

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



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VIRGINIA COMMISSIONERS

**Carlyle C. Ring, Jr.*
Brockenbrough Lamb, Jr.
H. Lane Kneeder, III
Stephen G. Johnakin
John B. Boatwright, Jr.**



* On July 24, 1983, at the Annual Conference in Boca Raton, Florida, Commissioner Carlyle C. Ring, Jr., was elected President of the Conference for a two-year term. He is the first Virginian in the ninety-two year history of the Conference to hold that position.

**Report of the
Virginia Commissioners to the
National Conference on Uniform State Laws
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
July 1, 1982 - June 30, 1983**

In 1983, the General Assembly of Virginia adopted the Uniform Audio-Visual Deposition Act. In 1982, Virginia adopted the Uniform Disposition of Community Property Rights at Death Act and the ULC Model Real Estate Cooperative Act. In total, Virginia has adopted 28 other uniform acts which are on the Conference "active list," including the Uniform Commercial Code.

The Commissioners from the 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 promulgated is thorough, involving frequent meetings of the drafting committee, oversight by the review committee, consideration line by line by the entire Conference at least twice, 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 Transfers to Minors Act.

Carlyle C. Ring, Jr. – Chairman, Executive Committee; Member, Drafting Committee on Uniform Payments Code (Amendments to UCC Articles 3 and 4); Ex-officio member of all other drafting and administrative committees.

H. Lane Kneedler, III – Drafting Committee on Criminal Records.

Stephen G. Johnakin – Member of Study Committee on Franchising Act; Member of Standing Legislative Committee.

The Conference was held in Monterey, California, from July 30, 1982 - August 6, 1982. Commissioners Lamb, Ring, Kneedler and Johnakin were in attendance.

Report of Proceedings of

Annual Conference in Monterey, California

The Annual Conference in Monterey, California, adopted the following Uniform Acts for consideration by the states:

Uniform Common Interest Ownership Act

Uniform Conflict of Laws - Limitations Act

Model Health Care Consent Act

Uniform Law on Notarial Acts

Uniform Guardianship and Protective Proceedings Act (Article V to the Uniform Probate Code)

In addition, the Conference considered on first reading the Marital Property Act, Antenuptial Agreements Act, Revised Securities Act, Transfers to Minors (Revised Uniform Gift to Minors Act), and Payment Code (Amendments to Articles 3 and 4 of the UCC).

Summaries of the acts promulgated at the 1982 Conference are attached.

Recommendations for Enactment

The Virginia Commissioners recommend the following uniform and model acts for consideration in the 1984 legislative session:

Revised Limited Partnership Act
Revised Article VIII of UCC
Uniform Common Interest Ownership Act
Revised Uniform Federal Lien Registration Act
Uniform Probate Code*
Uniform Unclaimed Property Act
Uniform Trade Secrets Act
Uniform Extradition and Rendition Act
Uniform Post-Conviction Procedure Act
Model Periodic Payments Act
Uniform Conservation Easement Act
Uniform Conflict of Laws - Limitations Act
Model Health Care Consent Act
Uniform Law on Notarial Acts

The Commissioners strongly recommend consideration in 1984 of the amendments to Article VIII of the Uniform Commercial Code and the Revised Uniform Limited Partnership Act (1976). The Article VIII amendments have now been adopted in New York, Delaware, Texas, West Virginia, Minnesota and Connecticut and are being actively considered in Florida, Massachusetts, New Jersey and Oregon. The New York Stock Exchange strongly supports their enactment. The Article VIII amendments authorize and permit "uncertificated securities" made possible by modern computer capability now regularly employed in security transfers.

The Internal Revenue Service (IRS) has adopted regulations according the same favorable tax treatment for limited partnerships established under the Revised Uniform Limited Partnership Act (1976) as previously accorded limited partnerships established under the 1916 Uniform Limited Partnership Act. The Revised Uniform Limited Partnership Act contains substantial improvements and protections over the original act. With the blessing of the IRS, the revised act should be considered by the General Assembly. Seventeen states have already adopted the 1976 revised 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 Personal Property Leasing Act (possible amendment to UCC)
Health Records Act
Criminal Records Act
Defense of Insanity Act
Revised Uniform Fraudulent Conveyances Act
Uniform Natural Death Act
Revised Uniform Criminal Procedures Act

In addition, the Conference is studying the possibility of appointing drafting committees for the following acts: Absentee Voters Act; Revised Adoption Act; Franchising Act; Revised Uniform Evidence Act; Mineral, Oil and Gas Act; and Complex Litigation 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 appropriately be considered by the Conference in those areas where there exists a need for uniformity in the law among the various states, and it can be anticipated that a majority of the states would be likely to adopt such an act.

