

## MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Thomas Gallanis

Re: Minutes, November 5, 2010; Chicago, Illinois

The meeting was called to order on Friday, November 5, 2010, at 9:08am by Chair Malcolm Moore. Others present were (in alphabetical order): Turney Berry, Jackson Bruce, David English, Mary Louise Fellows, Thomas Gallanis, Susan House, Joseph Kartiganer, Michael Kerr (ULC Legislative Director and Legal Counsel), Sheldon Kurtz, Carlyn McCaffrey, Pam Schneider, Robert Sitkoff, Martha Starkey, Bruce Stone, James Wade, and Raymond Young. Not present were Edward Halbach, Naomi Karp, and Judith McCue. Guests present (for parts of the meeting) included John Sebert, ULC Executive Director, and Professor Susan Gary, Co-Reporter for the Oversight of Charitable Assets Act.

1. **Welcome to New Members.** The Board welcomed Ms. Schneider as a new member of the Board, succeeding Mr. Kartiganer, and Mr. Berry as a new member of the Board, succeeding Professor Langbein.

2. **Minutes.** The Board approved the minutes of the September 2009 meeting.

3. **Members Emeriti.** Mr. Kartiganer, Professor Langbein, and Professor Waggoner are now members emeriti. Mr. Moore and Professor English explained that members emeriti are welcome and encouraged to attend Board meetings if they wish. The Board has sufficient funding to reimburse the expenses of members emeriti who attend Board meetings as long as the Board meets only once per year.

4. **Legislative Update.** Mr. Kerr gave a legislative update on uniform acts in the area of trusts and estates. As a part of this update, he explained that the ULC is planning to compile a fully current version of the Uniform Probate Code, including all of the recent technical and conforming amendments, by early 2011. The ULC also plans to digitize each iteration of the Uniform Probate Code, going all the way back to 1969.

5. **Technical and Conforming Amendments to the Uniform Probate Code.** Mr. Kerr reported that the technical and conforming amendments to the Uniform Probate Code approved by the ULC Executive Committee on April 23, 2010, are considered final, subject only to any changes made by the ULC Committee on Style at its January 2011 meeting.

**6. Proposed Uniform Probate Code Amendments.** Professor Kurtz led a brief discussion of proposed amendments to Uniform Probate Code §§2-120 and 2-121. The Board resolved that, rather than amending the text of these sections, the changes contemplated by these amendments should be made by amendments to the comments. Professors Kurtz and Waggoner will draft the proposed amendments to the comments and send them to Professor Gallanis, who will circulate them by e-mail to the Board.

**7. Conforming Amendments to Other Acts.** Mr. Kerr and Professor English led a brief discussion of conforming amendments necessitated by amendments to the Uniform Probate Code. These conforming amendments include changes to: Uniform Trust Code §415; the Uniform Disclaimer of Property Interests Act; and the Nonprobate Transfers on Death Act. Mr. Kerr reported that these amendments will be made “in-house” at ULC headquarters. The aim is to finalize the conforming amendments shortly after the January 2011 meeting of the ULC Committee on Style.

**8. Wellman Award.** The Board awarded the Richard Wellman Award to Mr. Young, in recognition of his decades of devoted service to the Board and his extraordinary leadership in obtaining a Massachusetts enactment of the Uniform Probate Code. In presenting the award, Mr. Moore noted that Mr. Young had also served as the ACTEC adviser to the drafting committee for the Uniform Statutory Rule Against Perpetuities, as well as an adviser on the Restatement Third of Property. Mr. Young was named an Estate Planner of the Year in 1991 by the Boston Estate Planning Council, and was named Lawyer of the Year in 2009 by the Massachusetts Lawyers Weekly.

**9. Potential Future Projects.** The Board discussed three potential future projects: (1) a uniform law on powers of appointment; (2) a uniform law on the disposition of mortal remains; and (3) a uniform law on future interests (perhaps with a new uniform rule against perpetuities). The Board concluded that: the project on powers of appointment is important and worthwhile, and ripe for a ULC drafting committee; the project on the disposition of mortal remains is of interest but requires further research to determine whether existing laws leave room for a uniform act, with discussion by the Board at its next meeting; and the feasibility of a uniform act on future interests heavily depends on whether it would be part of, or separate from, a revision of the Uniform Statutory Rule Against Perpetuities, and that in any event the reform of future interests law is not an urgent issue. Professor English will prepare a memorandum to the ULC Committee on Scope and Program by December 15, summarizing the Board’s views on all three potential projects. Professor Gallanis will prepare a detailed memorandum on powers of appointment by December 15, for attachment to Professor English’s memorandum, in the hope that the Committee on Scope and Program will approve the appointment of a drafting committee. Before the next Board meeting, Professor English will ask a research assistant to prepare a survey of state laws on the disposition of mortal remains. This topic will be on the Board’s next agenda. (Professor Kurtz requested that it be noted in the minutes that a uniform act on mortal remains would need to avoid any inconsistency with the existing uniform act on anatomical gifts.)

10. **Insurable Interests Relating to Trusts.** Professor English gave a brief report on this Act, which was approved at the ULC's annual meeting in Summer 2010.

11. **Model Tribal Probate Code Study Committee.** Professor English gave a brief report on the status of this project, which is awaiting outside funding.

12. **Statutory Trust Entity Act.** Professor Sitkoff gave a brief report on this Act (promulgated in 2009) and on the ULC's effort to harmonize uniform acts governing business entities. The Board concurred with Professor Sitkoff that the Comments to the harmonization project should acknowledge that in certain respects the Act rightly follows the norms of trust law rather than alternative-entity law.

13. **Oversight of Charitable Assets Act.** Professors English, Sitkoff, and Gary reported on the status of the Act, which had its first reading at the ULC annual meeting in Summer 2010. The drafting committee hopes to schedule the Act for final reading in Summer 2011. On the current draft of the Act, the Board offered two substantive comments, which were communicated by Mr. Moore and Professor English to the drafting committee: (1) named public charities should be excluded from the application of the Act, and (2) the word "oversight" in the title of the Act may generate resistance to enactment. When the next draft of the Act is ready, Professor English will circulate it to the Board by e-mail for comments.

14. **Palliative Care and Physicians' Orders for Life Sustaining Treatment (P.O.L.S.T.).** Professor English led a discussion of a possible uniform act in these areas. The Board encouraged Professor English to include in his memorandum to the Committee on Scope and Program (see item 9, above) a recommendation that the ULC Executive Committee appoint a study committee on these topics.

15. **Miscellaneous Trust Issues.** Professor English led a brief discussion of the following trust topics, perhaps as areas for future amendments to the Uniform Trust Code: (1) trust decanting; (2) trust protectors; (3) liability of ILIT trustees; and (4) virtual representation and the U.S. Supreme Court's decision in *Taylor v. Sturgell*. With respect to the first three topics, the Board requested Professor English to assemble materials for an in-depth discussion at the Board's next meeting. With respect to *Taylor v. Sturgell*, the Board had a brief discussion but concluded that the Court's decision addressed "virtual representation" in a context different from the use of the term in the Uniform Trust Code.

The meeting was adjourned at 2:40pm.

Respectfully submitted,  
Thomas P. Gallanis  
Associate Executive Director