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MINUTES

Colorado Commission on Uniform State Laws

August 5, 2015, 9:00 a.m.

Committee Room: HCR 0112

1. Roll was taken and Commissioner Keyser was excused. Commissioners Gardner, Grimshaw, Mielke, Morris, Steadman, and Shaffer were present. Vice-chair Shaffer started the meeting, introduced the meeting's agenda, and invited interested parties to sign in to testify. Commissioners Levy, McGihon, and Pike were present after roll call.
2. **Preliminary 2016 legislative agenda**
 - a. **Uniform Law Commission's newly adopted acts:**
 - i. **Revised Uniform Athlete Agents Act.** Commissioner Mielke spoke briefly about the act. It has been updated and is supported by the NCAA and students. There was no public testimony offered.
 - ii. **Uniform Home Foreclosure Procedures Act.** Deanne Stodden, Colorado Bar Association (CBA) Real Estate Section, also representing the Colorado Mortgage Lender's Association, Independent Bankers of Colorado, and the Colorado Banker's Association, briefly outlined foreclosure procedures and the widely varying timelines across the United States. The section believes that current Colorado statutes are very detailed and offer more protections than the Uniform Law Commission (ULC) act and that this act won't overlay as well with our statutes as it may with other states. The section objects to the uniform law. The commission asked for clarifications regarding excessive fees and the differences between current law and the uniform law. Ms. Stodden replied that lawsuits regarding fees have been filed and the Attorney General's office has settlement funds available for disbursal. In addition, costs are now required to be posted and charges have to be backed up with receipts. The commission observed that the current process in Colorado is far from perfect but it may be too complicated to adopt the uniform act at this time.
 - iii. **Uniform Commercial Real Estate Receivership Act.** Charles Calvin, CBA Real Estate Section, briefly outlined custodial and equity receiverships. A custodial receivership protects or enhances the value of a specific asset, while an equity (or reorganization) receivership assigns the responsibility to operate a business and requires broader powers. Colorado has statutes in place for appointments at different times during the process but there are some shortcomings in the laws. The section is concerned that the uniform act blurs the line between the two types of receiverships and grants some powers to every receiver, which may not be appropriate in our state. In addition, third-party rights could be affected creating additional potential litigation. The commission agreed that Colorado statutes are

deficient in areas, especially regarding appointments, and there have been abuses in ex parte actions. Abuses need to be addressed but because of the low number of appeals, there is little guidance through Colorado case law.

- iv. **Revised Uniform Residential Landlord and Tenant Act.** Dan Sweetser, CBA Real Estate Section, indicated that the act does contain some useful consumer protection but that the section feels that the overlay of some portions of it could prove to be a problem in Colorado. The act changes some aspects of current understanding of contracts and some definitions, such as "damages" and "lease". It also changes current law regarding the enforcement of unsigned leases, holdover leases, attorney fees, and habitability. It provides for an incoming tenant to have eviction rights against the existing tenant. The act does allow consumer protection in domestic violence situations but Colorado already has laws regarding that. The section has concerns with adopting the uniform act as is and would like to work with commissioners on tweaking it to prevent the creation of conflicting laws. The commission mentioned that there was talk at the national meeting of breaking this act into five sections in the final act version, so that portions could be enacted separately.
- v. **Uniform Trust Decanting Act.** Jessica Broderick, CBA Trusts & Estates Section, indicated that the section has been meeting since the end of 2014 and has reached out and is working with various groups and other CBA law sections, as well as Mr. Stanley C. Kent (who was on the act's drafting committee). The goal is to have recommendations by the end of the year. The section, in general, supports the act but has identified some changes for consideration. They do not expect to have major revisions.
- vi. **Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act.** There was no public testimony on this act. The commission discussed some aspects and possible issues of the act and encouraged the bar association to review the act and to share their comments with the commission.

b. Acts previously adopted by the Uniform Law Commission:

- i. **Uniform Fiduciary Access to Digital Assets.** Steve Brainerd, CBA Trusts & Estates Section, stated that the section remains supportive of the act and has formed a working committee comprised of attorneys from the various CBA sections to help review and re-vet the act as it does also impact other areas of law. The commission thanked the CBA for their assistance last year and Commissioner Keyser for sponsoring the bill. The ULC had expected last year's act to be well-received by the states, however, it was introduced in 27 states and only adopted in one. This should not be considered a failure, just part of the trials of adjusting the law to evolving technology.

Victoria Bantz, CBA Business Law Section, stated that the section does not believe that the act's amendments address their concerns from last year. They feel that some definitions remain overly broad and could be construed to include business entities.

Stanley C. Kent, former CCUSL Commissioner and member of the act's drafting committee, outlined some of the changes in this version of the act. The

fiduciary will be able to get access to the "envelope" of digital information (*i.e.*, can find out who communicated with the decedent) but not the content of specific communications. Facebook and other internet providers will be supporting the act as well as the ACLU (American Civil Liberties Union). The commission suggested the CBA committee include Mr. Kent in discussions and meetings to help answer questions and expedite the vetting process.

