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RAPID CITY, SD 57709-8250
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FAX 605-342-5185

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605-332-5999
FAX 605-332-4249

From the offices of Gene N. Lebrun
e-mail address: glebrun@lynnjackson.com

December 5, 2014

Honorable Dennis Daugaard
Office of the Governor
500 East Capitol Avenue
Pierre, SD 57501-5070

Jason Handcock, Director
Legislative Research Council
Capitol Building, 3rd Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Governor Daugaard and Director Handcock:

On behalf of the South Dakota Uniform Laws Commissioners, I am pleased to submit to you the South Dakota Commission on Uniform Legislation 2014 Report. This report is being submitted pursuant to SDCL § 2-11-8.

On behalf of the other South Dakota Commissioners, we wish to express our thanks to you and the South Dakota Legislature for your continued support of the Uniform Laws Commission.

We would request that Director Handcock make copies of the report available to the members of the South Dakota Legislative Research Council Executive Board and other legislators as the Board may see fit.

Sincerely yours,

SOUTH DAKOTA COMMISSION ON UNIFORM LEGISLATION

Gene N. Lebrun, Chair

GNL/fjs

Enclosure

Enc/cc: Commissioner Michael B. DeMersseman
Commissioner Marc S. Feinstein
Commissioner Thomas Geu
Commissioner Brian G. Gosch
Commissioner Richard O. Gregerson
Commissioner David E. Lust

2014 ANNUAL REPORT

SOUTH DAKOTA
COMMISSION ON UNIFORM LEGISLATION
2014 ANNUAL REPORT

I. PREAMBLE

To the Honorable Governor Dennis Daugaard and members of the Legislative Research Council Executive Board. The South Dakota Commissioners on Uniform State Laws respectfully submit this annual report.

II. OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. The statutory authority governing South Dakota's uniform law commission can be found at Chapter 2-11 of South Dakota Codified Laws.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators and other state officials, most are practitioners, judges and law professors. Uniform law commissioners serve for specific terms, and receive no salaries or fees for their work with the Uniform Law Commission.

Commissioners study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The ULC can only propose – no uniform law is effective until a state legislature adopts it.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, it is a genuine coalition of state interests. It has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions, and has done so with significant success.

III. HISTORY

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. By 1912, every state was

participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commission in 1988. South Dakota appointed its first Commissioners in 1893, and there have been a total of forty-five (45) South Dakota Commissioners who have served since then.

Very early on the ULC became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members: former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute, the UCC took ten years to draft and another 14 years before it was enacted across the country. It remains the signature product of the ULC.

Today the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The Uniform Law Commission 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.

IV. DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages the appointing authorities to consider among other factors, diversity of membership in their uniform law commissions, including race, ethnicity and gender in making appointments.

The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

V. PROCEDURES

The ULC is convened as a body once a year. It meets for a period of seven or eight days, usually in July or August. In the interim period between these annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the Uniform Law Commission is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, and is composed of the officers, certain ex-officio members, and members appointed by the ULC President. Certain activities are conducted by the standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the 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 ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts on an on-going basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI. Funding of the ULC

A. What is the state appropriation requested?

As a state service organization, the ULC depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount for the maintenance of the ULC. In addition, each state commission requests an amount to cover its travel to the ULC Annual Meeting. For South Dakota, the amount requested for the maintenance of the ULC for the 2015 fiscal year is $2,500. per Commissioner attending the ULC Annual Meeting.

B. Why should South Dakota support the ULC with a financial contribution?

The ULC is a unique institution created by state government to consider state law and to determine in which areas of the law uniformity is important. It then drafts Uniform and Model Acts for consideration by the states. The ULC began this work in 1892. The ULC's work has been a valuable addition to the improvement of state law for 123 years. Included in that work have been Acts such as the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, the Uniform Transfers to Minors Act the Uniform Unclaimed Property Act, and the Uniform Real Property Electronic Recording Act. Since it joined the ULC, South Dakotas has adopted 127 uniform and model acts. South Dakota citizens have gained a very great benefit from its participation in the Uniform Law Commission.

