The ULC never rests! There’s so much going on …..

Almost all presidential electors in the country’s history have voted for their parties’ candidates, but in a few incidents electors have not voted as directed by the party. The Uniform Faithful Presidential Electors Act addresses the problem of an elector who decides to vote inconsistently with the way the elector was elected to vote by the people of the state. UFPEA requires a pledge of faithfulness by each elector candidate. The act then converts an attempted faithlessness into a resignation and provides for a replacement who has also taken a pledge. In that respect, UFPEA is similar to a remove-and-replace law recently challenged in Colorado.

Before enacting the UFPEA in 2019, the State of Washington approached the problem of the faithless elector by imposing an after-the-fact sanction. Because constitutional challenges have been made regarding the operation of these laws in 2016, the Supreme Court has been asked to clarify the law of faithless electors. The ULC has filed a brief in support of Colorado’s request that the Court hear its appeal.

Our drafting committees that are moving toward final approval in Madison - Unregulated Transfers of Adopted Children, Easement Relocation, Public Participation Protection, Alternatives to Bail, and Fundraising Through Public Appeals - have had (or will have had) a weekend
meeting this fall to review comments made in Anchorage, finalize underlying policies and principles, and fine-tune statutory text.

Our drafting committees contemplating a first reading in Madison - Economic Rights of Unmarried Cohabitants, Disposition of Community Property, and revisions to the Common Interest and Condominium acts - have been focused on policy and principle decisions for consideration.

Two new committees - the UCC and Emerging Technologies, and CUPID (a wonderful acronym that stands for “Collection and Use of Personally Identifiable Data”) – may take us into novel and controversial areas of the law.

Keeping the Code current and vital is no easy task because the world of commerce moves at an ever-increasing pace. The UCC and Emerging Technologies Committee has already met and set a tentative agenda of topics for consideration, including virtual currency and other digital assets (including issues of custody and access), “control” of electronic assets or some other technique to protect rights in electronic assets, payment systems issues, and how to deal with bundled transactions.

The CUPID Committee will be addressing the ownership, sharing, storage, security, and control of the personal electronic data of others. California has adopted a comprehensive code that has a delayed effective date and apparently no groundswell of support. The European Union’s General Data Protection Regulation is comprehensive and a potential model. The drafting committee is scheduled to meet twice in the spring, in anticipation of a first reading in Madison.

We are scheduling a spring meeting for the committee on Registration and Licensing of Direct-to-Consumer Sales of Wine.

Our Joint Editorial Boards on Family Law, International Law, Real Property, Trusts and Estates, and Unincorporated Organizations and the UCC Permanent Editorial Board continue to do their research and make recommendations.

Our Monitoring Committees - Civil Litigation and Dispute Resolution, Criminal Justice Reform, Healthcare Law, and Technology - continue to make recommendations for study and drafting projects.

So much to do. So little time……

As Commissioners, we donate our time, skill and experience to improve the law. We are unpaid volunteers. We are proof of the truthfulness of the old saying: “If you want to get something done, give it to a busy person!”

Thanks for all you do.
Legislative Update

The ULC’s 2019 legislative year has now come to an end. The ULC officially closed its books on September 30, 2019, with a final tally of 80 enactments and 193 introductions. Washington led all states with six enactments in 2019. Alabama, North Dakota, Tennessee, the US Virgin Islands and Utah each had four enactments. Six states – Colorado, Indiana, Iowa, Kentucky, Montana, and Nebraska – each had three enactments.

Some of the major highlights from the year include:

**Revised Uniform Law on Notarial Acts**

The Revised Uniform Law on Notarial Acts (2018) was introduced in 11 states in 2019 and enacted in eight. In addition to RULONA (2018), six states have enacted RULONA (2010), including one enactment of the 2010 revision this year.

The Revised Uniform Law on Notarial Acts (RULONA 2018) is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records. The 2018 Amendments to RULONA authorizes notaries public to perform notarial acts in the state in which they are commissioned for remotely located individuals using audio-visual communication technology regardless of where the individual may be located. This amendment is not limited to foreign located individuals; it extends the authority to any remotely located individual. This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology.

