

MEMORANDUM

**TO: SHELLY D. MERRITT, CHAIR
STATUTORY REVISIONS COMMITTEE**

FROM: STANLEY C. KENT

DATE: APRIL 29, 2009

SUBJECT: UNIFORM ACTS

At the conclusion of the SRC meeting on March 19th, there was a suggestion that we begin including the schedule of Uniform Acts in SRC minutes.

What follows is a summary organized by status of various uniform acts.

NEW UNIFORM ACTS

Uniform Probate Code - 2008 Amendments. As you know, this act is designed to address four key issues, to-wit: (i) cost of living adjustments; (ii) recognition of notarized wills as an alternative to holographic and attested wills; (iii) amendments to the intestacy and class gift provisions to recognize children by artificial reproduction technology; and (iv) provisions governing formation of wills. This act also adds definitions to make the UPC consistent with use of electronic signatures and records. **This act has been passed by the legislature and is awaiting the governor's signature.**

Uniform Principal and Income Act - 2008 Amendments. This act concerns technical amendments to the UPIA, sections 409 and 505. This act has been passed by the legislature and is on the way to the governor for signature.

Uniform Power of Attorney Act. **This act has been signed into law by the governor.**

DRAFTING COMMITTEES

Insurable Interests Relating to Trusts. This act is being drafted to address concerns regarding the purchase of life insurance by trusts and trustees as it relates to insurable interest law. The impetus for this act was the decision in *Chawla v. Transamerica Occidental Life Insurance Co.*, 2005 WL 405 (E.D. V.A. 2005), aff'd in part, vac'd in part, 440 Fed.3d 639 (4th Cir. 2006). The purpose of this act will be to make clear that trusts and trustees of ILITs, in certain circumstances, do have insurable interests notwithstanding *Chawla*. This act is being drafted for incorporation into the UTC but may also be enacted as a stand alone measure. **The committee's draft will be considered on first reading at the July, 2009 annual meeting.**

Uniform Statutory Trust Entity Act. The business trust format is often used as an alternative to other business entities such as corporations and limited liability companies. This is especially true in the case of mutual funds, ERISA pension funds, and various types of regulatory compliance trusts. This act will not apply to trusts used in estate planning. Note: The business law section is currently working on a Colorado act addressing business trusts. John DeBruyn has spoken frequently about this. **This act will be considered for final adoption by the Conference at the July, 2009 annual meeting.**

Business Organizations Act. The purpose of this committee is to draft common provisions of business organization law such as definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; and administrative powers of the Secretary of State; and incorporate Model Entity Transactions Act provisions on merger, interest exchanges, conversions, domestications and divisions.

Real Property Transfer on Death Act. This committee is drafting an act that will permit real property to be transferred outside of probate upon death by beneficiary designation similar to current beneficiary designations now used on securities accounts. At least 8 other states, including Colorado, now have such statutes. These are being studied in connection with drafting of the uniform act. **This act will be considered for final adoption by the Conference at the July, 2009 annual meeting.**

Partition of Inherited Real Property Act. The purpose of this committee is to draft a uniform act that will address the issue of tenancy-in-common land ownership. Tenancy in common is a type of joint ownership without right of survivorship. When there is no right of survivorship, the death of a tenant in common can trigger an action to partition the land to satisfy the deceased tenant's heirs. In a partition, the land is sold to satisfy tenant in common interests, often in a sale that does not meet market value. This committee will draft a new law to protect vulnerable landowners by providing a buy-out option; balancing factors for judges on partition of real property; sale price minimums if dispossession occurs; and a waiting period of up to three years for strangers to title. The committee's draft will be considered on a first reading at the July, 2009 ULC annual meeting.

Oversight of Charitable Assets Act. This committee will draft an act to address state oversight of charitable assets. The committee will focus on state attorneys general authority with regard to the protection of charitable assets, notice requirements, remedies, and principles to guide attorneys general in interstate and multi-state cases.

STUDY COMMITTEES

Mental Health Advance Directives. This study committee has been formed to consider whether it is necessary to prepare a uniform act on mental health advance directives. Depending on the results of the study, a drafting committee may be formed.

Marital and Pre-Marital Agreements. This study committee has just been formed to determine whether or not uniform legislation is advisable. Depending upon the results of the study, a drafting committee may be formed.