings would involve a “middle level” dispute. These could be used if the facts were not disputed, or if the issue could be expressed solely in monetary terms and the disputed amount was less than \$1,000. They also could be used for such problems as minor disciplinary sanctions for prisoners, students, public employees and licensees. Some of the formal trappings such as pre-hearing conferences, discovery procedures and outside testimony could be dispensed with.

“Summary” proceedings would involve matters having the least serious impact upon the affected parties. Examples would include disputes involving less than \$100 and non-recorded reprimands of prisoners, students, employees and licensees. Procedural requirements are minimal. But as in all proceedings, those affected could ask that decisions be reviewed.

Drafters also have provided emergency adjudicative procedures to deal with situations involving an immediate danger to the public health, safety or welfare that require immediate agency action. But after emergency adjudication, an agency would be required to proceed as quickly as feasible to complete any procedures that would be required if the matter had not involved an immediate danger.

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AN OUTLINE OF:

Model Real Estate Cooperative Act

A new legislative proposal has been developed to extend the benefits of the Uniform Condominium Act (UCA) to cooperative developers, buyers, lenders and residents.

The Model Real Estate Cooperative Act includes provisions of UCA that are relevant to cooperatives. These include: flexibility for developers; consumer protections such as warranties of quality; provisions providing certainty to lenders; and a modern, workable management scheme that includes provisions needed to terminate a cooperative. The Model Act, like UCA, also includes protections for renters living in apartments that are converted to cooperatives.

The model tracks UCA but also deals with problems that are unique to cooperatives.

For example, developers are given the option of declaring that a cooperative should be considered as "real estate" or "personal property." Drafters point out that "classification of the possessory interests under the proprietary leases as real property or as personal property is significant for purposes of tenure, sales, recordation, transfer taxes, property taxes, estate and inheritance taxes, testate and intestate succession, mortgage age lending, the perfection, priority and enforcement of liens, rights of redemption..." The option was provided to avoid challenging traditional practices which vary from state to state.

"This decision recognizes that the tenant/stockholder interest in the cooperative typically is a composite one," drafters comment. "The composite interest includes both a beneficial interest in the corporation — either through stock ownership or membership — which is clearly a personal property interest, and a long term 'proprietary' or ownership interest under a proprietary lease in an apartment — clearly an interest in real estate."

Drafters said the option deals with a "highly theoretical issue" with "many practical consequences."

For example, if a developer opted for the "real estate" option then state real estate laws would apply to a cooperative in such vital areas as loan availability, taxing and foreclosure. But if a cooperative were considered "personal property" then the Uniform Commercial Code would serve as the relevant law for the unit.

The cooperative proposal is the latest in a series of ULC proposals which make up a comprehensive package of legislation designed to modernize and simplify the nation's real estate laws. Earlier pieces of the package include: Uniform Land Transactions Act; Uniform Simplification of Land Transfers Act; and Uniform Planned Community Act as well as UCA.