

**ANNUAL MEETING  
OF THE COMMITTEE ON SCOPE AND PROGRAM**

**UNIFORM LAW COMMISSION**

**Sunday, July 7, and Monday, July 8, 2013  
Boston, Massachusetts**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 9:00 am on Sunday, July 7, 2013, at the Westin Copley Place Hotel in Boston, Massachusetts, by Chair Richard T. Cassidy. Committee members Tom Bolt, James C. McKay, Jr., David S. Walker, Suzanne Brown Walsh, and Terry J. Care were present. Attending for a portion of the meeting was Michael Houghton, President. Staff members present included John A. Sebert, Executive Director; and Katie Robinson, Deputy Legislative Director and Communications Officer. Attending for a portion of the meeting was Scope member Battle R. Robinson. Also attending for portions of the meeting were Commissioners Dale Higer, Fred Miller, Tim Berg, Grant Callow, David Biklen, Bob Tennessen, Paul Kurtz, Bill Henning, Turney Berry, Harry Tindall, Debra Lehrmann, Rex Blackburn, David English, Bill Breetz, Carl Lisman, Kathy Patchel, Howard Swibel, Bob Stein, and Fred Stamp. Also attending for a portion of the meeting were Bill Dunn, Senior Manager of Government Relations, American Payroll Association; Kay Farley, National Center for State Courts; David Milby, National Association of Unclaimed Property Administrators (NAUPA), Carolyn Atkinson, NAUPA, Beth Pearce, NAUPA, Walter Graham, NAUPA; and David Hart, VOR. Attending for a portion of the meeting via conference call were Martin Brooks, APA, Amy Bryant, APA, Lisa Poole, APA, Lisa Price, APA, and Tamie Hopp, VOR.

Chair Cassidy welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the January 11, 2013, meeting of the Scope and Program Committee were unanimously approved.

**Study Committee Reports**

- **Study Committee on Model Tribal Legislation on Probate Transfers of Interests in Real Property** (Dale Higer, Chair) – Scope Liaison Jim McKay

Commissioner Higer reported on the progress of this study committee. The study committee continues to solicit support for the project from Indian tribes and Indian organizations, and to date has received letters of support from a total of seven Indian tribes. The study committee has attempted over the past three years, but without success, to obtain funding for a drafting project from the Department of Interior and other sources. Commissioner David English spoke at a program at the Federal Bar Association Indian Law Conference in April, and reports that the project was well-received. The committee requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Model Tribal Legislation on Probate Transfers of Interests in Real Property be formed.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Study Committee on Article 36 of Vienna Convention**  
(Grant Callow, Chair) – Scope Liaison Battle Robinson

Commissioner Callow reported on the progress of this study committee. At the request of the Scope and Program Committee, the study committee has continued its dialogue with the U.S. State Department and its outreach to various law enforcement organizations and prosecutors. The committee has developed an issues document that outlines what the study committee might recommend, which was sent to every state Attorney General for review and comment. The committee requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee to Implement the Consular Notification Requirements of Article 36 of the Vienna Convention be discharged with a letter of thanks to the committee.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Study Committee on Eyewitness Identification Procedures**  
(David Biklen, Chair) – Scope Liaison Jim McKay

Commissioner Biklen reported that the committee, at the request of the Executive Committee at its 2012 Annual Meeting, sought the support of law enforcement organizations for a potential drafting project. The International Association of Chiefs of Police submitted a letter stating their intention to be involved in drafting. The committee requests that a drafting committee be formed to draft a Model Act.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Eyewitness Identification Procedures be discharged with a letter of thanks to the committee.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Study Committee on Criminal Records Access and Accuracy**  
(Bob Tennesen, Chair) – Scope Liaison David Walker

Commissioner Tennesen reported on the progress of this study committee. Since it started its work, the committee has narrowed its focus to accuracy, and may narrow its focus even further to accuracy of records held by government entities. The committee continues its outreach to affected interest groups. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- **Study Committee on Portability and Recognition of Professional and Occupational Licenses of Military Spouses**  
(Paul Kurtz, Chair) – Scope Liaison Terry Care

