

D R A F T
FOR DISCUSSION ONLY

UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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ON UNIFORM STATE LAWS

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March 19, 2015

UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT

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UNIFORM UNSWORN DECLARATIONS ACT

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UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT

PREFATORY NOTE

Declarations of persons are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials. Federal and some state courts and agencies may receive unsworn declarations. The United States Code – see Appendix – authorizes the use of unsworn declarations if they meet the requirements of the statute. The federal provision, though, does not authorize the use of unsworn declarations in state courts or agencies. Those state courts that have addressed the issue generally hold that the federal statute is inapplicable to state actions.

A number of states have statutes of like nature – see Appendix – but these statutes are not uniform. Some apply only to foreign declarations; others apply to declarations without regard to where the declaration was made. Some apply only in specific types of litigation, proceedings, or situations. Others are more universally received.

Declarations of persons are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials. Federal and some state courts and agencies may receive unsworn declarations. The United States Code authorizes the use of unsworn declarations if they meet the requirements of the statute. (see 28 U.S.C. Section 1746, Appendix) The federal provision, though, does not authorize the use of unsworn declarations in state courts or agencies. Those state courts that have addressed the issue generally hold that the federal statute is inapplicable to state actions.

A significant number of states have statutes of like nature (e.g., California: Cal. Civ. Proc. Code Section 2015.5, Appendix), but these statutes are not uniform. Some apply only to foreign declarations; others apply to declarations without regard to where the declaration was made. Some apply only in specific types of litigation, proceedings, or situations. Others are more universally received.

The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated in 2008 and has since been enacted in 20 states. The Act authorizes the use in litigation and certain agency filings of unsworn declarations made outside the United States under penalty of perjury. Federal legislation (28 U.S.C. Section 1746, Appendix) is broader in that the federal legislation also authorizes the use in federal court of unsworn declarations made under penalty of perjury within the United States. Several states have similar provisions. (e.g., California: Cal. Civ. Proc. Code Section 2015.5, Appendix).

The Uniform Unsworn Domestic Declarations Act (UUDDA) reaffirms the use in state legal proceedings of unsworn declarations and expands the authorization to domestic unsworn declarations. Under UUDDA, if an unsworn declaration is made within the United States subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. UUDDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills,

1 declarations recorded under certain real estate statutes, and oaths required to be given before
2 specified officials other than a notary.
3

4 UUDDA will extend to state proceedings the same flexibility that federal courts have
5 employed for almost 40 years. Since 1976, federal law (28 U.S.C. Section 1746, Appendix) has
6 allowed an unsworn declaration to be recognized and valid as the equivalent of a sworn affidavit
7 if it contained an affirmation substantially in the form set forth in the federal act.
8

9 Several states also allow the use of unsworn declarations (e.g., Cal. Civ. Proc. Code
10 Section 2015.5, Appendix), but the state procedures are not uniform. Further, courts have ruled
11 that 28 U.S.C. Section 1746 is inapplicable to state court proceedings.
12

13 The Uniform Unsworn Domestic Declarations Act would be for use by those states that
14 have a law addressing foreign unsworn declarations, but not domestic declarations. Twenty states
15 have adopted UUFDA. Those states may choose to authorize the receipt of unsworn domestic
16 declarations without tampering with the state's version of UUFDA by adopting the second
17 version of the Act.
18

19 Enactment of UUDDA harmonizes state and federal treatment of unsworn declarations.
20 The act alleviates affiants' burden in providing important information for state proceedings.
21 Further, UUDDA will help reduce aspects of confusion regarding differences in federal and state
22 litigation.
23

1 **UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Unsworn
3 Domestic Declarations Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Boundaries of the United States” means the geographic boundaries of the United
6 States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession
7 subject to the jurisdiction of the United States.

8 (2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial
9 decision or order, a rule of court, an executive order, and an administrative rule, regulation, or
10 order.

11 (3) “Record” means information that is inscribed on a tangible medium or that is stored in
12 an electronic or other medium and is retrievable in perceivable form.

13 (4) “Sign” means, with present intent to authenticate or adopt a record:

14 (A) to execute or adopt a tangible symbol; or

15 (B) to attach to or logically associate with the record an electronic symbol, sound,
16 or process.

17 (5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
18 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
19 the United States.

20 (6) “Sworn declaration” means a declaration in a signed record given under oath. The
21 term includes a sworn statement, verification, certificate, and affidavit.

22 (7) “Unsworn declaration” means a declaration in a signed record that is not given under
23 oath but is given under penalty of perjury.

1 **Comment**

2 1. The definition of “law” is drafted in an open-ended manner to give it the widest
3 possible application. The term is not ordinarily defined in uniform acts but in this context it is
4 important that judges applying the act be in no doubt about its breadth. The wording is taken
5 from the definition contained in the Revised Model State Administrative Procedure Act.

6 2. A “record” includes information that is in intangible form (e.g., electronically stored)
7 as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic
8 Transactions Act and the federal Electronic Signatures in Global and National Commerce Act
9 (15 U.S.C. Section 7001 et seq.).

10
11 3. The definition of “sign” is broad enough to cover any writing containing a traditional
12 signature and any record containing an electronic signature. It is consistent with the Uniform
13 Electronic Transactions Act and the federal Electronic Signatures in Global and National
14 Commerce Act (15 U.S.C. Section 7001 et seq.).

