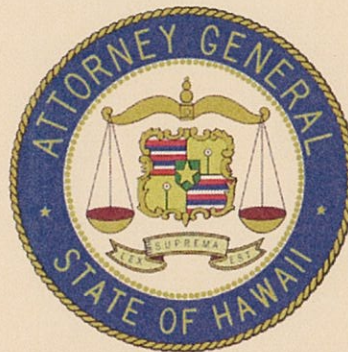


**STATE OF HAWAII**  
**Department of the Attorney General**



**2009 REPORT  
OF THE  
COMMISSION TO PROMOTE  
UNIFORM LEGISLATION**

**SUBMITTED TO  
THE TWENTY-FIFTH STATE LEGISLATURE  
Regular Session of 2010**



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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL

2009 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 2009 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 \$2,457,500 in fiscal year 2009-2010. The smallest state contribution is \$25,000, and the largest is \$148,600. Hawaii's contribution for fiscal year 2009-2010 is \$29,500, 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-six 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 \$3,145,917 for the current fiscal year (July 1 to June 30). Of this amount, \$621,792 (approximately 19.8%) 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 \$138,752 (or 4.4%). About \$699,865 (22.3%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$366,114 (11.6%) is spent on the annual meeting. Public education for uniform and model acts costs about \$238,840 (7.6%) 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 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 2008-2009 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 2009-2010 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 2008-2009 , Commissioner Ewart served as a member of the Executive Committee of the ULC, the Drafting Committee on Uniform Statutory Trust Entity Act, and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act.

For 2009-2010, Commissioner Ewart will continue to serve on the Executive Committee and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act.

In 2008-2009, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2009-2010 .

Commissioner Ewart attended three committee meetings in 2009: Executive Committee meeting in San Diego, California, from January 23-26, 2009; meeting of the Drafting Committee on Uniform Statutory Trust Entity Act, in Chicago, Illinois, from February 26 to March 1, 2009; and meeting of the Drafting Committee on Uniform Partition of Inherited Property Act from November 19-22, 2009, in Chicago, Illinois.

Commissioner Ewart also participated in committee conference calls on the Uniform Statutory Trust Entity Act, the Uniform Partition of Inherited Property Act, and State Delegations. She also had telephone conferences and e-mail communications with Enactment Committee members regarding the Revised Uniform Limited Liability Company Act and Amendments to the Uniform Unincorporated Associations Act, as well as with the Executive Committee regarding various ULC matters.

#### PETER J. HAMASAKI

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

For 2009-2010, Commissioner Hamasaki will continue to serve on the Drafting Committee to Revise the Uniform Law on Notarial Acts.

Commissioner Hamasaki attended two meetings on the Drafting Committee to Revise the Uniform Law on Notarial Acts, both in Chicago, Illinois, one on February 27 through March 1, 2009, and one on November 20-22, 2009.



ELIZABETH KENT

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

KEVIN P. H. SUMIDA

In 2008-2009, Commissioner Sumida served on the Standby Committee on a Uniform Limited Cooperative Association Act and on the Standby Committee on the Uniform Unsworn Foreign Declarations Act.

For 2009-2010, he will serve as a member of the Drafting Committee on Harmonization of Business Entity Acts.

In January 2009, Commissioner Sumida attended a meeting of non-profits to discuss the new act for nonprofits, the Uniform Prudent Management of Institutional Funds Act.

KEN H. TAKAYAMA

For 2008-2009, Commissioner Takayama served 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 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 2009-2010, Commissioner Takayama will continue to serve as a member of the Drafting Committee on Uniform Protection of Genetic Information in Employment and Insurance Act. 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 Uniform Protection of Genetic Information in Employment and Insurance Act on October 21-25, 2009, in Washington, D.C.

### ROBERT S. TOYOFUKU

For 2008-2009, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2009-2010. 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).

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.

On September 24-27, 2009, Life Member Toyofuku attended a meeting of the Legislative Committee in Minneapolis, Minnesota. The Legislative Council also met during the annual meeting in Santa Fe, New Mexico, in July 2009. He also attended a meeting of the Committee to



Review the ULC Drafting Process in Chicago, Illinois, on November 19-21, 2009. He participated as a member of the Legislative Council in monthly conference calls lasting from 30 to 45 minutes each, from January to May 2009, and he had e-mail communications with liaisons in the Western Region monthly for updated reports.