Commissioner Kurtz reported on the progress of this committee. The committee has worked to identify a list of issues that should be addressed by any uniform state legislation in this area. The committee expects that a stakeholders meeting will not be necessary, and expects to file a final report at the next meeting of Scope. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- **Study Committee on Wage Garnishment**  
(Bill Henning, Chair) – Scope Liaison Jim McKay

Commissioner Henning reported on the progress of the study committee. The committee has developed a detailed issues list and has reached out to affected stakeholders. Bill Dunn, Director of Government Relations with the American Payroll Association, appeared before the Scope Committee to report on APA's support of a drafting project. The committee requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Wage Garnishment be established, that the drafting committee consider the issues listed below, and that the drafting committee be asked to return to the Scope and Program Committee for approval if it wishes to address additional issues. The list of approved issues is as follows:**

- **Choice of Law;**
- **Obligation to Notify Debtor;**
- **Procedures for Multiple Garnishments;**
- **Involvement of Court and Court Clerk;**
- **Definition of Disposable Income, Withholding Calculations, and Process for Claiming Exemptions;**
- **Length of Time a Garnishment Remains in Effect;**
- **Liability for Failure to Comply with Garnishment Order;**
- **Remission of Withheld Funds;**
- **How a Garnishment Order is Served, and Time for Responding to the Order;**
- **Administrative Fees; and**
- **Whether Responding to a Garnishment Order Constitutes the Practice of Law.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Study Committee on Trust Protectors**  
(Turney Berry, Chair) – Scope Liaison Suzy Walsh

Commissioner Berry reported on the progress of the study committee. While the study committee has not yet begun its work, because it needs to know the direction of the work of the drafting committee on Trust Decanting, it plans to begin work on an issues list in the fall. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- **Study Committee on Model Veterans' Court Act**  
(Harry Tindall, Chair) Scope Liaison Terry Care

Commissioner Tindall reported on the progress of this study committee. The committee has developed a list of issues, and continues its outreach to stakeholders. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- **Study Committee on 3<sup>rd</sup> Party Custody and Visitation**  
(Debra Lehrmann, Chair) Scope Liaison Battle Robinson

Commissioner Lehrmann reported on the progress of this study committee. The committee continues its work on an issues list and continues its outreach to stakeholders. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- **Study Committee on Firearms Information**  
(Jim McKay, Chair) Scope Liaison Terry Care

Commissioner McKay reported on the progress of this study committee. The committee continues its work on an issues list and continues its outreach to stakeholders. The study committee believes its work would be greatly assisted if a reporter were appointed for the committee. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued and that a reporter be appointed for the committee.

- **Study Committee to Amend or Revise the Uniform Unclaimed Property Act**  
(*Rex Blackburn, Chair*) – Scope Liaison Terry Care

Commissioner Blackburn reported on the progress of the study committee. The committee has developed a detailed issues list and has held a stakeholders meeting in the spring, which was well-attended by affected stakeholders. Representatives of the National Association of Unclaimed Property Administrators (NAUPA) were present to confirm NAUPA's support for a drafting project. The committee requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee to Revise the Uniform Unclaimed Property Act be formed.**

*On July 9, 2013, the Executive Committee approved this resolution.*

## Joint Editorial Board Written Reports and Recommendations

- **JEB – Uniform Family Law**  
(Harry Tindall, Chair) – Scope Liaison Battle Robinson

There was no proposal from the JEB.

- **JEB – Uniform Trust and Estate Acts**  
(David English, Executive Director) – Scope Liaison Suzy Walsh

There was no proposal from the JEB.

- **JEB – Uniform Real Property Acts**  
(Wilson Freyermuth, Executive Director) – Scope Liaison Tom Bolt

Proposal: form a drafting committee to amend the Uniform Common Interest Ownership Act Section 3-116 relative to six-month limited priority for assessment liens for owners' association.

