

REPORT OF THE

**VIRGINIA COMMISSIONERS
TO THE NATIONAL CONFERENCE
OF COMMISSIONERS ON
UNIFORM STATE LAWS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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

January 1, 1994 - December 31, 1994

HISTORY OF THE CONFERENCE

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. The following year the New York legislature authorized the appointment of commissioners

. . . to examine certain subjects of national importance that seem to show conflict among the laws of the several commonwealths to ascertain the best means to effect an assimilation or uniformity of the laws of the states, especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.

In the same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain issues. In August 1892, the first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York.

By 1912, every state was participating in the Conference. Since then, the Conference has steadily increased its contribution to state law and has attracted some of the most outstanding members of the legal profession. Prior to his more notable political prominence and service as President of the United States, Woodrow Wilson became a member in 1912. Supreme Court Justices Brandeis and Rutledge, current Chief Justice Rehnquist, and such legal scholars as Professors Wigmore, Williston, Pound and Bogart have all served as members of the Conference.

The Conference began over 100 years ago because of the interests of state governments in improvement of the law and interstate relationships. Its purposes remain as service to state governments and improvement of state law.

OPERATION OF THE CONFERENCE

The National Conference convenes as a body once a year. The annual meeting lasts eight to twelve days and is usually held in late July or early August. Throughout the year, drafting committees composed of Commissioners work over several weekends on drafts of legislation to be considered at the annual meeting. The work of the drafting committees is read, line by line, and thoroughly debated at the annual meeting. Each act must be considered over a number of years; most are read and debated by the Conference two or more times. Those acts deemed by the Conference to be ready for consideration in the state legislatures are put to a vote of the states. Each state caucuses and votes as a unit.

The governing body of the Conference, the Executive Committee, is composed of the officers elected by vote of the Commissioners, and five members who are appointed annually by the President of the Conference. Certain activities are conducted by 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 Conference to the state legislatures.

The Conference maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which annually contributes to the operation of the Conference. In fiscal year 1993-94, the ABA contributed \$10,000 to the Conference. The Conference also seeks grants from the federal government and from foundations for specific drafting efforts. The drafting effort on the Uniform Victims of Crime Act (1992) was aided by a federal grant. The Conference will not take money from any source except on the understanding that its drafting work is autonomous. No source may dictate the contents of any act because of a financial contribution. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Other associations are frequently contacted and advised of Conference activities as interests and activities necessitate.

At the Conference's national office in Chicago, a small staff provides administrative and clerical assistance to the Conference and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts. The Conference has consciously limited its staff to prevent accrual of needless administrative costs. The seven-person, full-time staff in Chicago

includes the legal counsel, executive secretary and legislative assistant. The position of executive director is part-time and is traditionally occupied by someone from a law school. In addition, the Conference contracts with "reporters" for professional services to aid in drafting. These professional reporters are engaged at very modest honorariums (base rate \$150 per day) to work with drafting committees on specific acts. The Conference also contracts with professional independent contractors for part of its public information and educational materials. In-house staff costs amount to 35 percent of the budget. The Conference has annual budgets and audit reports which are available on request.

All members of the Conference contribute a minimum of 200 hours a year to drafting Acts for Conference consideration. Although the members volunteer their time and effort, they are reimbursed for expenses. The cumulative value of the time donated by the Commissioners for the development of Uniform and Model Acts conservatively averages \$5 million annually. The work product of the Conference guarantees a substantial return on each dollar invested by the various states.

The work of the Conference strengthens the state and federal system of government. In many areas of the law, the states must solve the problem through cooperative action, or the issues are likely to be preempted by Congress. The Conference is one of the few institutions that pursue solutions to problems on a cooperative basis by the states. Without the Conference, more legislative activities would undoubtedly shift from the state capitals to Washington.

STATE APPROPRIATIONS

The Conference is a state service organization which depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the Conference. In addition, each state delegation requests an amount to cover its Commissioners' travel expenses for the Conference Annual Meeting. For Virginia, the amount requested for the 1993-94 fiscal year for Conference maintenance was \$22,800.

