

## MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Thomas Gallanis

Re: Minutes, December 2-3, 2011; New Orleans, Louisiana

The meeting was called to order on Friday, December 2, 2011, at 9:06am by Chair Malcolm Moore. Others present were (in alphabetical order): Turney Berry, David English, Eric Fish (ULC Legal Counsel and Legislative Counsel, present on Friday), Brian Flowers (ULC Division Chair), Thomas Gallanis, Sheldon Kurtz, Carlyn McCaffrey, Kevin Millard, Katie Robinson (ULC Deputy Legislative Director and Communications Officer, present on Saturday), Bruce Stone, James Wade, and Raymond Young. Not present were Mary Louise Fellows, Edward Halbach, Susan House, Naomi Karp, Pam Schneider, Robert Sitkoff, and Martha Starkey. Guests present (for parts of the meeting) included Michael Coffee (of the U.S. Department of State) and Tanya Marsh (of Wake Forest University School of Law).

1. **Welcome to New Members.** The Board welcomed Mr. Millard as a new member of the Board, succeeding Ms. McCue.

2. **Associate Executive Director.** The Board voted to change Professor Gallanis' title from Assistant Executive Director to Associate Executive Director.

3. **Minutes.** The Board approved the minutes of the November 2010 meeting.

4. **Report on UPC Technical Amendments.** Professor English reported on his efforts, working with the ULC staff, to prepare a series of technical amendments to the Uniform Probate Code. These amendments are designed to correct errors and to harmonize the UPC with other uniform acts. The project is nearly complete. Professor English mentioned one further item for consideration: amendments to UPC §1-302, to take into account uniform acts, such as the Adult Guardianship and Protective Proceedings Jurisdiction Act and the Child Custody Jurisdiction and Enforcement Act, which limit court jurisdiction. Mr. Fish indicated that these changes to §1-302 could also be accomplished by technical amendment as a part of the project.

5. **Report on Third National Guardianship Conference Held October 13-15, 2011.** Professor English gave a brief report on this conference and the proposals discussed there. The proposal most likely to be controversial from the Board's perspective is a proposal for mandatory bond. The finalized set of proposals from the conference will be published in a forthcoming issue of the Utah Law Review. ULC headquarters will arrange for copies to be distributed to members of the Board.

**6. Report on Project to Revise National College of Probate Judges' Probate Court Standards.** Professor English gave a brief report on this project. The Board agreed that participation by organizations such as ABA-RPTE and ACTEC would be helpful to the project. Professor English will contact Tina Portuondo (trust & estate division vice-chair of RPTE) and Mary Radford (president of ACTEC).

**7. Digital Assets.** The Board discussed a proposal from Gene Hennig, Commissioner from Minnesota, for a ULC project in this area. The Board voted to recommend the appointment of a study committee. Professor English will prepare a memorandum for the Committee on Scope and Program.

**8. Premarital and Marital Agreements Act.** Mr. Berry and Ms. McCaffrey reported on the November 11-12, 2011, meeting of the act's drafting committee. At that meeting, the committee recommended major changes to the draft. Accordingly, no updated draft was ready for the Board's review. When the next draft becomes available, Mr. Fish will circulate it to the members of the Board for their individual comments. The Board observed that there are many important issues remaining to be resolved, and that there are a number of organizations who should be encouraged to become involved in the drafting process. The Board acknowledged the desire of the ULC leadership to finish the project in two years; however, the Board expressed its view that finishing well was more important than finishing promptly. The Board asked Mr. Fish to convey its view to the ULC leadership.

**9. Disposition of Community Property Rights at Death Act.** The Committee to Review ULC Acts had asked the Board for its view on whether this act should be updated. The Board observed that some changes to the black-letter (especially §§2(2) and 3) and commentary would be helpful. For additional input, Professor English will seek the views of one or more academics with expertise on the law of community property (perhaps Thomas Featherston at Baylor, Karen Boxx at the University of Washington, or Gail Bird at Hastings).

**10. Uniform Probate Code Article 6, Part 2: Application to Joint Brokerage Accounts?** The Board had a brief discussion of an article in the November 2010 issue of Estate Planning, reporting on a recent Kentucky case wrestling with the question whether a joint brokerage account is governed by Article 6, Part 2 of the UPC. Professor English will have a student research assistant prepare a memorandum on the law in this area. The topic will be on the agenda of the next Board meeting.

**11. Hague Conventions on Trusts and Protection of Adults.** Professor English and Mr. Coffee led a discussion about these conventions. The Board strongly endorsed both conventions, as the Board has done in the past. Professor English will send a letter of support to Mr. Coffee regarding each convention.

**12. Disposition of Mortal Remains.** Professors English and Marsh led a discussion of this topic as a possible area for uniform law activity. The discussion was informed by a scholarly

memorandum prepared by Professor Marsh. The Board was ambivalent about whether to recommend a study or drafting committee, in significant part because many states already have statutes addressing the topic, albeit incompletely. Professor English will contact associations of funeral directors (including the National Funeral Directors Association and the International Cemetary Cremation and Funeral Association) to gauge their potential interest in, and support for, a uniform law. The Board will continue the discussion of this topic at its next meeting. The Board expressed its appreciation to Professor Marsh for her memorandum.

**13. Trust Topics.** Professor English led a discussion of two possible topics for uniform law activity in the field of trust law:

a. Trust decanting. The Board expressed its view that the topic of trust decanting should be addressed by amendment(s) to the Uniform Trust Code (which amendments might also be packaged as a free-standing act), rather than in the ongoing project to prepare a uniform law on powers of appointment (see item 14 below). The Board voted to recommend the appointment of a drafting committee.

b. Trust protectors. After a lengthy discussion, the Board concluded that it was not ready to decide whether uniform law should address the topic of trust protectors. The Board agreed to recommend the appointment of a study committee to examine the issue (and to consider not only the desirability of amendments to the Uniform Trust Code but also to related acts such as the Uniform Principal and Income Act). The Board requested that the study committee be made aware of the Board's ambivalence.

**14. Powers of Appointment Act.** Mr. Berry and Professor Gallanis led a discussion of this Act in progress. The Board made many helpful suggestions, with careful notes taken by the act's reporter. In particular, the following should be noted as expressions of the Board's strong view:

a. The act should address only powers held in a nonfiduciary capacity. The Board is in the process of recommending a separate ULC project on trust decanting (see item 13 above).

b. Section 305 (on permissible appointments) should differ from the Restatement Third of Property in the following respect: if the donee of a nongeneral power exercises it by creating a new nongeneral power in a permissible appointee, the objects of the second power need not be limited to the objects of the first power.

c. Section 501 (on the power to contract) should be consistent with the Restatement Third of Property.

d. The drafting committee should consider broadening the definition of a testamentary power of appointment to include a power exercisable in a nontestamentary instrument if the instrument is both (i) revocable and (ii) effective only at the donee's death.

The meeting was adjourned on Saturday, December 3, 2011, at 11:27am.

Respectfully submitted,  
Thomas P. Gallanis  
Associate Executive Director