



## MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Benjamin Orzeske  
ULC Legislative Counsel and Staff Liaison to the JEB-UTEA

Re: Minutes from April 2016 Meeting; Chicago, Illinois  
**FINAL – Approved December 2, 2016**

The meeting was called to order on Friday, April, 29, 2016, at 9:00 a.m. by Chair Malcolm Moore. Others present were Turney Berry, David English, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, John Langbein, Carlyn McCaffrey, Kevin Millard, Benjamin Orzeske (ULC Staff Liaison), Robert Sitkoff, Martha Starkey, Bruce Stone, and James Wade.

- 1. Introductions and Welcome.** The Board welcomed its new representative from ACTEC, Ms. Kovar.
- 2. Resolution Honoring Prof. Halbach.** Prof. Gallanis announced the retirement from the Board of Prof. Halbach. The Board unanimously approved the following resolution:

The Joint Editorial Board for Uniform Trust and Estate Acts  
by resolution adopted April 29, 2016,  
gratefully recognizes the distinguished and devoted service of  
**EDWARD C. HALBACH, JR.**  
to this Board and to the Uniform Law Commission  
over a period of more than four decades,  
his scholarly expertise in trust and estate law,  
his superb service as the Reporter for the Restatement Third of Trusts,  
and the wisdom, sound judgment, and genuine collegiality  
he brought for so many years to the deliberations of this Board.

Action Item: Prof. Gallanis and Mr. Moore will transmit a copy of the resolution to Prof. Halbach.

- 3. Approval of Minutes.** Mr. Stone moved for approval of the Fall 2015 minutes, Mr. Wade pointed out one typographical error, and the Board unanimously approved the minutes as corrected.
- 4. Divided Trusteeship/Directed Trust Act.** Prof. Sitkoff presented the drafting committee's March 15, 2016, draft as updated by Prof. Sitkoff's memorandum of April 20,

2016. After a discussion of the act's organizing principles, the Board discussed specific provisions and offered feedback to the drafting committee.

5. **Proposal on Cohabitation and *De Facto* Marriage.** Prof. Langbein continued the Board's discussion of a proposal by Prof. Waggoner to recognize *de facto* marriage for certain cohabiting couples. He noted that the surviving spouse's intestate share and elective share have been greatly expanded in current law as compared to the old common law rules, and he asked why we should treat unmarried couples in long-term relationships any differently. He suggested a study committee on the issue. Prof. Sitkoff suggested coordinating any proposal to Scope and Program with the JEB for Uniform Family Law (JEB-UFL). The Board voted to endorse a study committee and to work with the JEB-UFL in preparing a proposal. Action Item: Prof. Gallanis will coordinate with Barbara Atwood, Chair of the JEB-UFL, to prepare a proposal. The proposal will be ready for discussion and approval by the Board and the JEB-UFL at their Fall 2016 meetings.
6. **Proposal to Amend the Uniform Anatomical Gift Act.** Prof. Langbein noted that the Uniform Anatomical Gift Act requires an individual to make an affirmative manifestation of consent to be a donor of an anatomical gift, whereas some European countries have helped to alleviate the shortage of organs for transplant by presuming an intention to make an anatomical gift unless an individual manifests a contrary intention. The Board voted to recommend that the standby committee for the act be reactivated to consult with all relevant stakeholder groups on whether a bracketed option should be added to the act to provide a rebuttable presumption of donor consent. Action Item: Prof. Gallanis will prepare a recommendation to the ULC Scope and Program Committee that the act's standby committee be reactivated for this purpose.
7. **Proposed Amendment to UPC Section 2-213 (Waiver of Right to an Elective Share).** The Board reviewed a draft amendment to UPC Section 2-213 prepared by Prof. Gallanis providing that a waiver under that section must satisfy the protections required by Section 9 of the Uniform Premarital and Marital Agreements Act (UPMAA). The Board made two minor amendments and approved the proposed language as amended. Action Item: Prof. Gallanis will submit the amendment to the ULC Executive Committee. Prof. Gallanis will also recommend that the Executive Committee ask the JEB for Uniform Family Law to consider a conforming amendment to the UPMAA to extend Section 9 of that act to an agreement signed unilaterally by the waiving spouse.
8. **Proposed Conforming Amendments to Uniform Acts in Light of the Approval of the Revised Uniform Fiduciary Access to Digital Assets Act.** The Board reviewed and approved proposed conforming amendments to Section 201 of the Uniform Power of Attorney Act and Section 3-711 of the Uniform Probate Code in order to conform them to the Revised Uniform Fiduciary Access to Digital Assets Act. Action Item: Prof. Gallanis will submit the amendments to the ULC Executive Committee.
9. **Proposed Amendment to the Comment for UTC Section 413.** The Board reviewed a proposal by Profs. Nancy McLaughlin, Ronald Chester, and Robert Danforth to amend the Comment to UTC Section 413 in order to clarify that *cy pres* can apply to charitable gifts