The total requested contribution of all the states to the operation of the ULC is \$1,052,800 for 1994-95. The smallest state contribution is \$6,200, and the largest is \$92,200. Even a modest use of the work product of the Conference guarantees any state a substantial return on each dollar invested. The average number of current Uniform and Model Acts adopted in all states is 70; Virginia has adopted 44.

The annual budget of the National Conference comes to \$1,248,850 for the current fiscal year (July 1 to June 30). Of this amount, \$1,037,485 goes to the

drafting effort, including travel expenses for drafting committee meetings and printing, publication, editing, personnel, and miscellaneous administrative costs. \$211,365 is spent in assisting state legislatures with bills based on Uniform and Model Acts. This latter amount includes salaries, travel expenses, and administrative expenses.

CREATION OF UNIFORM AND MODEL ACTS

The procedures for drafting an act are the result of long experience with the creation of legislation. The Scope and Program Committee considers new subject areas of state law as potentials for Uniform or Model Acts. The Committee, consisting solely of Commissioners, studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied, it is likely to be given to a special study committee. The recommendations that come from this study mechanism go to the Executive Committee, and to the entire Conference for approval.

If a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the Committee work. If there is a need for professional drafting assistance, and if the budget permits, a reporter from outside the Conference may be hired. Many committees work without professional assistance; in some cases, assistance is donated.

Usually advisors are solicited to assist the drafting committee. The American Bar Association appoints official advisors for every committee. Other advisors may come from state government or organizations with interests and expertise in a subject, and form the ranks of recognized experts in a subject. They must donate their time to the effort if they wish to participate. Advisors are invited to work with drafting committees and to contribute comments. They do not make final decisions with respect to the final contents of an act. Only the Commissioners who compose the drafting committee may do this.

A committee meets according to the needs of the project. Meetings ordinarily begin on Friday morning and finish by Sunday noon, so as to minimize conflict with ordinary working hours. A short act may require one or two committee meetings. Major acts may require one meeting every month for a considerable period of time -- several years, in some instances. A committee may produce a number of successive drafts as an act evolves.

At each annual meeting during its working life, the drafting committee must present its work to the whole body of the Conference. The most current draft is read and debated. This scrutiny continues until a draft can satisfy the whole body of the Commissioners. Every act receives at least one interim reading, and is

finalized when the whole Conference is satisfied as to its policies and technical quality. Then it becomes an official act by a vote of the states. Each state commission caucuses to represent its state's position; each state receives one vote. The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

The cost of this process to the states is primarily for travel, paper, publication, and meetings. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has great advantages.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members to serve a two-year term (§ 9-49, Code of Virginia). In 1982, Governor Charles S. Robb appointed Stephen G. Johnakin and H. Lane Kneedler III to the Conference. Mildred Robinson was appointed by Governor L. Douglas Wilder in mid-1990 and was reappointed for a full term in 1992. Mr. Johnakin died in the Spring of 1994. A copy of the memorial delivered to the Conference by Commissioner Lamb is attached. Governor Allen, in June of 1994, appointed three new commissioners: John Goode of Richmond, J. Rodney Johnson of Richmond and Pamela Meade Sargent of Abingdon. In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. To be eligible for life membership, a Commissioner must have served as President of the Conference or as a Commissioner for at least 20 years. Virginia's life members are Brockenbrough Lamb, Jr., a member since 1953, and Carlyle C. Ring, Jr., a member since 1970 and President of the Conference from 1983 to 1985. John B. Boatwright, Jr., was appointed to the Conference in 1950 and was a life member of the Conference at the time of his death on March 13, 1993.

The Constitution of the Conference also grants membership as an associate member to the principal administrative officer of the state agency "charged by law with the duty of drafting legislation, or his designee." E. M. Miller, Jr., Director of the Division of Legislative Services since 1989, is an associate member. Mary P. Devine, senior attorney with the Division, was designated in 1983 to represent the former Director and continues to serve as an associate member.

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

Brockenbrough Lamb, Jr. - Chairman, Standby Committee on the Uniform Limited Partnership Act.

H. Lane Kneedler III - Chairman, Drafting Committee to Revise the Uniform Partnership Act; member, Standby Committee on Criminal History Records Act.

