

**STATE OF HAWAII**  
**Department of the Attorney General**



**2008 REPORT  
OF THE  
COMMISSION TO PROMOTE  
UNIFORM LEGISLATION**

**SUBMITTED TO  
THE TWENTY-FIFTH STATE LEGISLATURE  
Regular Session of 2009**

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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL

2008 REPORT OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-FIFTH  
LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation, the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2008 Report.

I. HISTORY OF THE NATIONAL CONFERENCE OF  
COMMISSIONERS ON UNIFORM STATE LAWS (NOW  
REFERRED TO AS THE UNIFORM LAW COMMISSION)

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892, the first National Conference of Commissioners on Uniform State Laws (now commonly referred to as the "Uniform Law Commission" or "ULC") convened in Saratoga, New York, three days preceding the annual

meeting of the American Bar Association. By 1912, every state was participating in the ULC. As it has developed, the ULC is a confederation of state interests. It 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.

## II. OPERATION OF THE ULC

### A. Financial Support of the ULC.

The ULC, as a state service organization, depends upon state appropriations for its continued operation. All states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the ULC. In addition, each state commission requests an amount to cover its travel to the ULC annual meeting.

The ULC is a unique institution created to consider state law and to determine in which areas of the law uniformity is important. The work of the ULC has been a valuable addition over time to the improvement of state law in a great many subject areas. Included in that work have been acts such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Interstate Family Support Act, the Uniform Controlled Substances Act, the Uniform Anatomical Gift Act, the Uniform Unclaimed Property Act, the Uniform Probate Code, and the Model State Administrative Procedure Act, acts which have been adopted uniformly by nearly all the states or which have been heavily utilized by most state legislatures. Even with acts that have not been uniformly adopted, the texts consistently contribute to the improvement of the law and have served as valuable references for the legislatures in their effort to improve the quality of state law.

The procedures of the ULC ensure 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, the Uniform Probate Code, and the Uniform Land Transactions Act took nearly 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. Without the ULC, nothing like the existing body of uniform state laws would ever be available to the states.

The ULC also 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. He or she receives compensation only for actual expenses incurred. The ULC estimates that each commissioner devotes approximately 200 hours a year to ULC work, including work on various drafting committees and attendance at the 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 comes to literally thousands of hours. The value of this donated time averages over \$10,000,000 annually. The total requested contribution of all the states to the operation of the ULC is \$2,272,300 in fiscal year 2008-2009. The smallest state contribution is \$21,800, and the largest is \$144,200. Hawaii's contribution for fiscal year 2008-2009 is \$25,700, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the ULC guarantees any state a substantial return on each dollar invested. The State of Hawaii has had one hundred twenty enactments of uniform acts, amendments to

uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very substantial and valuable services.

The annual budget of the ULC comes to \$3,069,119 for the current fiscal year (July 1 to June 30). Of this amount, \$566,095 (approximately 18.5%) 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 \$117,437 (or 3.8%). About \$733,591 (24%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$389,774 (12.7%) is spent on the annual meeting. Public education for uniform and model acts costs about \$248,512 (8.1%) 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 also receives limited funds from the American Bar Association and the American Law Institute. 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 ULC'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 ULC 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 original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue



to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of ULC and ALI costs is paid from Falk Foundation income.

In addition, the ULC has recently established new royalty agreements with major legal publishers which reprint the ULC's uniform and model acts in their publications.

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. They were deeply concerned about the evils of centralized government, fearing the unchecked growth of the federal government.

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 Capitol Hill in Washington, D.C.

B. Creation of Uniform and Model Acts.

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 Scope and Program Committee that 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 a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the ULC Executive Committee.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

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, from 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 work with drafting committees and to contribute comments. They do not make decisions with respect to the final contents of an act. Only the 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 one or two committee meetings. Major acts may require a meeting per month for a considerable period of time -- several years, in some instances. A given committee may produce 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 ULC. The most current draft is read and debated. The entire text of each working draft is

actually read aloud -- a reading of a proposed uniform law is not by title only, but is considered section by section either by section title or word for word -- and debated during proceedings of the committee of the whole. This scrutiny continues from annual meeting to annual meeting until a final draft satisfies the whole body of the commissioners. Except in extraordinary circumstances, no act is promulgated without at least two years' 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.

