

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2013

I. INTRODUCTION

The West Virginia Commission on Uniform State Laws submits this annual report to the West Virginia Legislature in accordance with 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.” From the Uniform and Model Acts promulgated by the ULC, the West Virginia Commissioners have selected those that 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 eighty-nine 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 to determine 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. The first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York in August of 1892: three days preceding the annual meeting of the American Bar Association.

West Virginia joined the National Conference in 1909, 104 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, such as Professors Wigmore, Williston, Pound, and Bogart, have served in large numbers. This distinguished body has guaranteed

that the projects of the National Conference are of the highest quality and are influential upon the process of the law.

Over its 121 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 convenes as a body once a year. It meets for a period of eight days, usually in July. Between the annual meetings, study committees and 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 of the ULC is the ULC Executive Committee, which is 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. McClaugherty 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 2012.

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

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

Richard Ford has been a member of the Legislative Council, served for two years on the Executive Committee, and was Secretary of the Uniform Law Commission for two years. Vincent Cardi is the Legislative Liaison Member for West Virginia.

Former Commissioner John L. McClaugherty of Charleston 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. Fred Stamp was the Chairperson of the Study Committee on Conflicts of Laws-Limitations Act and 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, the Study Committee on Notice and Repair of Construction Defects, and the Drafting Committee on Uniform Certificate of Title Act for Vessels. He is presently a member of the Enactment Committee for the Uniform Certificate of Title Act for Vessels, and the Drafting Committee for Fraudulent Transfers Act.

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 120th Annual Conference of the Uniform Law Commission in July of 2012. At the conference, 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 that 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.

During 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, nine new study committees were appointed to consider subjects for possible future drafting. These include:

- (1) Study Committee to Amend the Uniform Athlete Agents Act**
Since the Uniform Athlete Agents Act was promulgated in 2000, there have been substantial changes in the marketplace for athlete agents, and a number of states have recently considered non-uniform amendments to the Act, particularly in response to recent allegations of improper conduct by agents with regard to college athletes. The study committee will consider and make recommendations concerning the need for and feasibility of drafting amendments to the Uniform Athlete Agents Act.
This committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on the appointment and powers of real estate receivers.
- (2) Study Committee on Criminal Records Accuracy and Access**
There have been many developments concerning criminal records over the past twenty years, including the creation of the National Criminal Background Check System in 1993, the establishment of criminal history repositories in all states, and the increasing use of criminal records checks for employment and other non-criminal justice purposes. The study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on access to and accuracy of criminal records.
- (3) Study Committee on Family Law Arbitration**
While arbitration has not normally been permitted in family law matters, in recent years a number of states have adopted legislation that authorizes arbitration with respect to some issues in the family law area. This study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on family law arbitration.

(4) **Study Committee on Portability and Recognition of Professional and Occupational Licenses of Military Spouses**

The difficulty of obtaining a license for one's professional occupation in a state to which a service member is transferred is a major problem for military families. This study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on the portability and recognition of professional licenses of military spouses.

(5) **Study Committee on Recognition and Enforcement of Canadian Domestic-Violence Protection Orders.**

In 2011, the Uniform Law Conference of Canada promulgated legislation that would facilitate the recognition and enforcement in Canada of domestic-violence protection orders. Earlier in 2011, the Council of the Hague Conference on Private International Law asked its Secretariat to study the feasibility of drafting an international convention concerning the recognition and enforcement of domestic-violence protection orders. The Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (last amended in 2002), applies only to enforcement of orders entered by courts in the United States. This study committee will consider and make recommendations concerning the need for and feasibility of revising the Uniform Act or drafting a separate act on recognition and enforcement of Canadian domestic-violence protection orders and also will monitor developments at the Hague Conference concerning these issues.

(6) **Study Committee on Trust Decanting**

Trust decanting is a non-judicial method for modifying an irrevocable trust. The technique has gained wide currency in the past several years, and about ten states have enacted legislation on the subject. Common law support for the technique of trust decanting is uncertain in many states. This study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on trust decanting.

(7) **Study Committee on Wage Garnishment**

For a lot of companies, even relatively small businesses if they operate in more than one state, payroll is handled centrally rather than in individual offices. Wage garnishments, however, are governed by widely varying law in all of the states, and this creates difficulties and inefficiencies in complying with wage garnishment orders. This study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act on wage garnishment.

