

**UNIFORM LAW COMMISSION**  
**MIDYEAR MEETING**  
**OF THE COMMITTEE ON SCOPE AND PROGRAM**

**January 20, 2012**  
**Charleston, South Carolina**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 8:00 am on Friday, January 20, 2012, at the Planters Inn in Charleston, South Carolina, by Chair Richard T. Cassidy. Committee members Tom Bolt, James C. McKay, Jr., Battle R. Robinson, David S. Walker, Suzanne Brown Walsh, and Terry J. Care were present. Also present were Michael Houghton, President, Harriet Lansing, Chair of the Executive Committee, and Robert A. Stein, immediate past 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 via conference phone was Commissioner William Breetz, Chair of the Mortgage Foreclosure Study Committee, and William Dunn, Amorette N. Bryant, Lisa Poole, Beverly Wooten, and Martin Brooke, on behalf of the American Payroll Association.

Chair Cassidy welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the July 2011 meeting 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 McKay reported that the study committee has submitted funding requests to the Special Trustee for American Indians within the U.S. Department of the Interior, and the Bureau of Indian Affairs. No funding has been confirmed yet, and the committee is exploring other funding options. The study committee has received letters of support from the Fond du Lac Chippewa tribe, and has been promised support letters from the Oglala Sioux and Crowe tribes. The study committee requests that it be continued for six more months in order to find funding sources and to seek more support from Tribal interests. A final report from the Study Committee is expected in July 2012.

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

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

Commissioner Robinson reported that the study committee, as instructed by Scope, has had discussions with Senator Leahy's staff regarding his proposed federal legislation that, if enacted, would establish a federal legislative requirement that consular notifications required by the Vienna Convention and bilateral agreements be given – one of the major objectives of any uniform state legislation that might be drafted. The committee requests that it continue its work and consultations with Leahy's staff as well as the State Department and law enforcement agencies, and hopes to submit a report to Scope and Program with final recommendation at July 2012 Annual Meeting.

After discussion, the Committee on Scope and Program determined that the study committee be continued, with a request that the study committee continue its discussions with the State Department, and, if appropriate, invite a representative from the State Department to the next meeting of Scope and Program in July 2012.

- Study Committee on **Relocation of Easements** (*Rodney Satterwhite, Chair*) – Scope Liaison Tom Bolt

Commissioner Bolt reported that the study committee is making good progress on identifying the major issues which any uniform act would need to address. A major topic which the committee still needs to decide is whether any uniform legislation should be retroactive or prospective only. The committee requests that it continue its work, and further requests that it be authorized to hold a stakeholders meeting in the spring. A final report from the committee is expected in July 2012.

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

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

Commissioner McKay reported that the study committee has engaged a reporter, who has prepared a preliminary report with topics that a uniform act might address, including, for example, provisions concerning the conduct of lineups (usually conducted at a police station), instructions that should be given to eyewitnesses prior to a lineup, jury instructions and expert testimony concerning eyewitness identifications, and other matters. The committee requests that it continue its work, and further requests that it be authorized to hold a stakeholders meeting in the spring. A final report from the committee is expected in July 2012.

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

- Study Committee on **Appointment and Powers of Real Estate Receivers** (*Tom Hemmendinger, Chair*) – Scope Liaison Suzy Walsh

Commissioner Walsh reported that the study committee is making good progress on identifying the major issues which any uniform act would need to address. It is unlikely that a stakeholders meeting is necessary to fully vet the issues or the enactment prospects of an act on those topics because the chair and members of the study committee plan to discuss the project at meetings of organizations that represent the most important stakeholders. The committee requests that it continue its work; a final report from the committee is expected in July 2012.

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

- Study Committee on **Mortgage Foreclosure**  
(*Bill Breetz, Chair*) – Scope Liaison Terry Care

Commissioner Breetz reported via conference phone that the study committee held a stakeholders meeting on Friday, January 13, in Washington DC. As a result of that meeting, the study committee unanimously recommends that a drafting committee be formed to draft an act that will be an overlay to existing state legislation, and that will apply to residential property only.