State Appropriations

Virginia's contribution to the operations of the Conference is relatively small, including a contribution of \$10,800 to the Conference for the fiscal year 1984 and travel expenses for the Virginia Commissioners to the annual conference. The contribution for each state is based upon population.

The time and energy of the Commissioners from the various states, including prominent members of the bench, law faculties and the practicing bar, are all contributed without charge. The Conference estimates that each Commissioner devotes approximately 200 hours a year to the Conference work, including work on the 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 above \$5,000,000 a year on a conservative basis. The total costs to the states for this effort was a little over \$400,000 in 1981-82. The largest contribution from a state was \$36,000 and the smallest was \$2,800. Since in many areas of law to which the Conference devotes itself, uniformity is either required or highly desirable, the work product of the Conference obviously guarantees a very substantial return on each dollar invested by the various states. The average number of uniform acts, on the "active list," adopted in all states is 32. Virginia has adopted 30 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 problem through cooperative action, or the issues are preempted by Congress. The Conference is one of the few institutions that pursues solutions to problems on a cooperative basis by the states. Without the Conference, more and more legislative activities would undoubtedly shift from the state capitals to Washington.

The full-time staff of the Conference is comprised of five people, located in Chicago. The reporters to the drafting committees either contribute their time or receive a very modest honorarium (a base rate of \$150 per day).

Respectfully submitted,

Carlyle C. Ring, Jr.
Brockenbrough Lamb, Jr.
H. Lane Kneedler, III
Stephen G. Johnakin
John B. Boatwright, Jr.

August 1, 1983

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

APPENDIX

Short Summaries

Uniform Acts Adopted at

1982 Annual Conference

UNIFORM COMMON INTEREST OWNERSHIP ACT

This Act provides for all common interest real estate forms, including condominiums, cooperatives, and planned communities (planned unit developments). It is a comprehensive Act that provides for the creation, financing, management, and termination of any common interest project. Special emphasis is placed upon adequate management powers, regular transfer of control of the project from developer to unit owners, and self-government through the owner's association. The Act allows flexible development plans that accommodate phased development. Five basic modes of buyer protection are provided: disclosure of all important facts concerning the project, warranties of sale, escrow of all deposits, substantial completion of the project before sale, and rescission rights for purchasers. There is also an optional article giving powers of control and enforcement to a regulatory agency.

UNIFORM CONFLICT OF LAWS - LIMITATIONS ACT

This Act treats statutes of limitations as substantive, rather than procedural. This means that a forum state, in choosing the law of another state through its choice-of-law rules, would then, also, choose the applicable statute of limitations of that other state. This rule contrasts with the ordinary, existing rule which treats statutes of limitations as procedural. The forum state always uses its own procedural law, but the existing rule, in interstate cases, merely encourages unnecessary forum-shopping, which the Uniform Act would discourage. There is one exception to the rule of this Act. A state may choose its own statute of limitations if the borrowed statute is so unfair that it would deprive a litigant of a right to litigate. This Act replaces and supersedes the Uniform Statute of Limitations on Foreign Claims Act.

MODEL HEALTH-CARE CONSENT ACT

This Act determines who may consent to the health care of any person. An adult and certain specially qualified minors have the power to consent to their own health care, or to delegate that power to another person in an appropriate, witnessed writing. For incapable adults, and all other minors, the Act sets priority, by statute, for all those who have the power to consent. An incapable adult may have exercised his power to delegate before incapacity. Otherwise, the power goes by statute to a spouse, parent, or other close relative. The same rule applies if a minor, specially qualified to give consent, becomes incapable. For all other minors, the parents, or a person acting in loco parentis, are the proper holders of the power.

UNIFORM LAW ON NOTARIAL ACTS

This Law provides for notarization or signature verification for all forms of acknowledgement, oath taking, witnessing, and certifying, as required in the law of any state. It simplifies and standardizes all required forms. Most importantly, it provides for the recognition of out-of-state, federal, and foreign notarial acts in any enacting state. This Law combines and supersedes the Uniform Acknowledgement Act and the Uniform Recognition of Acknowledgements Act.

UNIFORM PROBATE CODE ARTICLE V, AMENDMENTS TO PARTS 1, 2, 3 and 4 - UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

This Act provides, comprehensively, for the appointment and supervision of guardians and conservators for incapacitated adults and unemancipated minors. It provides for guardians of the

person and conservators of the estate as separate and distinct offices. The appointment procedures allow for appointment by will and for appointment upon a petition for a hearing in the appropriate court. Special care is taken to ensure adequate due process to all persons subjected to a proceeding. No adult can be subjected to a guardianship or conservatorship without a determination of incapacity to care for himself or herself. This Act requires courts to subject persons to the least restrictive alternative in qualifying guardians and conservators. All guardians and conservators are subject to the jurisdiction and the supervision of the court. This court, also, has substantial powers to order and validate transactions on behalf of the estate of a protected adult or minor.