(8) Study Committee on a Model Veterans' Court Act

Some state and local governments have recently created or authorized the creation of "veterans' courts" that would provide vehicles for diverting some veterans who are in the criminal justice system from traditional criminal courts to specialized courts that can facilitate the provision of rehabilitative treatment when appropriate. The Study Committee will consider and make recommendations concerning the need for and feasibility of drafting a model act on veterans' courts.

(9) Study Committee on Trust Protectors

A number of states have recently enacted legislation that authorizes the appointment of a "trust protector," a person other than the trustee, beneficiary or settlor who holds power over some aspect of a trust, such as the power to direct investments, remove or replace trustees, or amend the trust. The Study Committee will consider and make recommendations concerning the need for and feasibility of drafting uniform state legislation or amendments to current ULC acts on this topic.

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 six new drafting committees were created to begin working on new Acts. These are:

(1) Drafting Committee on Residential Real Estate Mortgage Foreclosure Process and Protections

This committee will draft an act that applies only to residential mortgages and that will be drafted as an overlay to, rather than a replacement of, existing state legislation. The drafting committee will consider a specific list of issues that were recommended for consideration in the final report of the Study Committee.

(2) Drafting Committee on a Model Act on Appointment and Powers of Real Estate Receivers

The Committee will draft a model act that authorizes the appointment of real estate receivers and sets forth the powers of real estate receivers. The act may also provide powers for a receiver to act with respect to personal property that is ancillary to real estate, but the act will not authorize the

appointment of receivers with respect to owner-occupied residences.

- (3) Drafting Committee on Series of Unincorporated Business Entities**
The Committee will draft series provisions that can be added to some or all of the uniform unincorporated business organization acts other than the Uniform Statutory Trust Entity Act, and the committee is also authorized to draft revisions to the series provisions in USTEPA if it believes such revisions are necessary.
- (4) Drafting Committee on Amendments to the Uniform Fraudulent Transfer Act**
The Committee will prepare amendments to the Uniform Fraudulent Transfer Act that address: (a) choice of law for fraudulent transfers, (b) presumptions and burdens of proof for fraudulent a transfer, (c) who receives “reasonably equivalent value” under Section 8(a), (d) asset freezing orders, and (e) the consistency of the UFTA with ULC unincorporated business organization acts. The drafting committee is also authorized to draft, for approval by the Executive Committee, revisions to the comments to other provisions of the UFTA.
- (5) Drafting Committee on Fiduciary Access to Digital Assets**
The Committee will draft a free-standing act and/or amendments to ULC acts, such as the Uniform Probate Code, the Uniform Trust Code, the Uniform Guardianship and Protective Proceedings Act, and the Uniform Power of Attorney Act, that will vest fiduciaries with at least the authority to manage and distribute digital assets, copy or delete digital assets, and access digital assets.
- (6) Joint Drafting Committee with the Uniform Law Conference of Canada on Inter-jurisdictional Recognition of Advance Planning Documents**
The Joint Committee will draft principles that will guide the drafting of uniform legislation for enactment in the United States and in Canada that provides for cross-border recognition of documents such as powers of attorney for both property and health care, health care instructions, and other documents, such as instructions concerning living arrangements, as appropriate. The ULC members of the Joint Committee also will draft uniform U.S. legislation on these matters. This project will not develop principles or statutory provisions concerning the recognition of provisions for trusts or guardianships.

C. Acts Reviewed and Debated at the Conference

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

(1) Drafting Committee on an Act on the Prevention of and Remedies for Human Trafficking

This committee will draft legislation concerning the prevention of and remedies for human trafficking. The scope of the project is specifically focused on (a) human trafficking for sexual purposes, in which a sex act is induced by force, fraud or coercion, or in which the person induced to perform a sex act has not attained the age of majority, and (b) human trafficking in which force, fraud or coercion is used to obtain the labor or services of an individual under circumstances that amount to involuntary servitude.

(2) Drafting Committee on a Powers of Appointment Act

This committee will draft legislation concerning powers of appointment. The power of appointment is a core device in modern estate planning practice, and powers of appointment are routinely included in trusts both for tax reasons and to add flexibility to the property arrangements. Only a few states have enacted powers of appointment legislation, but the Restatement (Third) of Property, approved by the American Law Institute in 2006, contains extensive provisions on powers of appointment.

(3) Drafting Committee to Implement the 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, through amendments to the Uniform Child Custody Jurisdiction and Enforcement Act. The Committee presented an initial draft for consideration at the July 2012 Annual Meeting and is expected to present a draft for final approval at the July 2013 Annual Meeting.