outside of a trust. The Board reviewed the proposal and determined that the goal could be accomplished with a simpler amendment. Action Item: Prof. Gallanis will draft an amendment to the Comment of UTC Section 413 for consideration at the Board's Fall 2016 meeting.

- 10. Proposed Amendment to UPC Section 2-209 (Source from Which Elective Share Payable).** Judge Wade reported on, and the Board discussed, his proposed amendment to Uniform Probate Code Section 2-209(e) to address the issue of interest on an unpaid or delayed elective share. Action Item: Judge Wade agreed to consider other methods for calculating interest and to present a revised proposal for the Board's Fall 2016 meeting.
- 11. Possible Amendments to Uniform Acts in Light of the Supreme Court's *Obergefell* Decision.** The Board reviewed a memorandum prepared by ULC law clerk Erica Jaeger identifying gender-specific language in ULC acts that may need to be rewritten in light of the *Obergefell* decision on same-sex marriage. The Board identified a section of the UPC that requires amendment but was not included in the memorandum: Section 2-103, which refers to "maternal" and "paternal" grandparents. The Board reviewed a draft amendment to Section 2-103 and approved it with minor changes. Action Item: Prof. Gallanis will transmit the amendment to UPC Section 2-103 to the ULC Executive Committee. Mr. Orzeske will have the clerk's memorandum updated to include Section 2-103 and will refer this addition to the Committee on Technical Amendments to ULC Acts in Light of the *Obergefell* Decision.
- 12. Drafting Committee to Revise the Uniform Guardianship and Protective Proceedings Act (UGPPA).** Prof. English presented the revised act's March 15, 2016, draft. The Board discussed both broad concepts and specific provisions in the draft and gave feedback for the drafting committee. Going forward, Prof. English asked for the Board's assistance in updating the rules applicable to conservatorships and guardianships for minors. At its Fall 2016 meeting, the Board will focus on these issues, among others.
- 13. Drafting Committee to Revise the Uniform Principal and Income Act.** Mr. Berry reported that the drafting committee held its first meeting in February. The Board reviewed the draft of February 16, 2016, and gave feedback for the drafting committee.
- 14. Proposal on Adult Visitation Rights.** The Board considered a proposal from the Catherine Falk Organization for a study committee to consider whether a uniform act should be drafted to facilitate a petition by an adult child for the right to visit the child's parent. The Board noted that the issue of adult visitation is being addressed by the drafting committee to revise the UGPPA. Accordingly, the Board voted not to recommend a study committee.
- 15. Drafting Committee to Amend the Uniform Parentage Act.** The Board discussed the drafting committee's April 13, 2016, draft. Prof. Courtney Joslin, the reporter for the drafting committee, joined the discussion by phone. The Board reviewed the draft act and gave feedback for the drafting committee.

The Board adjourned at 5:00 p.m. and reconvened at 8:30 a.m. on Saturday April 30, 2016.

- 16. Discussion of Comments to the Uniform Voidable Transaction Act (UVTA).** The Board discussed the ULC policy on Comments in light of recent objections from estate planning attorneys to certain Comments to the UVTA. The Board agreed that it would have flagged these Comments if it had had an opportunity to review them prior to publication, and discussed possible ways to improve communication between the ULC and the Board regarding projects that might impact trust and estate law. Action Item: Prof. Gallanis will contact the ULC Executive Committee to convey the Board's recommendation that the Executive Committee ask the UVTA standby committee to review the comments to see if changes could be made to alleviate concerns and facilitate enactment.
- 17. Drafting Committee on the Model Tribal Probate Code.** The Board discussed the drafting committee's March 25, 2016, draft. Prof. Katherine Guzman, co-reporter for the drafting committee, joined the discussion by phone. The Board reviewed the draft act and gave feedback for the drafting committee.
- 18. Next Meeting.** The Board had a brief discussion of possible dates for its next meeting.

The Board adjourned at 10:30 a.m.

Respectfully submitted,  
Benjamin Orzeske  
ULC Chief Counsel and Staff Liaison to the JEB-UTEA