Commissioners Bill Breetz and Carl Lisman reported on this proposal, and reported that the JEB/URPA had prepared a White Paper on the topic, so there is no need for a study committee to further examine the issue. The JEB/URPA requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee to Amend Section 3-116 of the Uniform Common Interest Ownership Act be formed.**

*On July 9, 2013, the Executive Committee did not approve this resolution, and instead requested that the JEB for Uniform Real Property Acts draft the amendments to the Uniform Common Interest Ownership Act Section 3-116, in consultation with the appropriate observers.*

- **JEB – International Law**  
(Michael Sullivan, Chair) – Scope Liaison Jim McKay

There was no proposal from the JEB.

- **JEB – Unincorporated Organization Acts**  
(Steve Frost, Chair) – Scope Liaison David Walker

There was no proposal from the JEB.

- **PEB – Uniform Commercial Code**  
(John Sebert, Chair) – Scope Liaison Terry Care

There was no proposal from the PEB.

### **New Business**

- **Proposal – Independent Redistricting Commissions**  
(Jamie Conrad, ABA Section of Administrative Law and Regulatory Practice)  
Scope Liaison Terry Care

Commissioner Care reported on this proposal to appoint a study committee to determine the feasibility of drafting a model code for independent redistricting commissions. The model code would be consistent with a 2008 resolution of the ABA House of Delegates recommending the use of independent redistricting commissions.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Proposal – Unsworn Declarations under Penalty of Perjury**  
(Joel Boon, Esq., Bismarck, ND) Scope Liaison Tom Bolt

Commissioner Bolt reported on this proposal to draft an act dealing with out-of-state unsworn declarations. The Uniform Unsworn Foreign Declarations Act, which has been enacted in 19 states, applies to declarations made outside the United States. This is a proposal to draft similar legislation that would apply to domestic declarations.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation on out-of-state unsworn declarations.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Proposal – Model Law to Protect People with Intellectual and Developmental Disabilities** (Tamie Hopp, Director of Government Relations and Advocacy, VOR) Scope Liaison Suzy Walsh

David Hart, with VOR, and Tamie Hopp, Director of Government Relations and Advocacy, VOR, reported on this proposal to form a study committee to consider the need for and feasibility of drafting an act that would help assure the consistent delivery of quality of care in community-based settings serving people with intellectual and developmental disabilities.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Proposal – Amend the Uniform Power of Attorney Act**  
(ABA Senior Lawyers Division) Scope Liaison Suzy Walsh

Commissioner Walsh reported on this proposal to amend the UPOAA, to provide that that power of attorney, to be valid under applicable state legislation, must contain a provision under which the grantor has the option to require the agent to report on the administration of the grantor’s affairs by the agent to some person, other than a court, designated by the grantor. After discussion, the Committee on Scope and Program concluded that this type of amendment to the UPOAA is not necessary because as the UPOAA is currently drafted, any principal who wishes to do so may require additional accounting responsibilities of an agent.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Proposal – Draft Successor Liability Statute**  
(Prof. Nicholas Georgakopoulos, Indiana University School of Law, and Bryan Repetto, General Counsel, Applied Research Works, Inc.) Scope Liaison David Walker

Commissioner Walker reported on this proposal to form a study committee to consider the need for and feasibility of drafting a state law that would standardize and improve the current law of successor liability. Successor liability exists in instances in which a successor entity (more specifically, the entity acquiring an asset), may be held liable by creditors and plaintiffs for debts and other claims arising prior to the transfer of assets.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the JEB for Uniform Unincorporated Organization Law for further review, with the request that the JEB report back its findings at the January 2014 meeting of the Scope and Program Committee.

- **Proposal to draft recreational sports liability statute**  
(Prof. Russell VerSteeg, New England Law/Boston) Scope Liaison Tom Bolt

Commissioner Bolt reported on this proposal to create a study committee to consider the feasibility of creating a state statute that would employ the legal principle of primary assumption of risk to modify the legal duty of protecting another from the risks that are inherent in sports and recreational activities.



