



MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Thomas P. Gallanis
JEB-UTEA Executive Director

Re: Minutes from December 2016 Meeting; Chicago, Illinois

The meeting was called to order on Friday, December 2, 2016, at 9:00 a.m. by Chair Malcolm Moore. Others present were Turney Berry, David English, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, John Langbein, Carlyn McCaffrey, Kevin Millard, Pam Schneider, Robert Sitkoff, Martha Starkey, Bruce Stone, James Wade, and Ray Young.

- 1. Approval of Minutes.** Mr. Berry moved for approval of the minutes of the Board's April 2016 meeting, and Mr. Stone seconded the motion. The Board unanimously approved the minutes.
- 2. JEB-UTEA Leadership and Resolution.** Prof. Gallanis shared with the Board that Mr. Moore had decided to retire as Chair and as a member of the Board, effective at the end of the current meeting. This information had been conveyed to the voting members of the Board prior to the meeting; by e-mail ballot, the voting members of the Board unanimously took the following actions: (1) elected Mr. Stone to succeed Mr. Moore as the Board's Chair, (2) voted to present Mr. Moore with a Richard V. Wellman Award in recognition of his decades of outstanding service and leadership on the Board, and (3) elected Mr. Moore to an emeritus membership. At the meeting, the Board unanimously approved the following resolution:

The Joint Editorial Board for Uniform Trust and Estate Acts
by resolution adopted December 2, 2016,
gratefully recognizes the distinguished and devoted service of
MALCOLM A. MOORE
to this Board and to the Uniform Law Commission
over a period of more than four decades,
his wisdom, sound judgment, and genuine collegiality
as an original member of this Board,
and his superb leadership as this Board's Chair.

Action Item: Prof. Gallanis will transmit a copy of the resolution to Mr. Moore. Prof. English will coordinate with the ABA RPTE Section to fill the vacancy in Section representation on the Board.

3. **Directed Trust Act.** Prof. Sitkoff led a discussion of the October 7, 2016, draft of the Directed Trust Act. The Board discussed specific provisions and offered feedback to the drafting committee. The Board plans to discuss an updated draft at the Board's May 2017 meeting.
4. **Revised Guardianship and Protective Proceedings Act.** Prof. English led a discussion of the October 10, 2016, draft of the Revised Guardianship and Protective Proceedings Act. The Board discussed specific provisions and offered feedback to the drafting committee. The Board plans to discuss an updated draft at the Board's May 2017 meeting.
5. **Revised Parentage Act.** The Board discussed the October 7, 2016, draft of the Revised Parentage Act. Prof. Courtney Joslin, the reporter for the Act, joined the discussion by speakerphone. The Board discussed specific provisions and offered feedback to the drafting committee. The Board plans to discuss an updated draft at the Board's May 2017 meeting. Action Item: As the project moves forward, Prof. Joslin will share drafts with Profs. Fellows and Gallanis so that the Board can begin to consider how to conform the Uniform Probate Code with the Act, a process that will include updating the UPC's inheritance and class-gift provisions to take into account, among other things, (1) the possibility that a child may have more than two parents, and (2) the Act's rules on *de facto* parentage.
6. **Revised Principal and Income Act.** Mr. Berry gave an update on the progress of the Revised Principal and Income Act. The Board plans to discuss a draft of the Act at the Board's May 2017 meeting.
7. **Tribal Probate Code.** Prof. English gave an update on the progress of the Tribal Probate Code. The Board plans to discuss an updated draft of the Code at the Board's May 2017 meeting. Prof. English mentioned that the drafting committee would especially welcome the Board's feedback on the Code's estate administration provisions.
8. **Technical Amendments in Light of *Obergefell*.** The Board reviewed and approved draft technical amendments to Uniform Probate Code §§ 2-802, 2-804, and 3-101A, and to Uniform Custodial Trust Act § 6. Action Item: Prof. Gallanis will transmit these technical amendments to the ULC Executive Committee for approval under § 4.3(b)(3) of the ULC Constitution.
9. **Amendments to the Comment to Uniform Trust Code § 413.** The Board reviewed and approved amendments to the Comment to § 413 of the Uniform Trust Code. Action Item: Prof. Gallanis will transmit these amendments to the ULC Executive Committee.
10. **Uniform Probate Code § 2-209 and Interest on the Elective Share.** The Board discussed the most recent draft, prepared by Mr. Wade, of a potential amendment to Uniform Probate Code § 2-209, to provide for interest on an unsatisfied elective-share or supplemental-share amount. The Board took note that the ULC's Executive Director, Ms. Karsai, had concluded that this potential amendment could not qualify as a technical amendment within

the meaning of § 4.3(b)(3) of the ULC Constitution. Accordingly, the Board resolved not to pursue the amendment as a technical amendment but rather to keep it on file for the next round of substantive revisions to the Uniform Probate Code. Action Item: Prof. Gallanis will add the draft to his file of future Uniform Probate Code revisions.

