

ULC Acts (And Amendments To ULC Acts) Completed In 2008

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UNIFORM LAW COMMISSION

The Revised Uniform Unincorporated Nonprofit Association Act

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996), addressed a key problem in common law – that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many characteristics of a business partnership. The 1996 Uniform Act reformed the common law in three basic areas – authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Act improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The revised act extends nature of unincorporated nonprofit associations as distinct entities by allowing qualified association to exist in perpetuity where necessary or convenient to carry out its purposes. The RUUNAA distinguishes itself from its predecessor in that it greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, the RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, the RUUNAA modernizes the 1996 Uniform Act by addressing popular internal and external issues that would face an unincorporated nonprofit association today. Significantly, the project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adopt of the revised act will have the added benefit of functional cross-border harmonization.

Uniform Unsworn Foreign Declarations Act

The Uniform Unsworn Foreign Declarations Act, promulgated by the Uniform Law Commission at its Annual Meeting in 2008, affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and who, therefore, may not have ready access to a notary. Under the Act, unsworn declarations could not be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the Act provides a model form that unsworn declarations must substantially follow. This project was initiated at the request of the ABA, which referred this issue to NCCUSL in Report 110, adopted by the House of Delegates on February 13, 2006.

2008 Amendments to the Uniform Common Interest Ownership Act (and) the Uniform Common Interest Owners' Bill of Rights Act

The 2008 amendments to the Uniform Common Interest Ownership Act (UCIOA) update and revise the 1994 version of the act. The original 1982 version of UCIOA had previously been adopted in five jurisdictions, and the 1994 revised version in two. This act contains provisions for the formation, management, and termination of any common interest community, including condominiums, planned communities, and real estate cooperatives.

The 2008 UCIOA amendments seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. Importantly, UCIOA gives greater flexibility to association governing boards with regard to enforcement of the declaration, bylaws, and rules of the

association. The 2008 amendments also modernize UCIOA with respect to electronic commerce and practice.

In addition to amendments to UCIOA, a new Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA) was also drafted that can be enacted by states as part of UCIOA or as a stand-alone act. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 act.

2008 Amendments to the Uniform Interstate Family Support Act

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments, approved by the Uniform Law Commission, serve as the implementing language for the Convention within U.S. States and Territories.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction by 2010, as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments by 2010 will result in the loss of this important federal funding.

2008 Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC), which is fully adopted in 19 states (and partially adopted as various stand-alone acts in many others) provides an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records, and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate inheritance rights to a broader group of potential heirs based on the existence of a “parent-child relationship” as defined therein. This last change significantly modernizes the UPC’s treatment of non-marital children (and children of new forms of marriage), adoptive children, and children of assisted reproduction. Finally, the process and standards under which a will can be reformed or corrected are clarified to be consistent with the Restatement (Third) of Property: Wills and other Transfers, and the Uniform Trust Code.

2008 Amendments to the Uniform Principal and Income Act

The Uniform Law Commission, in July 2008, approved a set of two amendments to the Uniform Principal and Income Act that update the act to current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy a 2006 IRS ruling regarding marital deductions. The new language comports with the ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to Section 505, which addresses the amount of money which must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.