Message from the President

Carl Lisman
President

The 2020 Annual Meeting …

When the poet Robert Burns wrote “the best laid schemes o’ Mice an’ Men Gang aft agley,” he probably didn’t have the Coronavirus pandemic and the ULC 2020 annual meeting in his mind. For some of us, though, the pandemic and its impact on the ULC have been a primary focus for weeks.

Here’s what we know:

1. Our last in-person committee meetings were in Chicago on March 13 and 14. All committee meetings since then have been or will be by Zoom, including the Style Committee meeting during the first week in May.

2. It is highly unlikely that the annual meeting will go forward on July 9, 2020 in Madison, Wisconsin. Notwithstanding the assurances by the Wisconsin Commissioners that the weather will be sunny, warm and pleasant, the rest of us are unlikely to be there.

We have contacted the hotels and the convention center and are working with them to hold (at least for now) our commitments, while at the same time looking into the potential impact of cancellation penalties. Yes, we are lawyers and judges and professors and know more now about force majeure and impossibility of performance than before, but we still need to be prudent about our choices.

PLEASE NOTE:
Due to the current COVID-19 crisis, and the shelter-at-home order that has been put in place in the city of Chicago, the Garland Building, home to the ULC headquarters office in downtown Chicago, is closed, at least through the end of April. Because the building itself is closed, the ULC cannot receive any shipments by either UPS or Fed-Ex. All such shipments will be returned to sender. However, we have arranged that all regular mail delivered via USPS is being forwarded appropriately.
3. “Flattening the curve” might happen soon (although no one can be sure) but that won’t eradicate the virus, only lessen the risk and help the healthcare providers. When the peak will occur and how soon thereafter we can return to some form of normalcy is not predictable at this time.

4. We are evaluating the possibility of a shortened in-person meeting later in the fall, probably in a city more easily accessible than Madison. Four days stretched over a weekend - Friday, Saturday, Sunday, Monday - might give us enough time to give appropriate attention to the four acts up for final review as well as first reads of a number of others. We might also schedule Zoom meetings in advance, on an act-by-act basis, to allow Commissioners to share thoughts and comments with the drafting committees before the annual meeting; this should result in edits to drafts prior to (and sharper debate at) any fall meeting.

5. Still, some of our Commissioners have chronic health issues and many are elderly. Even if the “official” period of the pandemic ends during the summer, we would want to be comfortable that we would have assurances of a robust attendance at the shortened in-person meeting.

So …

1. Keep the July meeting date on your calendar - but don’t bet (what’s left of) your 401(k) account on being in Madison this summer (unless you live there!).

2. I believe that we should explore every avenue to hold our 2020 annual meeting. We have acts that should be finalized and made available for the 2021 legislative sessions. My personal preference is an in-person meeting. We’ve thought about a Zoom meeting and have tentatively concluded that meeting solely through Zoom might be excessively challenging, but please share with me your thoughts on this; together, we can sort this out and get back to you.

3. You should know that our staff in the Chicago office has been distance-working and getting done the business of the ULC. The Executive Committee and the leadership team have been conferencing regularly. So far as we know, the ULC family has been spared the impact of the virus.

4. Please be healthy and safe - and let me know if there’s anything the ULC can do for you in these trying times.
Legislative Update

Although many state legislatures have already adjourned for the year or are limiting the business that may be taken up at this time due to the current public health crisis, there is still a lot of positive news to report this year. We currently report 155 introductions and 20 enactments, with many more enactments expected in the next few months.

New York got things started with the first two enactments of the legislative year – enacting the Uniform Partition of Heirs Property Act and the Uniform Voidable Transactions Act.

Kentucky, Utah, Washington, West Virginia, and Wisconsin have gotten off to a great start, with three enactments already in the books in each state. Virginia may soon join them or even overtake them, with one enactment so far, and three more waiting for the Governor’s signature.