C. Administration of the ULC.

The governing body of the ULC is the ULC Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the ULC. Certain activities are conducted by standing committees. As mentioned above, 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 provides support for drafting and legislative efforts

and handles meeting arrangements, publications, legislative liaison, and general administration for the ULC.

The ULC has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers only fourteen people. In addition, the ULC contracts for professional services to aid in the drafting effort. These professional reporters, so-called, are engaged at 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. The ULC also contracts with professional, independent contractors for part of its public information and educational materials.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an on-going basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### III. ACTIVITIES OF THE HAWAII COMMISSIONERS

#### A. Membership of the Hawaii Commission to Promote Uniform Legislation.

The Hawaii Commission to Promote Uniform Legislation was originally created by law in 1911. The Commission is placed within the State Department of the Attorney General and, pursuant to section 26-7, Hawaii Revised Statutes, is advisory to the Attorney General and to the Legislature on matters relating to the promotion of uniform legislation. Pursuant to sections 3-1 and 26-7, Hawaii Revised Statutes, the Commission consists of five members, who are appointed by the Governor, with the advice and

consent of the Senate, for staggered terms of four years and until their successors are appointed and qualified. The ULC Constitution requires that each commissioner be a lawyer. A deputy attorney general, assigned by the Attorney General to coordinate the review and preparation of legislative bills, sits with the Commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the ULC.

Hawaii's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Hawaii benefits from the excellent body of law created for its consideration. The ULC, and all the states, benefit from having Hawaii's direct contribution to the work of the ULC. Hawaii'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.

The members of the Hawaii Commission during 2007-2008 were as follows:

- (1) Lani Liu Ewart;
- (2) Peter Hamasaki;
- (3) Elizabeth Kent;
- (4) Kevin Sumida; and
- (5) Ken H. Takayama

The members of the Hawaii Commission for 2008-2009 will remain the same.

Former commissioners Hiroshi Sakai and Robert S. Toyofuku are ULC Life Members who continue to actively participate in ULC activities. Upon recommendation of the ULC Executive Committee and by the affirmative vote of two-thirds of the commissioners present at an annual meeting, they were elected as ULC Life Members with the privilege to

participate in ULC activities. Deputy Attorney General Maurice S. Kato of the Legislative Division has been assigned by the Attorney General to provide staff support for the commissioners and is recognized as an Associate Member of the ULC.

B. ULC Committee Assignments.

The ULC President appoints committees to investigate, study, and, if desirable, draft and review proposed uniform and model acts on subjects designated by the Executive Committee. Committee appointments are selectively made -- not all members of the ULC have the privilege of serving on a committee. The commissioners are assigned committees and contribute to the work relating to various uniform act committees as follows:

LANI LIU EWART

For 2007-2008 , Commissioner Ewart served as a member of the Executive Committee, the Drafting Committee on Uniform Statutory Trust Entity Act, and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act.

For 2008-2009 , Commissioner Ewart will continue to serve on the Executive Committee, the Drafting Committee on Uniform Statutory Trust Entity Act, and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act.

In 2007-2008 , Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2008-2009 .

Commissioner Ewart attended four committee meetings in 2008: Executive Committee Meeting in Fort Worth, Texas, on January 11-14, 2008; Drafting Committee on Uniform Statutory Trust Entity Act, in Chicago,

Illinois, on February 28 to March 2, 2008; and two meetings on the Drafting Committee on Uniform Partition of Tenancy in Common Act, in Tucson, Arizona, on March 13–16, 2008, and in Portland, Oregon, on November 20-23, 2008.

**PETER J. HAMASAKI**

For 2007-2008, Commissioner Hamasaki served on the Drafting Committee to Revise the Uniform Law on Notarial Acts.

For 2008-2009, Commissioner Hamasaki will continue to serve on the Drafting Committee to Revise the Uniform Law on Notarial Acts.

