

QUARTERLY REPORT

October 2016

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Features

President's Message
Richard T. Cassidy

Spotlight on
UPHPA in South Carolina

Update on UCCCA

New Drafting and Study
Committees

Acts Approved in 2016

In Every Issue

Legislative Update

ULC Member and
Staff News

President's Message

Richard T. Cassidy, President



The ULC's fall meeting season is now underway. Three drafting committees, along with the Style Committee as well as the Legislative Council, have already held meetings.

The Style Committee, chaired by Commissioner Lee Yeakel, met in Chicago the weekend of Sept. 8-11, and worked on the seven acts which were approved at the annual meeting in Stowe. We hope to have the final, styled acts, with prefatory note and comments, completed by early October.

The Legislative Council, chaired by Commissioner Ryan Leonard, met on Sept. 24. The Council's fall meeting is devoted to reviewing the 2016 legislative record, and most importantly, getting ready for the 2017 legislative year.

The three drafting committees that kicked off our meeting season include the [Criminal Records Accuracy Drafting Committee](#). That committee is dealing with issues that directly affect the 70 to 100 million Americans who have some

kind of a criminal record, as well as the entire law enforcement community, and indirectly, all Americans, as we all have an interest in a fair and effective criminal justice system. This committee is drafting an act that seeks to improve the accuracy of criminal records, and is scheduled to complete its work in July 2017.

The drafting committee to revise the [Uniform Principal and Income Act](#) has also met. This committee is revising the UPIA, last comprehensively revised in 1997. Much has changed in the past two decades: modern trust law requires a trustee to invest for the best possible return and simultaneously to treat income and remainder beneficiaries impartially. In order to fulfill these duties, a trustee should be able to make adjustments between income and principal, or to make a unitrust election. The drafting committee will undertake numerous revisions to the UPIA, and will have a draft ready for first read in July 2017.

The newly appointed drafting committee to [Revise UCC Articles 1, 3, and 9](#) has met. That committee will draft revisions to Articles 1, 3 and 9 of the UCC to provide the substantive commercial law rules to support an electronic registry for residential mortgage notes on a national basis. It is a joint committee comprised of members of the ULC and the American Law Institute, and will have a draft ready for first read in July 2017.

Coming in October, another very busy round of meetings.

The committee to revise the [Guardianship and Protective Proceedings Act](#) will revise selected portions of the UGPPA to update the act. The drafting committee on the [Non-Parental Child Custody and Visitation Act](#) is drafting procedures and standards for non-parents to obtain custody and visitation of children. The act balances the interests of the child, parents, and non-parents and is designed to be consistent with the U.S. Supreme Court's opinion in *Troxel v. Granville* (2000). The [Model Veterans' Court Act](#) drafting committee is developing model state legislation that will provide guidelines for the establishment of veterans' courts while permitting substantial local discretion necessary to accommodate particular circumstances in different communities. All of these committees are scheduled to complete their work in July 2017.

The [Regulation of Virtual Currency Businesses Act](#) drafting committee is drafting a state law framework to provide rules to regulate virtual currency businesses, including licensing requirements, reciprocity, consumer protection, cyber security, anti-money laundering, and supervision of licensees. The committee is scheduled to complete its work in July 2017.

The drafting committee to [Revise the Uniform Parentage Act](#) is updating the UPA, which was last revised in 2002, to conform with the recent Supreme Court decision *Obergefell v. Hodges*. The committee is also updating provisions of the act dealing with same-sex couples, surrogacy, and the right of a child to genetic information. The committee is scheduled to complete its work in July 2017.

The drafting committee on a [Directed Trust Act](#) is drafting an act that will better respond to contemporary estate planning and asset management. It is increasingly common practice to name a trustee that is given custody of the trust property, but with one or more of the investment, distribution, or administrative functions of the trusteeship to a person who is not formally designated as a trustee. This is the problem of divided trusteeship. Much uncertainty

now exists about the fiduciary status of nontrustees who have control over a function of trusteeship. The committee is scheduled to complete its work in July 2017.

And these meetings do not include the monthly "virtual" meetings of the Drafting Committee on [Limited Liability Company Protected Series Act](#). That committee, instead of holding an in-person meeting, is conducting a series of monthly meetings via Adobe Connect. These virtual meetings allow all participants to participate via computer or smart phone, and be seen via web-cam. This format allows the chair Steve Frost to control the meeting and direct the conversation. So far, this effort seems to be a great forum for productive discussions, and the committee will continue meeting "virtually" until July 2017, when the act is scheduled for final approval.

