

STATE OF HAWAII
Department of the Attorney General



**2014 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION**

**SUBMITTED TO
THE TWENTY-EIGHTH STATE LEGISLATURE
Regular Session of 2015**

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2014 REPORT OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-EIGHTH
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 2014 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 United States 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 150 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 represents literally thousands of hours of legal expertise. The total requested contribution of all the states to the operation of the ULC is \$2,681,900 in fiscal year 2014-2015. The smallest state contribution is \$29,000, and the largest is \$157,500. Hawaii's contribution for fiscal year 2014-2015 is \$33,600, 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 thirty-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 \$4,028,062 for the current fiscal year (July 1, 2014 to June 30, 2015). Of this amount, \$976,644 (approximately 24.2%) goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$301,162 (or 7.5%). About \$741,728 (18.4%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$457,227 (11.4%) is spent on the annual meeting. Public education for uniform and model acts costs about \$146,327 (3.6%) and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

The ULC 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 also established 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 thirteen people. The small staff provides support for drafting and legislative efforts. 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 ongoing 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 2013-2014 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 2014-2015 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 2013-2014, Commissioner Ewart served as a member of the Standby Committee on Uniform Partition of Heirs Property Act and on the Joint Study Committee on Harmonization of the Law of Canada, Caribbean Nations, and the United States Concerning Registration of Foreign Judgments

For 2014-2015, Commissioner Ewart will continue to serve on the Standby Committee on Uniform Partition of Heirs Property Act and on the Joint Study Committee on Harmonization of the Law of Canada, Caribbean Nations, and the United States Concerning Registration of Foreign Judgments.

In 2013-2014, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2014-2015.

Commissioner Ewart also responded to questions by phone and email relating to various uniform acts, including the Uniform Unclaimed Property Act, the Uniform Trust Code, the Uniform Interstate Family Support Act, amendments to Article 9 of the Uniform Commercial Code and Amendments to the Uniform Mediation act. She worked on an article relating to the Uniform Law Commission and Hawaii's Commission to Promote Uniform Legislation that was published in the Hawaii Bar Journal. She prepared a letter on behalf of the Commission to the Hawaii State Judiciary relating to uniform acts being considered during the 2014 legislative session and in the drafting stage with the Uniform Law Commission.

PETER J. HAMASAKI

For 2013-2014, Commissioner Hamasaki served on the Standby Committee to Revise the Uniform Law on Notarial Acts.

For 2014-2015, Commissioner Hamasaki will continue to serve on the reactivated Standby Committee to Revise the Uniform Law on Notarial Acts.

Commissioner Hamasaki corresponded with and participated in telephone conferences for the reactivated Standby Committee on Revised

Law on Notarial Acts to consider alternative notarization procedures for outside of the United States.

ELIZABETH KENT

For 2013-2014, Commissioner Kent served as a member of the Standby Committee on a Uniform Collaborative Law Act, on the Study Committee on Uniform Family Law Arbitration Act, on the Study Committee on Model Veterans Court Act, the Study Committee on Firearms Information, the Study Committee on Registration of Foreign Judgments, and the Drafting Committee on Home Foreclosure Procedures Act.

For 2014-2015, Commissioner Kent will continue to serve as a member of the Standby Committee on a Uniform Collaborative Law Act, the Study Committee on Uniform Family Law Arbitration Act, the Study Committee on Model Veterans Court Act, the Study Committee on Firearms Information, the Study Committee on Registration of Foreign Judgments, and the Drafting Committee on Home Foreclosure Procedures Act.

In 2014, Commissioner Kent attended three meetings: Two meetings of the Drafting Committee on Home Foreclosure Procedures Act, one in San Diego, California, on January 30 - February 2, 2014, and one in Washington, D.C., on May 9-10, 2014, and one meeting of the Drafting Committee on the Home Foreclosure Procedures Act and of the Drafting Committee on Family Law Arbitration Act, in Chicago, Illinois, on November 14-15, 2014.

Commissioner Kent did research and drafting on the Home Foreclosure Procedures Act. She spent time researching, preparing for meetings, drafting letters, and on phone calls regarding the Family Law Arbitration Acts as well as other acts. She wrote an article for the Hawaii State Bar Association Journal, and generally assisted with promoting uniform state laws.

KEVIN P. H. SUMIDA

In 2013-2014, Commissioner Sumida served as a member of the Standby Committee on Harmonization of Business Entity Acts on the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act, and the Study Committee on Out-of-State Unsworn Declarations.

In 2014-2015, Commissioner Sumida will continue to serve as a member of the Standby Committee on Harmonization of Business Entity Acts and the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act.