Commissioner Hamasaki attended one meeting on the Drafting Committee to Revise the Uniform Law on Notarial Acts on October 3-5, 2008, in Chicago, Illinois, and also participated in a conference call relating to that Act on February 14, 2008. He also attended several meetings on various uniform acts: one with Tung Chan, Commissioner of Securities, Department of Commerce and Consumer Affairs, on the Model Registered Agents Act and the Revised Uniform Limited Liability Company Act, a second meeting with the Department of Land and Natural Resources and Land Court on the Uniform Real Property Electronic Recordation Act, and a third meeting with various interested parties sponsored by the Hawaii Community Foundation on the Uniform Prudent Management of Institutional Funds Act.

**ELIZABETH KENT**

For 2007-2008, Commissioner Kent served as a member of the Drafting Committee on a Uniform Collaborative Law Act.

For 2008-2009, Commissioner Kent will continue to serve as a member of the Drafting Committee on a Uniform Collaborative Law Act.

Commissioner Kent attended two meetings on the Drafting Committee on a Collaborative Law Act, the first on January 19-20, 2008, in Chicago, Illinois, and the second on November 22-23, 2008, in Portland, Oregon.

Commissioner Kent spent a significant amount of time working on passage of the Uniform Anatomical Gifts Act, including numerous meetings and communication with affected parties. She also worked with parties who may be interested in the Uniform Prudent Management of Institutional Funds Act. In addition, she coordinated meetings for Michael Kerr, the ULC Legislative Director/Legal Counsel. She also made numerous inquiries regarding possible introductions of other uniform laws, trying to work with people who may be interested in those subject areas.

#### KEVIN P. H. SUMIDA

In 2007-2008, Commissioner Sumida served on the Standby Committee on a Uniform Cooperative Association Act and on the Drafting Committee on a Certification of Unsworn Foreign Declarations Act

For 2008-2009, he will serve as a member of the Standby Committee on a Uniform Limited Cooperative Association Act and will serve as a member of the Standby Committee on the Uniform Unsworn Foreign Declarations Act.

#### KEN H. TAKAYAMA

For 2007-2008, Commissioner Takayama served as a member of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance as well as a Subcommittee of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance. He also served as a member of the Committee on Membership and Attendance and the Committee of Legislative Counsel. In addition, he served as Hawaii's



liaison member of the Legislative Committee.

For 2008-2009, Commissioner Takayama will serve as a member of the Drafting Committee on Uniform Protection of Genetic Information in Employment and Insurance Act and the Study Committee on Authentication of Online Legal Documents. He will also continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Counsel and the Committee on Membership and Attendance.

Commissioner Takayama attended one meeting for the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance on March 1-2, 2008, in Chicago, Illinois.

#### ROBERT S. TOYOFUKU

The Legislative Committee was created as a standing committee to encourage the development of legislative programs in each state to accomplish the introduction and passage of bills to enact uniform and model acts of the ULC. The activities of the Legislative Committee are directed by the Chair and the Legislative Council. Each state and the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands are represented by a commissioner designated as the liaison member for that jurisdiction who is responsible for the legislative program in that commissioner's home jurisdiction. The represented jurisdictions are grouped into ten regions. A member of the Legislative Council is assigned to each region, with the responsibility to oversee the legislative activities in the states in the assigned region.

For 2007-2008, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2008-2009. He is the Legislative Committee council member who oversees the

legislative activities in the states in the Western Region (Alaska, California, Hawaii, Nevada, Oregon, and Washington).

On May 31, 2008, Life Member Toyofuku attended a meeting of the Legislative Committee in Chicago, Illinois. The legislative counsel also met during the annual conference in Big Sky, Montana, in July 2008. He also participated in monthly conference calls lasting from 30 to 60 minutes each, from January to May 2008, for the Legislative Council.

#### HIROSHI SAKAI

During 2007-2008, Life Member Sakai served on the Drafting Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Committee on International Legal Developments.

For 2008-2009, Life Member Sakai will serve on the Standby Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Committee on International Legal Developments.