After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Proposal – Draft Captive Insurance Companies Act**  
(Jay D. Adkisson, Chair of the Committee on Captive Insurance Companies, ABA Business Law Section) Scope Liaison David Walker

Commissioner Walker reported on this proposal to create a study committee to consider the feasibility of creating a state statute that would define and regulate the use of captive insurance companies. A “captive insurance company” is a wholly-owned insurance subsidiary that a parent corporation forms to underwrite the insurance needs of the parent corporation’s other subsidiaries. They are essentially a form of self-insurance whereby the insurer is wholly owned by the insured.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and requested that ULC staff contact the National Association of Insurance Commissioners (NAIC) for its view on the proposal, and report back at the January 2014 meeting of the Scope and Program Committee.

- **Proposal – Revise the Uniform Guardianship and Protective Proceedings Act**  
(Commissioner David English, on behalf of the National Guardianship Network) Scope Liaison Suzy Walsh

Commissioner English reported on this proposal to appoint a drafting committee to revise the Uniform Guardianship and Protective Proceedings Act. The UGPPA was approved by the ULC in 1982, and amended in 1989 and revised in 1997. Nearly 20 states have enacted one or the other version of the act. This is a proposal to revise selected portions of the UGPPA in order to implement the recommendations of the Third National Guardianship Summit.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the JEB for Uniform Trust and Estate Acts for further review, with the request that the JEB report back its findings at the January 2014 meeting of the Scope and Program Committee.

- **Reports from the Caribbean Harmonization Committee**  
(Commissioners Howard Swibel and Kathy Patchel) Scope Liaison Tom Bolt

Commissioners Swibel and Patchel and Commissioner Bob Stein reported on the recent work of the Caribbean Harmonization Committee. The Committee appointed four working groups, and two of those working groups have put forth proposals: (1) Working Group 2: Enforcement of Foreign Child Support and Child Custody Orders; and (2) Working Group 4: Registration of Foreign Judgments.

After discussion, the Committee on Scope and Program approved the following resolutions:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Joint Study Committee among the ULC, Caribbean jurisdictions, and the ULC of Canada be formed to study the need for and feasibility of harmonizing the law regarding registration of foreign judgments.**

*On July 9, 2013, the Executive Committee approved this resolution.*

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Joint Study Committee among the ULC and Caribbean jurisdictions be formed to study the need for and feasibility of harmonizing the law regarding enforcement of foreign child support and child custody orders.**

*On July 9, 2013, the Executive Committee approved this resolution.*

### **Other Business**

- **Request from the Drafting Committee to Amend the Uniform Fraudulent Transfer Act** (Ed Smith, Chair)

Commissioner Smith reported on the request from the drafting committee to Amend the Uniform Fraudulent Transfer Act to expand the charge of the drafting committee to include a new issue not part of the committee's original scope. The current UFTA has a complete defense for a transfer of an asset that is the result of the enforcement of a security interest under UCC Article 9. That provision makes sense when the enforcement is a sale or other disposition of the collateral in compliance with the safeguards of UCC9. But it makes less sense when the secured party accepts collateral from the debtor in full satisfaction of the secured obligation. Unless there are intervening lien holders who are notified, acceptance of the collateral in full satisfaction of the debt is subject to abuse when the value of the collateral is worth more than the secured debt. Acceptance is in effect a private sale of the collateral by the debtor to the secured party and should arguably not be sheltered from normal fraudulent transfer scrutiny. The drafting committee would like to consider this issue in addition to the issues already being considered.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the charge of the drafting committee to Amend the Uniform Fraudulent Transfer Act be expanded to include the issue of acceptance of collateral from a debtor in full satisfaction of a secured debt.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Proposal – Draft Uniform State Law on Computer Database for Land Records** (Commissioner Vince Cardi) Scope Liaison David Walker

Commissioner Walker reported on this proposal for a uniform law requiring county real estate recording offices to adopt compatible electronic recording, searching, and retrieving software systems. This proposal had been originally considered at the January 2013 meeting of Scope, and Scope had referred the proposal to the JEB for Uniform Real Property Acts for its review and recommendation. The JEB/URPA reports that the proposal has merit, and that the proposal should be forwarded to the re-activated Standby Committee on Uniform Real Property Electronic Recording Act.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Enactment Committee on the Uniform Real Property Electronic Recording Act for its review and recommendation, and that the Enactment Committee report back its findings at the January 2014 meeting of the Scope and Program Committee.