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 Residential Real Estate Mortgage Foreclosure Process and Protections be formed, that the act cover only residential mortgages and be drafted as an overlay to, rather than a replacement of, existing state legislation, that the drafting committee consider the issues on the attached issues list, and that the drafting committee be asked to return to the Scope and Program Committee for approval if it wishes to address additional issues, or if it believes that revisions to UCC Articles 3 or 9 are necessary.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Series of Unincorporated Business Entities**  
(*Steve Frost, Chair*) – Scope Liaison David Walker

Commissioner Walker reported that the study committee has begun its work on studying the issue of series and how series provisions are used in unincorporated entity law. The committee requests that it continue its work; a final report from the committee is expected in July 2012.

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

- Study Committee on **Regulation of Lawsuit Loans**  
(*Roger Henderson, Chair*) – Scope Liaison Tom Bolt

Commissioner Bolt reported that after a careful study of the issue of alternative litigation financing (lawsuit loans), the study committee ultimately does not recommend one way or the other that it go forward to drafting. In its report to Scope, the committee outlined the various reasons why drafting on this topic would be a difficult task, and noted that the committee members had different views on the viability of any project. The committee concluded that no specific recommendation could be made given the differing views of its members.

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 Regulation of Lawsuit Loans be discharged with a letter of thanks to the committee.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Choice of Law for Fraudulent Transfers**  
(*Ed Smith, Chair*) – Scope Liaison David Walker

Commissioner Walker reported that the study committee recommends that a drafting committee be formed to prepare a uniform law on conflict of laws for fraudulent transfers. The committee recommends that the new uniform law take the form of an amendment to the Uniform Fraudulent Transfer Act (1984), though the drafting committee should be empowered to prepare it as a stand-alone uniform law if the drafting committee deems that preferable.

After discussion, the Committee on Scope and Program determined that the study committee be continued, and that, in addition to choice of law issues, it consider the need for and feasibility of revising the entire Uniform Fraudulent Transfer Act, and that it report back in July 2012.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program approves an expansion of the charge of the Study Committee on Choice of Law for Fraudulent Transfers to consider the need for and feasibility of revising the Uniform Fraudulent Transfer Act.**

- Joint ULC/ULC Canada Study Committee on **Interjurisdictional Recognition of Life Planning Documents** (*David English, Chair*) – Scope Liaison Suzy Walsh

Commissioner Walsh reported that the joint study committee has begun its work in identifying relevant issues. A CLE program on this topic will be given at the Spring Meeting of the National Academy of Elder Law Attorneys on April 29. The program will involve both US and Canadian speakers. A separate discussion session will be held after the CLE session in order to crystallize issues and obtain the views of those attending the meeting. The study committee believes that the CLE program and related activities will provide the study committee with excellent information on which to base a recommendation as to whether to proceed to drafting. The committee requests that it continue its work, and expects to submit a report to Scope and Program with final recommendation in July 2012.

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

#### **Joint Editorial Board Written Reports and Recommendations**

- **JEB – Uniform Family Law**  
(*Harry Tindall, Chair*) – Scope Liaison Battle Robinson
- **Proposal:** Study Committee on recognition and enforcement of international domestic violence protection orders.

Commissioner Robinson reported on the JEB proposal to create a study committee to study whether to draft uniform U.S. legislation on the recognition and enforcement of Canadian domestic violence protection orders.

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 recognition and enforcement of Canadian domestic violence protection orders, and that Study Committee also be asked to monitor developments at the Hague Conference concerning possible Hague Conference protocols on enforcement of domestic violence protection orders.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- **Proposal:** Study Committee on Family Law Arbitration

Commissioner Robinson reported on this proposal to create a committee to study the feasibility of drafting an arbitration statute designed specifically for family law.

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 family law arbitration.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- **JEB – Uniform Trust and Estate Acts**  
(David English, Executive Director) – Scope Liaison Suzy Walsh
- **Proposal:** create study committee on trust decanting.

Commissioner Walsh reported that JEB UTEA recommends the appointment of a study committee to consider the need for and feasibility of drafting a trust decanting amendment to the Uniform Trust Code. Trust decanting is a nonjudicial means for modifying an irrevocable trust. The name “decanting” arises because the trustee does not technically modify the existing trust but instead pours over the affected beneficiaries’ interest into a new trust with different terms.

JEB UTEA recommends that any such project should be coordinated with outreach to the Internal Revenue Service to assure that the new provision is tax-qualified. On December 21, 2011, the IRS issued Notice 2011-101, requesting comments on the effect of decanting on a variety of income and GST tax attributes.

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 trust decanting, either as an amendment to the Uniform Trust Code or as a free-standing act.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- **Proposal:** create study committee on trust protectors.

