



MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Ben Orzeske
ULC Chief Counsel and Staff Liaison to the JEB-UTEA

Re: Minutes from December 3-4, 2020 meeting, held by Zoom
APPROVED April 15, 2021

The meeting was called to order on Thursday December 3, 2020, at 9:30 a.m. by Chair Bruce Stone. Others present were Molly Ackerly, Turney Berry, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, John Langbein, Carl Lisman (ULC President), Carlyn McCaffrey, Nancy McLaughlin, David Neufeld, Ben Orzeske (ULC Staff Liaison), Robert Sitkoff, Susan Snyder, James Wade, and Suzanne Brown Walsh.

- 1. Approval of Minutes.** The Board unanimously approved the draft minutes from the November 2019 meeting.
- 2. Economic Rights of Unmarried Cohabitants.** Drafting Committee Co-Chair Mary Devine and Reporter Naomi Cahn joined the Board for a discussion of the draft uniform act. Mr. Berry led the discussion in his capacity as co-chair of the drafting committee. The Board provided feedback on the draft. The Board will discuss an updated draft at its Spring 2021 meeting. The drafting committee hopes to produce a final draft for approval at the ULC's 2021 Annual Meeting in Summer 2021.
- 3. Community Property Disposition at Death.** Reporter Ronald Scalise joined the Board for a discussion of the draft uniform act. The Board provided feedback on the draft. The Board will discuss an updated draft at its Spring 2021 meeting. The drafting committee hopes to produce a final draft for approval at the ULC's 2021 Annual Meeting in Summer 2021.
- 4. Conflict of Laws in Trusts and Estates.** The Board received a brief report on the status of this project from Prof. Sitkoff (chair of the drafting committee), Mr. Berry (vice-chair of the drafting committee), and Prof. Scalise (reporter). The committee will hold an initial organizational meeting in Spring 2021 and expects to hold a substantive drafting meeting in Fall 2021.

The Board adjourned for lunch at 11:48 a.m. and reconvened at 1:30 p.m. Prof. English joined the group for the remainder of the meeting.

- 5. Proposed Technical Amendments to the 2019 Uniform Probate Code Amendments.** Prof. Fellows and Prof. Gallanis presented a set of proposed technical amendments to the 2019 UPC Amendments. The Board discussed the proposed technical amendments and voted unanimously to recommend them to the ULC’s Executive Committee for approval. Action Item: Prof. Gallanis will transmit the proposed technical amendments to the ULC Executive Committee.
- 6. Proposed Technical Amendment to UPC § 2-404.** Prof. Gallanis and Prof. English led a discussion about whether a technical amendment to UPC § 2-404 would be helpful to clarify the intended application of the section to a surviving spouse when the decedent has no minor or dependent children. Prof. Gallanis and Prof. Fellows were asked to draft language for the Board’s consideration. When the language was presented for consideration later in the day, the Board voted unanimously to recommend the proposed technical amendment to the ULC Executive Committee for approval. Action Item: Prof. Gallanis will transmit the proposed technical amendment to the ULC Executive Committee.
- 7. Proposed Technical Amendment to UPC § 3-703.** Prof. Gallanis relayed a suggestion from Mr. Stanley Kent who noticed a single use of the archaic term “pretermitted child” in UPC § 3-703 and suggested the term “omitted child” be substituted for consistency with § 2-302. The Board voted unanimously to recommend this technical amendment to the ULC Executive Committee for approval. Action Item: Prof. Gallanis will transmit the proposed technical amendment to the ULC Executive Committee.
- 8. Proposed Technical Amendment to UPC § 2-514.** Prof. Sitkoff led a discussion about whether a technical amendment would be helpful to clarify the meaning of UPC § 2-514(iii). The Board voted unanimously to recommend the substituted language as shown in the agenda as a technical amendment for approval by the ULC Executive Committee. Action Item: Prof. Gallanis will transmit the proposed technical amendment to the ULC Executive Committee.
- 9. Possible Amendments to the Uniform Directed Trust Act.** Prof. Sitkoff led a discussion about two issues involving the allocation of fiduciary duties under the Uniform Directed Trust Act. Both issues were raised by practitioners. After discussion, Prof. Sitkoff and Mr. Berry agreed to draft proposed amendments to the UDTA for the Board’s consideration at its Spring 2021 meeting. Action Item: Prof. Sitkoff and Mr. Berry will draft proposed amendments for discussion at the Board’s Spring meeting.
- 10. Disposition of Mortal Remains.** The Board briefly discussed the topic of mortal remains, a topic considered at multiple prior Board meetings. After discussion, the Board agreed to invite Prof. Tanya Marsh to submit a revision of her earlier proposal, this time to include information about the stakeholder groups that would potentially support or oppose a drafting project. Action Item: Prof. Gallanis will contact Prof. Marsh.
- 11. Electronic Trusts.** Prof. English led a discussion about whether amendments to the Uniform Trust Code would be needed to authorize electronic trust instruments. After reviewing the

