

REPORT OF THE

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

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



REPORT DOCUMENT NO. 107

**COMMONWEALTH OF VIRGINIA
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**Up to date information is available on the website of the National
Conference of Commissioners on Uniform State Laws
www.nccusl.org**

**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, 2010 - December 31, 2010

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 Springs, 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. Former Supreme Court Justices Brandeis, Souter, and Rutledge, and former 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 Commission (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. 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, ex-officio members, and 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, which provides advisors to all ULC drafting committees and many ULC study committees. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts. Other organizations 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 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 annual budget and audit report of the Conference are available on request.

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 pursues 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. 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.

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 between \$1 and \$2 million per project.

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. Each of these comprehensive projects cost much more than the actual budget of the ULC, and represents much larger contributions--in terms of time--from the ULC membership.

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 is \$2,457,500 in fiscal year 2011. The smallest state contribution is \$25,000 and the largest is \$148,600. Virginia's contribution for FY 2011 is \$53,000. The annual budget of the ULC for FY 2011 is \$3,058,793. Of this amount, \$596,493 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. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$126,820. In addition, \$668,424.37 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$345,125 is spent on the annual meeting. Public education for uniform and model acts costs about \$201,226 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

OTHER FINANCIAL CONTRIBUTORS

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts.

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.

In addition, the Commission has established royalty agreements with major legal publishers, which reprint the ULC's uniform and model acts in their publications.

The Conference will not take money from any source except on the understanding that its drafting work is completely autonomous.

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. Study committees report back to the Scope and Program Committee. The recommendations of the Scope and Program Committee go to the ULC 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. 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. A short act may require one or two committee meetings. Major acts may require many more meetings 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. There is often more than one interim reading and a drafting process that exceeds two years in duration. 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.

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 ULC.

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). Thomas Edmonds of Richmond is a gubernatorial appointee.

In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. Virginia's life members are Ellen F. Dyke, of Vienna, H. Lane Kneeder, of Charlottesville, Brockenbrough Lamb, Jr., of Richmond, a member since 1953, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria, 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. 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. — Chair, Committee on Uniform Commercial Code; Chair, Enactment 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, Committee on Federal Relations; and Liaison Member, Uniform Law Foundation Trustees; Member, Study Committee on Regulation of Financial Institutions and Payment Systems.

Ellen F. Dyke — Member, Drafting Committee on Manufactured Housing Act.

Thomas Edmonds — Member, Study Committee on the Regulation of Financial Institutions and Payment Systems; Member, Study Committee on Mental Health Advance Directives; Member, Committee on Liaison with the American Bar Association; and Member, Study Committee on a Mortgage Subrogation Act.

H. Lane Kneedler — Chair, Committee to Review the ULC Drafting Process; Member, Legislative Council (Atlantic Region); Member, Standby Committee on Uniform Certificate of Title Act; and Member, Study Committee on an Act on Prevention of and Remedies for Human Trafficking.

Esson McKenzie Miller, Jr. — Chair, Drafting Committee on a Uniform Certificate of Title Act for Vessels; Member, Standby Committee on Uniform Certificate of Title Act; Member, Legislative Committee; and Member, Study Committee on an Act on Prevention of and Remedies for Human Trafficking.

Jessica D. French — Member, Legislative Committee.

ACTIVITIES OF THE 2010 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 116, 2010, covering the period January 1, 2009, through December 31, 2009, and other initiatives, the following actions regarding uniform laws were taken by the 2010 Virginia General Assembly.

**Uniform Law-Related Bills Passed by the
2010 General Assembly Session**

Uniform Environmental Covenants Act (UECA)

Senate Bill 686; Senator Reynolds; Authorizes the Department of Environmental Quality to enter into environmental covenants with interest holders in real property that restrict the use of the real property. The covenants are intended to survive transfers of ownership interests in the land or operations of law that may otherwise terminate the covenant. The bill spells out the recordation process and notice to subsequent holders of interest. Prior held interests are not affected by the covenant. The bill authorizes the Department of Environmental Quality to establish fees to be paid by the fee simple owner of the real estate subject to the covenant in order to fund the program.

Uniform Power of Attorney Act (UPOAA)

Senate Bill 159; Senator Edwards / House Bill 719; Delegate Peace; Establishes in the Code of Virginia the Uniform Act that was adopted by the National Conference of Commissioners on Uniform State Laws in 2006. The UPOAA consists of default rules that can be modified if the principal desires. Powers of attorney will be durable unless drafted to expire upon a specified date or event. The UPOAA addresses creation and use, good faith reliance, limitations of agent's powers, refusal to recognize, judicial review, notification of resignation, and other matters. The UPOAA contains an optional statutory form that may be used by an agent to certify facts concerning a power of attorney.