The procedures of the ULC insure meticulous consideration of each Uniform or Model Act. The ULC spends a minimum of two years on each draft. Sometimes, the drafting work extends much longer. The drafting work for such large-scale Acts as the Uniform Commercial Code can take up to a decade to complete. No single state has the resources necessary to duplicate this meticulous, careful non-partisan effort. Working together with pooled resources through the ULC, the states can produce and have produced the impressive body of state laws called the Uniform State Laws.

The ULC permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. Commissioners receive compensation only for actual expenses incurred. The ULC estimates that each commissioner devotes an average 150 hours a year to ULC work, including work on various drafting committees and attendance at the ULC Annual Meeting. These are hours mainly spent in research and drafting work – solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts represents thousands of hours of legal expertise.

Every Uniform or Model Act promulgated by the ULC is developed over the course of two to three years, at intensive weekend meetings, and each Act is read and debated on the floor of ULC Annual Meetings at least twice before all of the assembled commissioners sitting as a Committee of the Whole. All uniform law commissioners are attorneys; assuming a (low) rate of $200/hour, each promulgated Act therefore represents at a minimum of somewhere between $1 and $2 million in donated legal expertise per project. Many states would find it both difficult and expensive to replicate the work of the ULC on their own, especially with regard to highly complex subjects such as commercial law or the law of probate and estates.

The total requested contribution of all the states to the operation of ULC is $2,681,900 in fiscal year 2015. The smallest state contribution is $29,000, and the largest is $157,500. South Dakota's dues commitment of $30,600 represents an extraordinarily good, cost-effective investment for the citizens of South Dakota.

The ULC works efficiently for all the states because individual lawyers are willing to donate time to the uniform law movement, and because it is a genuine cooperative effort of all the states. The ULC seemed like a very good idea to its founders in 1892. They saw nearly insoluble problems resulting from the rapid growth of the United States against confusing patterns of inadequate state law.

The ULC continues to be a very good idea. The states have chosen to maintain the ULC because it has been useful to their citizens and because it strengthens the states in the federal system of government. Different law in different states continues to be a problem. Either the states solve the problem, or the issues are removed to Congress. Without a state-sponsored, national institution like the ULC, more and more legislative activity would shift from the state capitols to Washington, D.C.

C. How are the funds contributed by the states spent?

The annual budget of the ULC comes to $4,028,062 for the current 2015 fiscal year (July 1, 2014, to June 30, 2015). Of this amount, $976,644 (approximately 24.2%) goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and, editing and personnel costs. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is $301,162 (or 7.5%). $741,728(18.4%) is spent in assisting state legislatures with bills based on Uniform and Model Acts. This amount includes salaries and travel expenses. About $457,227 (11.4%) is spent on the Annual Meeting. Public education for Uniform and Model Acts costs about $146,327 (3.6%) and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

The ULC has consciously limited its staff to prevent needless administrative costs. The full-time staff numbers 13 people, located in Chicago. The small staff provides support for drafting and legislative efforts.

In addition the ULC contracts for professional services to aid in many drafting efforts. These professional "reporters" are engaged for very modest honoraria to work with drafting committees on specific acts. Most often they are law professors with specific expertise in the area of law addressed in the act they draft.

D. Are there other financial contributors to the work of the ULC?

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts. All money received from any source is accepted with the understanding that the Commission's drafting work is completely autonomous. No source may

dictate the contents of any Act because of a financial contribution. By seeking grants for specific projects, the Commission expands the value of every state dollar invested in its work.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). The ALI holds the Falk Foundation funds that are allocated to work on the UCC. The ALI funds any study or drafting projects related to the UCC, using the Falk Foundation funds, as well as proceeds from the licensing of the publishing of UCC materials and other funds available to the ALI.

The Commission has also established royalty agreements with major legal publishers which reprint the ULC's uniform and model acts in their publications.

E. How are Uniform and Model Acts created?

The procedures for preparing an Act are the result of long experience with the creation of legislation. The ULC maintains a standing committee called the Committee on Scope and Program which considers new subject areas of state law for potential Uniform or Model Acts. That committee studies suggestions from many sources, including the organized bar, state government, and private persons. If the Scope and Program Committee believes that an idea for an act is worthy of consideration, it usually will recommend that a Study Committee be appointed. Study committees consider the need for and feasibility of drafting and enacting uniform or model legislation in an area and report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the ULC Executive Committee, which makes the final decisions as to whether to study a proposal or undertake a drafting project.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. Almost all drafting committees have a reporter, and some committees are assisted by two reporters.

Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government, organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to attend drafting committee meetings and to contribute comments throughout the drafting process. Advisors and observers do not make decisions with respect to the final contents of an Act. Only ULC members who compose the drafting committee may do this.

A committee meets according to the needs of the project. A meeting ordinarily begins on Friday morning and finishes by Sunday noon, so as to conflict the least with ordinary working hours. A short Act may require only two or three committee meetings. Major acts may require many

more meetings for a considerable period of time – several years, in some instances. A given committee usually produces a number of successive drafts, as an act evolves.

At each Annual Meeting during its working life, each drafting committee must present its work to the whole body of the Uniform Law Commission. The most current draft is read and debated. This scrutiny continues from Annual Meeting to Annual Meeting until a final draft satisfies the whole body of the commissioners. No act is promulgated without at least two year's consideration, meaning every act receives at least one interim reading at an Annual Meeting, and a final reading at a subsequent Annual Meeting. As noted previously, there is often more than one interim reading and a drafting process that exceeds two years in duration. A draft becomes an official act by a majority vote of the states (one vote to each state). The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

The cost of this process to the states is in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.

F. The Importance of South Dakota's Contribution

South Dakota's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. South Dakota benefits from the excellent body of law created for its consideration. The ULC, and all the states, benefit from having South Dakota's direct contribution to the work of ULC. South Dakota' ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

VII. ACTIVITIES OF THE SOUTH DAKOTA COMMISSIONERS

A. The South Dakota Commissioners and years of their first appointments are:

Michael B. DeMersseman (1997)
Marc S. Feinstein (2011)
Thomas E. Geu (2007)
Brian G. Gosch (2011)
Richard O. Gregerson (1983)
Gene N. Lebrun (1976)
David E. Lust (2007)

B. The ULC current committee assignments for Commissioners from South Dakota are:

Michael DeMersseman
-Liaison with American Indian Tribes and Nations
-Study Committee on Firearms Information

Marc S. Feinstein
-Drafting Committee on Fiduciary Access to Digital Assets
-Drafting Committee on Guardianship and Protective Proceedings Act
-Drafting Committee on Trust Decanting

Thomas Geu
-Standby Committee on Harmonization of Business Acts
-Drafting Committee Tribal Probate Code
-Enactment Committee for Unincorporated Entity Acts

Brian G. Gosch
-Drafting Committee Wage Garnishment Act
-Joint Study Committee on Harmonization of the Law of Caribbean Nations and the United States Concerning Enforcement of Child Custody and Child Support Orders

Richard O. Gregerson
-Life Member

Gene N. Lebrun
-Life Member
Committee on Uniform Law Commission History
-Public Information Committee, Chair
Committee on Parliamentary Practice
-Drafting Committee Revise the Uniform Unclaimed Property Act
-Liaison with the American Bar Association
-Standby Committee on Uniform Presidential Electors Act

David E. Lust
-Legislative Liaison

VIII. A SUMMARY OF NEW ACTS

At its One-Hundred-Twenty-Third Year Annual Meeting in Seattle, Washington, the ULC approved the following new Acts:

Uniform Fiduciary Access to Digital Assets Act
Uniform Recognition of Substitute Decision-Making Documents Act
Amendments to the Uniform Voidable Transactions Act
Amendments to Section 3-116 of the Uniform Common Interest Ownership Act

Short Summaries of those Acts are attached to this Report. Longer summaries, the Acts themselves and other information regarding the Uniform Laws Commission, including three videos under "About ULC," can be found at the ULC website: http://uniformlaws.org

The Executive Committee of the ULC took action to appoint the following new Study and Drafting Committees:

Study Committee on State Regulation of Driverless Cars
Study Committee on the Transfer and Recording of Consumer Debt
Drafting Committee on Divided Trusteeship
Drafting Committee to Revise or Amend the Uniform Guardianship and Protective Proceeding Act
Drafting Committee on Non-Parental Rights to Child Custody and Visitation
Drafting Committee on Social Media Privacy

