

**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, 2006 - December 31, 2006**

**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, and 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 regarding legislation on certain issues. In August of 1892, the first National Conference of Commissioners on Uniform State Laws (Conference or NCCUSL) 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 1901. Supreme Court Justices Brandeis and Rutledge, the late Chief Justice Rehnquist, and such legal scholars as Professors Wigmore, Williston, Pound and Bogart have all served as members of the Conference. This distinguished body has

guaranteed that the products of the Conference are of the highest quality and are enormously influential upon the process of the law.

The Conference, also known as the Uniform Law Commissioners (ULC), began more than 100 years ago because of the interests of state governments in improvement of the law and interstate relationships. Its purposes remain to serve state governments and improve state law.

## **OPERATION OF THE CONFERENCE**

The ULC convenes as a body once a year. The annual meeting lasts eight to 12 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 ULC 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 ULC, the Executive Committee, is composed of officers elected by vote of the commissioners, and five members who are appointed annually by the president of the ULC. 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 ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association. 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 national office in Chicago, a small staff provides administrative and clerical assistance to the ULC and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts. The staff includes a legislative director/legal counsel, deputy legislative director/legal counsel, legislative counsel, chief administrative officer and communications officer and several administrative assistants. The position of executive director is part time and is traditionally occupied by a law school

faculty member. In addition, the ULC contracts with "reporters" for professional services to aid in drafting. Reporters are engaged at modest honoraria to work with drafting committees on specific acts. The Conference also employs professional independent contractors for work on part of its public information and educational materials. The annual budget and audit report of the Conference are available on request.

Members of the ULC contribute numerous hours each 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 \$6 million annually.

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

## **VALUE FOR VIRGINIA AND THE STATES**

The process of drafting a uniform act is lengthy and deliberate, yet cost-efficient. A committee is appointed from the membership of the ULC. The American Bar Association is invited to appoint an advisor to each drafting committee. The bylaws of the ULC require at least two years for drafting and two readings of the draft at annual meetings of the ULC. Through this unique system--the only one like it in American political life--comprehensive legislation receives painstaking and balanced, nonpartisan consideration.

The price tag for this process represents true value to the states. With 98 percent of the annual budget of the ULC coming from state government contributions, here is a look at some of the costs and benefits.

Let us assume that a drafting committee will meet twice a year and that a given act will receive about 16 hours of debate. The average committee meeting costs \$10,000. Four meetings over a two-year period will cost \$40,000. Sixteen hours of annual meeting debate translates into an additional \$70,000, figuring the amount budgeted for annual meeting expenses and hours devoted to a specific act. Based on these assumptions, the total cost to the states for a uniform act is \$120,000.

The states would have to come up with an additional \$1,010,000 to duplicate these same services on their own, estimating a \$250 hourly fee for professional services for a total cost of \$1,120,000. The main difference: Uniform Law Commissioners donate their professional services, spending hundreds of hours on uniform state laws as a public service because of their commitment to good law. The cumulative value of this donated time in the development of uniform and model acts averages about \$6 million per year.

Of course, the hypothetical committee that meets twice a year over a period of two years is just that. The average revision of an article of the Uniform Commercial Code takes four years, with three to five committee meetings per year. The original Uniform Probate Code took a full decade to develop and promulgate. The Uniform Adoption Act (1994) required five years, with extensive committee meetings. Each of these comprehensive projects cost much more from the actual budget of the ULC, and represents much larger contributions--in terms of time--from the ULC membership.

The hypothetical example does not consider still other benefits to the state. Major committees of the ULC draw extensive advisory and observer groups into the drafting process. Meetings of the Uniform Commercial Code committees regularly draw advisors and observers in a ratio of two or three to one commissioner. These advisor and observer groups represent various interests, provide outside expertise and facilitate dissemination of the act. It is impossible to place a dollar value on their input, which state funds do not pay.

It is also not possible to measure the worth of the intellectual participation by all who are involved. There is no process at either the state or federal level of the United States government today that compares to the uniform law process--intense, nonpartisan scrutiny of both policy and execution of the law.

