



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 April 26-27, 2019 Meeting; Chicago, Illinois
FINAL – APPROVED NOVEMBER 8, 2019

The meeting was called to order on Friday, April 26th, at 9:00 a.m. by Chair Bruce Stone. Others present were Molly Ackerly (ULC Division Chair), Turney Berry, David English, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, Carl Lisman (Chair of ULC Executive Committee), Carlyn McCaffrey, Ben Orzeske (ULC Staff Liaison) Robert Sitkoff, Susan Snyder, James Wade, Steve Willborn (ULC Interim Executive Director), and Suzanne Brown Walsh.

- 1. Approval of Minutes.** After two minor corrections, the Board unanimously approved the draft minutes from the Fall 2018 meeting.
- 2. Proposed Conforming Amendments to the Uniform Probate Code in Light of the Uniform Parentage Act (2017).** The Board reviewed in detail a set of proposed conforming amendments to the UPC drafted by a subcommittee consisting of Prof. English, Prof. Fellows, and Prof. Gallanis and provided helpful input. The final amendments will be read at the ULC 2019 Annual Meeting in Anchorage, Alaska for possible approval. Action Item: Prof. Gallanis will prepare a strike-score version of the proposed final amendments with brief explanatory comments and send it to Lucy Grelle at the ULC office by the end of May for distribution to ULC Commissioners in advance of the annual meeting.

After a break for lunch, Prof. Nancy McLaughlin joined the group. The Board officially welcomed its two newest members, Prof. McLaughlin and Ms. Snyder.

- 3. Electronic Wills.** Ms. Walsh led a discussion about the latest draft of the Electronic Wills Act in which she reviewed the drafting committee's major policy decisions and received helpful input. The drafting committee is scheduled to meet once more to make final revisions and flesh out comments before the ULC annual meeting.

The Board adjourned at 5:00 p.m. and reconvened at 8:30 a.m. on April 27th without Prof. Sitkoff, Prof. Fellows, and Prof. Willborn.

- 4. Fundraising through Public Appeals.** Ms. Walsh gave an overview of the project and

collected input from the Board. The draft act will be read for the first time at the 2019 ULC Annual Meeting and then revised again in advance of possible final approval in summer 2020.

5. **Status Report: Tribal Probate Code.** Prof. English reported that the drafting committee met in March and made mostly stylistic changes to the draft. The Co-Reporters plan to meet in June to produce a final draft, which could be distributed for comment at the fall Board meeting. Prof. Gallanis requested from Prof. English a list of topics on which JEB input would be helpful. An implementation guide is planned but will not be finished until sometime in 2020. Mr. Lisman suggested having Nat Sterling, the act's liaison to the Style Committee, attend the June meeting of the Co-Reporters. Action Item: Prof. English will provide a list of topics for JEB input to Prof. Gallanis prior to the fall Board meeting.
6. **Status Report: Gender-Neutralizing Technical Amendments to the UPC.** Prof. English reported that he has completed a set of draft amendments and will submit them to the ULC Executive Committee for approval under Section 4.3(b)(3) of the ULC Constitution. Action Item: Prof English will submit the amendments to the ULC Executive Committee.
7. **Status Report: Incorporation of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act into Article 5 of the Uniform Probate Code.** Prof. English prepared a set of draft amendments to the UGCOPAA that would enable it to be incorporated into Article V of the UPC in place of the superseded UGPPA. Unlike the UGPPA, the UGCOPAA does not use the terms "incapacity" and "incapacitated person." Prof. English noted that the term "incapacity" is used inconsistently throughout the UPC, and various provisions will need to be amended in order to incorporate the UGCOPAA. The Board will consider the issue at its next meeting in the Fall 2019.
8. **Economic Rights of Unmarried Cohabitants.** Prof. English reported that the drafting committee met for the first time and discussed a list of issues to be addressed. He noted that the act could allow a court to fashion a remedy for special cases rather than provide default rules. Prof. Gallanis noted that traditional equitable remedies could apply. A first draft will be produced for the next drafting committee meeting in Fall 2019.
9. **Disposition of Community Property Rights at Death.** Prof. English reported that a drafting committee had been appointed and he was named as Chair. The Reporter is Prof. Ronald Scalise, and Prof. Thomas Featherston was named as the ABA Advisor. The committee is currently searching for observers from family law groups and LGBTQ advocates. Mr. Berry suggested that the committee consider a provision that would allow a married couple domiciled in a state to opt-in to community property for all or a portion of the couple's assets, thus allowing a total step-up in basis for those assets regardless of which spouse died first. Ms. McCaffrey noted that there was a recent ruling in California concluding that the execution of a prenuptial agreement providing for separate rather than community property was a property transfer under California's Fraudulent Transfer Act (*Sturm v. Moyer*, CA Court of Appeal, 2nd Appellate District, 2019).
10. **Directed Trust Act.** The Board deferred discussion of two issues raised by ACTEC Fellows

until Prof. Sitkoff could discuss them by phone with Mr. Berry and Prof. John Morley: (1) If a power of appointment can be exercised only with the consent of another individual, does the UDTA impose fiduciary duties on that individual? (2) Under the UDTA, must a power to correct scrivener's errors be held in a fiduciary capacity?

11. Premarital and Marital Agreements Act. The Board considered a request from the ULC Committee to Review ULC Acts to recommend whether to designate the act as a model act rather than a uniform act in light of its few adoptions by state legislatures. The Board determined that the act should remain as a uniform act and discussed ways to improve its prospects for enactments. Ms. Walsh noted that family-law attorneys generally opposed the act's provisions on marital agreements. Mr. Berry suggested revising the act and bracketing the provisions on post-nuptial agreements. Ms. Walsh suggested involving state bar family law representatives in any revision effort.

The Board adjourned at approximately 10:45 a.m.

Respectfully submitted,
Benjamin Orzeske