

MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Thomas Gallanis

Re: Minutes, September 25, 2009; Minneapolis, Minnesota

The meeting was called to order on Friday, September 25, 2009, at 9:02am by Executive Director David English. Others present were (in alphabetical order): Jackson Bruce, Mary Louise Fellows, Thomas Gallanis, Edward Halbach, Joseph Kartiganer, Michael Kerr, John Langbein, Carlyn McCaffrey, Robert Sitkoff, Bruce Stone, James Wade, Lawrence Waggoner, and Raymond Young. Not present were Brian Flowers (Division Chair), Susan House, Naomi Karp, Sheldon Kurtz, Judith McCue, Malcolm Moore, and Martha Starkey. Guests present included John Burton, Commissioner from New Mexico, and Robert Stein, ULC President.

1. **Welcome to New Members.** The Board welcomed Professor Sitkoff as a new member of the Board, succeeding Professor Scoles.

2. **Minutes.** The Board approved the minutes of the October 2008 meeting.

3. **Resolution Honoring Professor Scoles.** The Board unanimously approved the following resolution honoring Professor Scoles:

The Joint Editorial Board for Uniform Trust and Estate Acts,  
by resolution adopted September 25, 2009,  
gratefully recognizes the distinguished and devoted service of  
**EUGENE F. SCOLES**  
to this Board and to the Uniform Law Commission over a period of  
more than four decades,  
beginning  
with his role as a Reporter for the original Uniform Probate Code  
(promulgated in 1969), and  
expresses this Board's utmost regard for him and its sincere  
appreciation for his valued contributions  
to the ongoing work of the Board, his scholarly expertise not only in  
trust and estate law but also in  
conflict of laws and international conventions, and the wisdom,  
sound judgment and genuine collegiality  
he has for so long brought to the deliberations of this Board.

4. **Principal and Income Act.** The Board discussed possible amendments to sections 401 and 409 of the Act, and to the Act generally. The Board resolved:

a. To encourage the Standby Committee for the Act to issue a statement responding to the California cases concerning the 20% partial liquidation rule of Section 401(d)(2) (and, in so responding, to indicate that the Section 104 power to adjust is applicable in such instances), and to amend the Comment to Section 401 accordingly. Professor English will communicate with the Standby Committee.

b. To defer action on other aspects of the Act until the appropriate time for the next set of amendments to the Act.

5. **Health-Care Decisions Act.** Responding to a request from Commissioner Anne McGihon of Colorado, the Board reviewed the Act to determine whether any updates are needed. The Board concluded that no updates to the Act are needed.

6. **Insurable Interests Relating to Trusts.** The Board examined the September 8, 2009, draft of the Act prepared by Professor Roger Henderson. The discussion focused on subsection (c). The Board preferred the approach of Fla. Stat. §627.404. Professor English will communicate the Board's views to Professor Henderson.

7. **Real Property Transfer on Death.** Professor Gallanis and Mr. Kerr gave a report on the Act, which was approved at the ULC annual meeting in July 2009.

8. **Premarital and Marital Agreements.** Professor English and Mr. Kerr gave a report on the status of this project. A stakeholders meeting is scheduled for October 2009.

9. **Uniform Probate Code, Conforming and Technical Amendments.** Professors English and Waggoner led a discussion of conforming and technical amendments that will be presented for ULC Executive Committee approval in January 2010. These amendments include:

- a. Deleting Article VII on account of the approval of the Uniform Trust Code;
  - b. Deleting Article V on the durable power of attorney;
  - c. Inserting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act as Article 5A;
  - d. Inserting the Uniform Power of Attorney Act as Article 5B;
  - e. Inserting the Uniform Real Property Transfer on Death Act as Article 6, Part 4, and making a technical amendment to UPC §1-201(18) (definition of "governing instrument");
  - f. Technical amendments to the Uniform Disclaimer of Property Interests Act (UPC §§2-1104, 2-1112, 2-1114, and 2-1115);
  - g. Technical amendments to the Comments to §§3-703 and 3-705 concerning the personal representative's duty with respect to posthumously conceived children;
  - h. Technical amendments adjusting the amounts in §§3-605, 3-915, and 5-104;
- and

i. Technical amendments proposed by Professor Waggoner to (1) §2-705 and its Comment, (2) §2-805, (3) the Comments to §§2-302 and 2-514, and (4) Uniform Trust Code §415.