VI. NEW ACTS APPROVED BY ULC AND TARGETED ACTS

A. Approval of New Acts and Amendments

At the 2012 meeting, the Commissioners approved the following new Acts and Amendment to Acts for presentation to state legislatures.

- (1) **Uniform Deployed Parents Custody and Visitation Act**
The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. The deployment of a custodial parent raises custody issues that are not adequately dealt with in the law of most states. In many instances, deployment will be sudden, making it difficult to resolve custody issues before the deployment by ordinary child custody procedures. There is a need to ensure that parents who serve their country are not penalized for their service, while still giving adequate weight to the interests of the other parent, and most importantly, the best interest of the child. The UDPCVA contains provisions that apply generally to custody matters of service members, as well as provisions that arise on notice of and during deployment.
- (2) **Uniform Premarital and Marital Agreements Act**
The Uniform Premarital and Marital Agreements Act addresses the varying standards on both types of agreements that have led to conflicting laws, judgments, and uncertainty about enforcement as couples move from state to state. The Act harmonizes the standards in existing uniform acts governing premarital and marital agreements (Uniform Premarital Agreement Act, Uniform Marital Property Act, Uniform Probate Code, and Model Marriage and Divorce Act). The Act also addresses waivers of rights at death by agreement and requires explicit knowledge of other waivers. Waivers and unconscionability are also addressed with provisions relating to domestic violence.
- (3) **Uniform Asset Freezing Orders Act**
The Uniform Asset Freezing Orders Act creates a uniform process for the issuance of asset freezing orders, which are *in personam* orders freezing the assets of a defendant in order to prevent a party from dissipating assets prior to judgment. An asset freezing order is, by its very nature, an extraordinary remedy with potentially significant impact on the debtor whose assets are frozen and on third-parties holding those assets. Accordingly, it is extremely important that there be rigorous standards which must be met before such an order can be issued, which the uniform act provides. Since asset freezing orders also impact non-parties, the uniform act sets out with specificity the obligations of non-parties. Lastly, the uniform act also contains a mechanism for recognition and enforcement of asset freezing orders issued by other states and from courts outside the United States.
- (4) **Uniform Manufactured Housing Act**
The Uniform Manufactured Housing Act will allow owners of manufactured houses the option to classify manufactured homes as either real property or personal property. Although only a small percentage of manufactured homes are moved after being sited, the historic assumption is that the manufactured home is personal property – a remaining vestige

of its ancestor, the travel trailer. As a result, forty-two states issue a certificate of title for manufactured homes, as they do for cars. Though most of these states provide a statutory method by which a manufactured home can be reclassified as real property, the methods are cumbersome and often confusing. The act provides an efficient and effective method for having a manufactured home classified as real property at the time of the first retail sale, thereby obviating the need for a certificate of title, or at any other time. Classification of manufactured homes as real property should allow qualified buyers to obtain financing on more favorable terms. Retailers would be required to notify buyers of the classification option at the time of sale.

(5) Uniform Choice of Court Agreements Convention Implementation Act

The Uniform Choice of Court Agreements Convention Implementation Act will assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements, and is meant to harmonize with federal implementing legislation.

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 2013 Targeted Acts not yet adopted in West Virginia.

(1) Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the property. The objective of the new uniform act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The act does this by prioritizing the states which might claim jurisdiction. The state with primary jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state

lines. The act also provides transfer procedures from one state to another. *UAGPPJA has been enacted in 35 states: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia.*

(2) Uniform Certificate of Title for Vessels Act (2011)

The Uniform Certificate of Title for Vessels Act (UCOTVA) regulates the titling of boats and other vessels that are principally used on an adopting state's waters and that are of at least 16 feet in length, as well as all vessels propelled by an engine of at least ten horsepower. The UCOTVA removes or avoids ambiguities found in many state titling laws regarding the effect of the title, the consequence of a failure to title, or the effect of errors on the title, thereby facilitating transfers of ownership of a vessel. The UCOTVA deters and impedes the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel. The UCOTVA accommodates existing financing arrangements for vessels and provides certain consumer protections when purchasing a vessel through the Act's branding initiative. Additionally, the UCOTVA integrates seamlessly with the Uniform Commercial Code. *The UCOTVA has been enacted in no states.*

(3) 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 framework 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 five states: District of Columbia, Hawaii, Nevada, Texas, and Utah.*

(4) Uniform Commercial Code Article 4A Amendment (2012)

