

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2011

I. INTRODUCTION

The West Virginia Commission on Uniform State Laws submits this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code, § 29-1A-4. Since the establishment of the West Virginia Commission on Uniform State Laws, its members have regularly and actively participated in the Uniform Law Commission (ULC) as required by Section 29-1A-4 of the West Virginia Code. The ULC was formerly known as the “National Conference of Commissioners on Uniform State Laws” and frequently referred to as the “National Conference” and “NCCUSL.” From the Uniform and Model Acts promulgated by the ULC, the West Virginia Commissioners have selected those which they think would be most immediately beneficial to the State of West Virginia and have worked with the state Legislature for their passage. Over the years, the West Virginia Legislature has enacted 89 Acts drafted by the Uniform Law Commission.

II. HISTORY OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of Commissioners “to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.” In that same year, the American Bar Association adopted a resolution recommending that each state provide for Commissioners to confer with the Commissioners of other states on the subject of uniformity of legislation on certain subjects. In August of 1892, the first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association.

West Virginia joined the National Conference in 1909, 102 years ago. By 1912, every state was participating. Over the years, the National Conference has steadily increased its contribution to state law and has attracted some of the best of the profession. In 1912, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Justices of the Supreme Court of the United States (Louis Brandeis, Wiley Rutledge, and William Rehnquist) have been members. Legal scholars have served in large numbers. Examples are Professors Wigmore, Williston, Pound, and Bogart. This distinguished

body has guaranteed that the projects of the National Conference are of the highest quality and are enormously influential upon the process of the law.

Over its 119 years, the Uniform Law Commission has developed into a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

III. THE OPERATION OF THE NATIONAL CONFERENCE

The ULC is convened as a body once a year. It meets for a period of eight days, usually in late July or early August. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts of statutes which are considered at the annual meeting. The various drafts are accessible on the Internet at www.nccusl.org. At each annual meeting, the latest drafts of the drafting committees are read and debated. Normally, each Act is considered over a minimum period of two years. No Act becomes officially recognized as a Uniform Act until the ULC is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the state delegations, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee assists the State Commissioners in their work with their state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only fifteen people.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. The Uniform Commercial Code is a continuing joint project of the ULC and the American Law Institute. Liaison and activities may be conducted with other associations as interests and activities necessitate.

IV. ACTIVITIES OF THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

A. Annual Meeting of the Commission

The West Virginia Commissioners are attorney Richard E. Ford of Lewisburg, Judge Frederick P. Stamp, Jr., of Wheeling and Professor Vincent P. Cardi of Morgantown who succeeded John L. McLaugherty of Charleston. Richard Ford is Chairperson of the

West Virginia Commission and Frederick Stamp, Jr., is Secretary. The Commissioners had their annual meeting in July 2010.

B. Uniform Law Commission Offices Held by Commissioners from West Virginia and Committee Memberships

Judge Fred Stamp was until recently a Trustee of the Uniform Law Foundation.

Richard Ford is a member of the Legislative Council and is in his last year as Regional Co-Chairman for West Virginia, Virginia, the District of Columbia, Maryland, and North Carolina. He has also served for two years on the Executive Committee and has served for two years as Secretary of the Uniform Law Commission. Vincent Cardi is the Legislative Liaison Member for West Virginia.

Former Commissioner John L. McClaugherty served two years as Chairman of the Executive Committee and served two years as President of the ULC, an honor for lawyers second only to the Presidency of the American Bar Association.

The commissioners from West Virginia serve on several committees of the ULC. Richard Ford serves on the Committee on Review of Conference Act and the Committee on Membership and Attendance. Judge Fred Stamp was the Chairperson of the Study Committee on Conflicts of Laws-Limitations Act, has served on the Scope and Program Committee, the Drafting Committee for the Correction or Clarification of Defamation Act, and the Uniform Athlete Agents Act. He presently serves on the Committee on Review of Conference Acts and the Committee on Federalism and State Law. He is also a member of the drafting committee for the Uniform Oversight of Charitable Assets Act.

Vincent Cardi served on the Study Committee for Regulation of Medico-Legal Death Investigations and on the Study Committee on Notice and Repair of Construction Defects. He is presently a member of the Drafting Committee on a Certificate of Title Act for Vessels, and as such, met with the drafting committee in Chicago in November 2009 and March and October 2010, and March 2011.