And that's just a brief description of a few months in the life of our drafting committees!

The ULC Blog

Please don't forget that you can also follow our projects and other ULC developments via our blog, ULC Updates. You'll find the blog – listed as "ULC Updates" – on the ULC's website, under the "News" tab. A direct link to the blog can be found [here](#). The blog contains updates on ULC committee work, as well as other ULC news. Once you've accessed the Blog, you will have the opportunity to sign up to be notified of each new post by email.

We hope that this will expand the ability of members to stay informed and to weigh in on issues between ULC committee meetings.

If you are aware of information relating to the ULC that our members might want to know, please feel free to file a proposed post. Send your post to Katie Robinson in the Chicago office, who will edit the ULC Blog, via email to krobinson@uniformlaws.org. The ULC reserves the right to edit posts or to refuse to post material that is deemed inappropriate.



South Carolina Governor Haley Signs the “Clementa C. Pinckney Uniform Partition of Heirs Property Act” into Law

On September 22, South Carolina Governor Nikki Haley honored the memory of Senator Clementa C. Pinckney by signing a bill that was near and dear to his heart. HB3325, the Clementa C. Pinckney Uniform Partition of Heirs Property Act, will allow South Carolina families of modest means to protect their land from real estate speculators.



Ed Mullins (left), South Carolina Uniform Law Commissioner, Professor Thomas Mitchell, and South Carolina Rep. James E. Smith, Jr., primary sponsor of the UHPA in the South Carolina House of Representatives, with South Carolina Gov. Nikki Haley for the ceremonial signing of the Clementa C. Pinckney Uniform Partition of Heirs' Property Act.

“Heirs property” is land that has been passed down through generations of the same family, often without any formal change of title. Although the heirs may believe their inheritance is safe, heirs property is vulnerable to takeover by speculators who buy a single share from one of the heirs, and then file a partition action in court, usually forcing the rest of the family to sell their interests at prices below the true market value. African-American families living in the low country of South Carolina have been hit especially hard, resulting in the cumulative loss of millions of dollars in family wealth.

HB3325 gives family members the right to buy out the interests of outside speculators. If the family chooses to sell their property, the law requires an independent appraisal and an open-market sale to ensure the heirs receive a fair price.

HB3325 is based on the Uniform Partition of Heirs Property Act, approved by the ULC in 2010 and enacted in eight states: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, and South Carolina.

Uniform Law Commissioners Ed Mullins, Jr. and Clay Walker represented South Carolina on the Uniform Law Commission in the passage of the bill. Professor Thomas Mitchell now of Texas A&M University School of Law, reporter for the Uniform Act, was actively engaged in its promotion, as was Sue Berkowitz of S.C. Appleseed and Josh Walden of the Center for Heirs Property Preservation. Representative James Smith (D), Senator Wes Hayes (R), and Gerald Mallory (D) led the passage in the House of Representative and the Senate respectfully.

HB3325 was renamed the Clementa C. Pinckney Uniform Partition of Heirs' Property Act in honor of the late pastor and Senator Clementa Pinckney, who was killed in the 2015 Emanuel African Methodist Episcopal Church shooting in Charleston.

If you would like further information on the UHPA, please contact ULC Chief Counsel Ben Orzeske at borzeske@uniformlaws.org.

Update on the Uniform Collateral Consequences of Conviction Act and the availability of the National Inventory of the Collateral Consequences of Conviction (NICCC) to the states

In September, the U.S. Departments of Justice and Labor made two major awards to the Council of State Governments (CSG) to support the development of resources on collateral consequences and second chance programs.

The first award is a \$4.6 million contract awarded by the Labor Department for the development of the National Clean Slate Clearinghouse, a federal initiative intended to “build capacity for legal services needed to help with record-cleaning, expungement, and related civil legal services.”