15
16 **SECTION 3. APPLICABILITY.** This [act] applies to an unsworn declaration by a
17 declarant who at the time of making the unsworn declaration is physically located within the
18 boundaries of the United States.

19 **Comment**

20
21 In keeping with the limited scope of the act, unsworn declarations made outside of the
22 boundaries of the United States are not made admissible by this act. Other law within the
23 enacting state may authorize the use of foreign unsworn declarations.

24
25 **SECTION 4. VALIDITY OF UNSWORN DECLARATION.**

26 (a) Except as otherwise provided in subsection (b), if the law of this state requires or
27 permits use of a sworn declaration, an unsworn declaration meeting the requirements of this [act]
28 has the same effect as a sworn declaration.

29 (b) This [act] does not apply to:

30 (1) a deposition;

31 (2) an oath of office;

32 (3) an oath required to be given before a specified official other than a notary
33 public;

1 (4) a declaration to be recorded pursuant to [insert appropriate section of state=s
2 real estate law]; or

3 (5) an oath required by [insert appropriate section of state=s law relating to self-
4 proved wills].

5 ***Legislative Note:*** *Enacting states will need to ensure that the perjury laws of the enacting state*
6 *include unsworn declarations.*

7 **Comment**

8
9 The use of unsworn declarations is not limited to litigation. Unsworn declarations would
10 be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain
11 contexts in which unsworn declarations should not be used, and these contexts are listed in this
12 section.

13
14 Except as provided in section 4 of this act, pursuant to this section, an unsworn
15 declaration meeting the requirements of this act may be used in a state proceeding or transaction
16 whenever other state law authorizes the use of a sworn declaration. Thus, if other state law
17 permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the
18 requirements of this act would also suffice. Additionally, if other state law authorizes other
19 substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of
20 this section, an unsworn declaration meeting the requirements of this act could serve as a
21 substitute for an affirmation.

22
23 **SECTION 5. REQUIRED MEDIUM.** If the law of this state requires that a sworn
24 declaration be presented in a particular medium, an unsworn declaration must be presented in
25 that medium.

26 **Comment**

27
28 Courts and agencies often restrict the medium in which pleadings, motions, and other
29 documents may be filed. This section recognizes that such a restriction is binding on a person
30 seeking to introduce an unsworn declaration.

31
32 **SECTION 6. FORM OF UNSWORN DECLARATION.** An unsworn declaration
33 under this [act] must be substantially in the following form:

34 I declare under penalty of perjury under the law of [insert name of enacting state] that the
35 foregoing is true and correct.

Executed on the ____ day of _____, _____, at _____.
(month) (year) (city or other location, and state)

(printed name)

(signature)

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.

Comment

This declaration form is usable for any unsworn declaration if the declaration was made in the enacting state or another state. It would apply to intrastate or interstate unsworn declarations but would not apply to unsworn declarations made outside the boundaries of the United States.

A number of states have an unsworn declarations law that authorizes receipt of declarations and provides a suggested form for the declaration. The declaration in Section 6 is similar to, but more detailed than the declarations found in the laws of Arizona, Florida, Hawaii, Iowa, New Jersey, Oklahoma, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming, and the Virgin Islands. Other states describe the nature of the declaration without providing a form. Those states include Idaho, Illinois, Minnesota, Pennsylvania, and Rhode Island. Some jurisdictions separate intrastate and interstate declarations and provide distinct forms. Those include California, Kansas, Montana, Nevada, and Texas.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

This section recites the importance of uniformity among the adopting states when applying and construing the act.

SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,

1 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
3 U.S.C. Section 7003(b).

4 **Comment**

5
6 This section responds to the specific language of the Electronic Signatures in Global and
7 National Commerce Act and is designed to avoid preemption of state law under that federal
8 legislation.

9
10 **SECTION 9. REPEALS; CONFORMING AMENDMENTS.**

11 (a)

12 (b)

13 (c)

14 **Comment**

15 Any state enacting the Uniform Unsworn Declarations Act likely will need to amend the
16 state's laws by repealing any conflicting statutory provisions.

17
18 **SECTION 10. EFFECTIVE DATE.** This [act] takes effect

19
20 **Comment**

21 This act will become effective in the enacting jurisdiction on the designated date.
22

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APPENDIX

Existing Laws and Citations

The state statute which has served as a model for the uniform Act is CAL. CIV. PROC. CODE Section 2015.5. The federal version of this statute is 28 U.S.C. § 1746. They state as follows:

CAL. CIV. PROC. CODE Section 2015.5. Certification or Declaration Under Penalty of Perjury.

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

“I certify (or declare) under penalty of perjury that the foregoing is true and correct.”

(Date and Place)

(Signature)

(b) If executed at any place, within or without this state:

“I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(Date and Place)

(Signature)

28 U.S. CODE Section 1746.

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of

1 office, or an oath required to be taken before a specified official other than a notary public), such
2 matter may, with like force and effect, be supported, evidenced, established, or proved by the
3 unsworn declaration, certificate, verification, or statement, in writing of such person which is
4 subscribed by him, as true under penalty of perjury, and dated, in substantially the following
5 form:
6

7 (1) If executed without the United States:
8

9 “I declare (or certify, verify, or state) under penalty of perjury under the laws of the
10 United States of America that the foregoing is true and correct.
11

12 _____
13 Executed on (date).

(Signature)”.
14

15 (2) If executed within the United States, its territories, possessions, or commonwealths:
16

17 “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is
18 true and correct.
19

20 _____
21 Executed on (date).

(Signature)”.
22