

MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Thomas Gallanis

Re: Minutes, October 26, 2012; Chicago, Illinois

The meeting was called to order on Friday, October 26, 2012, at 9:22am by Chair Malcolm Moore. Others present were (in alphabetical order): Turney Berry, David English, Thomas Gallanis (by videoconference), Edward Halbach, Susan House, Sheldon Kurtz, John Langbein, Kevin Millard, Benjamin Orzeske (ULC Legislative Counsel and Staff Liaison to the Board), Pam Schneider, John Sebert (ULC Executive Director), Robert Sitkoff, Martha Starkey, Bruce Stone, and James Wade. Not present were Mary Louise Fellows, Naomi Karp, and Carlyn McCaffrey.

1. New Emeritus Member . The Board unanimously approved the appointment of Professor Kurtz as an emeritus member of the Board.
2. Staff Liaison . The Board welcomed Benjamin Orzeske as the new ULC Staff Liaison to the Board.
3. Minutes . The Board approved the minutes of the December 2011 meeting.
4. UPC Article III Technical Amendments . Professor English led a discussion of some possible technical amendments to Article III of the Uniform Probate Code. The Board resolved:
 - a. That Article III should have gender-neutral language. Professor English will prepare the necessary amendments and send them to Mr. Sebert, who indicated that the gender-neutral language can be incorporated ministerially at ULC headquarters; and
 - b. That with respect to other technical amendments to Article III, Professor English will prepare a memorandum on the amendments and will send the memorandum to Mr. Millard for feedback from the State Laws Committee of ACTEC.
5. Amendments to the Principal and Income Act . Professor English led a discussion of possible amendments to the Uniform Principal and Income Act.
 - a. The Board discussed an inquiry from the California Law Revision Commission (CLRC) about the exclusion of tenancies in common from the definition of “entity” in Section 401 of the Act, and whether this exclusion applies to tenant in common investments (TICs). The Board concluded that TICs were not contemplated when the Act was drafted. Professor English will send a letter to the CLRC to this effect.

b. Professor Sitkoff encouraged the Board to explore the possibility of a Uniform Unitrust Act that could be an amendment to the Principal and Income Act. Professor English will collect existing unitrust statutes and get input from ACTEC State Laws and ABA-RPTE on this possible project. He will report at the next Board meeting.

6. 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 require powers of appointment to be exercised in an instrument;
- b. The Act should exclude the power to create or change life insurance, pension plan, or other beneficiary designations;
- c. Section 203(2) (an exception to the presumption of unlimited authority) should be expanded to provide a presumption that a power is nongeneral whenever (i) the power is exercisable only at the powerholder's death and (ii) the permissible appointees are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate; and
- d. Section 306 should provide that a deceased appointee is treated as a devisee or beneficiary under the state's antilapse statute.

7. Disposition of Mortal Remains. Professor English led a discussion of this possible project. The discussion was facilitated by a memorandum prepared by Professor Tanya Marsh of the Wake Forest University School of Law. By a divided vote (8-5), the Board voted to recommend to the Committee on Scope and Program that a study committee be appointed to examine the substantive issues and the extent to which a uniform act would be enactable. Professor English will prepare a letter to Scope and Program with the Board's recommendation and will also note the reservations of a significant minority of the Board about the enactability of a uniform act on this topic.

8. 2008 Probate Code Amendments. Professors English and Kurtz and Mr. Berry led a discussion of these amendments, noting that only four states have enacted them so far. The Board discussed the possibility that a simplified act might have a better chance of enactment. Professor Gallanis, assisted by Professors English and Kurtz, will attempt to draft a simplified act for discussion at the Board's next meeting.

9. Reports on Completed or Ongoing Projects. The Board heard reports on:

- a. The Premarital and Marital Agreements Act, approved by the ULC in 2012;
- b. The projects on Fiduciary Access to Digital Assets and Inter-jurisdictional Recognition of Advance Planning Instruments, for which drafting committees have been approved;
- c. The project on Trust Protectors, for which a study committee has been approved; and

d. The project on Trust Decanting, for which the study committee has recommended (or will recommend) the appointment of a drafting committee.

The Board supported the appointment of a drafting committee on Trust Decanting and identified this new project as of highest priority. Professor English will prepare a letter to this effect to the Committee on Scope and Program.

10. 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 discussed the question, informed by memoranda prepared by Professors Thomas Featherston of Baylor Law School and Karen Boxx of the University of Washington School of Law. The Board concluded that the Act needs updating but not a complete overhaul. The Board voted to recommend to the Committee on Scope and Program that a drafting committee be appointed to prepare a revised Act but to note that this project is of secondary priority behind Trust Decanting. Professor English will prepare a letter to this effect to the Committee on Scope and Program.

The meeting was adjourned at 4:08pm, with thanks expressed to Christine Albright and the law firm of Holland & Knight for hosting the meeting and arranging the videoconferencing.

Respectfully submitted,
Thomas P. Gallanis
Associate Executive Director