Preemptive federal regulations for remittance transfers became effective in February 2013. The 2012 Amendment to UCC Article 4A maintains the coverage of UCC 4A for commercial wire transfers, while consumer remittance transfers will be covered by the federal rules. Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to commercial remittance transfers. The result would be no statutory rules for overseas commercial remittance transfers that are typically in large dollar amounts. The federal regulation is intended to cover primarily consumer overseas remittances.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the Electronic Funds Transfer Act governed consumer wire transfers. UCC §4A-108 was drafted to read that if any part of a funds transfers was subject to the federal act, that it would not be subject to Article 4A. When the amendment to EFTA goes into effect in 2013, EFTA will govern remittance transfers, whether or not those remittance transfers are also electronic fund transfers as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of UCC §4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, so that a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA. The Amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA. *UCC4A (2012) had been enacted in one state, New York, by the end of 2012, and has been enacted in many more states, including West Virginia, in 2013.*

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

The 2010 Amendments to UCC Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1998 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules. *UCC9 2010 enacted in thirty states: Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.*

(6) Uniform Electronic Legal Material Act (2011)

The Uniform Electronic Legal Material Act (UELMA) addresses many of the concerns posed by the publication of state primary legal material online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers state policies of accountability and transparency in providing legal information to the public. The act applies to electronic legal material that has been designated official. Four categories of basic state legal material are specifically named in the act, including the state constitution, state session laws, codified laws, and agency regulations which have the effect of law. The state has discretion to include any other publications it desires.

The Act requires that official electronic legal material be:

1. *Authenticated*, by providing a method to determine that it is unaltered;

2. *Preserved*, either in electronic or print form; and
3. *Accessible*, for use by the public on a permanent basis.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. *The UELMA has been enacted in 1 state: Colorado.*

(7) 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 fourteen states: Arkansas, Colorado, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Nevada, New Mexico, North Dakota, Oklahoma, Tennessee, U.S. Virgin Islands, and Utah.*

(8) 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 nineteen states: Alabama, California, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, and Washington.*

(9) 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 of 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 twenty-seven states" Alabama, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, U.S. Virgin Islands, Utah, Vermont, Virginia, and Washington.*

(10) Uniform Limited Liability Company Act (2006)

The Uniform Limited Liability Company Act (ULLCA) 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 six states: District of Columbia, Idaho, Iowa, Nebraska, Utah, and Wyoming.*

(11) 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 nineteen states: Alabama, Arkansas, California, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Utah, and Washington.*

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

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters. The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these acts to voting in applicable state and local elections. *UMOVA has been enacted in nine states: Colorado, District of Columbia, Hawaii, Nevada, North Carolina, North Dakota, Oklahoma, Utah, and Virginia.*

(13) Uniform Principal and Income Act Amendments (2008)

The Uniform Law Commission, in July 2008, approved amendments to the Uniform Principal and Income Act that update the act to reflect 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. *UPIA 2008 has been enacted in thirty-four states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.*

(14) 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 twenty-eight states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, Washington, and Wisconsin.*

(15) 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 twenty-five states: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming.*

(16) 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 sixteen states: Alabama, Colorado, Connecticut, Delaware, District of Columbia, Indiana, Minnesota, Montana, Nevada, New Mexico, North Dakota, South Dakota, Tennessee, Utah, Washington, and Wisconsin.*

VII. 2013 RECOMMENDATIONS BY THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS FOR 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 2013 session.

(1) 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.

(2) **Uniform Common Interest Ownership Act**

The Uniform Common Interest Ownership Act (UCIOA) was originally promulgated in 1982 by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commissioners or ULC). It is the act that succeeds and subsumes the earlier Uniform Condominium Act (1977) (1980), the Uniform Planned Community Act (1980), and the Model Real Estate Cooperative Act (1981). UCIOA is a comprehensive act that governs the formation, management, and termination of a common interest community, whether that community is a condominium, planned community, or real estate cooperative. It also provides for disclosure of important facts about common interest property at sale to a buyer, including resale disclosure for any sale after the initial sale by the developer of the property; for warranties of sale; for a buyer's rescission rights in a sale contract, and for escrow of deposits made to secure a sale contract. These are the four principal elements of consumer protection under UCIOA.

In 1994, the ULC has promulgated a series of amendments to UCIOA. These amendments do not change the general format or structure of UCIOA. They reflect the experience in states that have adopted UCIOA or one or more of its predecessor acts, and analyses that have appeared, occasionally, in the scholarly literature. Both actual experience and scholarly commentary have affirmed and reaffirmed the basic structure and content of UCIOA. The amendments cover the following topics: non-residential common interest communities; use and occupancy restrictions; leasing of units; fiduciary responsibilities of directors and officers; liability of unit owners; and alternate dispute resolution.