The Board resolved to keep in mind, for an appropriate future time, the question whether §2-302 should be extended to non-asset-specific will substitutes. See Restatement (Third) of Trusts §25, Comment e. See also *Kidwell v. Rhew*, 268 S.W.3d 309 (Ark. 2007); *Estate of Jackson*, 194 P.3d 1269 (Okla. 2008); *Robbins v. Johnson*, 780 A.2d 1282 (N.H. 2001).

**10. Uniform Probate Code, Other Amendments.** Professor English has collected potential amendments to the UPC, primarily to Article 3, that are too substantive to be approved under Section 4.3(b)(3) of the ULC Constitution. In addition, the Committee on Style would like to examine the entire UPC for consistency in style and general clean-up. The Board encouraged Professor English to send a memorandum to the ULC leadership, suggesting that the Board and the Committee on Style work together as a study committee.

**11. Mental Health Advance Directives.** Professor English gave a report on the status of this project. The Board expressed its support for a stakeholder meeting before the ULC decides whether to appoint a drafting committee.

**12. Collaborative Law.** Mr. Kerr gave a report on this Act. The Act was approved at the ULC annual meeting in July 2009.

**13. Mental Health Commitment.** Responding to a request from the Committee on Scope and Program, the Board discussed a proposal submitted by Ms. Mary Ann Bernard for a uniform act governing mental health commitment. The Board recommended that, if the Committee on Scope and Program is inclined to move forward, that the study committee for Mental Health Advance Directives consider this proposal, too, and solicit feedback at the meeting of stakeholders (see item 11).

**14. International Matters.** Professors English and Gallanis gave a report on their meeting with Mr. Keith Loken of the U.S. State Department. The Board discussed the Uniform International Wills Act and the international conventions covering wills, trusts, succession, and incapacitated adults. Ms. McCaffrey will talk with Mr. Edward B. Benjamin Jr., ACTEC Fellow from Louisiana, about his opposition to the Hague Convention on the Law Applicable to Trusts and on their Recognition.

**15. Possible Future Projects.** The Board discussed possible future projects in the areas of mortal remains, powers of appointment, and estates and future interests. The Board expressed an interest in moving forward as rapidly as possible, given ULC funding constraints, with a project on mortal remains. Professor English will prepare a memorandum for the Committee on Scope and Program. The Board also expressed interest in discussing, at its next meeting, the areas of powers of appointment and estates and future interests. At that time, the Board materials will include the relevant sections (black-letter) of the Restatement (Third) of Property.

16. **Mandatory Arbitration.** Professor English and Mr. Stone led a discussion of a recent Florida statute providing for the enforcement of mandatory arbitration clauses in donative documents. The Board concluded that it was too soon to amend uniform law in this regard. Instead, the Board resolved to monitor developments in Florida, for future consideration.

17. **Interstate Arbitration of Death Taxes & Interstate Compromise of Death Taxes.** The Board discussed a report from the ACTEC Committee on State Laws about these Acts. The Board observed that the Acts cover disputes about domicile but not about asset classification or situs. The Board resolved to contact the ACTEC Committee on State Laws to inquire whether it has a recommendation for how the Acts might be amended.

18. **Two Issues Raised by Commissioner Burton.** The Board discussed two recent developments raised by e-mail from Commissioner John Burton of New Mexico:

- a. The amendment of New Mexico's version of UPC §6-301.
- b. The case of *Castro v. Ballesteros-Suarez*, 213 P.3d 197 (Ariz. App. 2009), concerning the effect of the slayer statute on community property.

The Board concluded that no amendments to the Uniform Probate Code are needed at this time.

19. **Inquiry from Seth Weisbrod.** The Board discussed an inquiry from Seth Weisbrod, an attorney with United Disabled for Economic Security in Los Angeles, who has expressed concern that bills pending in Congress to permit ABLE accounts for disabled individuals do not have fiduciary safeguards. The Board suggested that the Uniform Custodial Trust Act might serve as a potential model.

The meeting was adjourned at 5:00pm.

Respectfully submitted,  
Thomas P. Gallanis  
Assistant Executive Director