

Minutes
Meeting of the Executive Committee
Uniform Law Commission

July 11, 2011
Vail, CO

Michael Houghton, Chair of the Executive Committee, called the meeting to order on July 11, 2011, at 1:40 p.m. The following members of the Committee were present: Terry J. Care, Richard T. Cassidy, Lani Liu Ewart, Dale G. Higer, Harriet Lansing, Robert A. Stein, Robert J. Tennesen, Charles A. Trost, Martha Lee Walters; and James A. Wynn, Jr. Also present were John A. Sebert, Executive Director; and Michael R. Kerr, Legislative Director/Legal Counsel; Katie Robinson, Communications Officer; and Gene N. Lebrun, Chair of the Public Information Committee. Commissioner Ray Pepe, Chair of the Committee on Federalism and State Law, and Commissioners Tim Berg, Chair of the Committee on Liaison with American Indian Tribes and Nations and Chair of the Uniform Law Foundation, attended a portion of the meeting.

Report of the Committee on Federalism and State Law

Commissioner Ray Pepe, Chair of the Committee on Federalism and State Law, reported on activity of this committee. Once the federalism principals are revised and stakeholders consulted on those revisions, the committee plans to schedule speaking engagements with groups like the Conference of State Government, National Governors Association, National Conference of State Governments, and others to seek endorsement of the Principles. The committee will also attempt to conduct CLE programs or other appropriate educational outreach programs for staffs of Congressional committees, federal executive agencies, and other organizations. The committee is also considering arranging for the writing and publication of well-targeted editorials that discuss the appropriate role of states and the federal government, the role of cooperative federalism, and the optimal ways of implementing federal preemption if that is deemed necessary. Given the interest of stakeholder groups and significant progress made to date, the Committee believes that ULC has the necessary momentum to carry forward.

Commissioner Houghton said he would like to schedule appointments for himself and Commissioner Pepe with officials of our collaborating organizations in DC in the early fall. The committee also discussed other initiatives that might be undertaken in connection with the Federalism project.

Report of the Uniform Law Foundation

1. Financials and Fundraising

Commissioner Berg, Chair of the Uniform Law Foundation, gave an oral report in addition to the written report submitted on Foundation activities during the 2010-2011 year. The Foundation is 83% ahead on where we were last year on collecting unrestricted money. The ULF has met and exceeded the goal for the 2011 Challenge Grant. The Foundation raised about \$4,000 at the auction on Friday evening at the ULF 2011 Gala. The Foundation projects that by early 2012, the ULF will reach its \$5,000,000 unrestricted endowment. When the Foundation reaches the \$5 million goal, it will be able to make annual grants to the ULC in an amount up to 5% of the four-year average of the

endowment.

2. Trustee Minutes

Minutes from the meetings of the Trustees were received by the Committee.

Report of the Vice President

1. Report of the PEB's and JEB's

Commissioner Wynn provided a brief report on the work of the JEBs and the PEB.

2. Report of the Committee on Relations with Other Organizations

Commissioner Wynn reported on activities of this committee.

3. Report of the Committee on Liaison with American Indian Tribes and Nations

Commissioner Berg reported on activities of this committee.

Report of the Committee on Public Information

1. Committee Report

Commissioner Lebrun, Chair of the Public Information Committee, reported on the activity of the Public Information Committee since the 2010 Annual Meeting. The Executive Committee reviewed and accepted the revised Purpose of the Public Information Committee as follows:

The purpose of the Public Information Committee is: to develop, on an ongoing basis, strategies to improve and assure that the work of the Uniform Law Commission (ULC) is timely and accurately communicated to the public, with particular emphasis toward State Legislators, Governors, and other State and Federal lawmakers and policy makers; and to support the legislative work of the ULC in conjunction with the Legislative Council, other committees of the ULC, and individual Commissioners.

Discharge of Committees

A motion was made and approved to discharge the following committees:

- Standby Committee for Common Interest Ownership Act (2008)
- Standby Committee for Emergency Volunteer Health Practitioners Act
- Standby Committee for Representation of Children in Abuse, Neglect, and Custody Proceedings Act
- Standby Committee for the Statutory Trust Entity Act
- Standby Committee for Standby Committee for Unsworn Foreign Declarations
- Standby Committee for Uniform Probate Code (2008)
- Standby Committee to Revise the Unincorporated Nonprofit Association Act

- Committee on Federal Relations

Action was deferred on whether or not to discharge the Committee on Relations with Other Organizations. A conference call will be scheduled with the Committee on Relations with Other Organization to discuss possible roles the committee could play going forward, and how the ULC can best enhance its relationships with other key organizations. Members of the Executive Committee will be invited to participate on that call.

A subcommittee will be formed of the newly constituted Executive Committee, and this subcommittee will be asked as a group to review and identify key action items contained in the report of the Committee to Review the ULC Drafting Process. The Committee will be retained at this time to advise the review process.

Report of Committee on Scope and Program

A motion was made and approved accepting the portions of the report of the Scope and Program Committee that did not require specific action by the Executive Committee.

Commissioner Lansing, Chair of the Committee on Scope and Program, presented the action items contain in the report of the committee. The Executive Committee approved the following resolutions after considering and discussing the recommendations of the Committee on Scope and Program:

1. Study Committees

The Executive Committee approved the following resolution recommended by the Committee on Scope and Program:

RESOLVED, that a Study Committee on Appointment and Powers of Real Estate Receivers be formed.