The second award is a \$5 million grant from the Bureau of Justice Assistance to support the ongoing work of the National Reentry Resource Center (NRRC), a project developed by CSG in 2011 with federal funding earmarked in the Second Chance Act of 2007. This award will bring the National Inventory of the Collateral Consequences of Conviction (NICCC) into the NRRC fold. The NICCC is a comprehensive interactive catalog of collateral consequences and relief mechanisms that was developed between 2011 and 2014 by the American Bar Association under a grant from the National Institute of Justice. As a part of the NRRC, the NICCC’s maintenance and expansion will continue. Free of copyright restrictions, its data can now be incorporated into many of the reentry resources that the NRRC already provides.

For further information, please go to the ULC website’s [UCCCA](#) page, or visit the Collateral Consequences Resource Center [here](#).

A link to information about NICCC availability is here: <http://ccresourcecenter.org/2016/09/23/major-new-federal-awards-support-second-chance-advocacy/>

If you would like further information on the UCCCA, please contact ULC Legislative Counsel Brian Lewis at blewis@uniformlaws.org





New Drafting and Study Committees

At its 2016 Annual Meeting in Stowe, Vermont, the ULC Executive Committee authorized the appointment of one new drafting committee and three new study committees.

The new drafting committee is:

Drafting Committee on Unauthorized Disclosure of Intimate Images

This drafting committee will create civil remedies relating to the unauthorized disclosure of intimate images. The inherent potential for unauthorized disclosure of intimate images over the internet and other technologies present a problem that may transcend state boundaries. Only nine states have enacted laws that provide a private right of action against the person making the unauthorized posting. The intentional public dissemination of intimate images without the subject's consent is not clearly a tort in some jurisdictions.

The new study committees are:

Study Committee on Installment Land Contracts

This study committee will study the need for and feasibility of state legislation on installment land contracts, including the nature of the rights and responsibilities held by a purchaser and a seller under an installment land contract, and the remedies available to the seller following purchaser default. Installment land contracts are effectively a form of mortgage substitute. In economic substance, the installment land contract is functionally comparable to a purchase money mortgage in which the seller provides financing of the purchase price. A uniform or model law on the characterization and enforcement of installment land contracts could provide clarity in an area of law and practice with great practical significance for homebuyers who cannot qualify for institutional mortgage financing.

Study Committee on an Anti-SLAPP Act

This study committee will study the need for and feasibility of drafting a uniform or model Anti-SLAPP law. The acronym SLAPP stands for Strategic Lawsuit Against Public Participation, meaning a lawsuit of dubious merit brought for the purposes of silencing, intimidating, or retaliating against a defendant who has done nothing more than exercise their lawful rights to free speech and freedom to petition or similar rights. Anti-SLAPP laws seek to protect such rights by allowing such a defendant to make a motion at the outset of the litigation for an expedited review by the Court, with the burden shifted to the plaintiff to show that the lawsuit is meritorious and that the plaintiff will likely prevail at trial.

Study Committee to Amend the Revised Uniform Law on Notarial Acts

This study committee will study the need for and feasibility of further amendment to the Revised Uniform Law on Notarial Acts to authorize American notaries to perform notarial acts where the individual appears before the notary by audio, video, or through the use of other technologies.

New Acts Approved in 2016

At its 125th Annual Meeting in Stowe, Vermont, in July, the ULC approved seven new acts or amendments to acts, including:



Uniform Employee and Student Online Privacy Protection Act:

The growing use of social media has implications in both employment and educational contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers' access to employees or prospective employees' social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions' access to students' or prospective students' similar online accounts.

Uniform Family Law Arbitration Act:

States' laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act, though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; and protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states.

Revised Uniform Unclaimed Property Act:

The ULC first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors.

Uniform Unsworn Domestic Declarations Act Uniform Unsworn Declarations Act:

The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made outside the United States. This new Uniform Act permits the use of unsworn declarations made under penalty of perjury in state courts when the declaration was made inside the U.S. States that have already enacted the Uniform Unsworn Foreign Declarations Act (UUFDA) should enact this act. For those states that have not yet enacted the UUFDA, a new act – the Uniform Unsworn Declarations Act – will be available that will essentially combine both the UUFDA and the Uniform Unsworn Domestic Declarations Act into one comprehensive act.

Uniform Wage Garnishment Act:

Currently, every state has a different wage garnishment law and process. This means that employers who do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If employers make processing errors calculating garnishments, they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms.

Revised Uniform Law on Notarial Acts: Amendment on Foreign Remote Notarization

The Amendment to the Revised Uniform Law on Notarial Acts authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio- and video-technologies for real-time communication, and requires the notary to record the interaction. It authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record must not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign state.