relevant provisions of the Trust Code, Prof. English reported his conclusion that no UTC amendments are necessary. Mr. Orzeske mentioned that a Comment in the Uniform Electronic Transactions Act might need to be amended. The Board suggested that the standby committee for the Electronic Transactions Act could be reactivated in order to consider an amendment to the UETA Comment. Action Item: Mr. Orzeske will convey the Board's suggestion to the ULC leadership.

- 12. Integration of Probate and Nonprobate Administration.** Prof. Fellows led a discussion on a possible future project to expand the authority and duties of a decedent's personal representative regarding the decedent's nonprobate transfers. Ms. Walsh suggested that more information on privacy regulations would be needed before the Board recommended any action. Prof. Langbein mentioned that ERISA could preempt portions of a uniform state law with respect to assets governed by ERISA. The Board agreed to gather information from interested groups over the coming months and to continue the discussion at its Spring 2021 meeting. Action Items: Prof. Fellows will transmit a memorandum summarizing the potential project to Ms. Snyder. Ms. Snyder will seek feedback from the members of the National Conference of Lawyers and Corporate Fiduciaries to gauge whether that group would support such a project. Mr. Berry will seek feedback from fellows of the American College of Trust and Estate Counsel.

The Board adjourned for the day and reconvened at 1:00 p.m. on December 4.

- 13. Minor IRA Beneficiaries under the Uniform Transfers to Minors Act.** Mr. Berry led a discussion about whether the UTMA should be amended to allow for IRA distributions to custodians for minor beneficiaries. Action Item: Mr. Berry will contact Jonathan Blattmachr for suggested statutory language to discuss at the Board's Spring meeting.
- 14. Remote Witnessing.** Mr. Berry suggested that the Board review recent Kentucky legislation allowing remote witnessing via videoconference. Action Item: Mr. Berry and Ms. Walsh will prepare statutory language for the Board to discuss at its Spring meeting.
- 15. Affiliated Investments Under Uniform Trust Code § 802.** Ms. Phoebe Papageorgiou and Mr. David Lauer from the American Bankers Association joined the Board for a discussion of their proposal to amend UTC § 802 to authorize trustees to receive compensation from affiliated entities with respect to a range of investment vehicles. The Board expressed concerns regarding the substance and form of the proposed disclosure, the persons entitled to receive the disclosure, and the lack of a remedy in the event a beneficiary objected to a particular transaction. After giving feedback to Ms. Papageorgiou and Mr. Lauer, the Board continued discussing the proposal in their absence. The Board voted to thank them for their proposal but to inform them that the Board is not ready to consider amending Section 802 at this time. Action Item: Prof. Gallanis will call Ms. Papageorgiou to inform her of the Board's decision.
- 16. Technical Amendment to UPC § 2-113.** Prof. Gallanis and Prof. Fellows presented proposed language they had drafted for a technical amendment to UPC § 2-113. The Board voted unanimously to recommend the technical amendment to the ULC Executive

Committee for approval. Action Item: Prof. Gallanis will include the technical amendment to UPC § 2-113 in the set of UPC technical amendments he plans to transmit to the ULC Executive Committee.

- 17. Amendment to the Uniform TOD Security Registration Act to allow Beneficial Transfer of Interests in Real Estate Cooperatives.** Prof. Gallanis led the discussion, prompted by a memorandum from the California Law Revision Commission, which is considering amendments to its UTODSRA statute to address stock cooperatives. Action Item: Prof. Gallanis will review the UTODSRA and the Uniform Real Property Transfer on Death Act and will prepare a memorandum on the topic for discussion at the Board's Spring meeting.

The Board adjourned at approximately 3:10 p.m.

Respectfully submitted,

Benjamin Orzeske