

MEMORANDUM

TO: Members and Observers, Drafting Committee to Amend the Uniform Common Interest Ownership Act (“UCIOA”) and Uniform Condominium Act (“UCA”)

FROM: Bill Breetz, Chair

DATE: January 13, 2020

RE: THOUGHTS REGARDING OUR INITIAL MEETING OF JANUARY 31 AND FEBRUARY 1, 2020

I’m happy to extend a warm welcome to each of you as we embark on the fourth revision to UCIOA, which the Uniform Law Commission first promulgated in 1982.

To provide us all a common sense of this Committee’s place in history, I append at the end of this memo a description of ULC’s 50-year history in addressing condominium law. The description is an excerpt from the Final Report of the 2019 Study Committee (also attached), which the Scope and Program Committee approved in creating this Drafting Committee.

This Memorandum addresses two matters:

- A. Various materials relevant to our work; and
- B. Details of our meeting schedule, including a description of how I expect to proceed during our two days together.

A. MATERIALS

Accompanying this memorandum are these materials relevant to our meeting:

1. A list of the Commissioners who comprise the Drafting Committee, together with a list of our Advisors and Observers. (I will supplement the Observer list as additional Observers join us.)
2. A .PDF copy of the current draft of the Uniform Common Interest Ownership Act, including comments.

3. A copy of the 2019 Study Committee Report. Some comments about that Report:

- a. Although the entire Report is 63 pages long, do not despair! Only the first 15 pages are required reading; the balance consists of the minutes of the Study Committee's meetings.
- b. As detailed in those initial 15 pages, the Study Committee considered 21 issues bearing on possible amendments or additions to UCIOA's existing statutory language or comments.

Of those 21 topics, the Study Committee concluded that six of the issues do not require further consideration (topics 7, 8, 13, 14, 18, and 19).

Of the remaining 15 topics, the Study Committee did not consider two (topics 20 and 21) and it therefore recommended that the Drafting Committee should itself decide whether amendments were needed.

Finally, the Study Committee recommended that amendments be drafted for the remaining 13 topics. The issues involving the law of adverse possession (topic 2) would require a new section. The other 12 issues involve amendments to existing UCOIA sections or its comments.

- c. In my view, most of these topics will require straight-forward consideration of existing text. In the case of the recommendations in topics 10 and 17, however, which address the ever-complex relationship between the Association and individual unit owners, the Study Committee recommended a review of all of Article 3 – a formidable undertaking.

B. DETAILS OF OUR MEETING.

1. **Meeting Notice.** On December 10, 2020, Rachel Hewitt from the Chicago ULC staff circulated the following notice; I include it to make sure all of us are on the same page.

TO: The Drafting Committee to Amend or Revise the Uniform Common Interest Ownership Act and the Uniform Condominium Act
FROM: Rachel Hewitt

RE: Committee Meeting January 31-February 1, 2020

Madison – a Hilton Hotel
1177 15th St NW
Washington, DC 20005
(202) 862-1600

The Drafting Committee to Amend or Revise the Uniform Common Interest Ownership Act and the Uniform Condominium Act will meet Friday, January 31 and Saturday, February 1, 2020 at the Madison – a Hilton Hotel in Washington, DC. Meeting hours will be 9:00 a.m. to 5:00 p.m. on Friday and Saturday.

The ULC and ALI Joint Committee on the Uniform Commercial Code and Emerging Technologies, the Drafting Committee on Unregulated Transfers of Adopted Children, and the Drafting Committee on Disposition of Community Property Rights at Death will also meet this weekend.

Your meeting room will be posted on-site.

Registration for this meeting via our website is currently not available. To register for the meeting please respond directly to Rachel Hewitt at rhewitt@uniformlaws.org.

2. Expected Procedure / Outcome

After introductions of those in attendance and a general Q and A as to what we are about, I anticipate that we will begin a topic-by-topic consideration of the issues posed in the Study Committee's report. Unless the group feels otherwise – I am open to that possibility – I plan (with one exception) to move through the topics in the order they appear in the Report.

We will not have any draft text for consideration at this meeting, with the exception of alternative draft approaches to the issue of adverse possession. Our Reporter, Professor Jim Smith of the University of Georgia School of Law, expects to circulate that language before the meeting.

Otherwise, I expect that the Committee will generally discuss each of the 15 topics over our two-day meeting, and give guidance to the Reporter as to how the Committee would propose to address each of them.

Based on that on input, Prof. Smith would then prepare drafts for each topic for consideration at our Spring 2020 meeting and, thereafter, prepare materials for our First Reading at the July 2020 annual meeting in Wisconsin.