Model Veterans Treatment Court Act

Of particular note is the first enactment of the Model Veterans Treatment Court Act in Utah. The Model Veterans Treatment Court Act provides guidelines for the establishment of veterans’ courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. Some of the issues that the model act and rules address include the following: what subset of veterans are entitled to diversion into a veterans’ court; for what type of offenses is diversion into a veterans’ court appropriate; what rights should victims have to participate in proceedings in veterans’ courts; and how, in general, should veterans’ courts be organized and operated. The Act provides that participation in the veterans’ treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.

Uniform Electronic Transactions Act

Washington was the 50th state to enact the Uniform Electronic Transactions Act, which was promulgated by the ULC in 1999. UETA establishes the legal equivalence of electronic records and signatures with paper writings and manually signed signatures, and has been an important component to removing barriers to electronic commerce.

Other Acts

The Revised Uniform Athlete Agents Act, or its 2019 Amendment, has been introduced in more than 10 states, and so far enacted in three. The Uniform Partition of Heirs Property Act has been introduced so far in 11 states and enacted in two. The Revised Uniform Law on Notarial Acts, with its provisions on remote notarization, has been introduced in six states to date and enacted in one.

Other major highlights of the year include:

- Uniform Registration of Canadian Money Judgments Act was enacted in its first state: Colorado.
- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act has been enacted in its third state: South Dakota.
ABA Approves Two New Uniform Acts

Two uniform acts were approved by the American Bar Association’s House of Delegates as “appropriate Acts for those states desiring to adopt the specific substantive law suggested therein.” The acts were approved at the ABA’s Midyear Meeting in Austin, Texas, February 12-17, 2020. The acts were drafted and approved by the ULC in 2019.

The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000 the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. But UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. Under the new Uniform Electronic Wills Act, the testator’s electronic signature must be witnessed contemporaneously (or notarized contemporaneously in states that allow notarized wills) and the document must be stored in a tamper-evident file. States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.

The Uniform Registration of Canadian Money Judgments Act (“Registration Act”) creates an administrative procedure for the registration and enforcement of a Canadian money judgment in an enacting state. Once the Canadian judgment is successfully registered in the state, the judgment is enforceable in the same manner as a judgment rendered in that state. The Registration Act only applies to a Canadian judgment if it (1) grants or denies recovery of a sum of money; (2) is final, conclusive, and enforceable in Canada; and (3) its recognition is sought in order to enforce the judgment. The Registration Act supplements the Uniform Foreign Country Money Judgments Recognition Act (“Recognition Act”) by providing an alternative method to seeking recognition and enforcement of a foreign judgment. If a state has not enacted the Recognition Act, it may enact this Act at the same time it adopts the Recognition Act as a companion Act. The Registration Act offers an efficient alternative to filing a lawsuit to recognize and enforce a Canadian money judgment in the United States.
At its 2020 Midyear Meeting, the ULC Executive Committee authorized the appointment of one new drafting committee, six new study committees, and one new monitoring committee.

The new drafting committee is:

**Drafting Committee on Conflict of Laws in Trusts and Estates**
This drafting committee will draft a uniform or model law to address the problems of conflict of laws in trusts and estates. The committee will address trusts, wills, will substitutes, intestacy, estate administration, fiduciary powers and duties, powers of appointments, powers of attorneys, jurisdictional claims, and statutes of limitations. The Joint Editorial Board for Uniform Trust and Estate Acts recommended this project. Robert Sitkoff, Chair; Turney Berry, Vice Chair.

The new study committees are:

**Study Committee on Tenancy-in-Common Ownership Default Rules**
This committee will study the need for and feasibility of state legislation to resolve problems arising under current common law tenancy-in-common ownership default rules. The committee will study the need for and feasibility of an act that would permit a threshold percentage of owners to convert their ownership from tenancy-in-common ownership to a more durable entity form of ownership, such as an LLC – as contrasted with existing law, where such a determination would require unanimity among the co-owners. The Joint Editorial Board for Uniform Real Property Acts recommended this project. Juliet Moringiello, Chair.