Legislative Update

The ULC's 2016 legislative year has now come to an end. The ULC officially closed its books on September 30, 2016, with a final tally of 66 enactments and 174 introductions. The Revised Uniform Fiduciary Access to Digital Assets Act led all acts with 19 enactments; at this time more than 25 states have RUFADAA on their legislative plans for 2017. Wisconsin led all states with four enactments this past year, while six more states – Florida, New Mexico, South Carolina, the U.S. Virgin Islands, Washington, and Wyoming – each had three enactments.

Legislative Council

The Legislative Council recently held its annual fall meeting to not only review the 2016 legislative results, but also to review plans for 2017 and review new acts. In 2017, all states will be in session. At this time, nearly every state has submitted its plans for 2017, and the Council members and legislative staff will follow up over the next few months with the state delegations on the progress of those plans. There are currently more than 300 planned introductions for 2017.

Continuing with procedures that the Council adopted last year, the legislative staff will again create and/or update the information kits for every act on state plans for 2017 (which is more than 50 acts), and will provide those kits via email to each legislative liaison.

UIFSA

On September 7, the United States deposited its instrument of ratification for The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The Convention will enter into force for the United States on January 1, 2017. The 2008 Amendments to the Uniform Interstate Family Support Act serve as the implementing language for the Convention throughout the states, and will improve the enforcement of American child support orders abroad. Every state has enacted the 2008 Amendments to UIFSA. The ratification of the Convention is the last step to establishing uniform, simple, inexpensive procedures for the processing of international child support cases, which benefits children and those responsible for their care. Ratification of the Convention means that more children residing in the United States will receive the financial support they need from their parents, whether their parents reside in the United States or in a foreign country party to the Convention. Secretary of State John Kerry announced the ratification with a [statement](#) on Sept. 7.



From left, Michigan Uniform Law Commissioners Kieran Marion, James J. White, and Sen. Tonya Schuitmaker preparing to testify in Lansing on uniform acts pending in Michigan.

Work Continues in Some States

While most states have adjourned for the year, there are a few states still in session, and work on uniform acts continues in those states. For instance, Michigan commissioners recently traveled to Lansing to testify on the Uniform Electronic Legal Material Act as well as the Uniform Voidable Transactions Act before the House and Senate Judiciary Committees.

ULC Member & Staff News

New Life Members

At the ULC's 125th Annual Meeting in Stowe, Vermont, three commissioners were awarded life membership. Life members are commissioners who have served as commissioners for at least 20 years, or who have served as President of the ULC.

Congratulations to the newest Life Members!



Harriet Lansing
Minnesota



Charles A. Trost
Tennessee



James White
Michigan

Newly Appointed Members

The following members have been appointed since June 1, 2016

Emma Buck (Associate Member), Virginia

William Quinlan, Illinois (Reappointed)

Daniel Riemer, Wisconsin

Annette Kingsland Ziegler, Wisconsin

Changes in Chicago

We are pleased to announce that in late August, Mary Shelly joined the ULC staff as the newest Uniform Law Foundation Fellow. The ULF Fellow's program, which began in 2014, is funded by the Uniform Law Foundation. The primary responsibility of a ULF Fellow is to undertake major research projects that support the work of the ULC, including providing research on potential ULC projects before the Scope and Program Committee.

Mary is a graduate of the University of Michigan, and received her J.D. from the University of Michigan Law School. Prior to joining the ULC, she was a Research Assistant with the American Law Institute, working with Jill Horwitz and Marion Fremont-Smith, reporters for the Restatement of the Law of Charitable Nonprofit Organizations. She was also an associate with the Urban Institute, researching issues relating to charity regulation with Senior Fellow Cindy M. Lott. You can reach Mary at 312-450-6610, or email at mshelly@uniformlaws.org.

New Member of the ULC Family!



The ULC family has grown once again! Brian Lewis, ULC Legislative Counsel, and his wife Karmel recently had a baby boy. Cameron Thomas Lewis was born on Sept. 5, 2016, and weighed 6 pounds and 15 ounces. The parents and baby Cam, along with big sister Kendall, are doing just fine. Brian is on family leave until October 13, but is accessible by email (blewis@uniformlaws.org) while he's away from the office. Congratulations Brian!



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