He attended two meetings of the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act on March 20-23, 2014, and November 7-8, 2014, both in Washington, D.C.

KEN H. TAKAYAMA

For 2013-2014, Commissioner Takayama served as a member of the Standby Committee on Uniform Deployed Parents Custody and Visitation Act and as a member of the Study Committee on Portability and Recognition of Professional and Occupational License of Military Spouses. In addition, he served as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Attorneys and on the Committee on Membership and Attendance.

For 2014-2015, Commissioner Takayama will continue to serve as a member of the Standby Committee on Uniform Deployed Parents Custody and Visitation 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 Attorneys and the Committee on Membership and Attendance.

In 2014, Commissioner Takayama participated in a one-hour conference call on May 5, 2014, relating to the Study Committee on Portability and Recognition of Professional and Occupational License of Military Spouses.

ROBERT S. TOYOFUKU

For 2013-2014, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2014-2015. 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.

In 2014, Life Member Toyofuku participated in a two-hour conference call (in lieu of an in-person meeting) on May 12, 2014, with members of the Legislative Council, attended a Legislative Council meeting during the 2014 ULC annual meeting in Seattle, Washington, and attended one meeting of the Legislative Council in Chicago, Illinois, on October 31 through November

2, 2014.

He had periodic thirty-minute conference calls as a member of the Legislative Council on January 21, February 10, March 10, and April 21, 2014, and has had monthly contact with the liaisons from California, Washington, Oregon, Alaska, Nevada, and here in Hawaii. He has also had continuous correspondence by e-mail with the national ULC office and the Hawaii Commissioners.

HIROSHI SAKAI

During 2013-2014, Life Member Hiroshi Sakai served on the Committee on International Legal Developments, the Standby Committee on Uniform Debt-Management Services Act, and the Drafting Committee on a Uniform Manufactured Housing Act.

For 2014-2015, Life Member Sakai will continue to serve on the Committee on International Legal Developments and on the Standby Committee on Uniform Debt-Management Services Act.

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 123rd year in Seattle, Washington, from July 11-17, 2014.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission member and ULC Life Member Toyofuku attended the 2014 annual meeting. Life Member Sakai 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 four new uniform acts or amendments to existing acts: the Uniform Fiduciary Access to Digital Assets Act, the Uniform Recognition of Substitute Decision-Making Documents, amendments to the Uniform Voidable Transactions Act, and amendments to Section 3-116 of the Uniform Common Interest Ownership Act.

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

D. Legislative Appearances by the Hawaii Commissioners.

Commissioner Takayama served in 2013-2014 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 2014, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Mediation Act, Uniform Power of Attorney Act, Unclaimed Property, and Protection of Charitable Assets, 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 Ewart prepared testimony for and testified on the Uniform Partition of Heirs Property Act before the House Judiciary Committee and had several telephone calls and email communications with the Judiciary Committee clerk regarding the amendments that had been made to the bill during the 2013 legislative session. She met with attorneys who practice in the partition area; and had numerous email and phone calls with those attorneys, a representative of the State Judiciary and the Chicago office of NCCUSL and other parties interested in the act. She reviewed and revised testimony on the Uniform Power of Attorney Act and coordinated assignments of commissioners for other Uniform Acts before the legislature. She also submitted testimony in support of the confirmation of Elizabeth Kent for another term as commissioner.

Commissioner Sumida spent numerous hours tracking and reviewing material on various bills enacting or revising certain uniform acts.

Commissioner Kent spent time researching and preparing testimony on the various acts introduced and prepared testimony for and testified at a hearing on her confirmation to another term.

Commissioner Takayama reviewed, researched, drafted testimony, and testified on bills relating to the Uniform Power of Attorney Act, the Model Protection of Charitable Assets Act, and the Uniform Partition of Heirs Property Act. He also had multiple telephone conferences with the Chicago staff of the Uniform Law Commission as well and House and Senate staff. He also had discussions with Judiciary staff regarding the Uniform Partition of Heirs Property Act.

Commissioner Hamasaki monitored No. S.B. No. 2321, relating to the Uniform Unclaimed Property Act, and reviewed testimony on the bills relating to the Partition of Heirs Property Act.

Life Member Sakai reviewed legislation on various uniform acts.

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 2014.