## **STATE APPROPRIATIONS**

The ULC is a state service organization that 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 ULC. In addition, each state delegation requests an amount to cover its commissioners' travel expenses for the Conference's annual meeting. The total requested contribution of all the states to the operation of the ULC was \$1,833,100 in fiscal year 2006. The smallest state contribution was \$16,500 and the largest was \$131,500. Virginia's contribution for FY 2006 was

\$41,000. The annual budget of the ULC for FY 2006 was \$2,446,779. Of this amount, \$413,214 goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. In addition, \$583,074 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$286,240 is spent on the annual meeting. Public education for uniform and model acts costs about \$217,529 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs.

### **OTHER FINANCIAL CONTRIBUTORS**

The American Bar Association makes a yearly contribution to the ULC. For FY 2006, it has contributed \$25,000. The ULC also seeks grants from the federal government and from foundations for specific drafting efforts. The last federal grant of \$60,000 funded the drafting effort for a Uniform Environmental Covenants Act.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). The ALI holds Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of ULC and ALI costs are paid from the Falk Foundation income.

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.

### **PROCESS FOR 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, which consists solely of commissioners, considers new subject areas of state law for potential uniform or model acts. The Committee reviews suggestions for uniform or model acts from many sources, including organized bar groups, state governments and private persons. If a subject area cannot be adequately studied by Scope and Program Committee, it is likely to be given to a special study committee. The recommendations of the Scope and

Program Committee go to the NCCUSL Executive Committee, and to the entire ULC for approval.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

Advisors and participating observers 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 interest and expertise in a subject, and from the ranks of recognized experts in a subject. They must donate their time to the effort if they wish to participate. Advisors and participating observers 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 noon on Sunday, 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 ULC. The most current draft is read and debated. This scrutiny continues from annual meeting to annual meeting until a draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting, and a final reading at a subsequent annual meeting. An act becomes official by a majority vote of the states. As mentioned earlier, each state commission caucuses to represent its state's position and 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 in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.



## **THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION**

Virginia's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Virginia benefits from the excellent body of law created for its consideration. The Conference, and all the states, benefit from having Virginia's direct contribution to the work of NCCUSL. Virginia's ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

## **ACTIVITIES OF THE VIRGINIA COMMISSIONERS**

The Governor is authorized to appoint three members, each to serve a four-year term (§ 30-196, Code of Virginia). The three gubernatorial appointees are: H. Lane Kneedler of Charlottesville, Ellen F. Dyke of Vienna, and Thomas Edmonds of Richmond.

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.

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." Esson McKenzie Miller, Jr., director of the Division of Legislative Services since 1989, is an associate member. Jessica D. French, senior attorney with the Division, was designated an associate member in July 1999.

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

Carlyle C. Ring, Jr. — Chairman, Committee on Uniform Commercial Code; Chairman, Standby Committee to Revise Uniform Anatomical Gift Act; Member, Study Committee on Environmental Controls and Hazards Notice System; Member, Executive Subcommittee of the Permanent Editorial Board for Uniform Commercial Code; Member, Permanent Editorial Board for Uniform Commercial Code; Member, Standby Committee to Revise Uniform

Commercial Code Article 1, General Provisions; Member, Committee on Federal Relations; and Liaison Member, Uniform Law Foundation Trustees.

Ellen F. Dyke — Member, Drafting Committee to Prepare Amendments to Uniform Common Interest Ownership Act.

Thomas Edmonds — Member, Study Committee on the Law of Payment Systems and Member, Committee on Liaison with the American Bar Association.

H. Lane Kneeder — Secretary, Executive Committee; Member, Drafting Committee on Uniform Collateral Sanctions and Disqualifications Act; Member, Study Committee on Administrative Procedures for Interstate Compact Entities; Member, Standby Committee on Uniform Certificate of Title Act; and Member, Drafting Committee to Revise Model State Administrative Procedures Act.

Esson McKenzie Miller, Jr. — Member, Standby Committee on Uniform Certificate of Title Act and Member, Legislative Committee.

Jessica D. French — Member, Drafting Committee on Collateral Sanctions and Disqualifications Act and Member, Legislative Committee.

## **ACTIVITIES OF THE 2006 VIRGINIA GENERAL ASSEMBLY**

Based on recommendations made by the Virginia Commissioners in Report Document No. 98, 2006, covering the period January 1, 2005, through December 31, 2005, and other initiatives, the following actions regarding uniform laws were taken by the 2006 Virginia General Assembly.