C. Work of the West Virginia Commissioners

The tasks of the three commissioners, among other duties that arise as their Conference work demands, are to:

- (1) Meet at least once every two years as required by § 29-1A-3 of the West Virginia Code.
- (2) Participate as members of the Uniform Laws Commission as required by § 29-1A-4 in drafting Uniform and Model State Acts and other functions of the ULC.
- (3) Work with the West Virginia Legislature's Joint Legislative Commission on Interstate Cooperation by

- a. reporting on the work of the ULC,
 - b. recommending to this Joint Legislative Commission Uniform and Model Acts produced by the ULC that the West Virginia Commissioners think the Commission should introduce in the Legislature for enactment, and
 - c. working with this Joint Legislative Commission in advising and assisting the Commission in considering these Uniform and Model Acts.
- (4) Testify on the Uniform and Model Acts that have been introduced by the Joint Legislative Commission (or by other legislative committees) before the Judiciary Committee or other committees that have taken up these acts when needed, and otherwise assist the legislature in gathering information on and understanding these acts.
 - (5) Make this annual report about the activities of the West Virginia Commission on Uniform State Laws to the Legislature as called for under § 29-1A-4 of the statute which creates the Commission.

V. THE WEST VIRGINIA COMMISSIONERS AND THE ANNUAL CONFERENCE OF THE UNIFORM LAW COMMISSION

Commissioners Ford, Stamp, and Cardi attended the 119th Annual Conference of the Uniform Law Commission in July of 2010, where they worked with other commissioners considering Uniform and Model Acts being presented to the Conference by various committees of state commissioners who have been working on the particular acts. At the meeting, the work of the Conference focused on the following:

- (1) discussing areas of social, commercial, and legal concerns which appear to be ripe for new state legislation, and deciding whether to appoint committees to study and make recommendations as to whether new state statutes should be drafted to address these problem areas;
- (2) deliberating on presentations from existing study committees as to whether a permanent drafting committee should be appointed to actually draft Acts on topics which have been studied over the last several years;
- (3) examining line-by-line preliminary drafts of Acts produced by existing drafting committees on various problems, and debating the policy implications of these drafts, the language of the drafts, and other matters surrounding these works in progress; and
- (4) participating in line-by-line readings of final drafts which are being presented to the conference for approval by the drafting committees.

Once the commissioners approved the final drafts they sent the resulting Uniform and Model Acts to the American Bar Association for its review.

The leadership of the ULC recommended to the commissioners attending the conference a list of “targeted acts,” which are Uniform and Model Acts which they think are particularly ripe for presentation to state legislatures.

Throughout the conference, special conference committees and subcommittees met regularly during the morning, day, and evenings on particular tasks involving conference business.

Throughout the year, committees of commissioners met, and are continuing to meet, to study problem areas and to draft Model Acts.

A. Creation of New Study Committees

At this year’s conference and at the winter meeting of the Executive Committee, two new study committees were appointed to consider subjects for possible future drafting. These include:

(1) Study Committee on a Revision of the Uniform Residential Landlord and Tenant Act.

This committee will consider and make recommendations concerning the need for and feasibility of revising the Uniform Residential Landlord and Tenant Act. The committee will, in particular, consider whether to recommend that the Act be amended to include provisions on the handling and status of security deposits, and possible rights or remedies under a lease for a tenant who is a victim of domestic violence. The committee also will consider the feasibility and enactability of a broader revision of the URLTA.

(2) Study Committee on an Act on Prevention of and Remedies for Human Trafficking.

This committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act that provides sanctions against those who engage in human trafficking and that provides remedies for and assistance to victims of human trafficking.

B. Creation of New Drafting Committees

Drafting committees composed of commissioners, with participation from observers, advisors and reporter-drafters, have been meeting and will meet throughout the year. Tentative drafts of the laws are not submitted to the entire Conference until they have received extensive committee consideration. Proposed Acts are subjected to rigorous examination and debate in at least two annual meetings before they become eligible for designation as Conference products.

This year two new drafting committees were created to begin working on new Acts. These are:

(1) **Drafting Committee on Asset Freezing Orders.**

This committee will prepare an act that provides authority for the granting of *in personam* orders that prevent a defendant in an action pending in one jurisdiction from dissipating assets that the defendant holds in another jurisdiction and that are necessary to ensure that assets are available to ensure payment of a judgment granted in the other jurisdiction. The committee will, among other matters, consider provisions that should be included in the act to provide appropriate protection for the interests of defendants in such actions. The act shall exclude coverage of asset freezing orders against consumer debtors or in domestic relations matters, and other similar matters.

