

## MEMORANDUM

**TO: CONNIE T. EYSTER, CHAIR  
STATUTORY REVISIONS COMMITTEE**

**FROM: STANLEY C. KENT**

**DATE: MARCH 4, 2010**

**SUBJECT: UNIFORM LAW COMMISSION PROJECTS OF INTEREST TO T & E  
SECTION**

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### ACTS PROMULGATED IN 2009

#### Uniform Collaborative Law Act

In recent years, the use of the collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory frame work is necessary in order to guarantee the benefits of the process and to further regulate its use. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. Additionally, the Act mandates that the collaborative agreement contains the disqualification of attorneys provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

#### Uniform Real Property Transfer on Death Act

This Act (URPTODA) 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.

#### Uniform Statutory Trust Entity Act

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust

entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEA validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing state laws into uniformity.

## **DRAFTING COMMITTEES**

### **Harmonization of Unincorporated Business Entity Acts**

This Committee will work to harmonize provisions of the various unincorporated business entity acts already promulgated by the ULC, such as the Uniform Partnership Act, the Uniform Limited Partnership Act, the Limited Liability Company Act, the Limited Cooperative Association Act, the Uniform Unincorporated Nonprofit Association Act, and the Uniform Statutory Trust Entity Act. The committee will present a draft for initial consideration at the July 2010 annual meeting and is expected to present its act for final approval in July 2011.

### **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. The committee will present a draft for initial consideration at the July 2010 annual meeting and is expected to present its act for final approval in July 2011.

### **Revisions to Uniform Law on Notarial Acts**

The purpose of this drafting committee is to revise the 1982 Uniform Law on Notarial Acts. The charge is limited to drafting revisions with respect to notary responsibilities, electronic recording, interstate recognition, and remedies. This act comes on for final approval in July 2010.

### **Marital and Premarital Agreements Act**

This newly formed drafting committee will draft an Act that provides standards and procedural requirements concerning the scope and enforceability of marital and premarital agreements between persons in legally recognized relationships. This project was jointly recommended by the Joint Editorial Boards on Family Law and on Trusts and Estates Law.

### **Insurable Interests Relating to Trust Act**

With input from the life insurance industry, this committee has drafted an act to address concerns regarding the purchase of life insurance policies by trustees as it relates to insurable interest law. Life insurance trusts are a standard estate planning tool because proceeds of an irrevocable life insurance trust are not subject to estate taxes. Recent case law has raised the possible need for

uniform law on insurable interests. The scope of the project is narrow and might be drafted within the Uniform Trust Code or as a free-standing act. This Act will be presented for final approval in July 2010.

#### 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. This Act will be presented for final approval in July 2010.

### **STUDY COMMITTEES**

#### Mental Health Advance Directives

Mental health advance directives are a special type of advance directive often used by persons who have been diagnosed with serious mental disorders. This committee will investigate the need for and feasibility of drafting and enacting uniform state legislation concerning the use and regulation of mental health advance directives.

### **ENACTMENT STATUS**

Uniform Prudent Management of Institutional Funds Act  
44 states

Uniform Principal and Income Act - 2008 Amendments  
17 states

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act  
13 states

Uniform Anatomical Gift Act  
38 states