

## **Memorandum**

To: UMIFA Drafting Committee, Advisors, and Observers

From: Susan Gary, Reporter

Date: August 22, 2005

Re: Report on NCCUSL Annual Meeting; Date for Fall Drafting Committee Meeting

At the Annual Meeting of the National Conference of Commissioners on Uniform State Laws, the Conference discussed UMIFA and offered suggestions and comments to the Drafting Committee. The Conference decided to postpone final consideration of revised UMIFA for one more year. The Drafting Committee intends to meet both in the fall and in the spring and hopes to reach agreement on the open issues. The fall meeting has been scheduled for November 11-13, in Chicago. All interested observers are invited to attend and participate in that meeting.

Looking ahead, the issues to be discussed continue to be issues with which we have struggled throughout our work on UMIFA. We seek input from everyone on the following concerns:

Historic dollar value. A number of attorneys general and some lawyers who advise donors continue to be concerned about the loss of historic dollar value. For some the concern focuses on funds created before the adoption of a new UMIFA, but others are concerned about the loss of the historic dollar value concept for future funds.

Retroactive application of the spending rule. Some observers have suggested making the application of the spending rule in UMIFA (200-) prospective only. Doing so would mean that charities with funds created before the adoption of UMIFA (200-) would operate under two sets of rules. Some charities and some lawyers have commented that this would be unworkable, especially for small charities or small funds.

Presumption of imprudence. The draft currently includes a presumption of imprudence for spending above 7% of the value of an endowment fund in any one year. The comments to UMIFA (200-) outline many of the problems inherent in this approach.

Coverage of UMIFA. After bankers and bank attorneys expressed concern, we removed charitable trusts with corporate trustees from the scope of UMIFA

(200-). Many people have commented that one set of rules should govern the management of charitable funds, regardless of the organizational structure of the charity. The Drafting Committee may want to reconsider this issue.

Accounting rules. The accounting rules set forth by FASB create problems for charities with endowment funds. To the extent possible (and we cannot change the FASB rules), we should try to improve the reporting related to endowment funds so that charities and their donors have a better picture of the financial circumstances being reported.

Donor standing. A number of comments from NCCUSL Commissioners suggest continuing dissatisfaction with the lack of standing for a donor whose gift has been misspent. The Drafting Committee concluded that UMIFA was not the right place to create standing, but we may want to reconsider the issue.

The difficulty with all of these issues is that thoughtful observers have expressed views on all sides of the issues. The further difficulty is that UMIFA applies to all charities organized as nonprofit corporations, regardless of size or structure. The act provides default rules, for the most part, so that charities and donors can opt out of UMIFA, but in general the act should make sense for a broad range of charities. The goal of the Drafting Committee will be to reach agreement on these issues in a way that will create appropriate guidance for charities and appropriate protection for donor intent.

I look forward to working with all of you in the coming year. UMIFA is an important act, and in my view the revisions substantially improve the law under current UMIFA. I hope that each of you with a particular view or concern or with information or experience in these issues will share your thoughts with the Drafting Committee by sending them to me as an email or an email attachment. Thanks for your continued involvement in this project.