- **Proposal – Interim Relief Enforcement and Recognition** (Steve Richman, ABA International Law Section) Scope Liaison Jim McKay

Commissioner McKay reported on this proposal to address a mechanism for recognition and enforcement of non-final, interim orders in both domestic and foreign cross-border disputes. It addresses both judicial and arbitral orders. This proposal had been originally considered at the January 2013 meeting of Scope, and Scope had deferred action on the proposal, and requested that ULC staff report on the reception of the Uniform Asset Freezing Orders Act (UAFOA) at the ABA Midyear Meeting and during the 2013 state legislative session. Executive Director Sebert reported that the UAFOA had been approved by the ABA/HOD at its 2013 midyear meeting, and that the UAFOA had not been enacted in any states this past year.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and requested that this proposal remain on the agenda for Scope's consideration in July 2014.

- **Review of Social Media Privacy Laws** (Idea forwarded by Commissioner Martha Walters, research provided by ULC legislative staff)

As the use of social media has grown, so have employers' and schools' concern about its employees and students use of those outlets. It is not uncommon for employers to ask prospective and current employees for access to social media accounts. In response, many states have introduced or passed legislation aimed to

protect individuals from such intrusions, while allowing employers and schools to access accounts under certain circumstances.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of drafting an act on social media privacy.**

*On July 9, 2013, the Executive Committee approved this resolution.*

- **Committee to Review ULC Acts**  
(Frederick Stamp, Chair)

Commissioner Stamp reported on the recommendations from the Committee to Review ULC Acts.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the May 24, 2013, recommendations from the Committee to Review ULC Acts be approved with regard to the following:**

- **List the Model Drug Dependence Treatment and Rehabilitation Act (1973) as “Obsolete.”**
- **List the Model Rules of Criminal Procedure (1974) as “Obsolete.”**
- **Re-designate the Model Employment Termination Act (1991) as “Other.”**
- **Re-designate the Model Periodic Payment of Judgments Act (1990) as “Other.”**

*On July 9, 2013, the Executive Committee approved this resolution.*

After discussion, the Committee on Scope and Program approved the recommendations from the Committee to Review ULC Acts with respect to the following acts:

1. Uniform Mediation Act: Scope requests that the ULC legislative staff undertake a survey to determine if the act has had any adoptions by court rule, and make the results of that survey available to the committee at its next meeting.
2. Uniform Certification of Questions of Law Act: Scope requests that the ULC legislative staff undertake a survey to determine if the act has had any adoptions by court rule, and make the results of that survey available to the committee at its next meeting.
3. Uniform Condominium Act: Scope requests that this Act be referred to the Joint Editorial Board for Uniform Real Property Acts, for the JEB’s review and

- recommendation concerning whether this Act should be updated to reflect the revisions that were made to the Uniform Common Interest Ownership Act in 2008.
4. Uniform Conservation Easement Act: Scope requests that this Act be referred to the Joint Editorial Board for Uniform Real Property Acts, for the JEB's review and recommendation concerning whether this Act should be updated in light of recent questions regarding the extent to which the law of charitable trusts applies to conservation easements.
  5. Uniform Disposition of Community Property Rights at Death Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Trust and Estate Acts for the JEB's review and recommendation concerning whether this act should be updated.

Scope requested that the Model Correction or Clarification of Defamation Act be referred to the Committee to Review ULC Acts to determine if it should be re-designated as a Uniform Act.

- **Uniform Law Conference of Canada**

Peter Lown from ULC/Canada reported on the current projects of the Uniform Law Conference of Canada, on the processes that the ULCC uses in deciding which projects to undertake, and on ULC's current cooperation with the ULCC.

Having no further business, the Committee on Scope and Program was adjourned on Monday, July 8, at 11:30 am.