In 2008, Life Member Sakai attended two meetings of the committees as follows: (1) Drafting Committee to Amend Uniform Common Interest Ownership Act, on February 26 to March 1, 2008, in Chicago, Illinois; and (2) Committee on International Legal Developments, on December 6-7, 2008, in Chicago, Illinois.

Life Member Sakai participated in two meetings by conference call on the Committee on International Legal Developments and one meeting by conference call on the Uniform Debt-Management Services Act. He also participated by responding to questions from various foundations with regard to the role of the Hawaii Commission to Promote Uniform Legislation relating

to the Uniform Prudent Management of Institutional Funds Act on November 28, 2008 during the morning session.

C. Meetings Attended.

The commissioners attended the meetings of their respective ULC committees (as listed in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland. In addition, the ULC met in its 117th year in Big Sky, Montana, from July 18-25, 2008.



Martha Lee Walters of Oregon, the first woman President of the ULC, presided over the annual meeting in Big Sky, Montana.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama, former Hawaii Commission members and ULC Life Members Sakai and Toyofuku, and Deputy Attorney General Maurice S. Kato attended the 2008 annual meeting.



Hawaii's delegation, Lani Ewart, Robert Toyofuku, Peter Hamasaki, Kevin Sumida, Hiroshi Sakai, Ken Takayama, and Elizabeth Kent, applauded during the first session of the ULC annual meeting on July 18, 2008.

During the sessions of the annual meeting of the ULC, the commissioners who are members of committees meet separately with their committees and, if scheduled, appear with their committees on the dais in the main meeting room during the reading of draft uniform acts.



Elizabeth Kent, member of the Drafting Committee on a Collaborative Law Act.

Kevin Sumida, center, member of the Drafting Committee on the Uniform Unsworn Foreign Declarations Act.





Ken Takayama, back row, right, member of the Drafting Committee on Uniform Protection of Genetic Information in Employment and Insurance Act.

Hiroshi Sakai, front row, right, member of the Drafting Committee to Amend Uniform Common Interest Ownership Act.



During the 2008 annual meeting, Life Member Toyofuku participated in a presentation to the commissioners at two separate breakfast meetings about how to organize a state delegation to be effective at their state legislature in order to enact various uniform acts.



Robert Toyofuku presented information on the legislative process during the regional legislative breakfast meeting held at 7:00 a.m. on Saturday, July 19, 2008.



After consideration of the latest drafts, the ULC approved seven new and revised uniform acts: Uniform Unsworn Foreign Declarations Act, amendments to the Uniform Interstate Family Support Act, the Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA), amendments to the Uniform Common Interest Ownership Act (UCIOA), the Uniform Common Interest Owners Bill of Rights Act, amendments to the Uniform Probate Code, and amendments to the Uniform Principal and Income Act.

Further information on the ULC and copies of the approved final drafts of the uniform acts can be found at its website,  
<http://www.nccusl.org/Update/>.

D. Legislative Appearances by the Hawaii Commissioners.

Commissioner Takayama served in 2007-2008 as the Commission's liaison to the Hawaii State Legislature. The Commission to Promote Uniform Legislation is advisory to the State Legislature, as well as to the Attorney General, and stands ready to assist the Legislature in providing information on any uniform act that the Legislature may be considering for enactment. Consequently, the Hawaii commissioners, upon notification by Commissioner Takayama of scheduled public hearings and as assigned by Chairman Ewart, have testified before the committees of the Legislature when public hearings have been held on bills to enact uniform laws.

During the regular session of 2008, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Debt-Management Services Act, Uniform Emergency Volunteer Health Practitioners Act, Revised Uniform Anatomical Gifts Act, and the Uniform Real Property Electronic Recording Act. They spent time at the Legislature meeting with various legislators regarding ULC related bills. They, together with the other

commissioners, also prepared testimony and testified before various Senate and House committees.

Commissioner Hamasaki provided written testimony and spent time testifying at the Legislature on H.B. No. 2302, Relating to Real Property.

Commissioners Kent and Takayama attended hearings and submitted testimony on H.B. No. 2139, H. B. No. 2010, and H.B. No. 2099, Relating to the Anatomical Gifts.