(2) **Drafting Committee on Implementation of Hague Convention on Protection of Children.**

This committee will draft uniform state legislation that will implement the recognition and enforcement provisions of the Hague Convention on the Protection of Children. The committee will be appointed upon confirmation that the Secretary of State has authorized United States' signature on the Convention.

C. **Acts Reviewed and Debated at the Conference**

Commissioners Ford, Cardi, and Stamp spent six days at the annual meeting with the commissioners from other states discussing the following evolving acts, and where drafts have been produced, reading and vigorously debating them for possible final consideration in the next few years:

(1) **Certificate of Title for Vessels Act**

The purpose of this act is to establish a certificate of title system for boats. Many states do not have certificate of title laws governing watercraft, and those that do have considerable differences in terms. The drafting committee is coordinating its work with the U.S. Coast Guard and developments concerning the Coast Guard's vessel identification and documentation systems.

(2) **Harmonization of Business Entity Acts**

The purpose of this act is 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.

- (3) **Oversight of Charitable Assets Act**
The purpose of this act is to address state oversight of charitable assets. The focus is 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.
- (4) **Authentication and Preservation of State Electronic Legal Materials Act**
The purpose of this act is to provide guidance to states on authenticating and preserving state electronic legal materials.

VI. NEW ACTS APPROVED BY ULC AND TARGETED ACTS

A. Approval of New Acts and Amendments

At the 2010 meeting, the Commissioners approved the following new Acts and Amendment to Acts for presentation to state legislatures.

- (1) The **Uniform Military and Overseas Voters Act** will simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient. The Act covers all military personnel or their dependents, as well as U.S. citizens residing outside the United States who are unable to vote in-person. This latter category includes a class of voters not covered by the federal law in this area: U.S. citizens born overseas who have reached voting age without having resided in the United States. The Act applies to all statewide and local elections, as well as to all federal elections, both primary and general (and also special and run-off elections).
- (2) The **Uniform Commercial Code (UCC) Article 9** governs secured transactions in personal property. UCC9 was substantially revised in 1999 and adopted in all states. The 2010 Amendments to UCC9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC9. Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement.
- (3) The **Uniform Electronic Recordation of Custodial Interrogations Act** addresses the use of audio and/or videotaping to record law enforcement officers' interviews of criminal suspects who are in custody. As drafted, the Act mandates audio recordings of interrogations only, leaving to the discretion of the various states and law enforcement agencies to require both audio and video recording of custodial interrogations.

- (4) The **Uniform Collateral Consequences of Conviction Act** addresses the various penalties and disqualifications that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, etc. The provisions in the act are largely procedural, and designed to rationalize and clarify policies and provisions which are already widely accepted by the states. The Act includes provisions to ensure that defendants are aware of the existence of collateral sanctions before sentencing. Amendments to the Act were approved addressing the recent U.S. Supreme Court decision in *Padilla vs. Kentucky*.
- (5) The **Uniform Faithful Presidential Electors Act** provides a statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state. The Act has a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge, effectively constituting resignation from the office of elector. The Act provides a mechanism for filling a vacancy created for that reason or any other.
- (6) The **Uniform Partition of Heirs Property Act** addresses 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 Act protects 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.
- (7) The **Uniform Protection of Genetic Information in Employment Act** comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the context of employment. The Act allows individuals to control the privacy of their genetic information, preventing the misuse of that information.
- (8) The **Revised Uniform Law on Notarial Acts** is an update of the 1982 act of the same name. The revision updates the provisions on notary responsibilities, electronic recording, interstate recognition, and remedies. The revision adapts the prior law to accommodate the societal and technological changes that have occurred in the past 30 years and is designed to make the Act more responsive to current transactions and continuing technological change.

- (9) The **Revised Model State Administrative Procedure Act** is an update of the 1980 act of the same name. The 1980 Act provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. The Revision updates the act to recognize electronic communications and other state procedural innovations since the Act was originally promulgated.
- (10) The **Insurable Interests Amendment to the Uniform Trust Code** has been drafted to address concerns regarding the purchase of life insurance trusts 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.

B. Targeted Acts

The Executive Committee of the ULC listed fourteen Uniform and Model Acts as “Targeted Acts,” Acts that they think are especially timely for state adoption this year. Following is the list of 2010-11 Targeted Acts not yet adopted in West Virginia.