**Revised Uniform Athlete Agents Act**

The Revised Act (RUAAA) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 41 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The RUAAA provides enhanced protection for student athletes and educational institutions, and simplifies the regulatory environment faced by legitimate athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

In 2019, the ULC amended Section 14 of the RUAAA to accommodate changes that the NCAA made to its bylaws. Under the new NCAA bylaws, certified sports agents can cover limited expenses of a prospective or enrolled student-athlete and their family for meals, hotel and travel in connection with the agent selection process. Though the changes to the NCAA bylaws are limited to student athletes playing basketball, the ULC did not limit the amendment in the same manner. The 2019 RUAAA amendment accommodates the 2018 changes to NCAA bylaws and will accommodate future changes by associations of educational institutions governing interscholastic or intercollegiate sports to rules or bylaws governing student athletes. The amendment sets forth appropriate safeguards so that it only applies if the NCAA makes further changes.

The Revised Uniform Athlete Agents Act (2015) was introduced in 11 states in 2019 and enacted in two, bringing its total number of enactments to 14. The 2019 Amendment to the Uniform Athlete Agents Act was introduced in 13 states and enacted in seven states.
**Uniform Directed Trust Act**

The Uniform Directed Trust Act (UDTA) provides clear, practical answers to the challenges raised by the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust’s administration. Such a person may be called a “trust protector,” “trust adviser,” or in the terminology of the UDTA, a “trust director.” The division of authority between a trust director and a directed trustee raises difficult questions about how to divide fiduciary power and duty. The UDTA provides clear, functional rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. The UDTA also provides sensible default rules for a variety of matters that might be overlooked in the drafting of a directed trust, including information sharing among trustees and trust directors, the procedures for accepting appointment as a trust director, the distinction between a power of direction and a nonfiduciary power of appointment, and many other matters. Because directed trusts are now standard in sophisticated trust drafting, a comprehensive directed trust statute is essential for every state.

The Uniform Directed Trust Act was introduced in nine states and enacted in eight in 2019, bringing its total number of enactments to 10.

**Uniform Partition of Heirs Property Act**

The Uniform Partition of Heirs Property Act (UPHPA) helps preserve family wealth passed to the next generation in the form of real property. If a landowner dies intestate, real estate passes to the landowner’s heirs as tenants-in-common under state law. Tenants-in-common are vulnerable because any individual tenant can force a partition. Too often, real estate speculators acquire a share of heirs’ property in order to file a partition action and force a sale. Using this tactic, an investor can acquire the entire parcel for a price well below its fair market value and deplete a family’s inherited wealth in the process. The UPHPA provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds. In 2018, the U.S. Congress passed a law giving preference for certain federal farm loans to states that enact the UPHPA.

The Uniform Partition of Heirs Property was introduced in 12 states and enacted in two states in 2019, bringing its total number of enactments to 13.

**Other major highlights of the year include:**

- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act was enacted in its first two states: Colorado and Nebraska.
- Uniform Fiduciary Income and Principal Act was enacted in its first state: Utah.
- Uniform Nonparent Custody and Visitation Act was enacted in its first state: North Dakota.
- Uniform Guardianship, Conservatorship and Other Protective Arrangements Act was enacted in its second state: Washington.
- Uniform Electronic Legal Material Act continues its steady pace, with three new enactments this year, bringing its total to 22 enactments.

In addition to these acts, more than 30 different uniform acts were adopted in various states across the country in 2019.
New Target Act: Uniform Directed Trust Act

At its November 16, 2019 meeting, the ULC Legislative Council added one new act to the Target List: the Uniform Directed Trust Act.

The Uniform Directed Trust Act (UDTA) addresses the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust’s administration. Such a person may be called a “trust protector,” “trust adviser,” or in the terminology of the UDTA, a “trust director.” This division of authority between a trust director and a trustee raises a host of difficult questions for which the UDTA provides clear, practical answers.

In a traditional trust, the responsibility for all aspects of the trust’s administration—including custody, investment, and distribution—belongs to the trustee. For centuries, this allocation of authority to a trustee has been a foundation of trust law. In a directed trust, however, this foundation may be modified by a grant of power over some aspect of trust administration to a trust director. A trust director is not a trustee, but has the power either to direct the trustee in the trust’s administration or to administer the trust directly. A trust director can have virtually any power over a trust, including the power to direct the trustee in the investment and distribution of trust property and the power to amend or terminate the trust.