Commissioners Takayama and Hamasaki attended hearings and submitted testimony on H.B. No. 2559, Relating to the Uniform Unclaimed Property Act.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and Life Members Sakai and Toyofuku also spent time attending meetings, making telephone calls, reviewing material and preparing supporting testimony and making various appearances on behalf of the Commission at the Legislature. Life Members Sakai and Toyofuku are specifically authorized by the Commission to represent the Commission before the Legislature.

#### IV. UNIFORM ACTS ENACTED IN HAWAII

The State of Hawaii has supported the ULC not only by sending a delegation of commissioners to the ULC but also by enacting the uniform acts adopted by the ULC. However, as with other statutes, the process of review and amendment of uniform acts is an ongoing, never-ending process that responds to changing circumstances and needs of our society.

##### A. Uniform Acts Introduced for Enactment in 2008.

During the regular session of 2008, bills were introduced to enact the

following uniform acts: (1) Revised Uniform Anatomical Gifts Act; (2) the Uniform Debt-Management Services Act; (3) the Uniform Emergency Volunteer Health Practitioners Act; and (4) the Uniform Real Property Electronic Recording Act. Of these, the Uniform Anatomical Gifts Act was approved by the Governor on May 28, 2008, as Act 122.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-four original, amended, or revised uniform acts enacted in Hawaii, either as a whole, in a substantially similar version, or in a modified version. The table also lists the references to the Hawaii Revised Statutes where the uniform acts or their similar or modified versions may be found. Some of the listed uniform acts, such as the Uniform Criminal Extradition Act, have been superseded by other uniform acts adopted by the National Conference after enactment in Hawaii. A review of the superseding uniform acts should be done on an ongoing basis for the eventual updating of the Hawaii Revised Statutes by enactment of the superseding uniform acts.

V. A SUMMARY OF NEW UNIFORM ACTS

During the 2008 annual meeting, the ULC considered and adopted seven new or amended uniform acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. 2008 Amendments to the Uniform Common Interest Ownership Act (and) the Uniform Common Interest Owners' Bill of Rights Act

The 2008 amendments to the Uniform Common Interest Ownership Act (UCIOA) update and revise the 1994 version of the act. The original 1982 version of UCIOA had previously been adopted in five jurisdictions, and the 1994 revised version in two. This act contains provisions for the



formation, management, and termination of any common interest community, including condominiums, planned communities, and real estate cooperatives.

The 2008 UCIOA amendments seek to address 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. Importantly, UCIOA gives greater flexibility to association governing boards with regard to enforcement of the declaration, bylaws, and rules of the association. The 2008 amendments also modernize UCIOA with respect to electronic commerce and practice.

In addition to amendments to UCIOA, a new Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA) was also drafted that can be enacted by states as part of UCIOA or as a stand-alone act. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 act.

B. 2008 Amendments to the Uniform Interstate Family Support Act.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments, approved by the ULC, serve as the implementing language for the Convention within United States states and territories.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention

that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement, and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction by 2010, as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments by 2010 will result in the loss of this important federal funding.

C. 2008 Amendments to the Uniform Principal and Income Act.

The ULC, in July 2008, approved amendments to the Uniform Principal and Income Act that update the act to reflect current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy a 2006 IRS ruling regarding marital deductions. The new language comports with the ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to section 505, which addresses the amount of money that must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.

D. 2008 Amendments to the Uniform Probate Code.

The Uniform Probate Code (UPC), which is fully adopted in 18 states (and partially adopted as various stand-alone acts in many others), provides

an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records, and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate inheritance rights to a broader group of potential heirs based on the existence of a “parent-child relationship” as defined therein. This last change significantly modernizes the UPC’s treatment of non-marital children (and children of new forms of marriage), adoptive children, and children of assisted reproduction. Finally, the process and standards under which a will can be reformed or corrected are clarified so as to be consistent with the Restatement (Third) of Property: Wills and other Transfers, and the Uniform Trust Code.

