

## LETTER FROM THE PRESIDENT

### Howard J. Swibel



In the past, I have told you about many of the new and exciting developments for the Conference on the international front, including our drafting efforts with both the Uniform Law Conference of Canada and the Mexican Center for Uniform Laws, as well as our work with the U.S. State Department. There is now a new development to report: the Conference has recently signed a Memorandum of Understanding to form a new Joint Editorial Board for International Law.

The new JEB will consist of three members appointed from the Conference, and three members appointed from the ABA Section on International Law. The purposes of the JEB are:

- to facilitate the promulgation of uniform state laws consistent with U.S. laws and international obligations dealing with international and transnational legal matters;
- to advise the Conference with respect to all aspects of international and transnational legal matters that have the potential to impact upon subject areas in which the Conference has promulgated, or might promulgate, a uniform or model act;

- to inform and assist the U.S. Government with respect to the negotiation of international treaties and agreement, taking into consideration where appropriate the laws, experience and perspective of the states;
- to promote the principles of the rule of law and for the attainment of uniformity of legal provisions world-wide; and
- to further the aims and objectives of both the Conference and the ABA Section on International Law.

There are several reasons why a JEB for International Law is important. With the movement toward globalization, the federal government has increasingly participated in the promulgation of private international law conventions that, upon ratification, become preemptive federal law. This potentially disrupts the law in areas such as commercial and family law that historically have been regulated at the state level and that have been the subject of numerous uniform acts promulgated by the Conference. The states have an interest in ensuring that international conventions mesh with their existing laws, influencing the law's development in other countries so that it is compatible with American legal concepts, and harmonizing their own laws with the laws of other countries. This will facilitate transactions and movement across borders and will provide the citizens of the

states a familiar and appropriate legal framework as they participate in the global community. For the same reasons it benefits our citizens and businesses to have uniform state laws, so too will our citizens benefit by having their state laws work in harmony with the laws of other nations.

Also, the globalization of business transactions is growing dramatically. The modern global economy needs laws that are harmonized across national borders or laws that are uniform in international scope.

The Conference is well positioned to advance the interests of the states in this global environment. We have a close working relationship with the Uniform Law Conference of Canada and in recent years have developed an excellent relationship with the Mexican Center for Uniform Laws. We also work closely with representatives of the U.S. Department of State's Office of Private International Law to develop a collaborative approach to negotiating and implementing international conventions.

The establishment of this JEB for International Law will enable the Conference to enhance its important work in the international and transnational arenas for years to come.

### HIGHLIGHTS FROM EXECUTIVE COMMITTEE MIDYEAR MEETING

The Executive Committee met in Pasadena, California, February 3-4, for its midyear meeting. Among the decisions made, the Executive Committee approved the appointment of four new drafting committees and four new study committees. (See accompanying article.)

A new Joint Editorial Board for International Law was authorized. At this time the JEB will have members appointed from the Conference as well as the ABA International Law Section. At the JEB's initial meeting, early in May, the group will review current international and transnational projects, discuss ways in which the Conference and the International Law Section can enhance their cooperative endeavors, and develop plans for future collaboration.

A new dues structure for state dues has been approved. The Executive Committee approved the establishment of a simplified, six-tier structure, to replace the current structure that currently sets dues by population. Under the new structure, each state will be assigned by population range to one of the tiers. Conference leadership and staff have been in close communication with lead commissioners in each state as to how to implement the new dues structure.

The agenda for the 2007 Annual Meeting in Pasadena was discussed. At this time the agenda is still tentative and subject to change. Currently, eight acts are scheduled for final reading this summer: Uniform Discovery of Electronically Stored Information Act, Uniform Limited Cooperative Association Act, Amendments to Uniform Emergency Volunteer Health Practitioners Act, Uniform Collateral Sanctions and Disqualification Act, Amendments to Uniform Common Interest Ownership Act, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Uniform Statutory Trust Entity Act, and the Uniform Interstate Depositions and Discovery Act.

The dates and sites for the 2008 and 2009 annual meetings have been set, so mark your calendars if you haven't already done so. The 2008 Annual Meeting will be held at the Big Sky Resort in Montana, July 18 through July 25, 2008. The Conference will meet in Santa Fe, New Mexico, July 9 through July 16, 2009, for the 2009 Annual Meeting.

The minutes of the Executive Committee midyear meeting will be posted online at [www.nccusl.org](http://www.nccusl.org).

### NEW DRAFTING AND STUDY COMMITTEES

At its February 2007 Midyear Meeting in Pasadena, California, the Conference Executive Committee authorized the appointment of four new drafting committees and four new study committees.

