Howard J. Swibel, Chair of the Executive Committee, called the meeting to order on July 29, 2004, at 9:00 a.m., at which time the following members of the Committee were present: Timothy Berg, K. King Burnett, Michael Houghton, Peter F. Langrock, Carl H. Lisman, Fred H. Miller, Robert A. Stein, Charles A. Trost, Martha Lee Walters, and James A. Wynn, Jr. Also present were William H. Henning, Executive Director; J. Elizabeth Cotton-Murphy, Chief Administrative Officer; John M. McCabe, Legislative Director/Legal Counsel; and Michael R. Kerr, Deputy Executive Director/Deputy Legal Counsel.

Chairman Howard J. Swibel began the meeting by remarking on the extraordinary contributions to the Conference of William J. Pierce, who recently passed away. Commissioner Swibel noted that this is the first annual meeting without Commissioner Pierce in over 50 years.

1. **Report of President**
   
   A. A motion was made and approved to make the following name changes:


   B. President Fred Miller led a discussion of the indemnification provision proposed by the subcommittee appointed at the 2004 Mid-Year Meeting of the Executive Committee, and certain modifications to the provision were made as a result of the discussion. A motion was made and approved adopting the indemnification provision as modified. After further discussion, a motion was made and approved recommending that the policy be adopted by the Conference as a new Article 32 to the By-Laws entitled “Indemnification.” A copy of the indemnification provision is attached to these minutes.

   C. A motion was made and approved revising the Official Comment to Section 7 of
the Uniform Disclaimer of Property Interests Act. A copy of the revised Comment is attached to these minutes.

D. President Miller reported that under the organizational rules of the Uniform Law Foundation the President of the Conference appoints Trustees to the Foundation with the consent of the Executive Committee and that he had appointed two new Trustees to fulfill the expired terms of Henry M. Kittleson (FL) and Frederick P. Stamp, Jr. (WV): Gerald L. Bepko (IN) and Rhoda B. Billings (NC). A motion was made and approved authorizing the President to make the appointments.

E. A motion was made and approved granting advisory status under Section 2.9 of the Constitution to Gregory K. Steele (ULC of Canada - President); Harold S. Burman (U.S. Department of State/UNCITRAL); Elena A. Cappella (ALI); Jeffrey D. Kovar (U.S. Department of State); Stephanie Martin (Federal Reserve); Jorge Sanchez Cordero (Mexican Uniform Law Center); and Stephen N. Zack (ABA). In the case of Mr. Zack, the appointment becomes effective at the end of the Annual Meeting. The appointment of Mr. Cordero followed a discussion led by Commissioner King Burnett regarding Mr. Cordero and the work of the Mexican Uniform Law Center.

F. A motion was made and approved appointing a nominating committee as follows: Robert Cornell (CA) – Chair; George Buxton (TN); Grant Callow (AK); Henry Gabriel (LA); and Nancy Rogers (OH).

G. President Miller reported on the results of the ABA 2003 Mid-Year Meeting. The following six acts were submitted to the House of Delegates, and all six were approved: Amendments to UCC Article 2, Amendments to UCC Article 2A, Revised UCC Article 7, Uniform Environmental Covenants Act, Uniform Apportionment of Tort Responsibility Act, and Uniform Estate Tax Apportionment Act. He also reported that he anticipates that the following four acts will be submitted to the House of Delegates at its Mid-Year 2005 Meeting: Uniform Residential Mortgage Satisfaction Act; Uniform Real Property Electronic Recording Act; Uniform Wage Withholding and Unemployment Insurance Procedure Act; and Uniform Management of Institutional Funds Act.

There was a discussion of recent efforts to reach out to ABA entities in order to gain support for our acts and of the importance of having Commissioners active within the ABA.