**REPORT OF PROCEEDINGS OF THE 2010
ANNUAL MEETING**

The 2010 annual meeting of the Conference was held July 9 - July 16, in Chicago, Illinois. Commissioners Dyke, Edmonds, French, Kneedler, Miller, and Ring attended.

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

- *Uniform Collateral Consequences of Conviction Act*
- *Uniform Commercial Code (UCC) Article 9*
- *Uniform Electronic Recordation of Custodial Interrogations Act*
- *Uniform Faithful Presidential Electors Act*
- *Uniform Military and Overseas Voters Act*
- *Uniform Partition of Heirs Property Act*
- *Uniform Protection of Genetic Information in Employment Act*
- *Revised Model State Administrative Procedure Act*
- *Revised Uniform Law on Notarial Acts*
- *Insurable Interests Amendment to the Uniform Trust Code*

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

- *Authentication and Preservation of State Electronic Legal Materials Act*
- *Certificate of Title for Vessels Act*
- *Harmonization of Business Entity Acts*
- *Oversight of Charitable Assets Act*

2010 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes.

Individuals will be advised of the particular collateral consequences associated with the offense for which they are charged at or before arraignment. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent.

Amendments approved in 2010 responded to the U.S. Supreme Court decision in *Padilla v. Kentucky*. This decision mandated that defense counsel must advise a defendant of certain collateral consequences associated with the crime. The need to provide clear and impartial descriptions of the possible consequences to the party prior to deciding upon a course of action is stressed in the Act.

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

Uniform Commercial Code (UCC) Article 9

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

of technical changes that respond to issues arising in the marketplace and a set of transition rules.

Uniform Electronic Recordation of Custodial Interrogations Act

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

Uniform Faithful Presidential Electors Act

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

Uniform Military and Overseas Voters Act

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

tracking of the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, the UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of the Uniform and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act, and extends the important protections and benefits of these acts to voting in applicable state and local elections.

Uniform Partition of Heirs Property Act

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

Uniform Protection of Genetic Information in Employment Act

The need for regulation of genetic information and the desirability of uniformity in the area were recognized at the federal level with the enactment of the Genetic Information Nondiscrimination Act (GINA) of 2008. However, much in the same way that states have supplemented federal employment nondiscrimination acts with their own fair employment acts, there is a role for states in the regulation of genetic information in the workplace.

The Uniform Act is designed to eliminate the preemption problems created by GINA for existing state statutes. It thus incorporates the key definitions and concepts of GINA. It also complements and supplements GINA

with additional provisions that are more protective of employees, following the pattern of many state fair employment laws that supplement Title VII and other federal statutes. The Act comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the employment setting.

Revised Model State Administrative Procedure Act

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

Revised Uniform Law on Notarial Acts

The 2010 Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and replaces the earlier 1982 Uniform Law on Notarial Acts (ULONA). Since the original promulgation of the ULONA, society and technology have advanced considerably, requiring notarial officers and their practice to adapt. In particular, the RULONA recognizes the ascendance of electronic commerce and transactions in the public and private sectors, and brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. The RULONA continues to focus on preservation of the integrity of the notarial transaction, whether tangible or electronic. References to the notarial seal are replaced with an “official stamp” and RULONA provides for affixing an official stamp to a notarial certificate for tangible documents or logically associating it with an electronic one. The RULONA provides minimal standards for commissioning

notarial officers, and handles recognition of notarial acts from other states and certain foreign equivalents. Finally, the revised Act addresses deceptive and fraudulent practices and advertising, transactions in which the notary or a spouse is a party or has an interest, and prohibitions on unauthorized practice of law.

Insurable Interests Amendment to the Uniform Trust Code

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

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 2011 General Assembly:

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The Act establishes a mechanism for resolving multistate jurisdictional disputes regarding adult guardianships and conservatorships. Procedures are provided for determining which jurisdiction is the "home state" having primary jurisdiction, transferring a guardianship or conservatorship to another state, registering orders, and addressing emergency situations. The Act has been adopted in 19 states and the District of Columbia.

Amendments to Articles 3 and 4 of the Uniform Commercial Code. The amendments update Articles 3 (Negotiable Instruments) and 4 (Bank Deposits and Collections) of the UCC to reflect court decisions and

advances in technology. The amendments cover the following topics: payment and discharge, telephonically generated checks, electronic communications, and consumer notices. The amendments to Articles 3 and 4 were completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 2002 and have been enacted in 10 states.

Repeal of Title 8.6A of the Uniform Commercial Code. Title 8.6A (Bulk Sales) of the Code of Virginia is considered obsolete. Bulk sales provisions have been repealed in 45 states. The ULC states that there is no evidence that fraudulent bulk sales occur frequently enough or engender credit losses significant enough to require regulation of all bulk sales.

CURRENT DRAFTING PROJECTS

There are currently 12 ULC drafting committees working on new and revised uniform acts. In addition, 8 study committees are considering subjects for possible future drafting.