- (1) **Uniform Collaborative Law Act (2009)**

The Uniform Collaborative Law Act standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of 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 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.

UCLA enacted in one state: Utah.

(2) Uniform Commercial Code Article 9 Amendments (2010)

The Uniform Commercial Code (UCC) Article 9 governs secured transactions in personal property. UCC9 was substantially revised in 1999 and adopted in all states. The 2010 Amendments to UCC9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC9. Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. *UCC9 2010 enacted in no states.*

(3) Uniform Emergency Volunteer Health Practitioners Act (2007)

The Uniform Emergency Volunteer Health Practitioners Act, first approved in 2006, allows state governments to give reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. Amendments to UEVHPA were approved in 2007 to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill or die while delivering emergency services. With regard to civil liability, the act provides two options. In "Alternative A," a volunteer health practitioner is not liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner's acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, represents an intentional tort; involves a breach of contract, is a claim by a host or deploying entity, or is an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle. "Alternative B" utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at \$500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regard "Good Samaritan" liability protection and/or each state's implementation of federal law on this subject. The 2007 Amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers' compensation laws of the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state's workers' compensation system. The act directs enacting states to coordinate implementation of this coverage with other enacting states. *UEVHPA has been enacted in 13 states: Arkansas, Colorado, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, New Mexico, North Dakota, Oklahoma, Tennessee, U.S. Virgin Islands, and Utah.*

- (4) **Uniform Foreign-country Money Judgments Recognition Act (2005)**
This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment debtor. This revision continues the basic policies and language of the 1962 Act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 Act revealed in the case law. For example, the 2005 Act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 Act. The 2005 Act has statutes of limitations provisions not found in the 1962 Act at all. The result is a more comprehensive Act and better response to the conditions of international trade. *The UFCMJRA has been enacted in 13 states: Colorado, Hawaii, Idaho, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, and Washington.*
- (5) **Uniform Interstate Depositions and Discovery Act (2006)**
The Uniform Interstate Depositions and Discovery Act provides efficient and inexpensive procedures to enable a party in one state to effectuate depositions of witnesses, discover documents or inspect premises in other states. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena must comply with the rules of the state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state. The goal of the Act is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation. *The UIDDA has been enacted in 16 states: California, Colorado, Delaware, District of Columbia, Idaho, Indiana, Kansas, Kentucky, Maryland, Montana, New Mexico, New York, South Carolina, Tennessee, Utah, Virginia.*
- (6) **Uniform Limited Liability Company Act (2006)**
The Uniform Limited Liability Company Act (2006) (ULLCA 2006) replaces the Uniform Act of 1996. A limited liability company (LLC) is an entity that shares the limitation of liability characteristic of a

corporation with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, a limited liability company does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made limited liability companies very popular throughout the U.S. Like the 1996 Act, ULLCA 2006 authorizes the filing of a certificate of registration to create an LLC. The terms of the Act, including fiduciary obligations and contractual obligations, govern the relationships between members and between members and managers, if there are designated managers. Most of the rules, as in the 1996 Act, are default rules. Express provisions of the operating agreement prevail over most statutory rules. These are some of the changes the ULLCA 2006 makes over the 1996 Act: the 2006 Act leaves the designation of a manager-managed LLC to the terms of the agreement rather than the certificate of registration; electronic records and signatures are recognized; the standard of care becomes ordinary care subject to the business judgment rule; there is the ability to certificate member transferable interests for the purpose of free transfer as investment securities; it is possible to eliminate the duty of loyalty or duty of care in an agreement, so long as not “manifestly unreasonable;” a member may bring a direct action against the company for misfeasance, not just a derivative action; a company threatened by a derivative action may form a litigation committee to assume the burden of investigating the action and take certain actions on behalf of the company in its best interests. *The ULLCA has been enacted in four states: Idaho, Iowa, Nebraska, and Wyoming.*

(7) Revision of Uniform Limited Partnership Act (2001)

The Uniform Limited Partnership Act (2001) updates limited partnership law to reflect modern business practices by allowing for greater variety and flexibility in the formation and management relationships within these entities. The ULPA allows for the use of a limited partner’s name in the entity’s name, and authorizes family limited partnerships, entities which by nature require entrenched management and passive limited partners. It shifts default liability away from limited partners by allowing for limited liability limited partnership status, and allows for easier dissolution upon the consent of all general partners together with a number of limited partners owning a majority of the rights to distributions. The ULPA furthers estate planning considerations by restricting the ability of a limited partner to disassociate from an entity prior to its termination, except for specific circumstances. Finally, the ULPA eliminates the previous rule requiring a termination date to be included in a limited partnership certificate, thereby allowing for the default creation of a perpetual entity. ULPA is also a free-standing, comprehensive act, no longer dependent upon general partnership law for rules that are not contained within ULPA.