There was a discussion of the importance of diversity in the membership and activities of the Conference. Although it was recognized that the appointing authority resides in the states, it was agreed that state delegations would be encouraged at the Legislative Breakfasts to consider strategies to promote the appointment of commissioners of diverse backgrounds. In addition, a motion was made and approved requesting that the President appoint a subcommittee of the
Executive Committee to examine ways to improve the effectiveness of the Conference by promoting diversity within the Conference and to report back to the Executive Committee at its 2005 Mid-Year Meeting with recommendations for action.

After further discussion, a motion was made and approved requesting that the President appoint a separate subcommittee of the Executive Committee to examine strategies for improving the effectiveness of the Conference by strengthening the membership of the Conference and increasing the level of commitment and participation by its members.

H. President Miller led a discussion of the annual meeting registration fees. The issue was continued to the Tuesday, August 3, 2004 meeting of the Executive Committee.

I. President Miller led a discussion of whether there should be a reintroduction of the prior practice of beginning the Annual Meeting with a roll call of the Members and, if not, whether a new practice of beginning the meeting with a roll call of the states should be instituted. It was agreed that the 2004 Annual Meeting would begin with a roll call of the states.

J. A motion was made and approved to grant privileges of the floor to the following reporters: Carter G. Bishop, R. Wilson Freyermuth, Susan N. Gary, Arthur R. Gaudio, Thomas E. Geu, Michael M. Greenfield, Alvin C. Harrell, Daniel S. Kleinberger, Linda Whitton, and Laurence B. Wohl.

A motion was made and approved to grant privileges of the floor to the following American Bar Association Advisors: Amy W. Bizar, Elizabeth M. Bohn, David Clark, William H. Clark, Jr., George W. Coleman, Craig Houghton, Sarah Jane Hughes, Joseph Kartiganer, Robert R. Keatinge, Carol G. Kroch, William P. LaPiana, Steven N. Leitess, Patrick Mears, Ira J. Waldman, Dale A. Whitman, and Carla Witzel.

K. President Miller reported that requests had been received for a waiver of line-by-line reading of certain sections of the Durable Power of Attorney Act and the Uniform Certificate of Title Act pursuant to By-Law 44A.4. A motion was made and approved granting the requests.

L. At the 2003 Annual Meeting of the Executive Committee, a motion was made and approved that NCCUSL join with the Uniform Law Conference of Canada to become an UNCITRAL Observer. President Miller reported that the ULC of Canada had declined to participate. He also reported that the Conference could participate in UNCITRAL as a consulting member by applying to the United Nations. A motion was made and approved that the Conference pursue such an application to the United Nations.
M. President Miller noted that, notwithstanding the current fiscal situation, he is recommending that the Conference resume publication of the handbook. The issue was continued until the Tuesday, August 3, 2004 meeting of the Executive Committee.

N. President Miller reported that the 2005 Mid-Year Executive Committee and Scope & Program Committee meetings will be held at the Broadmoor in Colorado Springs, Colorado, the weekend of January 14 - 16, 2005.

2. Report of Chair of Executive Committee

A. Chairman Swibel reported on the readiness of acts for final reading at the 2004 Annual Meeting based on reports of Enactment Plan Coordinators.

Commissioner Michael Houghton reported that the Legislative Committee was working with the Enactment Plan Coordinators to help them better understand their roles and improve the quality of their reports.

B. Chairman Swibel reported on drafting committee meetings held and to be held during the 2004-2005 fiscal year.

C. Chairman Swibel reported on his efforts to select sites for the Annual Meetings for the years 2006 and 2007. A motion was made and approved that the 2006 Annual Meeting be held at the Hilton Head Island Marriott Beach and Golf Resort (SC) with the standard room rate for Commissioners to be $165 per night and that the 2007 Annual Meeting be held at the Ritz Carlton, Huntington Hotel and Spa (CA) with the standard room rate for Commissioners to be $160 per night.

Commissioner Carl Lisman led a discussion of the activities of the Ad Hoc Committee on Payment of Dues and Expenses, which he Chairs. He reported that currently thirteen states are making no, or reduced, contributions. The Ad Hoc Committee is working to develop the information needed to enable it to create and implement an effective plan to deal with the problem. There was a discussion of various approaches that might be considered by the Ad Hoc Committee. The issue was continued until the second meeting of the Executive Committee and, in the meantime, members of the Conference from Massachusetts, Michigan, Missouri, New York, Ohio and Wisconsin will be invited to attend a special meeting in an effort to inform the ensuing discussion.