The rise of directed trusts raises numerous unsettled questions of law. The most obvious question is how to allocate fiduciary responsibility between a trust director and a trustee. If a trust director exercises a power of direction and the trustee acts accordingly, a court must decide how much responsibility for the action belongs to the director and how much belongs to the trustee. In addition, a directed trust creates a host of further problems about how to govern a trust director, such as how to discern whether a trust director has duly accepted appointment and how to differentiate between a fiduciary power belonging to a trust director and a nonfiduciary power belonging to the holder of a power of appointment.

The purpose of the UDTA is to address these complications. The UDTA expressly validates terms of a trust that provide for a trust director and prescribes a simple set of rules for directed trusts. The UDTA’s basic strategy for allocating fiduciary duty is to impose primary fiduciary responsibility for a trust director’s actions on the director, while preserving a minimum core of duty in a trustee. A trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances, but a trustee that acts subject to a trust director’s direction is generally liable only for the trustee’s own willful misconduct. The UDTA authorizes a similar allocation of power and duty among cotrustees.

In addition to this modified fiduciary scheme, the UDTA also offers solutions to the many practical problems created by the presence of a trust director. Among other things, the UDTA deals with the sharing of information among a trustee and a trust director and the compensation, succession, and appointment of a trust director.

UDTA has been enacted in ten states: Arkansas, Colorado, Connecticut, Georgia, Indiana, Maine, Michigan, Nebraska, New Mexico, and Utah.

With the addition of UDTA to the Target Acts list, there are now 14 Target Acts: Athlete Agents Act; Deployed Parents Custody and Visitation Act; Directed Trust Act; Electronic Legal Material Act; Foreign Country Money Judgments Recognition Act; Revised Law on Notarial Acts (2018); Limited Liability Company Act; Limited Partnership Act; Partition of Heirs Property Act; Power of Attorney Act; Prevention of and Remedies for Human Trafficking Act; Revised Unclaimed Property Act; Unsworn Declarations Act; Voidable Transactions Act Amendments.
The new committees which were approved at the 2019 Annual Meeting have now been appointed.

The new drafting committees are:

**Drafting Committee on Collection and Use of Personally Identifiable Data**
This drafting committee will draft a uniform or model law addressing the collection and use of personally identifiable data, including provisions governing the sharing, storage, security, and control of the personal data of others. The collection and use of personal data are important features of our modern economy but raise significant issues of privacy and control. A uniform or model act on this subject would serve as a comprehensive legal framework for the treatment of data privacy. Harvey Perlman (NE), Chair; William McGeveran, Reporter.

**Drafting Committee on Registration and Licensing of Direct-to-Consumer Sales of Wine and the Prevention of Illegal Sales**
This committee will draft a uniform or model law addressing registration and licensing of the direct sale of wine to consumers and the prevention of illegal sales. Currently, more than 40 states permit direct-to-consumer (DTC) sales of wine, though few existing DTC statutes adequately address compliance with other registration, reporting, or tax requirements, and most existing statutes do not adequately address sales to persons who are prohibited from purchasing alcohol. Steve Frost (IL), Chair; Commissioner Aaron Gary (WI), Reporter.

**Drafting Committee to Amend or Revise the Uniform Common Interest Ownership Act and the Uniform Condominium Act**
This drafting committee will develop revisions to the Uniform Common Interest Ownership Act (UCIOA) and the Uniform Condominium Act (UCA). UCIOA deals comprehensively with the complex issues posed in condominiums, cooperatives, and planned communities — the three forms of real estate ownership in which multiple persons each own a separate parcel of real estate, and all those persons collectively own other parcels of real estate in common. William Breetz (CT), Chair; James Smith, Reporter.

The new study committees are:

**Study Committee on Special Deposits**
This committee will consider the need for and feasibility of state legislation on special deposits. A special deposit resembles a prefunded letter of credit with three parties: a funder, a bank, and a benefciary. The law of special deposits has not developed much since the 1930s, and a uniform or model act on special deposits could provide greater clarity in this area. Patrick Guida (RI), Chair; Michael Wiseman and Thomas Baxter, Co-Reporters.