Current Drafting Committees

Drafting Committee on Authentication and Preservation of State Electronic Legal Materials. This committee will prepare an act that provides guidance to states on authenticating and preserving state electronic legal materials. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

Drafting Committee on a Certificate of Title Act for Vessels. This committee will draft an act establishing a certificate of title system for boats. Many states do not have certificate of title laws governing watercraft, and those that do have considerable differences in terms. The committee will coordinate its work with the United States Coast Guard and developments concerning the Coast Guard's vessel identification and documentation systems. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

Drafting Committee on the Uniform International Choice of Court Agreements Act. This drafting committee, at the request of the U.S. State Department, will draft uniform state legislation and appropriate declarations and understandings to assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements. The

committee presented drafts for consideration at the July 2009 and July 2010 Annual Meetings and is continuing its work.

Drafting Committee on Harmonization of Unincorporated Business Entity Acts. This committee will work to harmonize provisions of the various unincorporated business entity acts already promulgated by the ULC, such as the Uniform Partnership Act, the Uniform Limited Partnership Act, the Limited Liability Company Act, the Limited Cooperative Association Act, the Uniform Unincorporated Nonprofit Association Act, and the soon-to-be promulgated Uniform Statutory Trust Entity Act. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

Drafting Committee on a Marital and Premarital Agreements Act. This committee will draft an act that provides standards and procedural requirements concerning the scope and enforceability of marital and premarital agreements between persons in legally recognized relationships. This project was jointly recommended by the Joint Editorial Boards on Family Law and Trusts and Estates Law. The committee expects to present a draft for initial consideration in July 2011 and to present a draft for final approval in July 2012.

Drafting Committee on a Manufactured Housing Act. The uncertainty about whether a manufactured home is characterized as “personal” or “real” property creates significant impediments to the financing of manufactured homes, particularly upon resale or attempts to refinance, and also makes it difficult to securitize debt secured by manufactured homes. This committee will draft an act on manufactured housing that will alleviate those problems and address at least the following issues: the appropriate characterization of manufactured housing as either personal property or real property, including in particular the point in time at which an interest in manufactured housing converts from a personal property interest to a real property interest; whether the fact that manufactured housing is located on leased land affects that characterization; the continued priority and appropriate characterization of security interests in manufactured housing after conversion; and appropriate transition provisions. The committee expects to present a draft for initial consideration in July 2011 and to present a draft for final approval in July 2012.

Drafting Committee on an Oversight of Charitable Assets Act. This committee will draft an act to address state oversight of charitable assets. The committee will focus on state attorneys general authority with regard to the protection of charitable assets, notice requirements, remedies, and principles to guide attorneys general in interstate and multi-state cases. The

committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

Drafting Committee on a Protection of Genetic Information in Insurance Act. The need for and feasibility of drafting and enacting uniform legislation on the protection of genetic information in the context of life, disability and long-term care insurance will be considered.

Drafting Committee on Visitation and Custody Issues Affecting Military Personnel and Their Families. This committee will prepare an act that provides standards and procedures for resolving visitation and custody issues affecting military personnel and their families, which may include resolution of matters in intrastate, interstate, and international contexts. The committee is expected to present a draft for first reading at the 2011 Annual Meeting.

Drafting Committee on Asset Freezing Orders. This committee will prepare an act that provides authority for the granting of *in personam* orders that prevent a defendant in an action pending in one jurisdiction from dissipating assets that the defendant holds in another jurisdiction and that are necessary to ensure that assets are available to ensure payment of a judgment granted in the other jurisdiction. The committee will, among other matters, consider provisions that should be included in the act to provide appropriate protection for the interests of defendants in such actions. The act shall exclude coverage of asset freezing orders against consumer debtors or in domestic relations matters, and other similar matters.

Drafting Committee on Implementation of the Hague Convention on the Protection of Children. This committee will draft uniform state legislation that will implement the recognition and enforcement provisions of the Hague Convention on the Protection of Children.

Committee on the Hague Securities Convention. This committee will work with the U.S. Department of State to assist in the implementation and ratification of the Hague Convention on Securities Held by Intermediaries and to ensure proper interface between the provisions of the Convention and of Articles 8 and 9 of the Uniform Commercial Code.

Study Committees

Study Committee on Payment Issues
Study Committee on Model Tribal Legislation on Probate Transfer of
Interests in Real Property
Study Committee on Model Tribal Legislation Concerning Child
Custody and Domestic Violence
Study Committee on a Mortgage Subrogation Act
Study Committee on an Act on the Recovery of Stolen Cultural and
Artistic Property
Study Committee on an Act to Implement the Consular Notification
Requirements of Article 36 of the Vienna Convention on Consular
Relations
Study Committee on a Revision of the Uniform Residential Landlord
and Tenant Act
Study Committee on an Act on Prevention of and Remedies for Human
Trafficking

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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