



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 November 8, 2019 Meeting; Chicago, Illinois
FINAL – APPROVED ON DECEMBER 3, 2020

The meeting was called to order on Friday, November 8th, at 9:00 a.m. by Chair Bruce Stone. Others present were Molly Ackerly (ULC Division Chair), David English, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, John Langbein, Carlyn McCaffrey, Nancy McLaughlin, David Neufeld, Ben Orzeske (ULC Staff Liaison), Robert Sitkoff, Susan Snyder, and James Wade. The Board welcomed Mr. Neufeld as its newest member. Prof. Gallanis remembered the passing of Emeritus Member Jackson Bruce with sadness.

- 1. Approval of Minutes.** The Board unanimously approved the draft minutes from the Spring 2019 meeting.
- 2. Update from ULC 2019 Annual Meeting.** Prof. Gallanis noted that the Uniform Electronic Wills Act and the 2019 Amendments to the Uniform Probate Code had been approved by the ULC in July. The E-Wills Act has been published to the ULC web site, while the UPC Amendments were undergoing a final review and will be published soon.
- 3. Proposed Amendments to the Uniform Trust Code.** The Board reviewed a series of suggestions for amendments to the Uniform Trust Code, collected from multiple sources. After discussion, the Board determined it would not recommend a major revision of the UTC at this time but will continue to generate and collect ideas for UTC revisions and may recommend amendments to specific sections or Comments as appropriate.
- 4. Disposition of Community Property Rights at Death.** Prof. English reported that the drafting committee to revise the Uniform Disposition of Community Property Rights at Death Act had met for the first time and reviewed an issues memo prepared by the Reporter. The drafting committee determined that the act needed to be updated to address non-probate transfers, and the Reporter will prepare a draft for consideration at the committee's Spring 2020 meeting.
- 5. Fundraising Through Public Appeals.** The latest draft of the Fundraising Through Public Appeals Act was circulated in advance to the Board. However, the draft does not use the

framework of a trust. Therefore, the Board decided not to devote time during the meeting to the draft's review. Individual Board members were encouraged to send suggestions or comments to the Act's Reporter.

- 6. Incorporation of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act into Article V of the Uniform Probate Code.** Prof. English reported that he had prepared a set of draft amendments to the stand-alone version of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act in preparation for its incorporation into the UPC. The revised act uses updated terminology, which necessitates conforming amendments to certain other sections of the UPC. The Board reviewed the draft amendments and offered helpful input. The next steps will involve a review by the liaison to the ULC Committee on Style and changes to comments. Action Item: Prof English will work with the Style Liaison to finalize a set of conforming amendments for submission to the ULC Executive Committee for approval.
- 7. Electronic Documents.** The recent approval of the Uniform Electronic Wills Act spurred a discussion among commissioners about whether the Uniform Trust Code and the Uniform Power of Attorney Act permitted electronic versions of trusts and powers of attorney, respectively. The Board determined that no amendments were necessary to the latter act, which adequately addressed the subject, but asked Prof. English to review relevant sections of the UTC to determine whether video trusts can or should be addressed. Action Item: Prof English will review the UTC and provide a recommendation to the Board at its Spring 2020 meeting.
- 8. Health-Care Decisions Act.** In response to a request from the ULC Committee on Scope and Program, which acted on a recommendation from the Committee to Review ULC Acts, the Board reviewed the Uniform Health-Care Decisions Act to determine (1) whether the Act should be retained as a uniform act or instead should be designated as a model act, and (2) whether the Act should be updated. The Board concluded that the Act should be retained as a uniform act and that any recommendation on updating the Act should be coordinated with the ULC's Health Law Monitoring Committee. Action Item: Prof. Gallanis will convey the Board's conclusions to the ULC Committee on Scope and Program.
- 9. Proposed Amendment to Uniform Power of Attorney Act Comments.** The Board discussed a request received from the Joint Editorial Board on Uniform Real Property Acts to amend the Prefatory Note and Comment to Section 119 of the Uniform Power of Attorney Act. The amendments would clarify the application of the act to powers of attorney used in real estate transactions. The Board agreed that the proposed changes were appropriate. Action Item: Prof. Gallanis will convey the Board's decision to the Executive Director of the JEB-URPA.
- 10. Uniform Trust Code Section 112 – Rules of Construction.** The Board discussed an article from the July, 2019 issue of *Estate Planning* magazine that questioned whether UTC Section 112 provided sufficient guidance as to when it was appropriate to apply a rule of construction applicable to wills to a similar provision of a trust, and determined the comment to that section should be clarified. Action Item: Prof. Gallanis will draft proposed amendments to

the comment and circulate them to the Board for review.

- 11. Minors and Digital Asset Succession.** The Board discussed a law review article by Professor Natalie M. Banta proposing that minors should be permitted by law to devise digital assets and concluded that no changes to uniform acts were advisable.

The Board adjourned for lunch at 12:05 p.m. and reconvened at 1:30 p.m.

- 12. Conflict of Laws in Trusts and Estates.** Prof. Jeffrey Schoenblum joined the meeting by telephone to discuss the possibility of a uniform act on conflict of laws in trusts and estates. After extensive discussion, the Board voted unanimously to propose that a drafting committee be appointed to draft a uniform law that would address the domestic (non-international) aspects of the conflict of laws in trusts and estates. Action Item: Prof. Gallanis will submit a proposal to the ULC Committee on Scope and Program.

- 13. Disposition of Mortal Remains.** The Board discussed an article by Professor Tanya Marsh that suggests inconsistent state laws frustrate a decedent's control over funeral planning. After discussing the issues raised in the article, the Board suggested that mortal remains might be part of the project on conflict of laws (see item 12).

- 14. Uniform Trust Code Section 802 – Duty of Loyalty.** Phoebe Papageorgiou and David Lauer joined the group for discussion of a proposal to amend UTC Section 802 submitted by the American Bankers Association Trust Counsel Committee. The proposed amendments would address rules governing the use and disclosure of additional types of affiliated investment vehicles by trustees. The Board expressed concern about the whether the proposed amendments would diminish a trustee's duty of loyalty to beneficiaries. The Board requested representatives from the American Bankers Association to submit a revised proposal for consideration at the next meeting in Spring 2020. Action Item: Mr. Orzeske will ask the ULC Executive Committee whether a set of proposed amendments to UTC Section 802 would require appointment of a drafting committee or could be approved using an abbreviated process.

The Board adjourned at approximately 4:40 p.m.

Respectfully submitted,
Benjamin Orzeske