Stephen G. Johnakin - Member, Committee to Revise U.C.C. Article 8 Opportunities Act; member, Review Committee on Unincorporated Nonprofit Associations Act.

Carlyle C. Ring, Jr. - Chairman, Committee on Uniform Commercial Code; Chairman, Drafting Committee to Revise Article 5 of the U.C.C.; Co-Chairman of the Standby Committee on Amendments to Articles 3 and 4 of the U.C.C.; member, Act Management Subcommittee for Article 4A of the U.C.C.; member, Permanent Editorial Board for the Uniform Commercial Code; member, Legislative Committee.

Mildred W. Robinson - Member, Health-Care Decisions' Act Drafting Committee; member, Prudent Investor Act Review Committee.

Mary P. Devine - Member, Committee on Liaison with Legislative Drafting Agencies; member, Legislative Committee; member and reporter, Drafting Committee on the Uniform Disclaimers Act.

REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN CHICAGO, ILLINOIS

The 1994 annual meeting was held July 28 - August 5, 1993, in Chicago, Illinois. Commissioners Lamb, Ring, Kneedler, Goode, Johnson, Sargent and Devine attended. A memorial to Steve Johnakin was delivered to the Conference by Commissioner Lamb on behalf of the Virginia Commissioners.

The agenda for the annual conference was very full. As always, the debates were spirited and lengthy, but fruitful. The following Uniform Acts were adopted for consideration by the states:

Uniform Adoption Act

Uniform Commercial Code, Revised Article 5 - Letters of Credit

Uniform Commercial Code, Revised Article 8 - Investment Securities

Uniform Limited Liability Company Act

Uniform Prudent Investor Act

In addition, the Conference approved amendments to the Uniform Common Interest Ownership Act and the Uniform Controlled Substances Act.

ACTIVITIES OF THE 1994 GENERAL ASSEMBLY

Uniform Interstate Family Support Act was sponsored by Delegates Robert S. Bloxom and Jean W. Cunningham. The bill passed without opposition.

Uniform Commercial Code, Article 6 - Bulk Sales was again introduced upon recommendation of the study committee chaired by Delegate George H. Heilig, Jr., although this time both repeal (HB 471 - Woodrum) and revision (HB 645 - Heilig) were introduced. In 1993, lawyer-legislators from the rural areas of the state expressed concerns over the effect of repeal and elimination of the notice requirements of Article 6. In deference to these concerns, further review was undertaken by the U.C.C. study committee. The study committee decided to introduce both versions of Article 6. Both versions were carried over by the House Courts of Justice Committee, which failed to take any action with regard to either bill prior to the procedural deadline for dealing with carryover bills.

TOD - Security Registration was again introduced, this time by Delegate W. Tayloe Murphy, Jr., upon recommendation of the Virginia Bar Association (HB 786). This bill passed without opposition.

Uniform Simultaneous Death Act (1993) was sponsored by Delegate W. Tayloe Murphy, Jr., upon recommendation of the Wills, Trusts and Estates Section of the Virginia Bar Association. The bill passed without opposition.

Revised Uniform Partnership Act was introduced by Delegate George H. Heilig, Jr., but was carried over to allow the Virginia Bar Association to review the Act. No action was taken prior to the procedural deadline for dealing with carryover bills.

RECOMMENDATIONS FOR ENACTMENT

The following Uniform Acts, which have been approved by the Conference, make significant contributions to important subjects. The Virginia Commissioners strongly recommend these acts for consideration and adoption by the 1995 General Assembly:

Repeal or Revision of Article 6, Uniform Commercial Code

Revised Article 8, Uniform Commercial Code*

* See: Short Summaries, beginning at page (10).

Uniform Partnership Act (1993)*

Uniform International Wills Act

Uniform Commercial Code, Article 6 - Bulk Sales is presented to the states by the Conference in the form of two alternatives, revisions or repeal. Repeal is the recommended alternative. The Virginia Bar Association has endorsed repeal.

Uniform Commercial Code, Revised Article 8 - Investment Securities governs the transfer of investment securities in recognition of the modern transfer and holding systems.

Uniform Partnership Act (1993) revises the former act to establish a partnership as a separate legal entity, although partners remain equally liable for the debts of the partnership.