During the regular session of 2014, bills were introduced to enact the following uniform acts: (1) amendments to the Uniform Mediation Act; (2) the Uniform Power of Attorney Act; and (3) the Model Protection of Charitable Assets. Of these, the bill to enact the amendments to the Uniform Mediation Act, was passed by the Legislature and approved by the Governor as Act 5 on April 1, 2014; the bill to enact the Uniform Power of Attorney Act was approved by the Governor as Act 22 on April 17, 2014; and the bill to enact the Model Protection of Charitable Assets Act was approved by the Governor as Act 217 on July 7, 2014.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the seventy-seven 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 2014 annual meeting, the ULC considered and adopted four new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Fiduciary Access to Digital Assets Act.

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

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

A fiduciary is a trusted person with the legal authority to manage another's property, and the duty to act in that person's best interest. The

Uniform Fiduciary Access to Digital Assets Act (UFADAA) concerns four common types of fiduciaries:

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

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

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

Under UFADAA, fiduciaries that manage an account holder's digital assets have the same right to access those assets as the account holder, but only for the limited purpose of carrying out their fiduciary duties. Thus, for example, an executor may access a decedent's email account in order to make an inventory of estate assets and ultimately to close the account in an orderly manner, but may not publish the decedent's confidential communications or impersonate the decedent by sending email from the

account. Moreover, a fiduciary's management of digital assets may be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not access the contents of communications protected by federal privacy laws.

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

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

B. Uniform Recognition of Substitute Decision-making Documents Act.

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

they cannot do so for themselves.

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

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

The act recognizes the validity of a substitute decision-making document for use in the enacting state if the document is valid as determined by the law under which it was created.

The act preserves the meaning and effect of a substitute decision-making document as defined by the law under which it was created regardless of where the document is actually used.

The act protects the persons asked to accept a foreign document from liability for either acceptance or rejection, if they comply with the law in good faith.

URSDDA's effect is best illustrated with an example.

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

make decisions for himself. John also executes a separate document giving Robert the power to make financial transactions on his behalf, effective immediately.

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

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

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

Meanwhile, using his authority to make financial transactions for John, Robert wants to complete the planned order with their hardware supplier.

When presented with John's substitute decision-making document, the supplier may ask for the same assurances as the hospital administrator, and receive the same protections from liability for good faith compliance with John's grant of authority to Robert.

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

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

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

C. 2014 Amendments to the Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act).

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

The 2014 amendments are the first made to the act since its original promulgation. The amendments address a small number of narrowly defined

issues, and are not a comprehensive revision. The principal features of the amendments are as follows:

Name Change. The amendments change the title of the act to the “Uniform Voidable Transactions Act.” The name change is not motivated by the substantive revisions made by the amendments, which are relatively minor. Rather, the original title of the act, though sanctioned by historical usage, has always been a misleading description of its provisions in two respects. First, fraud is not, and never has been, a necessary element of a claim under the act. Second, the act has always applied to the incurrence of obligations as well as to transfers of property.

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

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

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

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

As originally written, section 8(a) of the act creates a complete defense to an action under section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to section 8(a) the further requirement that the reasonably equivalent value must be given the debtor.

Section 8(b), derived from Bankruptcy Code section 550(a) and (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person. The amendments clarify the meaning of section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code section 550(a) and (b) (which is substantially unchanged as of 2014).

Section 8(e)(2) as originally written created a defense to an action under section 4(a)(2) or section 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as “strict foreclosure”).

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

Medium Neutrality. In order to accommodate modern technology, the amendments replace references in the act to a “writing” with “record,” and

make related changes.

Conclusion

The amendments do not contemplate enactment by states with a uniform effective date. However, the lack of a choice of law rule for claims of the nature governed by the act under current law has led to uncertainty and wasteful litigation in respect of such claims in regard to transactions that touch on more than one jurisdiction. To alleviate that problem and install a clear and uniform choice of law regime for such claims, all states are urged to adopt the 2014 amendments as quickly as possible.

D. Uniform Common Interest Ownership Act and the 2014 Amendments.

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

In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and to respond to scholarly commentary and analyses surrounding the act. Issues addressed by the 1994 act included: increasing declarant responsibility for large and non-residential projects; allowing subdivision and expansion of projects; improving procedures for addressing use and occupancy

restrictions in units; easing the process for projects begun in states prior to the adoption of UCIOA to opt in to the act; empowering the association to deal with tenants in rented units; and clarifying the standard of care that applied to association directors.

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

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

VI. RECOMMENDATIONS FOR ENACTMENT IN 2015

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 2015, the Commission supports enactment of the 2008 amendments to the Uniform Interstate Family Support Act and the Uniform Fiduciary Access to Digital Assets Act.

