

To: Drafting Committee, Advisors and Observers;
Uniform Cooperative Association Act
From: Peter Langrock, Tom Geu and Jim Dean
Date: February 23, 2006
Re: Request for Consideration and Information

Dear All:

Those remaining in Dallas on Sunday morning (February 5, 2006) discussed two general matters and Tom and Jim (the reporters) were directed to prepare information and background materials on those matters to communicate to the Committee, Advisors and Observers. The two matters were a continued discussion on divisions from Saturday's session and a very general (and brief) discussion concerning the name of the organization formed under the Act.

No action was taken at the meeting on these matters but those remaining in attendance reached a consensus that the issues warranted further thought before the Drafting Committee's next Committee meeting. It is possible they will be mentioned as "being under consideration by the Committee" at the Annual Meeting in July or in the Reporter's Notes in the Annual Meeting Draft but no action will be requested pending further Committee action.

DIVISIONS

The issue discussed was the advisability of including divisions in the final act. Divisions are entity level transactions that are included in the Model Entity Transaction Act and might be best described as divisive mergers or, perhaps, spinoffs under specific state law. To date very few states provide for division in any of their entity statutes.

In order to discuss the matter in greater depth at the next drafting meeting (with a view to deciding whether divisions should be included in the act) the reporters were requested to provide relevant portions of META for distribution. They have done so and portions of META are attached. The attachment contains 5 parts. They are:

- (a) Article 6 of META entitled "Divisions" (with attendant explanatory comments);
- (b) A combination of Sections 101 through 103 of META (section 102 is "definitions");
- (c) META's Table of Contents;
- (d) Prefatory Note to META explaining its operation and purpose; and
- (e) Section A2-5 which is a legislative note concerning amendments to the Uniform Liability Company Act if a state desires META to apply to LLCs (it is included for illustrative purposes only).

The entire META is available at http://www.law.upenn.edu/bll/ulc/ulc_frame.htm. A general description of a draft from a preliminary META project is Robert Keatinge and Thomas Earl Geu, "The Proposed Model Inter-Entity Transaction Act: A Proposal to Rationalize Changes in Forms of Business Organizations," 37 *Real Prop., Prob., & Tr. L.J.* 385-438 (2003).

Tom has discussed META in contexts other than as Reporter for this Act. He was an ABA Section Advisor (Real Property Probate & Trust) to META and currently serves in the same capacity to the NCCUSL Limited Liability Company Revision Project (final reading this July). He reports that divisions remain controversial because they are new and because there is little practical experience with them. The other provisions of META were adopted by the Conference in 2004 and the project continued in 2005 to focus on "divisions" which were adopted last summer. He attended the LLC drafting committee meeting February 10-12 (the weekend following our meeting) and that drafting committee affirmed its prior decision not to include divisions in the LLC Act leaving the states to decide whether divisions are appropriate for LLCs as a nonuniform amendment or, more likely, when the states look at adopting META.

NAME OF ENTITY

The name of the entity formed under the draft ("cooperative association" in the February 2006 Draft) continues to shape other provisions. As such, and without deciding whether changing the name of the entity is advisable, those present on Sunday reached a consensus that it might be helpful to generate a list of possible alternative names. A few basic parameters for alternative names include that it be descriptive and that the acronym/abbreviation be "appropriate" and not misleading given the acronym/abbreviations of other NCCUSL projects. Finally, the name should include the word "cooperative" as a matter of description of the organization and as required by the basic charge of the Committee.

A few names that have been used in the literature of this and similar organizations, generally, have included "new generation cooperatives" and "LLC Cooperatives." The existing state acts use "cooperative association" as does the current draft. A few ideas generated in the short time this matter was discussed on Sunday included "capital cooperative" (or "capital cooperative association"), "limited cooperative" (or "limited cooperative association") and "equity cooperative" (or "equity cooperative association").

None of those listed names has been vetted under the guiding parameters and are used here for illustrative purposes only. Indeed each of the alternatives listed may raise as many name "issues" as they solve. Nonetheless, please think of alternative names and send them to Tom so he can compile a list.

The purpose of thinking of alternative names is solely to have them available for possible Committee discussion. Nonetheless it might be helpful to generate possible alternatives before the annual meeting in July though, again, "names" are not on any "plan" for the annual meeting.

Thank you for all your continued work and interest in this project. I believe the drafts continue to come closer to improving the existing "cooperative association" law, give due deference and weight to cooperative principles and values, and accomplish the purpose of the charge given the Committee.

Sincerely,

Peter Langrock