Uniform Probate Code, International Wills Act (1977) - Implements, by state action, the Washington Convention on the international validity of wills and covers the form, certificate and registry of such wills.

Revised Article 5, Uniform Commercial Code was approved by the Conference, but has not yet been approved by the American Law Institute. That revision should be ready for consideration in the 1996 Session of the General Assembly and incorporates important modernizations and improvements in the UCC provisions governing letters of credit.

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

In the next several years, the Conference will be considering proposed Uniform Acts covering:

- Unclaimed Property
- Trusts
- Punitive Damages
- Principal and Income
- Management of Public Employee Pension Funds
- Interstate Child Visitation
- Guardianship and Protective Proceedings
- Disclaimers of Property Interest
- Consumer Leases
- UCC, Article 9 (Secured Transactions)
- UCC, Article 2A (Leases)

UCC, Article 2 (Sales)
Certification of Questions of Law

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General and executive branch agencies on topics that may be appropriate for consideration by the Conference. Appropriate topics are those where (i) there exists a need for uniformity in the law among the states and (ii) it is anticipated that a majority of the states would adopt such an act.

Respectfully submitted,

Brockenbrough Lamb, Jr.
Carlyle C. Ring, Jr.
John Goode
Stephen G. Johnakin
J. Rodney Johnson
H. Lane Kneedler III
Mildred Robinson
Pamela Meade Sargent
E.M. Miller, Jr.
Mary P. Devine

MEMORIAL OF STEPHEN G. JOHNAKIN

Stephen G. Johnakin was born April 20, 1945 and died March 26, 1994.

Steve attended the University of Virginia where he received two degrees namely, B.A. with Honors, Phi Beta Kappa in 1967 and his J.D. in 1970.

Upon graduating from Law School, he was from 1970 to 1971 Law Clerk to the Honorable John A. MacKenzie U.S. District Court for the Eastern District of Virginia, Norfolk, Virginia. From 1971 to 1978 he was employed by Lawyers Title Insurance Corporation where he held positions of Title Attorney, Senior Title Attorney and Assistant and Associate Counsel.

In 1978 to 1979, he was an Associate at Thomas & Fiske, P.C. and then in 1979 until his death, he became the Director and Member of the Executive Committee.

When many of us were first appointed Commissioner on Uniform State Laws, it took some time perhaps one, two, or three years to learn the manner in which the Conference operates. We had to attend several annual meetings before we understood the rules and the procedures and came to know the actual mechanics of how we perform our duties.

Steve was not faced with this problem because, prior to being appointed a Commissioner from Virginia in 1982, he was in 1973 - 1974 the Drafter for Virginia Condominium Study Commission (he drafted most of the Virginia Condominium Act of 1974 and most of the 1975 amendments thereto.)

In 1975 and 1976, he was Counsel and Advisor to the Bar Association Committees which drafted the D.C. and Georgia Condominium Acts.

In 1975 through 1977 he was the Reporter for the Uniform Condominium Act Committee of the National Conference of Commissioners on Uniform State Laws.

In 1977 through 1979, he was the Reporter for the Uniform Real Estate Time Share Act Committee of the National Conference of Commissioners on Uniform State Laws.

In 1979 through 1980 he was the Reporter for the Uniform Planned Community Act Committee of the National Conference of Commissioners on Uniform State Laws.

From 1975 until his death, he was a member of Virginia Condominium Advisory Committee and the Virginia Time-share

Advisory Committee. He also was Reporter for the Model Cooperative Tenancy Act Committee of the National Conference of Commissioners on Uniform State Law.

Consequently in June of 1982 when he was appointed a Commissioner from Virginia, he was thoroughly familiar with the work done by the Conference.

Articles published by Steve included the following:

"A Second Generation of Condominium Statutes," published in the Urban Land Institute's Urban Land, December 1974.

"Federal Condominium Regulation: Contra," published in the American Land Title Association's Title News, April 1975; and

"Legislation for Timeshare Ownership Projects," published in the American Bar Association's Real Property, Probate, & Trust Journal, Winter 1976.

Steve was a member of the Virginia State Bar, American Bar Association and Bar Association of City of Richmond.