Commissioner Walsh reported that the JEB UTEA recommends the appointment of a study committee on trust protectors. The term “trust protector” refers broadly to any power over the trust held by someone other than the trustee, beneficiary, or settlor. This might include a power to direct investments, to remove or replace trustees, or to amend the trust.

The JEB UTEA believes that the issue of trust protectors should receive further study but the JEB UTEA is not currently in a position to undertake this work. Therefore, a study committee is recommended.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the matter back to the JEB with the suggestion that the JEB continue to monitor the issue, and to renew the recommendation if and when the JEB thinks it is appropriate.

- JEB report: on proposal on state law on fiduciary powers and authority to access digital property (see agenda item #25 for summary of discussion).
- **JEB – Uniform Real Property Acts**  
(*Wilson Freyermuth, Executive Director*) – Scope Liaison Tom Bolt
  - No proposal from JEB URPA.
  - JEB report on proposal for study of potential Uniform Tenancy in Common Act (see agenda item #27 for summary of discussion).
- **JEB – International Law**  
(*Michael Sullivan, Chair*) – Scope Liaison Jim McKay
  - No proposal from JEB IL.
- **JEB – Unincorporated Organization Acts**  
(*Steve Frost, Chair*) – Scope Liaison David Walker
  - No proposal from JEB UUOA.
- **PEB – Uniform Commercial Code**  
(*John Sebert, Chair*) – Scope Liaison Terry Care
  - No proposal from PEB.

## New Business

- Proposal – Create Model Veterans’ Court Act  
(Commissioner Harry Tindall) Scope Liaison Battle Robinson

Commissioner Robinson reported on this proposal to create a Model Veterans’ Court Act. Within the last 3 ½ years, at least 80 veterans’ treatment courts have been established within existing court structures. Veterans courts are meant to divert cases involving veterans to a specialized court set up to deal with veterans’ issues, and steer those veterans towards treatment rather than incarceration.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and requested that Executive Director Sebert provide information regarding this proposal to the National Center for State Courts.

- Proposal – State Law on Interstate Recognition of Professional and Occupational Licenses of Spouses of Active Military Members  
(Jeremy Smith, Director, Strategic Initiatives, Pew Center on the States)  
Scope Liaison David Walker

Commissioner Walker reported on this proposal to study the issue of portability of professional and occupational licenses for military spouses. Eleven states have passed some sort of legislation on portability of professional licenses. The need for this legislation is national since military spouses might be deployed to any state for extended time periods. If enacted nationally, spouses would be able to travel freely from deployment to deployment, keeping their right to practice their occupation intact.

After discussion, the Committee on Scope and Program approved, by a divided vote, 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 portability and recognition of professional and occupational licenses of military spouses.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Proposal – Amend or Revise the Uniform Athlete Agents Act  
(Commissioners Dick Hite, Harvey Perlman, Jerry Bassett, Dale Higer)  
Scope Liaison Jim McKay

Commissioner McKay reported on the proposal to amend or revise the Uniform Athlete Agents Act, promulgated in 2000 and enacted in 42 states. Recently, at least six states have introduced legislation to amend the UAAA in response to highly publicized scandals involving agents and their relationship to college athletes. At a recent NCAA



summit to discuss agent issues, there was strong sentiment that the evolving nature of the agent problem, coupled with a decade of experience with the UAAA, merits a formal review of the act's provisions.

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 amending the Uniform Athlete Agents Act.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Proposal – Interim Relief Enforcement and Recognition Act  
(Steven M. Richman, ABA Section on International Law)  
Scope Liaison Tom Bolt

Commissioner Bolt reported on this proposal to address a mechanism for enforcing non-final, or interim, orders in cross-border scenarios that encompass both court orders and non-final orders in arbitration. The ABA Section of International Law has endorsed this proposal. At present, there is no treaty for providing for recognition and enforcement of foreign country money judgments. Within the U.S., many states have enacted the Uniform Foreign Country Money Judgments Recognition Act, but that applies to final judgments and certain categories are excluded. Therefore, the problem is how to obtain recognition and enforcement of non-final orders issued by U.S. and foreign courts and arbitration panels.

This proposal had been forwarded to the ULC International Legal Developments Committee for its review. The ILDC reports that the idea has merit and that the proposal should be kept on the Scope agenda, but also recommended that Scope take no action at least until the Asset Freezing Orders committee has completed its work.

