

OFFICE OF LEGISLATIVE LEGAL SERVICES

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MINUTES

Colorado Commission on Uniform State Laws

Tuesday, December 9, 2014, 10 a.m.
Committee Room 356

Roll was taken and Commissioners Gardner, Levy, Pike, and Shaffer were excused. Commissioners Grimshaw, Kent, Mielke, Morris, and McGihon were present. Commissioner Shaffer was present after the roll call.

1. **Proposed 2015 legislative agenda**

a. Newly approved by the Uniform Law Commission (ULC) in 2014.

- i. **Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act).** Andy Toft, Colorado Bar Association – Real Estate (RE) Section, addressed two areas of concern -- Section 10 stating that the governing section of law is the local law of the debtor and Section 11 regarding series organizations, which Colorado law is not currently in the position to support. The RE Section's position is that litigation regarding Colorado real estate should be filed in Colorado and litigated under Colorado law. Never-the-less, the Section supports the proposed legislation as long as it is amended to state that Colorado law applies to any litigation involving real estate in Colorado. The Commission briefly discussed changing the language in Section 10. It was decided that the Commission would take a closer look at the language and get more clarification from the ULC while working on an amendment to address these concerns. Lori Hulbert, Colorado Bar Association – Elder Law Section, indicated that a committee has been formed to study this act, but does not currently have a position.
- ii. **Fiduciary Access to Digital Assets Act.** Lori Hulbert, Colorado Bar Association – Elder Law (EL) Section, indicated that the section does support this act but also has some suggested changes. The Section agrees that most financial information is now stored electronically and it is important for a fiduciary agent to have the ability to get all the information needed to fulfill their duties as administrators to their clients. The EL Section has concerns regarding some of the definitions and indicated that

they were prepared with written suggested changes and comments. Commissioner McGihon requested that the comments be sent to the commission. Steve Brainerd, Colorado Bar Association – Trusts & Estates Section, indicated that this section, in general, also supports this act. In addition to some definitional concerns, this section has been discussing whether financial agents under a medical durable power of attorney should be given the same access and is working on some alternative wording. John DuBruyn, Colorado Bar Association – Business Law Section, voiced concerns that this act may affect the law of agency, choice of law, and contract law, especially regarding the definition of “person”. Commissioner McGihon pointed out that the applicability of the act should be considered when applying definitions.

- iii. **Recognition of Substitute Decision-making Documents Act.** Catherine Hance, Colorado Bar Association – Real Estate (RE) Section, voiced concerns over the broadness of the term “jurisdiction”. Currently it could be interpreted to mean documents from any country and voiced concerns over the consequences for not accepting provided translations at face value. Real estate law has recently seen varying levels of increased fraud and inadequately verified translations of property descriptions could become a problem. In general, the RE Section supports the act as long as real estate transactions are not part of it. The Commission discussed taking these concerns to ULC to see if others have raised similar issues. Commissioner Kent pointed out that this act is meant to be an overlay to the Power of Attorney law and to buttress other law and that it is not trying to change current power of attorney laws. John DeBruyn, Colorado Bar Association – Business Law Section, expressed concerns regarding the scope and reach of this act and would like to see clarification regarding to what extent foreign law is imported. Steve Brainerd, Colorado Bar Association – Trusts & Estates Section, indicated that the Section was in general agreement with the act but would like more time to reach out to other sections of the bar and other health-related professionals in order to better consider the act’s impact. Lori Hulbert, Colorado Bar Association – Elder Law Section, also indicated that they needed more time to reach out to others and for consideration.
- iv. **Revisions to the Uniform Common Interest Ownership Act Section 3-116.** Catherine Hance, Colorado Bar Association – Real Estate Section, indicated that it does not take a position on this act, but it does want to raise awareness that these amendments may be more controversial than previously considered – especially with lending entities. There are concerns that the “super priority” of liens may cause problems with consumer borrowing and that the right of eviction could cause some homeowner concern. Commissioner Mielke agreed that the commission has seen changes in the levels of support of this act from lenders and associations and shares in the Section’s concerns.

- b. Previously approved by the ULC.
 - i. **Interstate Family Support Act Amendments (2008).** Commissioner Mielke explained that the priority in proceeding with this act is that federal law has been amended to specify that federal funding will be lost should it not be enacted during the 2015 legislative session.
- c. Commissioner McGihon requested a motion to indicate that the commission is moving forward with the drafting of legislation and the recruitment of sponsors for the five ULC acts discussed today. She made it clear that this vote does not constitute final approval of any bill language but will allow these bills to be considered committee bills and, as such, not be counted against a legislator's bill limit. Commissioner Shaffer moved for the adoption or endorsement of the Uniform Voidable Transactions Act, the Fiduciary Access to Digital Assets Act, the Recognition of Substitute Decision-making Documents Act, Revisions to the Uniform Common Interest Ownership Act Section 3-116, and the Interstate Family Support Act Amendments (2008) with the understanding that any drafts are not yet final and for the purpose of making these drafts available to legislators for potential sponsorship, if final bill drafts are approved by the commission. Commissioner Kent seconded the motion and it passed unanimously.

- 2. **Study and Drafting Committee updates.** The commissioners briefly outlined some of the ULC committees that they are currently working on and also highlighted some newly formed committees that might be of interest to attendees. A document listing the 2014-2015 ULC drafting and study committees was made available. Commissioner McGihon encouraged those interested in the potential uniform state laws to contact one of the commissioners or CCUSL staff with comments or for drafts and to do so as early as possible in the process.
- 3. **Next CCUSL meeting.** Leadership will introduce a joint resolution within the first few days of session appointing commissioners for the 2015-2016 term. The commission will need to meet after the adoption of the joint resolution to elect a new chair. After some discussion the next CCUSL meeting was scheduled for noon on Wednesday, January 28.
- 4. There was no other business.
- 5. There was no further public comment.