3. Report of Vice-President
Commissioner Peter Langrock submitted a written report, collected from all Division Chairs, on the progress of all committees. He led a discussion of methods that might be used to improve the utility to the Executive Committee of the Vice President’s report.

4. **Report of Secretary**

   A. Commissioner Robert Stein reported on changes in membership since the 2003 Annual Meeting. He reported that there are currently 234 Commissioners, 29 Associate Members, 91 Life Members, and 7 Advisory Members, making a total of 361 Members of the Conference.

   B. A motion was made and approved granting an excuse to all commissioners who have given reasons for their absence from the 2004 Annual Meeting: J. Samuel Tenenbaum (IL); Thomas J. McCracken, Jr. (IL); Fred A. Risser (WI); Mark D. Gundrum (WI); David J. Hogue (ND); Regina R. Quinn (MS); Robert R. Barengo (NV); Gregory J. Petesch (MT); Larry L. Ruth (NE); Bruce Munson (WI); John L. Vratil (KS); Amy L. Longo (NE); Kerry Triche (LA); Robert B. Webster (MI); Dimitri Karcazes (IL); Byron D. Sher (CA); Cheryl Purvis (OK); Diane Boyer-Vine (CA); David G. Nixon (AK); Thomas A. Edmonds (VA); Jay E. Buringrud (ND); M. Gay Taylor (UT); Thomas A. Casey (LA); John G. Strand (MI); Caralee Lambert (ID); Albert D. Brault (MD); Jamie-Lynn Elacqua (NY); Glenn Ansardi (LA); Ann I. Park (CA); Richard C. Edwards (IL); David L. Hostetter (PA); James C. Nelson (MT); Raymond A. Pacia (RI); David Cullen (WI); Ross B. Clark, II (TN); Patrick C. Guillot (TX); Scott Wasserman (NV); Ken Takayama (HI); Anthony Santoro (MA); Kenneth Elliott (OK); Henry Drummond (OR); Susan Kelly Nichols (NC).

5. **Consideration of Requests for Life Membership**

   A motion was made and approved recommending that Commissioner Robert G. Beverly (CA) and Commissioner Francis J. Pavetti (CT) be granted life membership.

6. **Report of Treasurer**

   A. Commissioner Lisman submitted a written report on the financial condition of the Conference.

   B. Commissioner Lisman led a discussion regarding the Conference’s payment of certain expenses of the Uniform Law Foundation. The practice since the Foundation was created has been for the Conference to pay the Foundation’s expenses, thereby enhancing its growth, and it was agreed that this practice would be continued.

Commissioner Robert Stein submitted a written report on Foundation activities during the 2003-2004 year. As of June 30, 2004, the Foundation’s assets were $2,492,606.

Commissioner Stein explained that the goal of the Trustees is to have an endowment of at least $5 million, at which time it is anticipated that there will be a significant expansion of the grants program in order to support the work of the Conference. Commissioner Stein also reported that the Trustees would discuss concerns that have been expressed by some Conference members regarding the Foundation’s activities.

8. Report of Executive Director

A. Executive Director Henning reported that the Permanent Editorial Board for the Uniform Commercial Code has approved the transfer of up to $400,000 from the PEB’s unrestricted fund balance to NCCUSL and the ALI (up to $200,000 to each organization). $150,000 will be transferred to each organization upon request by that organization, and an additional $50,000 will be transferred if, in the discretion of the Director of the ALI and the Executive Director of NCCUSL, it is prudent to do so in light of the fund balance and the ongoing needs of the PEB. The following resolution was then adopted:

RESOLVED, that the Executive Committee hereby approves the transfer, in fiscal 2004-2005, of up to $400,000 from the PEB fund balance to ALI and NCCUSL, in equal amounts of up to $200,000 each, on condition that none of the transferred funds will reimburse or cover lobbying or other expenditures relating to enactment efforts.