**Study Committee on Default Judgments in Debt Collection Cases**
This committee will study the need for and feasibility of state legislation on default judgments in debt collection cases brought by third-party debt collectors and debt buyers. Significant changes in debt collection practices in recent years have resulted in dramatic growth in the industry which, in turn, has placed considerable pressure on court dockets and raised concerns about fairness to debtors. These developments may justify a model or uniform law to regulate the processes and information required before the entry of a default judgment in debt collection cases. Gail Hagerty (ND), Chair.

**Study Committee on Fines and Fees**
This committee will consider the need for and feasibility of a uniform or model law addressing the impact of fnes and fees on people of limited means. The committee will consider three major areas which might be addressed in a uniform or model law: (1) suspension of driving privileges because of unpaid fnes and fees even when unrelated to public safety; (2) fnes and fees imposed on juveniles and their parents in the juvenile justice system; and (3) fnes and fees imposed without consideration of ability to pay because of adult criminal offenses. Kay Kindred (NV), Chair.

**Study Committee on Third-Party Funding of Litigation**
This committee will study the need for and feasibility of a uniform or model law governing third-party funding of litigation and arbitration. Third-party funding, in its traditional form, is a non-recourse loan from the funder to a party in arbitration or litigation in return for a contingent right to receive a portion of the potential proceeds of a settlement, judgment, award, or verdict obtained for a legal claim. Current state legislation on third-party funding varies in terms of the issues addressed and the policy solutions provided. Cassandra Robertson (OH), Chair.
South Dakota Commissioner and ULC Life Member Gene Lebrun is retiring from his law practice as of December 31, 2019.

At that time, his new contact information will be:

4151 Villa Ridge Court, Unit 118
Rapid City, SD  57701
gnlebrun2@gmail.com
(605) 484-6244

Gene has practiced law for 56 years. He joined the Rapid City, SD, law firm of Lynn Jackson (now Lynn, Jackson, Shultz & Lebrun) in 1964, not long after earning his JD from the University of North Dakota Law School. Gene served in the South Dakota Legislature from 1971 to 1974, and was Speaker of the House during the last two years of his tenure.

Along with his service as a uniform law commissioner, he has been a member of the American Law Institute, an Associate Member of the American Board of Trial Lawyers, and a Fellow of the American Bar Foundation. He was a member of the South Dakota Health and Education Facilities Authority for 15 years, and a member of the South Dakota Budget and Policy Advisory Council, and the Mount Rushmore National Memorial Society. He was also a member of the Advisory Commission on Electronic Commerce that was created by the U.S. Congress when it passed the Internet Tax Freedom Act in 1998. In September 2012 Gene was inducted into the South Dakota Hall of Fame.

Gene and his wife of 56 years, Pat, have two children: Michael, a civilian deputy director with the United States Department of Defense, and Ken, an attorney with the international law firm of Davis Polk in Tokyo, Japan.

Gene has been a uniform law commissioner since 1976, and served as ULC President from 1997-1999. Though Gene is retiring from his law practice, he hopes to remain active in the ULC and fully anticipates being at the 2020 annual meeting in Madison, and many more after that.

Congratulations Gene!

Newly Appointed Members

Recent changes in membership include:

In Arkansas, Marty Garrity, Director of the Bureau of Legislative Research, is the new Associate Commissioner, replacing Vincent Henderson.

In Georgia, David B. Dove, Executive Counsel with the Office of the Governor, has been appointed commissioner, replacing Nicole Julal.

In North Carolina, Andrew Kasper, Senior Law Clerk with the U.S. Court of Appeals for the Fourth Circuit, has been appointed commissioner, replacing James Wynn, who has requested life membership.

In Wisconsin, Timothy Burns, an attorney in Madison, has been appointed commissioner, replacing Annette Ziegler.

Changes in Chicago

We are pleased to announce a new addition to the Chicago staff: Gloria Korpas has recently joined the ULC as Legislative Assistant. Gloria is a 2019 graduate of Washington University in St. Louis, earning a bachelor’s degree with a double major in political science and international relations.

You can reach Gloria at 312-450-6614, or email at gkorpas@uniformlaws.org