These acts are summarized below:

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

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders by: setting basic jurisdictional standards for state courts; determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding; establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions; and providing rules for modifying or refusing to modify another state's child support order.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("the Convention"). This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. In July 2008, the Uniform Law Commission amended UIFSA to incorporate changes required by the Convention. 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. The 2008 UIFSA amendments serve as the implementing language for the Convention throughout the states. Importantly, enacting the UIFSA amendments will improve the enforcement of American child support orders abroad and will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

The bulk of the 2008 amendments are housed in a new section of UIFSA: section 7. The new section provides guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Specifically, section 7 provides that a support order from a country that has acceded to the Convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. Once registered, the non-registering party receives notice and is allowed the opportunity to challenge the order on certain grounds. Unless one of the grounds for denying recognition is established, the order is to be enforced. Additionally, section 7 requires documents submitted under the Convention be in the original language and a translated version submitted if the original language is not English.

In September 2014, Congress passed federal implementing legislation for the Convention. Importantly, the new law (the Preventing Sex Trafficking and Strengthening Families Act) requires that the 2008 UIFSA amendments be enacted in every jurisdiction as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments during the 2015 legislative session may result in loss of this important federal funding.

B. Uniform Fiduciary Access to Digital Assets Act.

The Uniform Fiduciary Access to Digital Assets Act is summarized on pages 19-21 in Section V of this report.

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 Adult Guardianship and Protective Proceedings Jurisdiction Act	Chapter 551G
2. Uniform Anatomical Gift Act (1968)(1987)(2008)	Part I, Chapter 327
3. Uniform Arbitration Act (1956)(2000)	Chapter 658A
4. Uniform Athlete Agents Act (2000)	Chapter 481E
5. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
6. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
7. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
8. Uniform Collaborative Law Act	Chapter 658G
9. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
10. Uniform Commercial Code Article 1 -- General Provisions (2001)	Article 1, Chapter 490
11. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
12. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
13. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
14. Uniform Commercial Code Article 4A -- Funds Transfer (1989) (2013)	Article 4A, Chapter 490
15. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
16. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
17. Uniform Commercial Code Article 7 -- Documents of Title (2003)	Article 7, Chapter 490
18. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
19. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999) (2010)	Article 9, Chapter 490
20. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
21. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
22. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
23. Uniform Custodial Trust Act (1987)	Chapter 554B
24. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
25. Uniform Determination of Death Act (1978)(1980)	§ 327C-1 (Substantially similar definition)

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
26. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
27. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
28. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
29. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
30. Uniform Electronic Legal Material Act	Chapter 98
31. Uniform Electronic Transactions Act (1999)	Chapter 489E
32. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
33. Uniform Environmental Covenants Act	Chapter 508C
34. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
35. Uniform Fiduciaries Act (1922)	Chapter 556
36. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
37. Uniform Foreign-Money Claims (1989)	Chapter 658B
38. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
39. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
40. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
42. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
43. Uniform Interstate Depositions and Discovery Act	Chapter 624D
44. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
45. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
46. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
47. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
48. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
49. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
50. Uniform Mediation Act (2013) (2014)	Chapter 658H
51. Uniform Military and Overseas Voters Act	Chapter 15D
52. Uniform Parentage Act (1973)	Chapter 584
53. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
54. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
55. Uniform Power of Attorney Act (2014)	Chapter 551E
56. Uniform Premarital Agreement Act (1983)	Chapter 572D
57. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
58. Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998)	Chapter 560
58. Model Protection of Charitable Assets Act (2014)	Chapter 28
60. Uniform Prudent Investor Act (1994)	Chapter 554C
61. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E
62. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
63. Uniform Real Property Transfer on Death Act (2009)	Chapter 527
64. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
65. Model Registered Agents Act (2006)	Chapter 425R
66. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
67. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
68. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

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| 69. | Uniform Status of Convicted Persons Act (1964) | Chapter 831 |
| 70. | Uniform Statutory Rule Against Perpetuities Act (1986)(1990) | Chapter 525 |
| 71. | Uniform Testamentary Additions to Trusts Act (1960)(1961)
(Uniform Probate Code § 2-511 (1991)) | § 560:2-511 |
| 72. | Uniform Trade Secrets Act (1979)(1985) | Chapter 482B |
| 73. | Uniform Transfer-on-Death (TOD) Security Registration Act (1998) | Chapter 539 |
| 74. | Uniform Transfers to Minors Act (1983)(1986) | Chapter 553A |
| 75. | Uniform Trustees' Powers Act (1964) | Chapter 554A |
| 76. | Uniform Unclaimed Property Act (1981) (1995) | Part I, Chapter 523A |
| 77. | Uniform Unincorporated Nonprofit Association Act (1992)(1996) | Chapter 429 |