The one exception I propose to this plan is to defer consideration at this time of the ‘Super Lien’ provisions of UCIOA § 3-116, which is Topic 1, appearing on page 7 of the Report.

As those of you who have followed this topic over the past 40 plus years know, the Super Lien has been extremely controversial with the lending community, particularly Fannie Mae and Freddie Mac, which together are the principal entities comprising the secondary mortgage market.

Efforts over many years to identify compromise with those entities and representatives of homeowners’ associations have been uniformly unsuccessful. At the same time, despite lender opposition, many states have adopted statutes granting a limited priority of association liens for common expenses over first mortgages. Generally, those statutes either follow the text of UCIOA § 3-116 or, in several instances, substantially increase the dollar amount or frequency of that priority.

In my view, it would be a waste of the Drafting Committee’s time and energy to discuss this topic without some sense that the lending community’s opposition might be successfully addressed.

Quite recently, representatives of the secondary market have signaled a possible interest in considering whether some accommodation on this subject might be possible. While encouraging, it is premature to speculate on what such an accommodation might look like.

For that reason, I propose to defer consideration of amendments to UCIOA § 3-116 at this meeting.

APPENDIX

Excerpt from the 2019 Study Committee to Amend the Uniform Common Interest Ownership Act

Background to the Study The Uniform Common Interest Ownership Act (‘UCIOA’) deals comprehensively with the many complex issues posed in condominiums, cooperatives and planned communities – the three forms of real estate ownership in which multiple persons each own (or lease for a long term) a separate parcel of real estate and all those persons collectively own or lease other parcels of real estate in common.

The Uniform Laws Conference has devoted substantial attention and resources for more than 50 years to the regulation of these forms of shared real estate ownership. The minutes of the first meeting of this Study Committee describe that history:

In 1968, the NCCUSL began a project ...meant to accomplish for aspects of land law what the Uniform Commercial Code had done for sales of goods and secured transactions. The project expanded to include ...condominiums. In 1975, the entire product was brought before the NCCUSL at its Annual Meeting...(where) the entire project was split.... In 1975...the Uniform Land Transactions Act (was approved). [I]n 1976... the Uniform Simplification of Land Transfers Act (USLTA) (was approved).” Both ULTA and USOLTA...were ultimately withdrawn by ULC (Oct. 11, 2018 Study Committee. minutes, *fn* 2).

In 1976, ULC appointed a drafting committee to prepare a free standing Uniform Condominium Act and that Act was promulgated in 1978. Thereafter, ULC promulgated both a Uniform Planned Community Act in 1980 and a Model Real Estate Cooperative Act in 1981. The Uniform Common Interest Ownership Act (‘UCIOA’) was promulgated in 1982 and applies the concept of a ‘common interest community’ to all three forms of shared real estate ownership. ULC has subsequently promulgated amendments to UCIOA in 1994 and 2008. (*Id.*, at 1)

That statement of history failed to note that the Conference also adopted an amendment in 2014 to those UCIOA provisions dealing with the Association’s so-called ‘super lien’ in Section 3-116. Finally, in 2017 the Conference approved

amendments to the Uniform Condominium Act to conform that Act to the 1994, 2008, and 2014 amendments to UCIOA.

Creation of this Study Committee was proposed by the Joint Editorial Board for Uniform Real Property Acts in a letter dated June 12, 2018 from the JEB's Executive Director, Professor Wilson Freyermuth of the University of Missouri School of Law. Freyermuth wrote, in pertinent part:

UCIOA has been enacted in eight states. Although the ULC continues primarily to promote the adoption of UCIOA (rather than one of its three forebears), at this point, UCA or UCIOA are in effect in 20 states, and the provisions of UCA or UCIOA have also impacted the development of common interest ownership law even in states that have not enacted either UCA or UCIOA. Further, because nearly all modern residential real estate development occurs in the context of common interest ownership developments, the frequency of litigation involving common interest ownership continues to increase. For this reason, if the ULC is to preserve and/or expand the legislative footprint of UCIOA, the ULC has a significant interest in making sure that UCIOA undergoes periodic review and amendment so that any ambiguities in its language can be identified and clarified, and so that UCIOA will continue to reflect the "state of the art" in common interest ownership.

The Executive Committee thereafter approved the recommendation of Scope and Program and voted as follows: "A motion was made and approved to appoint a study committee to consider the need for and feasibility of revisions to the Uniform Common Interest Ownership Act."