The ULPA represents a significant revision of limited partnership law to reflect modern usages, makes the limited partnership even more appealing to business ventures and estate planners, and will enhance the business climate of those states which adopt it. *RULPA has been enacted in 17 states: Alabama, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, Virginia, Washington.*

(8) Uniform Military and Overseas Voters Act (2010)

The Uniform Military and Overseas Voters Act will simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient. The Act covers all military personnel or their dependents, as well as U.S. citizens residing outside the United States who are unable to vote in-person. This latter category includes a class of voters not covered by the federal law in this area: U.S. citizens born overseas who have reached voting age without having resided in the United States. The Act applies to all statewide and local elections, as well as to all federal elections, both primary and general (and also special and run-off elections). *UMOVA has been enacted in no states.*

(9) Uniform Real Property Electronic Recording Act (2004)

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The Act also establishes a state board to establish standards for electronic recording. *URPERA has been enacted in 25 states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, Washington, Wisconsin.*

(10) Uniform Trust Code (2000)

The Uniform Trust Code (UTC) is the first effort to codify the law of trusts in the history of the United States. A trust is formed when an individual (called settlor) transfers assets to a person called the trustee. The assets are held in "trust" for identifiable beneficiaries or for a valid beneficial purpose. All voluntary trusts fall under the UTC. Involuntary trusts such as resulting trusts are not included. The UTC provides rules for charitable trusts and other honorary trusts such as pet trusts, as well as for ordinary trusts in which there are income beneficiaries and remainder beneficiaries at the conclusion of the trust. Spendthrift trusts are recognized. A spendthrift trust prevents creditors of a beneficiary from

attaching a trust distribution until it is actually made to that beneficiary. UTC distinguishes revocable trusts from irrevocable trusts. All trusts are revocable unless the trust instrument makes them irrevocable. A revocable trust, which allows the settlor to revoke it before the settlor dies or becomes incapacitated, is treated as a will substitute. Any individual with the legal capacity to make a will can create a revocable trust. UTC provides for fiduciary obligations of a trustee, except for those contained in the Uniform Prudent Investor Act. There can be valid oral trusts under UTC. A written instrument is not necessary for enforcement. There are rules for jurisdiction and enforcement. Almost all the rules in the UTC are default rules, and may be waived or varied in a trust instrument. *UTC 2000 has been enacted in 23 states: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Wyoming.*

(11) Uniform Unsworn Foreign Declarations Act (2008)

The Uniform Unsworn Foreign Declarations Act 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 may not have access to a notary. Under the Act, unsworn declarations cannot 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. The UUFDA has been enacted in 10 states: Colorado, Connecticut, Delaware, District of Columbia, Indiana, Minnesota, New Mexico, Tennessee, Utah, Wisconsin.

VII. 2011 RECOMMENDATIONS BY THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS AND WEST VIRGINIA LEGISLATIVE ACTION

The West Virginia Commissioners on Uniform State Laws met in July and, after some discussion, decided to present to the Joint Legislative Commission on Interstate Cooperation the following Uniform Acts for consideration for introduction into the West Virginia Legislature at its 2011 session.

(1) Uniform Trust Code (2000)

The Uniform Trust Code (UTC) is the first effort to codify the law of trusts in the history of the United States. A trust is formed when an individual (called settlor) transfers assets to a person called the trustee. The assets are held in “trust” for identifiable beneficiaries or for a valid

beneficial purpose. All voluntary trusts fall under the UTC. Involuntary trusts such as resulting trusts are not included. The UTC provides rules for charitable trusts and other honorary trusts such as pet trusts, as well as for ordinary trusts in which there are income beneficiaries and remainder beneficiaries at the conclusion of the trust. Spendthrift trusts are recognized. A spendthrift trust prevents creditors of a beneficiary from attaching a trust distribution until it is actually made to that beneficiary. UTC distinguishes revocable trusts from irrevocable trusts. All trusts are revocable unless the trust instrument makes them irrevocable. A revocable trust, which allows the settlor to revoke it before the settlor dies or becomes incapacitated, is treated as a will substitute. Any individual with the legal capacity to make a will can create a revocable trust. UTC provides for fiduciary obligations of a trustee, except for those contained in the Uniform Prudent Investor Act. There can be valid oral trusts under UTC. A written instrument is not necessary for enforcement. There are rules for jurisdiction and enforcement. Almost all the rules in the UTC are default rules, and may be waived or varied in a trust instrument. *UTC 2000 has been enacted in 23 states: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Wyoming.*