IX. RECOMMENDATIONS FOR ENACTMENT

The South Dakota Commissioners recommend that the following Uniform Acts or Amendments to Uniform Acts be considered in the 2015 legislative session:

- Uniform Interstate Family Support Act Amendments (2008)
- Uniform Military and Overseas Voters Act
- Uniform Power of Attorney
- Uniform Prevention of and Remedies for Human Trafficking Act
- Uniform Recognition of Substitute Decision-Making Documents Act
- Uniform Voidable Transactions Act Amendments (2014)

X. SOUTH DAKOTA PARTICIPATION IN THE ULC

South Dakota's participation, both in terms of appointing uniform laws commissioners and contributing funds, is essential. South Dakota benefits for the excellent body of law created for its consideration. The ULC and all the states benefit from having South Dakota's direct participation and contribution to the work of the ULC. South Dakota's ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

Since joining the ULC, in 1893 South Dakota has enacted One-Hundred-Twenty-Seven (127) Uniform and Model Acts promulgated by the ULC. That is one of the highest enactment records in the Nation. During the 2014 Legislative Session, South Dakota enacted three additional Uniform Acts: the Uniform Deployed Parents Custody and Visitation Act, the Uniform Real Property Electronic Recording Act, and the Uniform Real Property Transfer on Death Act.

XI. CONCLUSION

The South Dakota Commissioners on Uniform State Laws thank the Executive Board of the Legislative Research Council, the Legislature, the Governor, the Supreme Court, and the people of South Dakota for the support given to the Uniform Laws Commission and its South Dakota Commissioners. We are honored and privileged to represent South Dakota in the Uniform Laws Commission.

This 2014 Annual Report is submitted as part of its duty and the South Dakota Commissioners look forward to continuing their statutory duties as set forth in Chapter 2-11 of South Dakota Codified Laws.

Respectfully submitted this 5th day of December, 2014.

SOUTH DAKOTA COMMISSION ON UNIFORM LEGISLATION

Commissioner Michael B. DeMersseman
Commissioner Marc S. Feinstein
Commissioner Thomas E. Geu
Commissioner Brian G. Gosch
Commissioner Richard O. Gregerson
Commissioner Gene N. Lebrun
Commissioner David E. Lust

2014 ACTS SUMMARIES

2014 Uniform Acts: Summaries

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

In the Internet age, the nature of property and our methods of communication have changed dramatically. A generation ago, a human being delivered our mail, photos were kept in albums, documents in file cabinets, and money on deposit at the corner bank. For most people today, at least some of their property and communications are stored as data on a computer server and accessed via the Internet.

Collectively, a person's digital property and electronic communications are referred to as "digital assets" and the companies that store those assets on their servers are called "custodians." Access to digital assets is usually governed by a restrictive terms-of-service agreement provided by the custodian. This creates problems when account holders die or otherwise lose the ability to manage their own digital assets.

A fiduciary is a trusted person with the legal authority to manage another's property, and the duty to act in that person's best interest. The Uniform Fiduciary Access to Digital Assets Act (UFADAA) concerns four common types of fiduciaries:

1. Executors or administrators of deceased persons' estates;
2. Court-appointed guardians or conservators of protected persons' estates;
3. Agents appointed under powers of attorney; and
4. Trustees.

UFADAA gives people the power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property: by providing instructions in a will, trust, or power of attorney. If a person fails to plan, the same court-appointed fiduciary that manages the person's tangible assets can manage the person's digital assets, distributing those assets to heirs or disposing of them as appropriate.

Some custodians of digital assets provide an online planning option by which account holders can choose to delete or preserve their digital assets after some period of inactivity. UFADAA defers to the account holder's choice in such circumstances, but overrides any provision in a click-through terms-of-service agreement that conflicts with the account holder's express instructions.

Under UFADAA, fiduciaries that manage an account holder's digital assets have the same right to access those assets as the account holder, but only for the limited purpose of carrying out their fiduciary duties. Thus, for example, an executor may access a decedent's email account in order to make an inventory of estate assets and ultimately to close the account in an orderly manner, but may not publish the decedent's confidential communications or impersonate the decedent by sending email from the account. Moreover, a fiduciary's management of digital assets may be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not access the contents of communications protected by federal privacy laws.