### **Uniform Law-Related Bills Introduced by the 2006 General Assembly Session**

**House Bill 906; Delegate Oder** - Pet trust; created. Trust for care of animal. Amends the Uniform Trust Code to provide that trust assets can be used for burial or other postdeath expenditures of the pet if provided for in the trust instrument and more clearly defines the trustee's duties and rights. Also delineates that excess funds shall be distributed pursuant to the residuary clause of the settlor's will.

### **Real Property Electronic Recording Act**

**Senate Bill 448; Senator Devoliltes Davis.** Reenacts the Uniform Real Property Electronic Recording Act, which was passed in 2005 with the requirement that it be reenacted by the 2006 Session. The Act authorizes circuit court clerks to record land transaction records electronically, and to convert paper records into electronic records. The bill also states that in any circumstance where the law requires that a land records document be an original that an electronic land records document satisfying this Act satisfies the law.

### **Mortgage Satisfaction**

**Senate Bill 433; Senator Devolites Davis.** Imports into the Virginia Code provisions of the Uniform Residential Mortgage Satisfaction Act relating to definitions, notifications, rescinding erroneously recorded certificates of satisfaction, requirements on secured creditors, and the form and effect of satisfaction. Current Code provisions relating to payoff statements, mortgage satisfaction via settlement agents and court proceedings, and penalties for errors or omissions in satisfaction procedures are retained. The bill was passed by the 2005 Session, but was required to be reenacted.

### **Virginia Uniform Transfer to Minors Act**

**House Bill 796; Delegate Fralin;** Allows two people to be joint custodians for a single minor under the Virginia Uniform Transfer to Minors Act. Each joint custodian shall have full power and authority to act alone with respect to the custodial property, and if either resigns, dies, becomes incapacitated or is removed, the remaining person becomes sole custodian.

## **REPORT OF PROCEEDINGS OF THE 2006 ANNUAL CONFERENCE**

The 2006 annual meeting of the Conference was held July 7 - July 14, in Hilton Head, South Carolina. Commissioners Dyke, French, Lamb, Kneedler, Miller and Ring attended.

The following uniform acts or amendments to uniform acts were approved at the annual meeting:

- ***Uniform Anatomical Gift Act***
- ***Uniform Child Abduction Prevention Act***
- ***Uniform Emergency Volunteer Health Practitioners Act***
- ***Uniform Limited Liability Company Act***

- *Uniform Power of Attorney Act*
- *Uniform Prudent Management of Institutional Funds Act*
- *Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings*
- *Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act*

In addition to the approved acts listed above, the following uniform acts were considered by the Conference at its annual meeting:

- *Uniform Emergency Volunteer Healthcare Practitioners Act*
- *Uniform Statutory Trust Act*
- *Uniform Guardianship Interstate Jurisdiction and Enforcement Act*
- *Model State Administrative Procedures Act*
- *Uniform Cooperative Association Act*
- *Amendments to Uniform Common Interest Ownership Act*
- *Interstate Depositions and Discovery of Documents Act*
- *Uniform Collateral Sanctions and Disqualifications Act*

## 2006 ADOPTIONS BY ANNUAL CONFERENCE

### SUMMARIES

Summaries of the acts adopted or amended by the Conference are as follows:

#### Uniform Anatomical Gift Act (2006)

The Uniform Anatomical Gift Act (2006) (UAGA 2006) revises the earlier 1968 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system for allocations of cadaver organs for transplant purposes. It makes it easier to make a document of gift, particularly as provided on drivers' licenses. It creates a power in certain individuals, such as a holder of a health care power of attorney, to authorize an anatomical gift on behalf of an incapacitated person, before death actually occurs. It expands the list of those who may make an anatomical gift after an individual dies, when the individual has not executed a document of gift. It makes it clear that an anatomical gift that does not specify the donees of organs goes to a recognized transplant organization responsible for allocating organs. It accommodates

the use of donor registries upon which a potential donor may put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The Act attempts to resolve ambiguity and conflict between anatomical gifts and “Do Not Resuscitate” instructions. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the Act more usable than the earlier acts are currently.

