

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

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MINUTES

Colorado Commission on Uniform State Laws

Tuesday, August 19, 2014, 10 a.m.

Committee Room 0112

1. Commissioner Shaffer was excused. Commissioners Gardner, Grimshaw, Kent, Levy, Mielke, Morris, Pike, and McGihon were present. Commissioner Shaffer was present after the roll call.
2. **Proposed 2015 legislative agenda**
 - a. Newly approved by the Uniform Law Commission in 2014.
 - i. **Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act).** John DeBruyn, Colorado Bar Association – Business Law Section, outlined some of the concepts contained in the proposed legislation and pointed out that there may be some portions that will need to be tweaked to fit in with other Colorado law regarding corporation organization. In addition, there are some terms used in the act, particularly a “series organization”, that are not currently defined in Colorado law and there may be some relationship elements or other issues that will need to be addressed. In general, it seems that current law seems to be inadequate to address some of the current legal issues in transactional law so that the CBA has formed a group to look at the act’s language and work with the Commission on moving the legislation forward. Tony vanWestrum, Colorado Bar Association – Business Law Section, confirmed that there is CBA interest in participation in the development of this legislation for Colorado and that there are components that need to be explored with care regarding current state and federal law. The Commission agreed to move forward with the proposed legislation and encouraged the CBA group to have comments ready for the December meeting when final decisions for approving introduction of drafts will be made.

- ii. **Fiduciary Access to Digital Assets Act.** Commissioner Kent provided a general description of the proposed legislation. Many people now hold most or all of their assets electronically. These assets are password protected making it difficult for administrators in fiduciary roles to get the information they need to fulfill their duties to their clients. Federal privacy laws also hinder access to other electronic communications such as emails, review of which is often the first step for fiduciary personnel in assisting those with protected status or in determining assets during probate. Steve Brainerd, Colorado Bar Association – Trusts & Estates Section, indicated that the CBA has a subcommittee ready to assist the Commission. Marco Chayet, Colorado Bar Association – Trusts & Estates Section, added that the subcommittee will start meeting in September and that there seems to be a consensus that this legislation is necessary. The Commission agreed to move forward with the proposed legislation and encouraged the CBA group to have comments ready for the December meeting when final decisions for approving introduction of drafts will be made.

- iii. **Recognition of Substitute Decision-making Documents Act.** Commissioner Kent provided a general description of the proposed legislation. There is a growing need for the recognition of powers of attorney and other substitute decision-making documents across state lines and some international jurisdictions in order to increase the portability and usefulness of such documents – especially for military personnel. This act is meant to fit within the current uniform powers laws and a draft is available on the Uniform Law Commission website. The Commission will be moving forward with the proposed legislation and encouraged any interested parties to have comments ready for the December meeting when final decisions for approving introduction of drafts will be made.

- iv. **Revisions to the Uniform Common Interest Ownership Act Section 3-116.** Commissioners Morris and Mielke explained that the revisions deal with a specific time period and the priority of liens for unpaid common expenses owed and currently left unpaid to homeowners’ associations during the foreclosure of a unit. Units under foreclosure are not shouldering their portion of HOA dues and the costs of these outstanding maintenance expenses are shifted to other unit owners because the HOA has no priority to get payment money from the source. The Commission pointed out that these changes were proposed to address problems from the recent recession but the legislation is still necessary. Dan Sweetser,

Colorado Bar Association – Real Estate Section, indicated that there are concerns about unintended consequences from the act and that it should be considered carefully. Candyce Cavanagh, Community Associations Institute - Colorado Legislative Action Committee (CAI-CLAC), confirmed that currently there is no recourse available for HOAs to collect delinquent dues and that there was some support for the legislation. Commissioner Gardner indicated that this act generated a lot of discussion at the national convention and that it may be questionable for moving forward through the general assembly this year. Commissioner Mielke encouraged those supporting the act to find a sponsor to help the Commission move it forward. Final decisions on approving legislation for introduction will be made at the December meeting so all interested parties should have comments ready for that meeting.

- b. Previously approved by the Uniform Law Commission in 2014.
 - i. **Interstate Family Support Act Amendments (2008).** Commissioner McGihon briefly summarized some of the proposed changes needed to update the current uniform act for the processing of international child support cases and indicated that the Commission will be considering it at the December meeting for introduction in 2015.
- 3. The two-year appointed terms for current Commissioners end in December of this year. There will be some newly appointed members in January. Commissioner Morris announced that an email went out to all current legislators who are attorneys regarding the anticipated openings on the Commission. Commissioner McGihon also invited input from the Colorado Bar Association regarding possible suggestions for appointments.

The December meeting will be at 10:00 a.m. on Tuesday, December 9. Sponsors outside of the current Commission members will need to found for all legislation approved for introduction.

Commissioners announced some of the newly formed Uniform Law Commission study and drafting committees that Colorado Commissioners will be participating on and requested input from interested parties on draft legislation as it becomes available.

- 4. There was no further public comment.