**Study Committee on Choice of Law and Choice of Court Clauses**
This committee will study the need for and feasibility of drafting a set of uniform laws on choice of law and choice of court clauses in international business transactions. The ULC International Legal Developments Committee recommended this project. K. King Burnett, Chair.

**Study Committee on College Athlete Name, Image, and Likeness Issues**
This committee will study the need for and feasibility of state legislation addressing the rights of college athletes to their name, image, and likeness. California enacted the first legislation on this topic in 2019, giving student athletes a right to earn money from their name, image, or likeness without affecting the student’s scholarship eligibility. Dale Higer, Chair.

**Study Committee on Supply Chain Transparency**
This committee will study the need for and feasibility of state legislation dealing with transparency in the context of international supply chains. The committee will determine if state legislation dealing with reporting requirements for businesses with respect to human trafficking, child labor, or substandard production and facility standards is desirable and feasible. The ULC International Legal Developments Committee recommended this project. Anita Ramasastry, Chair.

**Study Committee on Online Sales Tax Collection**
This committee will study the need for and feasibility of state legislation on state taxation of online sales and collection of taxes. In the 2018 decision South Dakota v. Wayfair, the U.S. Supreme Court ruled that the correct standard to determine the constitutionality of a state tax law is whether the tax applies to an activity that has “substantial nexus” with the taxing state, eliminating the requirement that businesses must be physically present in a state before their sales can be taxed. Many states are looking for guidance to address the Wayfair decision. Lyle Hillyard, Chair.

**Study Committee to Amend or Revise the Uniform Health Care Decisions Act**
This committee will study the need for and feasibility of amending or revising the Uniform Health Care Decisions Act (UHCDA). The UHCDA was originally promulgated in 1993 and has been enacted in eight states. The key issues in the UHCDA warranting possible revisions are the priority list of those who can act as surrogate; identification of residual surrogates; provision for oral appointment; lack of domestic partnerships, civil unions, or co-habitants in the surrogate list; disqualification of surrogates; scope of surrogate decisions; and decision-making by mature minors. The Joint Editorial Board on Uniform Family Law and the Committee to Monitor Developments in Healthcare Law recommended this project. Nora Winkelman, Chair.

The new monitoring committee is:

**Committee to Monitor Developments in Privacy Law**
This committee will monitor developments in privacy law and provide suggestions to the Scope and Program and Executive Committees about issues that may be appropriate for uniform state law or current ULC acts in this area that should be revised or withdrawn. Rich Cassidy, Chair; Stephen Chow, Vice Chair.
The ULC’s Annual Report was sent to all commissioners earlier this year. The annual report contains information on current ULC activity, and commissioners are encouraged to use the report in your state. You can use the report for informing individuals in your state about the ULC, including appointing authorities, legislative leadership, and state bar leadership; there may also be other people you wish to keep informed on ULC activities.

Another useful publication is the new Guide to Uniform and Model Acts, which has summary information on every current uniform and model act, and is a wonderful quick reference guide to ULC acts. It is designed for commissioners, but is also useful for other individuals who may need information on the ULC.

Under normal circumstances, we would be happy to send you extra copies of both the Annual Report and the Guide to Uniform and Model Acts for use in your state. Since the ULC offices are currently closed due to the COVID-19 crisis, we are unable to do that. However, if you would like to share either publication with anyone in your state, please note that both publications are posted on the ULC website at www.uniformlaws.org. The direct link to all ULC publications can be found here: https://www.uniformlaws.org/newsandpublications/publications.

New Member of the ULC Family!

The ULC family has grown once again! Lindsay Beaver, ULC Legislative Counsel, and Marin Nitzov recently welcomed their first child – a baby girl. Elena Marie Nitzova was born on December 28, 2019, and weighed 7 pounds and 4 ounces. Elena just turned three months, so she is quite a bit bigger now! Lindsay and Marin and Elena are all home and doing fine.

Lindsay, along with the rest of the ULC staff, is currently working at home, but she can be reached by email at lbeaver@uniformlaws.org. Congratulations, Lindsay!