### **Uniform Child Abduction Prevention Act**

The Uniform Child Abduction Prevention Act (UCAPA) authorizes a proceeding in a court between contestants in a child custody dispute during which the court considers the probability that a contestant will abduct a child to another state or foreign jurisdiction. Upon a finding that an abduction is highly probable, the court may issue orders as necessary to prevent that abduction. The court hears evidence respecting the risk of abduction, based upon statutorily provided risk factors: previous abductions or attempts to abduct; threats by a contestant respecting abduction; abuse of the child; domestic violence; negligence; or, refusal to obey an existing child-custody order. There are further risk factors if the anticipated abduction is to a foreign country, i.e., the country is not a party to the Hague Convention on International Child Abduction. Standing to bring such a proceeding broadly includes the court itself, a contestant in a child-custody proceeding, a prosecutor or a public attorney. UCAPA relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

### **Uniform Emergency Volunteer Health Practitioners Act**

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) provides a state with a procedure for recognizing another state’s licenses for healthcare practitioners who volunteer to provide assistance for the duration of an emergency requiring substantial health care assistance. UEVHPA was prompted by the difficulties during the 2005 hurricane season on the gulf coast. Many health care practitioners (doctors, nurses, veterinarians, for example) from other states volunteered services, but were denied the opportunity or were delayed because they were not initially licensed in the disaster states. Federal provisions for interstate cooperation do not reach to most private practitioners. UEVHPA calls for the creation of a registration system which out-of-state practitioners may use either before or during a disaster. The system may coincide with existing federal/state

systems. Upon registration, practitioners are expressly allowed to contribute their professional skills to existing organized disaster efforts. The effect of the act should be to ease the utilization of out-of-state practitioners when a state needs them the most.

### **Uniform Limited Liability Company Act (2006)**

The Uniform Limited Liability Company Act (2006) (ULLCA 2006) replaces the Uniform Act of 1996. A limited liability company (LLC) is an entity that shares the limitation of liability characteristic of a corporation with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, a limited liability company does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made limited liability companies very popular throughout the U.S. Like the 1996 Act, ULLCA 2006 authorizes the filing of a certificate of registration to create an LLC. The terms of the Act, including fiduciary obligations and contractual obligations, govern the relationships between members and between members and managers, if there are designated managers. Most of the rules, as in the 1996 Act, are default rules. Express provisions of the operating agreement prevail over most statutory rules. These are some of the changes the ULLCA 2006 makes over the 1996 Act: the 2006 Act leaves the designation of a manager-managed LLC to the terms of the agreement rather than the certificate of registration; electronic records and signatures are recognized; the standard of care becomes ordinary care subject to the business judgment rule; there is the ability to certificate member transferable interests for the purpose of free transfer as investment securities; it is possible to eliminate the duty of loyalty or duty of care in an agreement, so long as not “manifestly unreasonable;” a member may bring a direct action against the company for misfeasance, not just a derivative action; a company threatened by a derivative action may form a litigation committee to assume the burden of investigating the action and take certain actions on behalf of the company in its best interests.

### **Uniform Power of Attorney Act**

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960's to early 1970's in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-

consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically conferred rather than be general powers; this eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

### **Uniform Prudent Management of Institutional Funds Act**

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an update of the Uniform Management of Institutional Funds Act which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds. The earlier Act did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 Uniform Act. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7% of total return measured by a three year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

### **Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings**

The Model Registered Agents Act (MRAA) with amendments to other entity acts allows a state to use the same rules in the same place for registering agents mainly for partnerships, limited partnerships, limited liability companies and corporations. Currently every state has registration requirements for each kind of entity in the specific statute authorizing the entity, i.e., the partnership act has provisions for registering agents

representing the partnership. There is no reason to have separate registration requirements, with inevitable differences, in every entity statute. A single statute applying to every kind of entity makes the administration of these statutes much more efficient. Accordingly, MRAA would consolidate registration of agents in one place under one procedure. It would repeal the individual registration provisions from entity act to entity act. The amendments in an appendix provide suggestions for making the repeal amendments from state to state by showing how it would be done in the existing uniform or model entity statutes. Agents are registered primarily to establish a single office for service of process and for taking jurisdiction of the entity in litigation.