E. The Revised Uniform Unincorporated Nonprofit Association Act.

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996), addressed a key problem in common law: that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many characteristics of a business partnership. The 1996 uniform act reformed the common law in three basic areas: authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Uniform Unincorporated Nonprofit Association Act

(RUUNAA) improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The revised act extends the nature of unincorporated nonprofit associations as distinct entities by allowing qualified associations to exist in perpetuity where necessary or convenient to carry out its purposes.

The RUUNAA distinguishes itself from its predecessor in that it provides greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, the RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, the RUUNAA modernizes the 1996 uniform act by addressing popular internal and external issues that would face an unincorporated nonprofit association today. Significantly, the project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adoption of the Revised Act will have the added benefit of functional cross-border harmonization.

F. Uniform Unsworn Foreign Declarations Act.

The Uniform Unsworn Foreign Declarations Act, promulgated by the ULC in 2008, affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and who may not have access to a notary. Under the act, unsworn declarations cannot be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under

certain real estate statutes, and oaths required to be given before specified officials other than a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the act provides a model form that unsworn declarations must substantially follow.

## VI. RECOMMENDATIONS FOR ENACTMENT IN 2009

The Hawaii Commission to Promote Uniform Legislation annually selects uniform acts that have not yet been enacted in Hawaii and recommends the enactment of those selected uniform acts. However, the Commission's selection is based in part on practical and logistical considerations and the number of uniform acts recommended for enactment in any legislative session is not intended to imply that other uniform acts should not be considered. The Commission stands ready to provide information and support on any uniform act that the Legislature may have before it for consideration.

For the regular session of 2009, the Commission recommends enactment of the Uniform Foreign-Country Money Judgments Recognition Act, the Uniform Real Property Electronic Recording Act, the Model Registered Agents Act, the Uniform Mediation Act, and the Uniform Prudent Management of Institutional Funds Act (UPMIFA). These acts are summarized below:

A. Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA).

This act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment

debtor. This revision continues the basic policies and language of the 1962 act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 act revealed in the case law. For example, the 2005 act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 act. The 2005 act has statutes of limitation provisions not found in the 1962 act at all. The result is a more comprehensive act and better response to the conditions of international trade.

B. Uniform Real Property Electronic Recording Act.

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The act also establishes a state board to establish standards for electronic recording.

C. Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings.

The Model Registered Agents Act (MRAA) with amendments to other entity acts allows a state to use the same rules in the same place for registering agents mainly for partnerships, limited partnerships, limited liability companies, and corporations. Currently every state has registration requirements for each kind of entity in the specific statute authorizing the entity, i.e., the partnership act has provisions for registering agents representing the partnership. There is no reason to have separate registration requirements, with inevitable differences, in every entity statute. A single statute applying to every kind of entity makes the administration of

these statutes much more efficient. Accordingly, MRAA would consolidate registration of agents in one place under one procedure. It would repeal the individual registration provisions from entity act to entity act. The amendments in an appendix provide suggestions for making the repeal amendments from state to state by showing how it would be done in the existing uniform or model entity statutes. Agents are registered primarily to establish a single office for service of process and for taking jurisdiction of the entity in litigation.

D. 2003 Amendments to Uniform Mediation Act: UNCITRAL Model Act on Commercial Conciliation.

The 2003 Amendment to the Uniform Mediation Act provides for adoption of the United Nations commission on International Trade Law (UNCITRAL) Model Law on Commercial Conciliation by incorporating it by reference in the Uniform Mediation Act. The Model Law was adopted by UNCITRAL in 2002, and provides for the appointment of conciliators (mediators) and the conduct of a conciliation between international commercial disputants. Conciliation and mediation are virtually synonymous for the purposes of these acts.

E. Uniform Prudent Management of Institutional Funds Act (UPMIFA).

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 1972 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 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 seven percent 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.

The interest of Hawaii foundations, private and corporate trustees, nonprofit organizations and attorneys in UPMIFA led the Commission to arrange with the ULC for Susan Gary, law professor at the University of Oregon and the Reporter for UPMIFA, to travel to Honolulu to give two seminars on UPMIFA on November 21, 2008. Both sessions, organized by the members of the Commission with the assistance of the Hawaii Community Foundation, were very well-attended and provided participants with a unique opportunity to learn about UPMIFA from the person who worked on all of the drafts. This is one example of the valuable resources available to Hawaii through its participation in the ULC.