In order to gain access to digital assets, UFADAA requires a fiduciary to send a request to the custodian, accompanied by a certified copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust. Custodians of digital assets that receive an apparently valid request for access are immune from any liability for good faith compliance.

UFADAA is an overlay statute designed to work in conjunction with a state's existing laws on probate, guardianship, trusts, and powers of attorney. Enacting UFADAA will simply extend a fiduciary's existing authority over a person's tangible assets to include the person's digital assets, with the same fiduciary duties to act for the benefit of the represented person or estate. It is a vital statute for the digital age, and should be enacted by every state legislature as soon as possible.

# # #

THE UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT

Substitute decision-making documents are widely used in every U.S. State and Canadian Province for both financial transactions and health care decisions. These documents are commonly called powers of attorney, proxies, or representation agreements, depending on the jurisdiction, and the law governing their use also varies from place to place. Consequently, a person's authority under a decision-making document may not be recognized if the document is presented in a place outside the state of its origin. In our modern mobile society, this can create serious problem problems for the people who rely on their agents to make decisions when they cannot do so for themselves.

However, a person asked to accept a decision-making document from out of state faces problems as well. Because the law varies by jurisdiction, significant legal research may be required to determine whether a foreign document actually complies with the law where it was executed.

The Uniform Recognition of Substitute Decision-making Documents Act (URSDDA) is the result of a joint project between the Uniform Law Commission and the Uniform Law Conference of Canada to resolve these problems. The act employs a three-part approach to portability modeled after the Uniform Power of Attorney Act:

1. The act recognizes the validity of a substitute decision-making document for use in the enacting state if the document is valid as determined by the law under which it was created.
2. The act preserves the meaning and effect of a substitute decision-making document as defined by the law under which it was created regardless of where the document is actually used.
3. The act protects the persons asked to accept a foreign document from liability for either acceptance or rejection, if they comply with the law in good faith.

URSDDA's effect is best illustrated with an example.

John and Jane are longtime friends living in Ottawa, Canada. John is unmarried, and owns a hardware store that he manages with the help of his adult son Robert. With the assistance of his attorney, John executes a substitute decision making document giving Jane the power to make health care decisions on his behalf if he ever becomes incapacitated and cannot make decisions for himself. John also executes a separate document giving Robert the power to make financial transactions on his behalf, effective immediately.

John and Robert are meeting with a hardware supplier in Minneapolis, Minnesota when they are involved in a traffic accident and John is seriously injured. He is transported to the closest hospital where doctors perform emergency surgery. When Jane is informed, she immediately flies to Minneapolis to be at his side.

After surgery, John's doctors keep him under heavy sedation while he heals. His surgeon recommends a second procedure that might restore more of John's ability to use his damaged arm, but John is unable to evaluate the risks of the procedure for himself. Jane presents a copy of John's health care decision-making document to the hospital administrator, who must determine whether she has the authority to authorize John's additional procedure.

Assume the state of Minnesota has enacted URSDDA. The hospital administrator, being unfamiliar with Ottawa's law, asks Jane to (i) provide an opinion of counsel that the document is valid under Ottawa law, and (ii) verify that she is the person to whom John granted the authority to make health care decisions, and that John never revoked her authority. (The administrator could also ask for an English translation of the document if applicable.) Jane verifies her identity and her authority, and asks John's attorney to send an opinion of counsel to the administrator via email. Once received, the administrator can allow Jane to direct John's health care and the hospital will incur no liability for recognizing her authority.

Meanwhile, using his authority to make financial transactions for John, Robert wants to complete the planned order with their hardware supplier. When presented with John's substitute decision-making document, the supplier may ask for the same assurances as the hospital administrator, and receive the same protections from liability for good faith compliance with John's grant of authority to Robert.

If there was any question as to the extent of Jane's or Robert's authority because the documents were vague or contradictory, the meaning and effect of the documents would be determined under Ottawa's law. In other words, the meaning and effect of any particular document does not change simply because the document is used in another state or province.