### **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 represents a child in a custody or support proceeding?” The courts have traditionally used what is called a guardian ad litem, but that designation is ambiguous, particularly if an attorney is appointed. Courts have been more and more inclined to appoint an attorney for a child, remembering that this attorney does not represent the principal parties to the proceeding. The scope of representation and an attorney’s obligations are not well set out in prior law. URCANCPA establishes three categories of representatives: a child’s attorney, a best interests attorney and a child’s advisor. A child’s attorney represents the child purely as a client, taking direction from that client. A best interests attorney represents the child’s “best interest” before the court but not subject to the child directions as a client. The child’s advisor is appointed by the court to advise the court on the best course of action with respect to the child, and is wholly court directed. A child’s attorney is usually the first appointed and recognized, but has the capacity to relinquish the attorney-client relationship in the event the child’s directions and desires raise the issue of its “best interests.” The child’s attorney can step aside and the court then appoints the “best interests” attorney. A child’s advisor may be appointed at any time, but may also be appointed as an alternative to a best interests attorney. URCANCPA does not require a court to appoint any representative for or on behalf of a child. It is in the court’s discretion whether to utilize these provisions. URCANCPA provisions reconcile appointments with the standard attorney obligations for representing a client, and should make proceedings in which a child needs representation more certain.



## RECOMMENDATIONS FOR ENACTMENT

The following uniform acts, which have been approved by the Conference, make significant contributions to important subjects. The Virginia commissioners recommend these acts for consideration and adoption by the 2007 General Assembly:

- *Uniform Anatomical Gift Act*
- *Uniform Environmental Covenants Act*

## CURRENT DRAFTING PROJECTS

There are currently 21 ULC drafting committees working on new and revised uniform acts. In addition, 14 study committees are considering subjects for possible future drafting.

### Current Drafting Committees

**Drafting Committee on Uniform Adult Guardianship Interstate Jurisdiction and Enforcement Act.** This committee is drafting an act that addresses the issue of jurisdiction with regard to adult guardianships, conservatorships, and other protective proceedings, and may also draft conforming amendments to the Uniform Guardianship and Protective Proceedings Act and other acts impacted by guardianship jurisdiction.

**Drafting Committee on a Business Organization Act.** The purpose of this committee is to draft common provisions of business organization law such as definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; and administrative powers of the Secretary of State; and incorporate Model Entity Transactions Act provisions on merger, interest exchanges, conversions, domestications and divisions. Working in partnership with an ABA committee, the drafting committee will also consider future expansion of the project.

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

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

**Drafting Committee on Amendments to the Uniform Common Interest Ownership Act.** UCIOA, first promulgated in 1982 and revised in 1994, is a comprehensive statute relating to condominiums, planned communities and cooperatives. This committee is revising UCIOA in light of intervening developments in this area of law and will study and recommend corresponding amendments to the Uniform Condominium, Planned Community, and Real Estate Cooperative Acts. The committee will consider a number of topics, including owner access to budget and financial records of the association, the establishments and funding of reserve accounts, and issues to improve the usefulness of the act.

**Drafting Committee on Uniform Cooperative Association Act.** This committee is drafting an act addressing the cooperative business format. Since the last NCCUSL effort in this area (the 1936 Uniform Agricultural Cooperative Association Act), there has been a tremendous amount of development in and use of this form of business entity but with wide variation among the states. The committee is reexamining the use of this form in light of nearly 70 years of development, the need for greater uniformity, and the growing use of cooperatives in providing marketing approaches.

**Drafting Committee on Uniform Discovery of Electronic Records Act.** This committee is drafting an act to address a broad array of issues that arise in discovery requests for electronic records. With the emergence of electronic technology, the extent to which individuals and institutions store or maintain information in an electronic form has clearly increased since the adoption of rules governing discovery generally. The drafting committee will draft an act relating only to civil litigation.

**Drafting Committee on a Uniform Emergency Volunteer Healthcare Practitioners Act.** In July 2006, NCCUSL promulgated the Uniform Emergency Volunteer Healthcare Practitioners Act in an effort to help state governments seeking to grant emergency licensing to out-of-state health care professionals during a period of emergency. The drafting committee is now scheduled to continue its work on the act to determine

whether to provide emergency health care practitioners with workers' compensation coverage and protection from some aspects of civil liability.

**Drafting Committee on a Faithless Presidential Electors Act.** This committee will draft an act providing a state statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state.

