

To: Scope and Program Committee

From: David English, Committee Chair

Date: June 13, 2012

This is the second report of the Joint Study Committee on Interjurisdictional Recognition of Life Planning Documents. This Committee consists of eight members in addition to the chair, with four members from the Uniform Law Conference of Canada and four members from the Uniform Law Commission of the United States. The Committee is currently assisted by Advisers from the Senior Lawyers Division of the American Bar Association, from the ABA Health Law Section, and from the ABA Section of Real Property Trust and Estate Law. The Committee was formed in Fall 2011

The charge to the Committee as it appears on the website of the Uniform Law Commission is as follows:

The committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on inter-jurisdictional recognition of life planning documents, such as powers of attorney, health care advance directives, and similar instruments.

The Study Committee held its first conference call on December 8, 2011, and its second call on June 12, 2012. In the interim, the Committee on April 29 presented a program on the project at the 2012 Annual Meeting of the National Academy of Elder Law Attorneys. Speakers were David English, Committee Chair, Laura Watts, Canadian Centre on Elder Law, Linda Whitton, Advisor to the Study Committee and Reporter for the Uniform Power of Attorney Act, and Charlie Sabatino, Director, ABA Commission on Law and Aging. There were approximately 20 US and Canadian attendees. The materials from the NAELA meeting will be quite valuable as resource materials should a drafting project be approved.

Following the program, the four speakers and four of the attendees met to discuss the project. The additional attendees were Mike Kirtland, the Senior Lawyers Division Advisor to the Study Committee, Catherine Seal, who was an Observer to the Drafting Committee on the Uniform Adult Guardian and Protective Proceedings Jurisdiction Act, Ron Kruzeniski, the Public Guardian and Trustee of Saskatchewan, and Jasmine Sweatmen, a trusts and estates practitioner from Toronto. The speakers and other attendees all agreed that the project should move forward to a drafting committee.

During the June 12, 2012 call, the Study Committee reached the following conclusions:

1. The project has considerable merit and should move forward to a drafting committee. Both the Canadian and US contingents agree that this is a desirable step.

2. The name Life Plan is too broad and not particularly descriptive of the project. The Study Committee on the phone could not quickly come up with a new title but will give the question further thought.
3. The drafting project should deal with powers of attorney, both property and health care. The project should also deal generally with instructions regarding health care although not with a focus on end-of-life issues. In doing so, it must be kept in mind that the uses of “health-care directives” is different in Canada than in the US. Consideration should also be given to issues that sometimes fall in the cracks between health care and property management documents, such as decisions on living arrangements. Drafting should begin with powers of attorney and get into the other issues as the draft evolves.
4. The drafting project should leave for another day interjurisdictional issues concerning trusts and guardianship.
5. The project should develop principles that would include (1) a provision validating documents executed elsewhere; (2) a provision specifying under which law the document would be interpreted; (3) a provision encouraging acceptance by third parties and specifying circumstances under which acceptance would be mandated; and (4) a provision that would respect procedural and substantive restrictions imposed by the implementing state.
6. The provisions of the Hague Convention on Protection of Adults should be kept in mind as drafting proceeds although neither Canada or the US have yet ratified the Convention. Where possible, the draft should be consistent with the Convention. But the drafting project is of significant practical benefit to both countries whether or not Canada or the US eventually decide to ratify the Hague Convention.