## VII. CONCLUSION

The Hawaii Commission to Promote Uniform Legislation offers its assistance in obtaining information or advice regarding the uniform acts recommended for consideration, or any other uniform act adopted by the ULC. The Commission wishes to express its appreciation for the interest in and support of the Commission's efforts to promote uniform



legislation that have been received from the Governor, the Attorney General, and the Legislature.

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM  
LEGISLATION

By: Lani L. Ewart  
LANI L. EWART  
Chairman

TABLE OF  
UNIFORM ACTS ENACTED IN HAWAII

| <u>ACT (Date of ULC Adoption<br/>or Amendment)</u>                               | <u>HAWAII REVISED STATUTES</u> |
|--|--------------------------------|
| 1. Uniform Anatomical Gift Act<br>(1968)(1987)(2008)                             | Part I, Chapter 327            |
| 2. Uniform Arbitration Act (1956)(2000)  | Chapter 658A                   |
| 3. Uniform Athlete Agents Act (2000)   | Chapter 481E                   |
| 4. Uniform Attendance of Out of State<br>Witnesses Act (1931)(1936)              | Chapter 836                    |
| 5. Uniform Child Custody<br>Jurisdiction Act (1968)                              | Chapter 583<br>(Repealed 2002) |
| 6. Uniform Child-Custody Jurisdiction<br>and Enforcement Act (1997)              | Chapter 583A                   |
| 7. Uniform Commercial Code (1951)(1957)<br>(1962)(1966) (and Revised Articles)   | Chapter 490                    |
| 8. Uniform Commercial Code Article 1 --<br>General Provisions (2001)             | Article 1, Chapter 490         |
| 9. Uniform Commercial Code Article 2A --<br>Leases (1987)(1990)                  | Article 2A, Chapter 490        |
| 10. Uniform Commercial Code Article 3 --<br>Negotiable Instruments (1990)(1991)  | Article 3, Chapter 490         |
| 11. Uniform Commercial Code Article 4 --<br>Bank Deposits and Collections (1990) | Article 4, Chapter 490         |
| 12. Uniform Commercial Code Article 4A --<br>Funds Transfer (1989)               | Article 4A, Chapter 490        |
| 13. Uniform Commercial Code Article 5 --<br>Letters of Credit (1995)             | Article 5, Chapter 490         |

| <u>ACT (Date of ULC Adoption<br/>or Amendment)</u>                          | <u>HAWAII REVISED STATUTES</u>             |
|---|--|
| 14. Uniform Commercial Code Article 6 -- Bulk Sales (1989)                  | Article 6, Chapter 490<br>(Repealed 1998)  |
| 15. Uniform Commercial Code Article 7 -- Documents of Title (2003)          | Article 7, Chapter 490                     |
| 16. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994) | Article 8, Chapter 490                     |
| 17. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999) | Article 9, Chapter 490                     |
| 18. Uniform Common Trust Fund Act (1938)(1952)                              | Chapter 406                                |
| 19. Uniform Controlled Substances Act (1970)(1973)                          | Chapter 329 (Substantially similar)        |
| 20. Uniform Criminal Extradition Act (Superseded 1980)                      | Chapter 832                                |
| 21. Uniform Custodial Trust Act (1987)                                      | Chapter 554B                               |
| 22. Uniform Deceptive Trade Practices Act (1964)(1966)                      | Chapter 481A                               |
| 23. Uniform Determination of Death Act (1978)(1980)                         | § 327C-1(Substantially similar definition) |
| 24. Uniform Disclaimer of Property Interests Act (1999)                     | Chapter 526                                |
| 25. Uniform Disposition of Community Property Rights at Death Act (1971)    | Chapter 510                                |
| 26. Uniform Division of Income for Tax Purposes Act (1957)                  | Part II, Chapter 235                       |