- ii. **Uniform Voidable Transactions Act Amendments (2014).** Andy Toft, CBA Real Estate Section, indicated that the section remains concerned with sections 10 (governing law) and 11 (series organizations) in the uniform law and have been in contact with the ULC. Some specific points of concern include jurisdiction over *lis pendens*, which currently can be filed with respect to Colorado real property only in Colorado courts, §38-35-110, C.R.S.), notice requirements when transferring property, enforcing decisions from other states, and conflicts with existing venue laws. The commission pointed out that it is not uncommon for other jurisdictions to determine Colorado property disputes, such as in divorce decrees from other states involving Colorado property.

Victoria Bantz, CBA Business Law Section, stated that this section also has objections to the choice of governing law and series organization provisions in the act. The section would like to work with commissioners on determining how to best address these issues. The commission suggested that as series corporations do exist in other states Colorado law should address how to handle them. The series language could use the language added to last year's version stating that "nothing in this act shall be deemed to authorize the creation or formation of a series organization in Colorado". The commission could also consider deleting the series language.

- iii. **Uniform Recognition of Substitute Decision-Making Documents Act.** Catherine Hance, CBA Real Estate Section, stated that the section recognizes the potential value of the act in regards to medical decisions and with other legal decisions where there is a need for immediacy, just not with real estate transactions. The section is significantly concerned with the obligations imposed by the act with regard to real property and feels that, in Colorado, it may be more appropriate to amend the power of attorney laws to allow for the recognition of substitute decision-making documents. The section is concerned with the "required" acceptance of translations and feels this could increase the risk of fraud.

Stanley C. Kent, former CCUSL Commissioner and testifying for himself, agrees that there is an absolute need for personal and health care power of attorneys, etc., to be transferable without going through the legal system. Although current law does allow for a power of attorney regarding real estate provisions, the uniform law makes it clear that substitute decision-making documents related to property in another country can be enforced in Colorado, similar to how such documents from other states are now handled. This act does not change the current burden in law, just allows for international recognition of documents. He pointed out that the act allows for immunity for companies relying on these foreign documents and that current law regarding patient autonomy does not have enforcement or translation provisions, which the uniform law does provide for.

Steve Brainerd, CBA Trusts and Estate Section, stated that this section opposed the act last year with similar objections as the Real Estate Section. The

section believes that the intent behind this uniform law is already well covered in other Colorado law and, if needed, current patient law could be revised to accommodate international documents.

As there was no additional public testimony on any of the acts under consideration, Commissioner McGihon thanked those who testified for their input and encouraged interested parties to continue to follow these acts and share information with the commission.

3. Other business

The following acts were given preliminary approval to continue in the bill drafting process and assigned a CCUSL contact to work with CBA members and talk with potential sponsors:

- **Revised Uniform Athlete Agents Act** (Commissioner McGihon). Notes: Pretty much ready to go, needs sponsor.
- **Uniform Commercial Real Estate Receivership Act** (Commissioner Mielke). Notes: Some portions seem to be needed now as bar testimony highlighted gaps in current law; the entire act may not be right for Colorado at this point; may need to be put on a two year tract for consideration.
- **Revised Uniform Residential Landlord and Tenant Act** (Commissioners Levy & Shaffer). Notes: May be more viable if sections considered separately. One objection - Commissioner Gardner.
- **Uniform Trust Decanting Act** (Commissioner Steadman with Mr. Kent as back-up). Notes: Has a sponsor.
- **Uniform Recognition & Enforcement of Canadian Domestic Violence Orders Act** (Commissioner Gardner).
- **Uniform Fiduciary Access to Digital Assets Act** (Commissioners Keyser & Steadman, with Mr. Kent as back-up). Notes: Has bill sponsors.
- **Uniform Voidable Transactions Act Amendments (2014)** (Commissioners Grimshaw & Pike). Notes: Needs more time and work with CBA.
- **Uniform Recognition of Substitute Decision-Making Documents Act** (Commissioner McGihon & Mr. Stan Kent). Notes: Needs more time and work with CBA.

Commissioners made a preliminary decision not to pursue the following act at this time:

- **Uniform Home Foreclosure Procedures Act.**

Final act language should become available from the ULC towards the end of September. The Office of Legal Services will use the ULC final acts to have draft bills ready for discussion at the next CCUSL meeting to be scheduled for late October. Meeting notifications will be sent out once a date, time, and location have been determined.

Interested parties were encouraged to sign up for CCUSL email notifications. The commissioners briefly discussed the possibility of giving a presentation to the Joint Judiciary Committee prior to session and working with the CBA on a continuing legal education program.