After discussion, the Committee on Scope and Program recommended that the proposal be referred to the JEB for International Law for its consideration, with request that the JEB IL report back to Scope in January 2013.

- Proposal – State Law on Criminal Records  
(Stephen Saltzburg, ABA Criminal Law Section; Todd Belcore, Shriver National Center on Poverty Law; and Nicole Julal, Legislative Counsel)  
Scope Liaison David Walker

Commissioner Walker reported on this proposal to create a study committee to address the problem of access to criminal records and opportunity to correct errors in criminal records.

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 criminal records accuracy and access.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Proposal – State Law on Wage Garnishment  
(American Payroll Association) Scope Liaison Suzy Walsh

William Dunne and others from the American Payroll Association participated via conference call, and reported on this proposal from the APA on a state law governing wage garnishment by creditors. Currently, wage garnishments are governed by 54 very different state and territorial laws, which create significant complexity for employers. The varying state provisions create the likelihood of processing errors and the risk of financial liability. APA believes that a uniform law governing wage garnishments would do much to alleviate this complexity and enable employers to more easily fulfill their obligations, which would benefit creditors, employees and employers.

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 wage garnishment.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Proposal – Revise the Uniform Consumer Credit Code  
(Commissioner Jack Davies) Scope Liaison Terry Care

Commissioner Care reported on this proposal to revise the Uniform Consumer Credit Code, promulgated in 1968 and enacted in 10 states. The most recent enactment of the UCCC was in Utah in 1985.

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

## Other Business

- Proposal – State Law on Fiduciary Powers and Authority to Access Digital Property (Commissioner Gene Hennig) Scope Liaison Suzy Walsh

Commissioner Walsh reported on this proposal that deals with subject of fiduciary powers and authority to gain access to online accounts and digital property after death or during an individual's incapacity. There is considerable uncertainty concerning how a fiduciary can access such property when administering a decedent's estate or the affairs of an incapacitated person. When an individual dies or becomes incapacitated, fiduciaries need to find, access, value, protect, and transfer the individual's valuable or significant property. Fiduciaries need clear powers to act on behalf of the individual in the digital world. This proposal had been forwarded to the JEB UTEA for its review. JEB UTEA supports appointment of a study committee.

After discussion, the Committee on Scope and Program recommended the appointment of a study committee, and encourages the study committee to move expeditiously if possible.

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 fiduciary powers and authority to access digital information.**

*On January 21, 2012, the Executive Committee approved this resolution.*

- Proposal – Tribal Transfer of Litigation Act  
(Commissioner Mark Ramsey) Scope Liaison Jim McKay

Commissioner McKay reported on this proposal to draft a uniform law that would allow the transfer of litigation between state and tribal court systems with an appropriate balancing of the rights of state and tribal governments and private litigants. The proposal had been forwarded to the Committee on Liaison with American Indian Tribes and Nations for its review. The Liaison Committee appointed a small ad hoc committee consisting of Commissioner Ramsey as well as some members of the Liaison Committee to analyze the proposal further. The Ad Hoc Committee recommends that the proposal be held for future consideration, and that no study or drafting committee is recommended at this time.

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

- Proposal – Uniform Tenants in Common Act (Commissioner Harry Tindall)  
Scope Liaison Tom Bolt

Commissioner Bolt reported on this proposal to examine the issue of ownership of property by tenants in common. Tenants in common own separate and distinct shares of the same property, but do not have a right of survivorship. The proposal had been referred to JEB for Uniform Real Property Acts for review. After review, JEB URPA recommends that the proposal be forwarded to the ALI to consider undertaking an appropriate ALI project on this matter.

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

- Letter from Virginia Governor Robert McDonnell  
(Provided for information purposes only.)

Executive Director Sebert reported that Commissioner Carlyle C. Ring forwarded to the ULC a letter from Virginia Governor Robert McDonnell to Iowa Governor Terry E. Branstad (who is also Chair of the Health and Human Services Committee of the National Governors Association) regarding the issue of founded complaints of family abuse, and a potential recommendation of uniform state law to provide for information sharing of abuse complaints among states.

After discussion, the Committee on Scope and Program recommended that the letter be referred to the JEB/Uniform Family Law for its consideration. Scope further requested that Commissioner Ring respond to Governor McDonnell to inform him of Scope's discussion and recommendation.

- Uniform Law Conference of Canada

Executive Director Sebert reviewed the current projects of the Uniform Law Conference of Canada.

The Committee on Scope and Program was then adjourned.