**Drafting Committee on a Uniform Interstate Depositions and Discovery of Documents Act.** This committee is drafting an act that would provide a procedure to enable a party to effectuate depositions and discover documents in other states and foreign jurisdictions. The drafting committee will draft an act that contains reciprocal provisions for taking the deposition testimony of a witness in one state for use in civil litigation pending in another state. When completed, the act should simplify the procedures for obtaining the testimony of out-of-state witnesses while minimizing the need for court involvement. The goal is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

**Drafting Committee to Amend Intestacy Provisions of the Uniform Probate Code.** This committee will amend the intestacy provisions of the UPC that deal with inheritance by children. Newer reproductive technologies – including posthumous conception – are becoming more and more commonplace, and yet the inheritance rules that govern in these circumstances are outdated or nonexistent. This committee will amend specific sections of the UPC, and possibly carve those sections off as a freestanding uniform act.

**Drafting Committee on Misuse of Genetic Information in Employment and Insurance Act.** This committee will draft uniform or model legislation on the misuse of genetic information in the context of employment and health insurance discrimination.

**Drafting Committee to Revise Model State Administrative Procedures Act.** This committee is revising the 1980 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated. Upon completion of its main charge, the committee will study the development of an administrative procedures act for use by interstate compact entities.

**Drafting Committee on a Regulation of Medical Examiners Act.**

This committee will draft an act regulating state and local forensic medical examination systems in an effort to improve the current standards. The committee will consider the areas of accreditation and quality assurance programs which play a crucially important role in the criminal justice system.

**Drafting Committee on a Relocation of Children Act.**

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

**Drafting Committee on Uniform Statutory Entity Trust Act.**

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

**Drafting Committee on a Transfer on Death for Real Property Act.**

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

**Drafting Committee to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America.**

This committee will review developments relative to the Uniform Unincorporated Nonprofit Association Act, last amended in 1995, and will draft updated amendments to promote the Act's national uniform adoption in conjunction with an effort to harmonize similar applicable laws in Canada and Mexico.

**Drafting Committee on a Certification of Unsworn Foreign Declarations Act.**

This committee will draft an act that would permit, in state court proceedings, unsworn declarations under penalty of perjury to be executed by witnesses located outside the United States in lieu of affidavits, verifications, or other sworn court filings. Obtaining an affidavit abroad can be a costly and time-consuming process. A uniform state law on this subject would be extremely useful in transnational litigation.

**Committee to Harmonize North American Law with Regard to the Assignment of Receivables in International Trade Convention.**

The United Nations Convention on Receivables in International Trade is in large measure consistent with, and derived from, Article 9 of the Uniform Commercial Code, and deals with choice of law. This Committee, in conjunction with delegations from the Uniform Law Conference of Canada and the Mexican Uniform Law Center is working on a statutory approach to implementation of the convention that would harmonize the law of the three countries.

**Committee on Liaison with American Indian Tribes and Nations.**

This committee, in addition to providing a general liaison function for the introduction of applicable Uniform Laws into tribal codes, has completed work on a version of Article 9 of the Uniform Commercial Code suitable for use by tribal governments, and will continue to draft in other areas.

**Study Committees**

- Study Committee on the 1996 Hague Convention on the Protection of Children
- Study Committee on Revisions to the Uniform Law on Notarial Acts
- Study Committee on DNA Evidence
- Study Committee on Notice and Repair of Construction Defects
- Study Committee on Electronic Recording of Custodial Interrogations
- Study Committee on Payment Systems
- Study Committee on Administrative Procedures for Interstate Compact Entities
- Study Committee on Bank Deposits
- Study Committee on Regulation of Charities
- Study Committee on Disposal of Electronic Products
- Study Committee on Environmental Controls and Hazards Notice Systems
- Study Committee on Health Care Information Interoperability
- Study Committee on Implementation of International Conventions and Treaties
- Study Committee on Insurance Coverage for Substance Abuse-Related Injuries or Sickness

**REQUEST FOR TOPICS APPROPRIATE  
FOR CONSIDERATION AS UNIFORM ACTS**

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General, the organized bar, state governmental entities, private interest groups and private citizens on ideas for new uniform or model acts. Appropriate topics are those where (i) uniformity in the law among the states will produce significant benefits to

the public and (ii) it is anticipated that a majority of the states would adopt such an act.

Respectfully submitted,

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