(3) **Uniform Commercial Code 4A Amendments**

An amendment to Article 4A of the Uniform Commercial Code is needed to close a gap inadvertently caused by the enactment of a federal law, the Dodd-Frank Wall Street Reform and Consumer Protection Act. Article 4A provides a comprehensive set of rules that define the rights and obligations that arise from wire transfers of money. The focus of Article 4A is primarily wholesale transfers of funds in the commercial context. Article 4A is designed to coordinate with federal laws in this area, including the Electronic Fund Transfer Act of 1978, which covers a variety of electronic funds transfers involving consumers. As currently written, Section 108 of Article 4A states that it "does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978.

The Dodd-Frank Act provides additional protections to consumers who send money to recipients outside the United States. Effective in 2013, it amends the Electronic Fund Transfer Act ("EFTA") to cover remittance transfers, which include funds transfers initiated by a consumer to a person

located in a foreign country. Under EFTA, the term remittance transfer is broader than the term electronic funds transfer because the definition of electronic funds transfer *excludes* a transaction originated by check, draft, or similar paper instrument.. This will create legal uncertainty for remittance transfers that are not electronic funds transfers because they are initiated by check, draft or similar paper instrument. The federal Consumer Financial Protection Bureau has acknowledged this problem and has formally suggested that the best mechanisms for resolving this uncertainty rest with the states, which can amend their respective versions of UCC Article 4A.

In response, the American Law Institute and the National Conference of Commissioners on Uniform State Laws, which are the joint drafters of the Uniform Commercial Code, have developed a revision of Section 108 of Article 4A which will maintain the applicability of Article 4A to transactions that are remittance transactions but not electronic funds transactions.

(4) Interstate Depositions and Discovery Act

The Uniform Law Commission promulgated the Uniform Interstate Depositions and Discovery Act in 2007. The Act sets forth an efficient and inexpensive procedure for litigants to depose out of state individuals and for the production of discoverable materials that may be located out of state. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased.

Under the Uniform Interstate Depositions and Discovery Act, litigants can present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

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 is to comply with the rules of 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.

(5) The Uniform Real Property Transfer on Death Act

The Uniform Real Property Transfer on Death Act (URPTODA), promulgated by the Uniform Law Commission in 2009, enables an owner of real property to pass the property to a beneficiary on the owner's death simply, directly, and without probate. Under URPTODA, real property passes by means of a recorded transfer on death (TOD) deed. URPTODA establishes the requirements for the creation and revocation of a TOD deed and clarifies the effect of the TOD deed on all parties while the transferor is living and after the transferor dies. URPTODA provides optional forms to create or revoke a TOD deed.

Key elements of URPTODA include: (1) the TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate; (2) the TOD deed must contain all of the essential elements and formalities of a properly recordable *inter vivos* deed. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located; (3) the capacity required to create a TOD deed is the same as the capacity to make a will; (4) a TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed or a subsequent TOD deed that names a different beneficiary. If the transferor disposes of the property during lifetime, the TOD deed is ineffective; (5) until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the designated beneficiary's eligibility for public assistance; it does not subject the property to the designated beneficiary's creditors; (6) Assuming the transferor dies owning the property and has not revoked the TOD deed and assuming that the designated beneficiary survives the transferor, the TOD deed passes the property to the designated beneficiary on the transferor's death; (7) Liability of the beneficiary and property for claims against the transferor's estate is limited to cases where the estate is insolvent; and (8) a designated beneficiary may disclaim all or part of the transferred interest.

(6) Unsworn Foreign Declarations Act (2008)

UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations 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.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature) Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal procedure in U.S. court proceedings. It should be enacted in every state.

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 2012 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 2013 session.

In the 2013 Legislative Session, the West Virginia Legislature considered the following Uniform Acts recommended by the Commissioners:

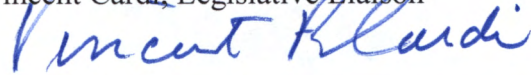
- (1) **Uniform Real Property Electronic Recording Act (2004)**
- (2) **Uniform Common Interest Ownership Act (2008)**
- (3) **UCC Article 4A Amendments (2012)**
- (4) **UCC Article 9 Amendments to Prevent Fraudulent Filing**
- (5) **Uniform Real Property Transfer on Death Act (2009)**

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 Trial Lawyers Association, and the Defense Trial Counsel of West Virginia.

Respectfully submitted this 22nd day of May 2013.

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



for the Commissioners