(2) Uniform Real Property Electronic Recording Act (2004)

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The Act also establishes a state board to establish standards for electronic recording. *The Uniform Real Property Electronic Recording Act has been adopted now in 25 states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, US Virgin Islands, Virginia, Washington, and Wisconsin.*

(3) Uniform Commercial Code Article 9 Amendments (2010)

The Uniform Commercial Code (UCC) Article 9 governs secured transactions in personal property. UCC9 was substantially revised in 1999 and adopted in all states. The 2010 Amendments to UCC9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC9. Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a

financing statement. *UCC9 2010 was approved by the ULC in July 2010 and has been enacted in no states.*

(4) Uniform Power of Attorney Act

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960's to early 1970's in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically conferred rather than be general powers; this eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent. *The Uniform Power of Attorney Act has been adopted in 9 states: Colorado, Idaho, Maine, Maryland (substantially similar), Nevada, New Mexico, U.S. Virgin Islands, Virginia, and Wisconsin.*

(5) Uniform Military and Overseas Voters Act (2010)

The Uniform Military and Overseas Voters Act will simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient. The Act covers all military personnel or their dependents, as well as U.S. citizens residing outside the United States who are unable to vote in-person. This latter category includes a class of voters not covered by the federal law in this area: U.S. citizens born overseas who have reached voting age without having resided in the United States. The Act applies to all statewide and local elections, as well as to all federal elections, both primary and general (and also special and run-off elections). *UMOVA was approved by the ULC in July 2010 and has been enacted in no states.*

1. Uniform Debt-management Services Act (2005)
2. Uniform International Wills Act (1977)
3. Revision of Uniform Limited Partnership Act (2001)
4. Uniform Real Property Transfer on Death Act
5. Uniform Trust Code (2000)

The final decision was to be left to Commissioner Cardi after his discussions with members and counsel to the West Virginia Joint Legislative Commission on Interstate

Cooperation, Delegates and Senators serving on the Joint Commission, and other citizens and groups who would naturally have an interest.

At the September 2010 interim meeting of the West Virginia Joint Legislative Commission on Interstate Cooperation in Charleston, Commissioner Cardi reported on the activities of the July National Conference meeting among other matters and advised the Committee on the Acts that the West Virginia Commission would be recommending for enactment in the 2011 session.

In February 2011, the Probate Committee finished the extensive examination of it, and enthusiastically approved it with a number of suggested changes. It was too late for the West Virginia Commission to introduce it to the Joint Commission on Interstate Cooperation, so it will be done next year.

In the 2010 Legislative Session, the West Virginia Legislature considered the following Uniform Acts recommended by the Commissioners:

- (1) **Uniform Real Property Electronic Recording Act (2004)**
- (2) **Uniform Trust Code (2000)**
- (3) **Uniform Power of Attorney Act**


The Joint Legislative Commission on Uniform State Laws decided that it was premature to consider introducing the Uniform Military and Overseas Voter Act as the legislature took action on a related bill within the last several years. In late October 2010, the final style edits of the Article 9 Amendments had not yet been completed by the Uniform Law Commission so the Commissioners decided it was too late to press the adoption of the Amendments in the 2011 session. The Uniform Trust Code and the Uniform Real Property Recording Act were considered and passed by the Joint Legislative Commission on Interstate Cooperation at November, December, and January interim meetings. The Uniform Trust Code was passed by the legislature and signed into law during the 2011 session.

VIII. DISTRIBUTION OF REPORT

As recommended in the Performance Review Report pertaining to the Commission on Uniform State Laws, a copy of this report to the Legislature is being forwarded to the West Virginia State Bar, the West Virginia Bar Association, the Mountain State Bar Association, the West Virginia Association of Justice, and the Defense Trial Counsel of West Virginia.

Respectfully submitted this 13th day of June 2011.

Richard E. Ford, Chairman
Frederick P. Stamp, Jr., Secretary
Vincent Cardi, Legislative Liaison



for the Commissioners