#### HIROSHI SAKAI

During 2008-2009, 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 2009-2010, Life Member Sakai will continue to serve on the Committee on International Legal Developments, the Standby Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Standby Committee on a Uniform Limited Cooperative Association Act.

In 2009, Life Member Sakai attended a meeting of the Committee on International Legal Developments in Chicago, Illinois, on December 5, 2009.

Life Member Sakai participated in a meeting by conference call on the Committee on International Legal Developments for approximately 90 minutes on June 22, 2009. The committee coordinated its activities with matters related to the United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law, (also known as UNIDROIT), United States treaties with foreign countries and Hague Convention on various subject matters. Mr. Sakai spent about two hours reviewing materials and preparing for discussion by conference call.

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 118th year in Santa Fe, New Mexico, from July 9-16, 2009.

Commissioners Ewart, Hamasaki, Kent, and Takayama and former Hawaii Commission members and ULC Life Members Sakai and Toyofuku attended the 2009 annual meeting. They attended the meeting at their own expense because, due to the projected budget shortfall, their expenditure of state funds for the costs to attend the annual meeting was not approved. Commissioner Sumida and Mr. Kato did not attend the meeting.

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.

After consideration of the latest drafts, the ULC approved five new uniform acts: the Uniform Collateral Consequences of Conviction Act, the Uniform Real Property Transfer on Death Act, the Uniform Law Enforcement Access to Entity Information Act, the Uniform Collaborative Law Act, and the Uniform Statutory Trust Entity 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 2008-2009 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 2009, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), the Uniform Real Property Electronic Recording Act (URPERA), the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), the Uniform Mediation Act, and the Model Registered Agents 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 S.B. No. 301 and H.B. No 272, Relating to the Hawaii Registered Agents Act (enacting the Model Registered Agents Act), and on H.B. No. 271 and S.B. No. 67, Relating to Real Property (enacting the Uniform Real Property Electronic Recording Act).

Commissioner Takayama attended hearings, answered questions and inquiries raised about acts by legislators, monitored hearings or decision

making meetings, alerted other commissioners of hearings scheduled or actions taken, and met with or called legislators or staff to get hearings scheduled.

Commissioner Ewart had numerous telephone conferences and e-mail correspondence with Tung Chan, Hawaii Commissioner of Securities, Department of Commerce and Consumer Affairs, regarding the Model Registered Agents Act (S.B. No. 301 and H.B. No. 272) and the Revised Uniform Limited Liability Company Act. In addition, she had numerous telephone conferences and e-mail correspondence with organizations interested in the Model Registered Agents Act and the amendments to the Uniform Principal and Income Act.

Commissioner Sumida attended Senate and House committee hearings to give testimony on the Uniform Mediation Act (H.B. No. 782 and S.B. No. 120) and on the Uniform Foreign Country-Money Judgments Recognition Act (H.B. No. 779 and S.B. No. 119)

Commissioner Kent testified in support of the Uniform Prudent Management of Institutional Funds Act (H.B. No. 618 and S.B. No. 121).

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 2009.

During the regular session of 2009, bills were introduced to enact the following uniform acts: (1) the Uniform Foreign-Country Money Judgments Recognition Act; (2) the Uniform Mediation Act; (3) the Uniform Prudent Management of Institutional Funds Act; (4) the Uniform Real Property Electronic Recording Act; and (5) the Model Registered Agents Act. Of these, the Uniform Foreign-Country Money Judgments Recognition Act was approved by the Governor on April 3, 2009, as Act 34; the Uniform Prudent Management of Institutional Funds Act was approved by the Governor on June 19, 2009, as Act 135; the Uniform Real Property Electronic Recording Act was approved by the Governor on June 9, 2009, as Act 102; and the Model Registered Agents Act was approved by the Governor on May 7, 2009, as Act 55.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-eight 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 ULC 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 2009 annual meeting, the ULC considered and adopted five new uniform acts. These acts are briefly described below, based on summaries prepared by the ULC.

### A. Uniform Collateral Consequences of Conviction Act (2009)

The Uniform Collateral Consequences of Conviction Act, promulgated by the ULC in 2009, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. At or before arraignment, individuals will be advised of the particular collateral consequences associated with the offense for which they are charged. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. Formal advisement promotes fairness and compliance with the law.