As many of you know, the Virginia Commissioners have for many years held "Meditation Sessions" in Commissioner Lamb's room and Steve was a faithful attendee at these sessions.

Respectfully submitted,


Brockenbrough Lamb, Jr.

Commissioner from Virginia since 1953

August 4, 1994

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SHORT SUMMARIES, 1994

UNIFORM ADOPTION (1994)

The Uniform Adoption Act (1994) provides comprehensive procedures for the adoption of children. An adoption proceeding ends an existing parent and child relationship and creates a completely new one, which generally continues (except for step-parent adoptions) as if the original parent and child relationship had never existed. Included procedures are those for obtaining consents of birth parents to place children for adoption, directly, and for obtaining the relinquishment of the custody of a child for an agency placement for adoption. There is a procedure for pre-placement evaluation of any prospective adoptive parents. The adoption proceeding includes proceedings to identify unknown fathers and to terminate a parent and child relationship for a parent who has not consented to adoption or to a relinquishment for adoption. A termination may occur if there is clear and convincing evidence that not terminating a relationship will be detrimental to a child. Once an adoption has concluded, it is not reviewable for any reason after six months. Records of an adoption are sealed and regarded as confidential for 99 years. However, there is a procedure for releasing non-identifying information, and a procedure for releasing identifying information if a court finds good cause to do so, after balancing all of the interests of the parties protected by the confidentiality requirement. Protected parties have a registry in which they may choose to waive the confidentiality of their own identities. Parties to an adoption may choose initially to have identities revealed. There are separate procedures for step-parent adoptions and adult adoptions.

REVISED UNIFORM COMMERCIAL CODE ARTICLE 5 - LETTERS OF CREDIT

Letters of credit are used to obtain payment and as a backup to other kinds of credit extension. They are very important in international trade. The revision to Article 5 does not change the stated intent to create a flexible framework of rules that allow commercial entities great latitude in tailoring letters of credit by agreement. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits, issued by the International Chamber of Commerce, can govern many of the particulars of letters of credit. The Statute of Frauds provision is revised to allow for other forms of durable representation of language, such as computer storage devices. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the

document plus incidental damages. Consequential damages are not permitted. Cover is not required to obtain damages. There are clear subrogation rights for any party who pays on a letter on behalf of another. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

REVISED UNIFORM COMMERCIAL CODE ARTICLE 8 - INVESTMENT SECURITIES - WITH CONFORMING AMENDMENTS TO ARTICLES 1, 5, 9, AND 10

The 1994 revision to Article 8 of the Uniform Commercial Code introduces a new concept of "security entitlement" as a property interest in "security accounts," recognizing the fact that most investment securities are kept in securities accounts in what is called the indirect holding system for securities. That system is characterized by central depositories for the certificates representing investment securities in which securities intermediaries hold positions in their own names or the names of nominees. In turn, investors have interests in securities represented in accounts with the same securities intermediaries. A security entitlement is a property right that an investor has in a security account with an intermediary, and that an intermediary has in an account with a depository. That property right guarantees ownership rights even though direct ownership is not registered with the issuers of these same investment securities. One of the major impacts of these revisions is upon attachment and perfection of security interests in investment securities. A security interest may be taken in a security entitlement, or in the entire financial assets held in a securities account, or in the even broader category of investment property that includes commodities contracts. Commodities contracts are not securities under Article 8. The security interest may be taken by filing a financing statement or by creditor control over the specific securities. Control is obtained by giving the secured creditor power over transactions concerning the investment property to which the security interest has attached.

1994 AMENDMENTS, UNIFORM COMMON INTEREST OWNERSHIP ACT

The Uniform Common Interest Ownership Act contains provisions for the formation, management, and termination of any common interest community, including a condominium, a planned community, or a real estate cooperative. It also includes significant consumer protection provisions effective at the time of sale of any unit in a common interest community. These amendments are designed to make the original act more effective for all participants in common interest communities. Included in these amendments are a broader exclusion of non-residential common interest communities, with more flexible opportunity to make the Act applicable, if desired; better provisions for dealing with use and occupancy restrictions; clearer statement of the fiduciary responsibilities of elected executive board members and officers of common interest communities; clarification of the liability of unit owners in condominiums; and, inclusion of provisions authorizing alternate dispute resolution.