B. Executive Director Henning led a discussion regarding a contribution of PEB funds to support the work of the archivist at the University of Pennsylvania Law School Library. At the 2003 Annual Meeting, a one-time donation of $15,000 had been authorized, subject to the condition that the University of Pennsylvania continue to forego any overhead charges related to money spent or grants received. At the direction of the Executive Committee, the Executive Director obtained additional information on the work of the archivist and, after discussion, a motion was made and approved authorizing the payment of $15,000 in PEB funds to the library in each of the next two years, subject again to the condition that the University of Pennsylvania continue to forego any overhead charges related to money spent or grants received.

C. Executive Director Henning reported on the status of the Model Entity Transactions Act. Under the September 16, 2003, framework agreed to by NCCUSL and the Business Law Section of the American Bar Association, the Act will be separately submitted for approval by NCCUSL and by appropriate ABA entities.
D. Executive Director Henning reported on a proposed ALI Information Project. He expressed concern that efforts to gain enactment of the 2003 Amendments to UCC Article 2 might be undermined if the ALI approves the project and then attempts to resolve two issues that were left unresolved in the Amendments: The scope of Article 2 as applied to mixed contracts involving goods and information, and the effectiveness of terms first disclosed after payment for a product has been made. Executive Director Henning reported that he had discussed these concerns with the Director of the ALI and with the Permanent Editorial Board for the UCC.

E. President Miller reported on enactment issues with regard to recent revisions and amendments to the Uniform Commercial Code.

F. Executive Director Henning reported on a successful effort by NCCUSL and the ALI to obtain clarification from the Office of the Comptroller of the Currency that a federal regulation adopted by the OCC does not preempt any of the provisions of the UCC.

G. Deputy Executive Director Michael Kerr reported that, as a cost containment measure, the Conference has set up its web server so that it can be brought in-house. After a discussion of the potential cost savings but the increased risks of viruses, it was decided that the server would continue to be maintained off-site. The Executive Committee directed that the minutes reflect appreciation for the efforts and expertise of Deputy Executive Director Kerr in the area of technology.

Deputy Executive Director Kerr reported on a $70,000 unrestricted grant that has been received by the Foundation from an entity which supports the enactment of the Uniform Environmental Covenants Act.

There was a discussion of the Conference’s activities in the area of seeking and obtaining grants. The discussion was continued until the Tuesday, August 3, 2004 meeting of the Executive Committee.

9. Report of Chief Administrative Officer

The report of the Chief Administrative Officer will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

10. Report of Chair of Legislative Committee

The report of the Chair of Legislative Committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

11. Report of Committee on Scope and Program

The report of this committee will be considered at the Tuesday, August 3, 2004, meeting
of the Executive Committee.


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17. **Report of Committee of Legislative Counsel**

   The report of this committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

18. **Report of Committee on International Legal Developments**

   The report of this committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

19. **Report of Committee on Uniform Commercial Code**

   The report of this committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

20. **Report of Committee on Public Information**

   The report of this committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.
21. **Report of Committee on Website and Technology**

The report of this committee will be considered at the Tuesday, August 3, 2004, meeting of the Executive Committee.

22. **Designation of Proposed Acts as Uniform or Model Acts**

A motion was made and approved that the following acts, which will be read at the 2004 Annual Meeting, be designated as Uniform Acts:

1. First Reading: Uniform Assignment of Rents Act, Uniform Agricultural and Agricultural Related Cooperatives Act, Uniform Consumer Debt Counseling Act.


A motion was made and approved designating as a Model Act the Entity Transactions Act, which is up for final reading at the 2004 Annual Meeting.

23. **Consideration of Continuation or Discharge of Standby Committees**

This topic will be considered at the Tuesday, August 3, 2004 meeting of the Executive Committee.

The Chair of the Executive Committee adjourned the meeting at 5:40 p.m.