The act provides mechanisms for relieving collateral sanctions imposed by law. The act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of



law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

B. Uniform Real Property Transfer on Death Act (2009)

Asset-specific mechanisms for the non-probate transfer of property and funds are now common – the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts, are good examples of property that have benefitted from this trend in modern property law. However, a straightforward, inexpensive, and reliable means of passing real property, which may be a decedent's major asset, directly to a beneficiary is not generally available. The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass it to a beneficiary upon the owner's death by a similar mechanism – simply, directly, and without probate. Under URPTODA, the property passes by means of a recorded transfer on death (TOD) deed. URPTODA sets forth the requirements for the creation and revocation of a TOD deed, and clarifies the effect of the TOD deed for all parties while the transferor is living and after they pass away. A TOD deed is effective without consideration, and without notice or delivery to the beneficiary. Beneficiaries take the property subject to allowed claims against the transferor's estate. If the intended beneficiary wishes, they may disclaim all or part of their beneficiary interest in the property. Finally, URPTODA provides optional language for forms to create and revoke TOD deeds.

C. Uniform Law Enforcement Access to Entity Information Act (2009)

The Uniform Law Enforcement Access to Entity Information Act

(ULEAEIA) addresses the need for law enforcement to have ready access to information regarding the owners and managers of entities established under state law. ULEAIEA is designed to be a substitute for the Incorporation Transparency and Law Enforcement Assistance Act (S. 569), co-sponsored by United States Senators Levin, Grassley, and McCaskill. ULEAIEA will help address some national security concerns relating to companies operating for the purpose of organized crime, terrorist financing, securities fraud, tax evasion, and other misconduct, while at the same time balancing important privacy concerns. The act is intended to provide a viable state law alternative to pending federal legislation. Rather than filing and updating "beneficial ownership" information, ULEAEIA provides that limited liability companies, partnerships, trusts, and other entities must designate a "records contact," which is responsible for producing information upon an appropriate request. ULEAEIA is intended to be more comprehensive and less invasive than S. 569.

D. Uniform Collaborative Law Act (2009)

The Uniform Collaborative Law Act, promulgated by the ULC in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory frame work is necessary in order to guarantee the benefits of the process and to further regulate its use. The act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.



The act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the act. Additionally, the act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

E. Uniform Statutory Trust Entity Act (2009)

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEA validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing state laws into uniformity.

USTEA more closely resembles a generic corporate code or unincorporated entity law than it does the Uniform Trust Code (UTC). However, nothing in this act displaces the common law of trusts, or the UTC, with respect to such trusts. The USTEA uses Delaware Statutory Trust Act as a starting point for the act but adds several innovations. The USTEA will be used primarily as a business organization tool and will clarify this area of law.

## VI. RECOMMENDATIONS FOR ENACTMENT IN 2010

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 2010, the Commission recommends enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and the Uniform Child Abduction Prevention Act. These acts are summarized below:

A. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the property. The objective of the new uniform act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The act does this by prioritizing the states that might claim jurisdiction. The state with primary



jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state lines. The act also provides transfer procedures from one state to another. In this and other respects, the new act accomplishes for adult guardianship determinations the same certainty that has occurred in child custody law with the promulgation of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act, now the law in 48 states.

B. Uniform Child Abduction Prevention Act.

The Uniform Child Abduction Prevention Act 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. The act relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

## 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 or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Anatomical Gift Act (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 Witnesses Act (1931)(1936)	Chapter 836
5. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
6. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
7. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
8. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
9. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
10. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
11. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
12. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
13. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
14. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (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 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-Country Money Judgments Recognition Act (2005)	Chapter 658F
34. Uniform Foreign-Money Claims (1989)	Chapter 658B
35. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
36. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
37. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
38. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
39. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
40. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
42. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
43. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
44. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
45. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
46. Uniform Parentage Act (1973)	Chapter 584
47. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
48. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
49. Uniform Premarital Agreement Act (1983)	Chapter 572D
50. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
51. Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998)	Chapter 560
52. Uniform Prudent Investor Act (1994)	Chapter 554C
53. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E



<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
54. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
55. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
56. Model Registered Agents Act (2006)	Chapter 425R
57. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
58. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
59. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
60. Uniform Status of Convicted Persons Act (1964)	Chapter 831
61. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
62. Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	§ 560:2-511
63. Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
64. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
65. Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A

ACT (Date of ULC Adoption  
or Amendment)

HAWAII REVISED STATUTES

- 66. Uniform Trustees' Powers Act  
(1964)
- 67. Uniform Unclaimed Property Act  
(1981)
- 68. Uniform Unincorporated Nonprofit  
Association Act (1992)(1996)

Chapter 554A

Part I, Chapter 523A

Chapter 429