Finally, if either the supplier or the hospital administrator had reason to believe the substitute-decision making document presented was invalid, or that Jane or Robert were exceeding their authority under the document, the supplier or the hospital administrator could reject the document, again without fear of incurring liability

The preceding example uses Canadian residents, but the effect is exactly the same for residents of the United States who present substitute decision-making documents in another state or Canadian province.

# # #

2014 AMENDMENTS TO THE UNIFORM VOIDABLE TRANSACTIONS ACT *(FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)*

The Uniform Fraudulent Transfer Act was promulgated in 1984 and has been enacted by 43 states, the District of Columbia, and the U.S. Virgin Islands as of 2014. The act replaced the very similar Uniform Fraudulent Conveyance Act, which was promulgated in 1918 and remains in force in two states as of 2014.

The 2014 amendments are the first made to the act since its original promulgation. The amendments address a small number of narrowly-defined issues, and are not a comprehensive revision. The principal features of the amendments are as follows:

Name Change. The amendments change the title of the act to the "Uniform Voidable Transactions Act." The name change is not motivated by the substantive revisions made by the

amendments, which are relatively minor. Rather, the original title of the act, though sanctioned by historical usage, has always been a misleading description of its provisions in two respects. First, fraud is not, and never has been, a necessary element of a claim under the act. Second, the act has always applied to the incurrence of obligations as well as to transfers of property.

Choice of Law. The amendments add, for the first time, a choice of law rule for claims of the nature governed by the act.

Evidentiary Matters. New provisions add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the act.

Deletion of the Special Definition of "Insolvency" for Partnerships. Under the general definition of "insolvency" in the act, a debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets. The act as originally written set forth a special definition of "insolvency" applicable to partnerships, which adds to the sum of the partnership's assets the net worth of each of its general partners. The amendments delete that special definition, with the result that a partnership will be subject to the general definition.

Defenses. The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee, as follows:

- As originally written, Section 8(a) of the act creates a complete defense to an action under Section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to Section 8(a) the further requirement that the reasonably equivalent value must be given the debtor.
- Section 8(b), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person. The amendments clarify the meaning of Section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code §§ 550(a), (b) (which is substantially unchanged as of 2014).
- Section 8(e)(2) as originally written created a defense to an action under Section 4(a)(2) or Section 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

Series Organizations. The amendments add a new section which provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act, even if it is not treated as a person for other purposes. This change responds to the emergence of the "series organization" as a significant form of business organization.

Medium Neutrality. In order to accommodate modern technology, the amendments replace references in the act to a "writing" with "record," and make related changes.

Conclusion

The amendments do not contemplate enactment by states with a uniform effective date. However, the lack of a choice of law rule for claims of the nature governed by the act under current law

has led to uncertainty and wasteful litigation in respect of such claims in regard to transactions that touch on more than one jurisdiction. To alleviate that problem and install a clear and uniform choice of law regime for such claims, all states are urged to adopt the 2014 amendments as quickly as possible.

# # #

Uniform Common Interest Ownership Act
and the 2014 Amendments

The ULC promulgated the original version of the Uniform Common Interest Ownership Act (UCIOA) in 1982. UCIOA succeeded and subsumed several older ULC acts, including the Uniform Condominium Act (1977 and 1980 versions), the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities, whether that community is a condominium, planned community, or real estate cooperative.

In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and to respond to scholarly commentary and analyses surrounding the act. Issues addressed by the 1994 act included: increasing declarant responsibility for large and non-residential projects; allowing subdivision and expansion of projects; improving procedures for addressing use and occupancy restrictions in units; easing the process for projects begun in states prior to the adoption of UCIOA to opt in to the act; empowering the association to deal with tenants in rented units; and clarifying the standard of care that applied to association directors.

In 2008, the ULC approved amendments to UCIOA to incorporate non-substantive, style changes to update the act and harmonize it with state legislative developments and terminology changes, and to clarify and modernize the operation and governance of common interest associations. The 2008 UCIOA amendments addressed critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records.

In 2014, amendments to **Section 3-116** of UCIOA clarify rules governing the six-month "limited priority" lien for unpaid common expense assessments owed to community associations, in response to conflicting interpretations by state courts.

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