The Committee on Scope and Program had approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that, in view of the current foreclosure crisis, an expedited Study Committee on Mortgage Foreclosure be formed, and that the committee submit a report for consideration at the January 2012 midyear meeting. The report should identify which issues among the following recommended by the JEB on Uniform Real Property Acts should be addressed in a drafting project:

- **Who can commence foreclosure?**
- **What evidentiary proof is required to commence a foreclosure?**
- **What pre-foreclosure notices must the mortgagee provide?**
- **What is the appropriate time and place in the foreclosure process for alternative dispute resolution?**

- **To what extent are statutory redemption periods warranted?**
- **To what extent do current foreclosure processes impose unwarranted costs that inhibit a borrower's potential ability to redeem?**
- **To what extent may private actors fulfill the role of government officials in the foreclosure process?**
- **What post-sale court process, if any, is required to confirm the sale, and for what purpose?**
- **To what extent is the purchaser at a nonjudicial sale entitled to a presumption of the sale's validity based on the trustee's representations of compliance with the state's nonjudicial foreclosure statute?**

The report should also indicate how the committee proposes to relate the act to existing judicial and nonjudicial foreclosure procedures, and identify any conforming changes to the Uniform Commercial Code that would be necessary in conjunction with the project that the study committee is recommending.

The report should also address the issues of availability of funding for a drafting committee and potential challenges to enactability.

After discussion, the Executive Committee approved the following revised resolution:

RESOLVED, that, in view of the current foreclosure crisis, an expedited Study Committee on Mortgage Foreclosure be formed, and that the committee submit a report for consideration at the January 2012 midyear meeting. The report should identify which issues, including the following recommended by the JEB on Uniform Real Property Acts, should be addressed in a drafting project:

- **Who can commence foreclosure?**
- **What evidentiary proof is required to commence a foreclosure?**
- **What pre-foreclosure notices must the mortgagee provide?**
- **What is the appropriate time and place in the foreclosure process for alternative dispute resolution?**
- **To what extent are statutory redemption periods warranted?**
- **To what extent do current foreclosure processes impose unwarranted costs that inhibit a borrower's potential ability to redeem?**
- **To what extent may private actors fulfill the role of government officials in the foreclosure process?**
- **What post-sale court process, if any, is required to confirm the sale, and for what purpose?**
- **To what extent is the purchaser at a nonjudicial sale entitled to a presumption of the sale's validity based on the trustee's representations of compliance with the state's nonjudicial foreclosure statute?**

The report should also indicate how the committee proposes to relate the act to existing judicial and nonjudicial foreclosure procedures, and identify

areas, without drafting, where any conforming changes to the Uniform Commercial Code would be necessary in conjunction with the project that the study committee is recommending.

The report should also address the issues of availability of funding for a drafting committee and potential challenges to enactability.

The Executive Committee approved the following resolution recommended by the Committee on Scope and Program:

RESOLVED, that a Study Committee on Series of Unincorporated Business Entities be formed.

The Executive Committee approved the following resolution recommended by the Committee on Scope and Program:

RESOLVED, that a Study Committee on Regulation of Lawsuit Loans be formed.

The Committee on Scope and Program had approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on Fiduciary Powers and Authority to Access Digital Property be formed, and further recommends that the study committee be asked to seek the input of the JEB on Uniform Trust and Estate Acts.

After discussion, the Executive Committee decided to refer this proposal to the JEB on Uniform Trust and Estate Acts for review at its fall 2011 meeting. The JEB is asked to report its recommendation for consideration at the January 2012 meeting of the Scope and Program Committee.

The Executive Committee approved the following resolution recommended by the Committee on Scope and Program:

RESOLVED, that a Study Committee on Choice of Law for Fraudulent Transfers be formed.

The Executive Committee approved the following resolution recommended by the Committee on Scope and Program:

RESOLVED, that a Joint ULC/ULC of Canada Study Committee on Inter-jurisdictional Recognition of Life-Planning Documents be formed.

2. Drafting Committees

After discussion, the Executive Committee approved the following resolution as recommended by the Committee on Scope and Program:

RESOLVED, that a Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act be formed.

3. Consideration of Continuing the Study Committee on Article 36 of the Vienna Convention

The Executive Committee approved continuing the Study Committee on Article 36 of the Vienna Convention until the January 2012 midyear meeting of Scope, and requests that the study committee: (1) seek a letter of support from the U.S. Department of State for ULC's initiating a drafting project on this topic; (2) discuss with Sen. Leahy and his staff concerns about Sen. Leahy's recently introduced legislation on this topic, and seek to develop means to coordinate any ULC act with possible federal legislation; and (3) obtain more feedback from law enforcement agencies, NCSC and other interested entities regarding this proposal.

4. Recommendation Concerning the Report of the Committee on Review of Conference Acts

The Executive Committee approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the June 10, 2011, recommendations from the Committee to Review ULC Acts be approved with regard to the following:

- **List the Uniform Supervision of Trustees for Charitable Purposes Act (1954) as "Superseded" by the Model Protection of Charitable Assets Act (2011), subject to the final approval of the Model Act in 2011.**
- **List the Uniform Veterans' Guardianship Act (1928)(1942) as "Obsolete."**

Recommendation Concerning State Dues for 2012- 2013

After discussion, the Executive Committee decided that the dues increase for 2012-13 would be 1% for "caught up" states and 3% for those not yet caught up to the previously approved dues schedule.

The Committee recognized the importance of enhanced efforts to obtain dues payments from all states and endorsed the commitment on the part of leadership to that effort.

The meeting of the Executive Committee adjourned at 5:15 p.m.