The four new drafting committees which will begin working on new acts are:

- **Drafting Committee to Amend the Uniform Interstate Family Support Act.** The purpose of this committee is to consider the impact of the expected November 2007 completion of the Hague Convention on Family Maintenance, which deals with international recovery of child support and other forms of family maintenance. The committee will examine, at the request of the State Department, whether becoming a party to the Convention is in the best interests of the United States and is expected, if appropriate, to draft amendments to UIFSA, and possibly drafting implementing federal statutory language, that would comply with the new Hague Convention.
- **Drafting Committee on Tenancy-in-Common Partition Act.** The purpose of this committee is to draft a uniform act that will address the issue of tenancy-in-common land ownership. Tenancy in common is a type of joint ownership without right of survivorship. When there is no right of survivorship, the death of a tenant in common can trigger an action to partition the land to satisfy the deceased tenant's heirs. In a partition, the land is sold to satisfy tenant in common interests, often in a sale that does not meet market value. This committee will draft a new law to protect vulnerable landowners. In doing so, it will consider providing a buy-out option; establishing balancing factors for judges on partition of real property; creating sale price minimums if dispossession occurs; and establishing a waiting period of up to three years for strangers to title.
- **Drafting Committee on Environmental Controls and Hazards Notice System Act.** This committee will draft an act to work with existing "one-call" systems, which allow landowners, contractors, and other workers to call prior to breaking ground in order to determine if underground utilities are present. It is hoped

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*New Committees, continued from previous page*

that these one-call systems will be significantly enhanced if environmental use controls and hazards are included in such notice systems.

- **Joint Drafting Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit.** This committee will work with the American Law Institute, the Uniform Law Conference of Canada and the Mexican Center for Uniform Laws to draft language to implement the UN Convention on Independent Guarantees and Stand-by Letters of Credit, and to assist Canada and Mexico in developing letter-of-credit law consistent with UCC Article 5. The Convention is designed to facilitate the use of independent guarantees and stand-by letters of credit, in particular where only one or the other of these instruments may be traditionally in use.

The four new study committees which will consider a subject for possible future drafting are:

- **Study Committee on Insurable Interest in Trusts Act.** Life insurance trusts have become a standard estate planning tool. The reason for their popularity is simple: tax savings. The proceeds of an irrevocable life insurance trust are not subject to estate taxes. However, recent case law has raised the possible need for uniform law on insurable interest, particularly when a trustee of a life insurance trust needs an insurable interest in the insured unhindered. This study committee will study the feasibility of an Insurable Interest Act as it applies to life insurance trusts and other estate planning entities.
- **Study Committee to Revise Uniform Federal Lien Registration Act.** This committee will research the need to revise the Uniform Federal Lien Registration Act to better harmonize the filing requirements for notices of federal liens with those applicable to security interests under UCC Article 9. Security interests and tax liens should be readily discoverable by third parties because lenders and buyers are concerned with both encumbrances.
- **Study Committee to Revise Uniform Division of Income for Tax Purposes Act.** This committee will study the need to update the Uniform Division of Income for Tax Purposes Act, last amended in 1966, in conjunction with the proposed revision of the Multistate Tax Compact. Twenty states have adopted the Compact and 20 have adopted UDITPA, with some overlapping. The committee will focus on Section 17 of UDITPA (Article IV of the Compact) which deals with sales factor sourcing for transactions other than sales of tangible goods.
- **Study Committee to Revise Model Drug Dependence Treatment and Rehabilitation Act.** The UDDTRA was approved in 1973 and was intended to complement the Uniform Controlled Substances Act, with procedures to substitute treatment for incarceration. The fundamental principle of the act was fostering social and economic reintegration of drug dependent persons into society. Although the original 1973 act was not adopted in any state, the huge increase in the numbers of persons incarcerated and the cost of their incarceration may have increased interest around the country in viable alternatives to imprisonment. The study committee will focus on enactment feasibility but also consider the extent to which substantive revisions of the model act are desirable.

## UNIFORM LAW FOUNDATION NEWS

**Robert A. Stein, Chair**

### Successful Year-End Fundraising...

The 2006-2007 ULF Campaign is off to a strong start. Response to our year-end solicitation has been terrific and has included generous gifts by more than 100 Commissioners, observers and other interested individuals, as well as several major law firms that have demonstrated their support of the work of the National Conference with gifts to the Foundation. We are pleased that to date 30 gifts from Commissioners and other individual supporters have been at the *Fellow* gift level, and nine gifts at the *Benefactor Fellow* level, and eleven at the new *Patron* level.

On behalf of the Trustees, thanks to all of you who remembered the Foundation with a contribution during the recent traditional season of giving. Thank you for your generous support.

### New Way to Give to the Foundation ...

Legislation enacted by Congress last year gives commissioners and other donors the opportunity to support the Foundation in an exciting new way. With the enactment of the Pension Protection Act of 2006, taxpayers age 70½ and older are permitted to make tax-free "qualified charitable distributions" totaling up to \$100,000 per year

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*ULF Update, continued from page 3*

from traditional IRAs or Roth IRAs. All contributions must be made between January 1, 2006, and December 31, 2007.

One of the primary reasons that an IRA owner may wish to use the rollover to make gifts is the convenience of a direct transfer from an IRA to a favorite charity, without incurring any income tax liability for the transfer. Also, some donors find that they have substantial amounts in their IRA and this is the best way for them to make a charitable gift this year.