AMENDMENTS TO UNIFORM CONTROLLED SUBSTANCES ACT, ARTICLE 4 - OFFENSES AND PENALTIES - AND ARTICLE 5 - CIVIL FORFEITURE

These amendments contain the provisions for criminal and civil forfeiture of assets associated with illegal transactions in narcotic and dangerous substances and the proceeds of such illegal transactions. A criminal forfeiture procedure takes place in the criminal court and as part of the criminal prosecution. It is not substantively different from a civil forfeiture action, including the burden of proof of a preponderance of the evidence. Civil forfeiture is a legal action separate and apart from any criminal action, and is available even though there is no criminal prosecution. The procedure includes seizure and lien procedures. The state has the option to proceed either with an administrative proceeding or a judicial proceeding for forfeiture. The defendant has the option of requesting a judicial proceeding if an administrative proceeding is first initiated. The burden of proof in the proceeding is mainly preponderance of the evidence. The prosecution must establish that property should be forfeited. The defendant has the burden of establishing most exemptions and other affirmative defenses. The exemption provisions protect innocent owners, and are available to owners, generally, who do not participate in or know of illegal activities. Grossly disproportionate forfeitures are not permitted. Proceeds and property are the state's following a successful forfeiture action. Proceeds go to the general fund of the state.

UNIFORM LIMITED LIABILITY COMPANY ACT

A limited liability company under the Uniform Act is a business organization that is formed by filing Articles of Organization, that commences business as either a member managed company or a manager managed company, that limits liability of all members to the extent of assets invested in the company, that exists either for a term or "at will," and that dissolves either at the end of a term or upon the dissociation of a member, unless a majority in interest of members vote to continue the business or unless the company buys out a dissociating member, as provided. A limited liability company is principally controlled by its operating agreement. The agreement may waive or vary all provisions of the Act, except for a few provisions governing fiduciary obligations and rights of members. There are no limitations on the types of contributions that members may be permitted to provide to the capital of the company. Member distributions are equal, unless the agreement otherwise provides. Included are provisions for conversion of partnerships and limited partnerships to limited liability company and mergers of limited liability companies with other business organizations. Rules governing foreign limited liability companies are provided. Derivative actions by members on behalf of a company are provided for.

UNIFORM PRUDENT INVESTOR ACT

This act removes much of the common law restriction upon the investment authority of trustees of trusts and like fiduciaries. It allows such fiduciaries to utilize modern portfolio theory to guide investment decisions. A fiduciary's performance is measured on the performance of the whole portfolio, not upon the performance of each investment, singly. The Act allows the fiduciary to delegate investment decisions to qualified and supervised agents. It requires diversification of a portfolio, unless there is a very good reason not to diversify. It requires sophisticated risk-return analysis to guide investment decisions. In return, there are virtually no restrictions upon the types of investments that the fiduciary may make, provided that he or she has made the proper risk/return analysis as any prudent investor should do.

UNIFORM PARTNERSHIP ACT (1994)

- A S U M M A R Y -

This Act revises the Uniform Partnership Act of 1914. The 1994 Act establishes a partnership as a separate legal entity, and not merely as an aggregation of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. It permits the filing of statements of authority that have the effect of affirming the authority of designated partners to do business on behalf of the partnership, and to impose limitations upon the authority of certain partners to conduct business on behalf of the partnership. The 1994 Act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. Partnership property is held in the partnership name, and is not co-owned by the partners, individually. Partners own their partnership interest, but not specific property. Every dissociation of a partner with the partnership does not result in dissolution of the partnership and a winding-up of its affairs. Only dissociation with express intent of so doing will cause dissolution of a partnership at will. A partnership for a term or a particular purpose dissolves after dissociation of a partner unless a majority in interest of the remaining partners vote to continue the business. There are provisions in the 1994 Act for conversion of a partnership to a limited partnership, and vice versa, and for merger of a partnership with other partnerships or limited partnerships. A partnership remains an association of one or more persons to do business for profit, and partners remain equally liable for the debts of the partnership.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.