|     | <u>ACT (Date of ULC Adoption<br/>or Amendment)</u>         | <u>HAWAII REVISED STATUTES</u>                 |
|-----|--|--|
| 27. | Uniform Durable Power of Attorney Act (1979)(1987)         | Chapter 551D                                   |
| 28. | Uniform Electronic Transactions Act (1999)                 | Chapter 489E                                   |
| 29. | Uniform Enforcement of Foreign Judgments Act (1948)(1964)  | Chapter 636C                                   |
| 30. | Uniform Environmental Covenants Act                        | Chapter 508C                                   |
| 31. | Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)     | Chapter 626                                    |
| 32. | Uniform Fiduciaries Act (1922)                             | Chapter 556                                    |
| 33. | Uniform Foreign-Money Claims (1989)                        | Chapter 658B                                   |
| 34. | Uniform Foreign Money Judgments Recognition Act (1962)     | Chapter 658C                                   |
| 35. | Uniform Fraudulent Transfer Act (1984)                     | Chapter 651C                                   |
| 36. | Uniform Guardianship and Protective Proceedings Act (1997) | Parts 1-4, Article V,<br>Chapter 560           |
| 37. | Uniform Health-Care Decisions Act (Modified)               | Chapter 327E                                   |
| 38. | Uniform Information Practices Code (1980)                  | Chapter 92F<br>(Substantially similar)         |
| 39. | Uniform Interstate Family Support Act (1992)(1996)         | Chapter 576B                                   |
| 40. | Uniform Jury Selection and Service Act (1970)(1971)        | Part I, Chapter 612<br>(Substantially similar) |

ACT (Date of ULC Adoption  
or Amendment)

HAWAII REVISED STATUTES

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|-----|---|--|
| 41. | Uniform Limited Liability Company Act (1995) (1996)                   | Chapter 428                                    |
| 42. | Uniform Limited Partnership Act (1976)(1983)(1985)                    | Chapter 425D (Repealed effective July 1, 2004) |
| 43. | Uniform Limited Partnership Act (2001)                                | Chapter 425E (Effective on July 1, 2004)       |
| 44. | Uniform Management of Institutional Funds Act (1972)                  | Chapter 517D                                   |
| 45. | Uniform Parentage Act (1973)  | Chapter 584                                    |
| 46. | Uniform Partnership Act (1914) (1997)                                 | Part IV, Chapter 425                           |
| 47. | Uniform Photographic Copies as Evidence Act (1949)                    | § 626-1, Rules 1001 to 1008                    |
| 48. | Uniform Premarital Agreement Act (1983)                               | Chapter 572D                                   |
| 49. | Uniform Principal and Income Act (1997)(2000)                         | Chapter 557A                                   |
| 50. | Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998) | Chapter 560                                    |
| 51. | Uniform Prudent Investor Act (1994)                                   | Chapter 554C                                   |
| 52. | Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)      | Chapter 576 (Repealed 1997)                    |
| 53. | Uniform Rendition of Accused Persons (Superseded 1980)                | Chapter 833                                    |

| <u>ACT (Date of ULC Adoption<br/>or Amendment)</u>   | <u>HAWAII REVISED STATUTES</u> |
|--|--------------------------------|
| 54. Uniform Residential Landlord and Tenant Act (1972)   | Chapter 521                    |
| 55. Uniform Securities Act (1956)(1958) (Superseded 1985)  | Chapter 485                    |
| 56. Uniform Status of Convicted Persons Act (1964)   | Chapter 831                    |
| 57. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)                                       | Chapter 525                    |
| 58. Uniform Testamentary Additions to Trusts Act (1960)(1961)<br>(Uniform Probate Code § 2-511 (1991)) | § 560:2-511                    |
| 59. Uniform Trade Secrets Act (1979)(1985)   | Chapter 482B                   |
| 60. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)                                   | Chapter 539                    |
| 61. Uniform Transfers to Minors Act (1983)(1986)   | Chapter 553A                   |
| 62. Uniform Trustees' Powers Act (1964)  | Chapter 554A                   |
| 63. Uniform Unclaimed Property Act (1981)  | Part I, Chapter 523A           |
| 64. Uniform Unincorporated Nonprofit Association Act (1992)(1996)                                      | Chapter 429                    |