Who will benefit from this new law? Taxpayers who don't itemize their deductions. The IRA rollover most benefits the nearly two-thirds of Americans who do not itemize deductions on their annual income tax returns, and therefore do not receive a tax benefit for their charitable contributions. Also benefiting are donors who've reached the 50% charitable giving limit. Donors who itemize their deductions are prohibited from deducting more than 50% of their annual gross income for the purpose of making contributions to public charities. However, donations from an IRA are excluded from the percentage limit.

Some states (Indiana, Michigan, New Jersey, Ohio, Massachusetts and West Virginia) do not allow itemized tax deductions, and taxpayers are required to pay state income tax on all charitable donations. By making a charitable donation through an IRA, taxpayers exclude the amount from their state income and, consequently, from state taxes.

Please contact Liz Cunneen in the Chicago office if you'd like more information about charitable IRA rollovers. Liz can be reached at 312-915-0195, or by email at [liz.cunneen@nccusl.org](mailto:liz.cunneen@nccusl.org).

### **2007 Annual Meeting News...**

Plans for our 2007 Annual Meeting Saturday Night Benefit in California are progressing - we are currently finalizing arrangements for an event at an exciting and memorable venue. You can be sure that our plans will continue the tradition of a gala benefit at a location that reflects the unique features of our annual meeting site. You'll be hearing more about this exciting foundation event in the weeks ahead.

Thank you all for your continuing support.

## **NEWS FROM THE ABA MIDYEAR MEETING**

### *Four Uniform Acts Approved by ABA House of Delegates*

Four new uniform acts were approved by the American Bar Association's House of Delegates at its Midyear Meeting in Miami, Feb. 9-13.

#### **Uniform Anatomical Gift Act (2006)**

The Uniform Anatomical Gift Act (2006) (UAGA 2006) revises the earlier 1968 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system for allocations of cadaver organs for transplant purposes. It makes it easier to make a document of gift, particularly as provided on drivers' licenses. It creates a power in certain individuals, such as a holder of a health care power of attorney, to authorize an anatomical gift on behalf of an incapacitated person, before death actually occurs. It expands the list of those who may make an anatomical gift after an individual dies, when the individual has not executed a document of gift. It makes it clear that an anatomical gift that does not specify the donees of organs goes to a recognized transplant organization respon-

sible for allocating organs. It accommodates the use of donor registries upon which a potential donor may put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The Act attempts to resolve ambiguity and conflict between anatomical gifts and advanced directives. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the Act more usable than the earlier acts are currently.

**Legislative Status:** the UAGA has been enacted in two states - Idaho and Virginia- and introduced in 22 others: Arizona, Arkansas, California, Colorado, District of Columbia, Indiana, Kansas, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Rhode Island, South Dakota, Tennessee, Texas, Utah, U.S. Virgin Islands, Vermont, Washington.

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*ABA, continued from page 4*

### **Uniform Child Abduction Prevention Act**

The Uniform Child Abduction Prevention Act (UCAPA) authorizes a proceeding in a court between contestants in a child custody dispute during which the court considers the probability that a contestant will abduct a child to another state or foreign jurisdiction. Upon a finding that an abduction is highly probable, the court may issue orders as necessary to prevent that abduction. The court hears evidence respecting the risk of abduction, based upon statutorily provided risk factors: previous abductions or attempts to abduct; threats by a contestant respecting abduction; abuse of the child; domestic violence; negligence; or, refusal to obey an existing child-custody order. There are further risk factors if the anticipated abduction is to a foreign country, i.e., the country is not a party to the Hague Convention on International Child Abduction. Standing to bring such a proceeding broadly includes the court itself, a contestant in a child-custody proceeding, a prosecutor or a public attorney. UCAPA relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

**Legislative Status:** UCAPA has been enacted in two states - Nebraska and South Dakota - and introduced in seven others: Colorado, Connecticut, Kansas, Nevada, South Carolina, Utah, and the U.S. Virgin Islands.

### **Uniform Power of Attorney Act**

The Uniform Power of Attorney Act (UPOAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960's to early 1970's in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPOAA requires that certain powers be expressly and specifically conferred rather than be general powers; this eliminates questions about the agent's authority

and are cautionary in intent. UPOAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

**Legislative Status:** UPOAA has been introduced in three states: Maryland, Minnesota, and New Mexico.

### **Uniform Prudent Management of Institutional Funds Act**

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an update of the Uniform Management of Institutional Funds Act which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds. The earlier Act did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 Uniform Act. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7% of total return measured by a three year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

**Legislative Status:** UPMIFA has been enacted in one state - South Dakota - and introduced in 14 others: Connecticut, Idaho, Indiana, Kentucky, Minnesota, Montana, Nebraska, Nevada, Oklahoma, Oregon, Tennessee, Texas, Utah, and the U.S. Virgin Islands.

Each of these acts was approved on the consent calendar of the ABA/HOD. Information on these acts is available at NCCUSL's website at [www.nccusl.org](http://www.nccusl.org).