11. **Transfer of Real Estate by Small Estate Affidavit.** The Board discussed a proposal from the Joint Editorial Board for Uniform Real Property Acts, exploring whether the two Boards might jointly submit a proposal to the ULC Committee on Scope and Program for a study committee to consider the feasibility of a uniform act on the transfer of real property by small estate affidavit. The Board decided not to pursue a joint proposal on this topic. Among other reasons, the Board noted that the monetary limits on small estate affidavits vary widely from one state to another and that transfer-on-death deeds provide an increasingly-available alternative to the transfer of land through probate. Action Item: Prof. Gallanis will communicate the Board's views to the JEB-URPA's Executive Director.

12. **Referral from Scope and Program: State Escheat Laws.** The Board discussed a proposal from Commissioner Trost of Tennessee for a study committee on a uniform act on state escheat laws. The proposal had been referred to the Board by the ULC Committee on Scope and Program. The Board concluded that the proposal lies outside the Board's scope and, instead, should be referred to the Joint Editorial Board for Uniform Real Property Acts. Action Item: Prof. Gallanis will communicate the Board's views to the ULC Committee on Scope and Program.

13. **Future Projects.** The Board discussed several possible future projects for uniform laws in the field of trusts and estates. The Board expressed enthusiasm for two projects for which a drafting committee could be appointed directly (without the need for a study committee) and two projects for which a study committee would be appropriate. The two projects that should go directly to drafting are, in order of priority:
 - (a) **Revision of the Uniform Disposition of Community Property Rights at Death Act.** The Uniform Disposition of Community Property Rights at Death Act, promulgated in 1971, aims to define the property rights of spouses who move from a community-property jurisdiction to a separate-property jurisdiction. In 2012, the Board sought input from Profs. Karen Boxx of the University of Washington and Thomas Featherston of Baylor University on the advisability of updating the Act. Their thoughtful memoranda, which recommend that the Act be revised and discuss some of the needed revisions, nicely lay the groundwork for a drafting committee.
 - (b) **A Uniform Act on Estates and Future Interests.** In the final volume (2011) of the Restatement Third of Property, the American Law Institute approved a simplified system of present estates and future interests, repudiated outmoded rules of future-interest law, and addressed questions of construction that arise in connection with present estates and future interests. The Restatement Third's provisions provide the template for a uniform act on estates and future interests that would be of benefit in sweeping away unneeded complexity and providing simplicity and uniformity in this unnecessarily-technical area of the law. In the same way that the Restatement Third's provisions on powers of appointment enabled the smooth drafting of the Uniform Power of Appointment Act, the Restatement's provisions on estates and future interests (drawing on

scholarly articles by Professor Gallanis¹ and Professor Waggoner²) lay the groundwork for the direct appointment of a drafting committee.

The two projects for which the Board recommends the appointment of a study committee are, in order of priority:

(c) Electronic Wills. The one U.S. state to authorize electronic wills by statute is Nevada, but a growing number of jurisdictions, in the U.S. and in Australia, are starting to grapple with the validity of electronic or digital wills. Before more U.S. states legislate in this area, it is important for the ULC to examine the feasibility of a uniform act. In addition to examining the feasibility of an electronic will, a study committee should also consider whether a uniform act might extend beyond wills to end-of-life planning documents such as advance medical directives or powers of attorney for health care or finance. A study committee will need to consult not only experts in succession law but also in the technologies that are facilitating electronic documents.

(d) Nonmarital Cohabitation/*De Facto* Marriage. The Board unanimously voted to join with the Joint Editorial Board for Uniform Family Law in recommending the appointment of a study committee on nonmarital cohabitation/*de facto* marriage. However, the Board encourages the study committee to consider how broad or narrow a uniform act should be. For instance, should an act create *de facto* marriage for all purposes or should be act be limited to creating rights under the law of succession (where the primary policy is to further the decedent's intention)?

Action Item: Prof. Gallanis will transmit the Board's recommendations to the ULC Committee on Scope and Program and the ULC Executive Committee.

- 14. Voidable Transactions.** The Board briefly discussed the ongoing controversy over the Comments to the Uniform Voidable Transactions Act. The Board expressed its continuing hope that the Comments can be amended to facilitate the Act's enactment. Action Item: Prof. Gallanis will communicate the Board's views to the ULC leadership.

The meeting adjourned at 5:00pm.

- 15. Wellman Award.** At dinner, the Board presented its Richard V. Wellman Award to Malcolm A. Moore, in recognition of his outstanding contributions and superb leadership in the field of trusts and estates.

Respectfully submitted,
Thomas P. Gallanis
JEB-UTEA Executive Director

¹ Thomas P. Gallanis, *The Future of Future Interests*, 60 Wash. & Lee L. Rev. 513 (2003).

² Lawrence W. Waggoner, *Reformulating the Structure of Estates: A Proposal for Legislative Action*, 85 Harv. L. Rev. 729 (1972).