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January 13, 2025

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-Third State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Nadine K. Nakamura
Speaker and Members of the
House of Representatives
Thirty-Third State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Nakamura, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the 2024 Report of the Commission to Promote Uniform Legislation. In accordance with section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

If you have any questions or concerns, please feel free to call me at (808) 586-1500.

Sincerely,

Anne E. Lopez

Anne E. Lopez
Attorney General

c: Josh Green, M.D., Governor
Sylvia Luke, Lieutenant Governor
Legislative Reference Bureau (Attn: Karen Mau)
Leslie H. Kondo, State Auditor
Luis Salaveria, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
Wendy F. Hensel, President, University of Hawaii

Enclosure

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**2024 REPORT OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION**

*Submitted to
The Thirty-Third State Legislature
Regular Session of 2025*

TO THE HONORABLE MEMBERS OF THE THIRTY-THIRD LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation (CPUL), the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2024 Report.

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

The Uniform Law Commission (or ULC), more formally known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Commissioners are appointed by their states to draft and promote enactment of uniform laws that are designed to solve problems common to all the states. Each jurisdiction determines the number of commissioners appointed and their method of appointment. Most jurisdictions provide for their commission by statute. The statutory authority governing Hawaii's commission is found in chapter 3 and section 26-7, Hawaii Revised Statutes (HRS).

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

Uniform law commissioners study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing statutes in areas of the law where uniformity between the states is desirable. After receiving the ULC's seal of approval, a uniform act is officially promulgated for consideration by the states, and legislatures are urged to adopt it. The ULC can only propose laws; no uniform law is effective until a state legislature adopts it.

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

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 UCC, 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 that have been adopted uniformly by nearly all the states or that 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 ULC maintains relationships with many other organizations. The American Bar Association provides advisors to ULC drafting committees and ULC study committees. The ULC also maintains a liaison with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the National Association of Attorneys General, the Conference of Chief Justices, and the National Center for State Courts, and other organizations.

II. HISTORY OF THE ULC

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the ULC. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commissioner in 1988.

Very early on, the ULC became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. Woodrow Wilson became a member before his service as President of the United States. Several Justices of the Supreme Court of the United States were previously members: former Justices

Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 300 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

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

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

The ULC 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.

Each member jurisdiction determines the number of uniform law commissioners it appoints to the ULC, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The ULC encourages the appointing authorities to consider, among other factors, diversity of membership in their uniform law commissioners, including race, ethnicity, and gender, in making appointments. The ULC does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

III. OPERATION OF THE ULC

A. Financial Support of the ULC and Donated Time of Commissioners.

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 total requested contribution of all the states to the operation of the ULC is \$3,405,513 in fiscal year 2024-2025. The smallest state contribution is \$22,380 (for the

U.S. Virgin Islands), and the largest is \$197,180 (for California and New York). Hawaii's contribution for fiscal year 2024-2025 is \$41,835, which represents an extraordinarily 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 list of enactments of uniform acts, amendments to uniform acts, and revised uniform acts in Hawaii is in the table attached to this report as Appendix 1. Hawaii has received substantial and valuable services for its investment.

The annual budget of the ULC comes to \$5,211,380 for the current fiscal year (July 1, 2024, to June 30, 2025). Approximately forty percent of this budget will be used to study and draft acts, including holding the ULC annual meeting where the acts are presented to the commissioner body for approval. Another thirty percent is spent assisting state legislatures with bill enactment and public education regarding Uniform and Model Acts. The remainder of the budget pays for general administrative costs, governance costs, and occupancy expenses.

The UCC is a joint venture between the ULC and the American Law Institute (ALI). In the 1940s, the Falk Foundation supported the UCC's original development. Proceeds from copyright licensing of UCC materials replenish the original funds. Whenever work on the UCC commences, a percentage of ULC and ALI costs are paid from endowment income.

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

The ULC permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. Commissioners receive compensation only for actual expenses incurred. The ULC estimates that, on average, commissioners devote between 100 and 150 hours a year to ULC work. This donated time represents tens of thousands of hours of legal expertise cumulatively, such that it would cost millions of dollars to replicate with non-volunteer efforts. States would find it difficult and expensive to replicate the work of the ULC on their own, especially regarding highly complex subjects such as commercial law or the law of probate and estates.

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 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 capitals to Capitol Hill in Washington, D.C.

B. Procedures of the ULC and Creation of Uniform and Model Acts.

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

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

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

Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government, 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 attend drafting committee meetings and to contribute comments throughout the drafting process. Advisors and observers do not make decisions with respect to the final contents of an act. Only ULC members who compose the drafting committee may participate in any necessary votes.

At each annual meeting during its working life, each drafting committee must present its work to the whole body of the ULC at the ULC's annual meeting. The most current draft is read and debated. The entire text of each working draft is 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. 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.

The 2024 ULC annual meeting was held in Boston, Massachusetts in July 2024. The 2025 ULC annual meeting will be held in Santa Fe, New Mexico. The ULC encourages all its commissioners to attend all meetings, but that is often subject to available funding.

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 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 has established royalty agreements with major legal publishers that 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's founders in 1892 saw it as the solution to otherwise insoluble problems resulting from the rapid growth of the United States against confusing patterns of inadequate state law.

IV. THE HAWAII COMMISSIONERS

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

The Hawaii CPUL was originally created by law in 1911 (See, sections 3-1 and 3-2, HRS). The CPUL is placed within the State Department of the Attorney General and, pursuant to section 26-7, HRS, 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, HRS, the CPUL 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 member of the bar. A deputy attorney general, assigned by the Attorney General to coordinate the review and preparation of legislative bills, provides technical assistance to the CPUL, as necessary, and is recognized by the ULC as a member of Hawaii's delegation to the ULC, although not an appointed member of the CPUL. Additionally, although they are no longer voting members of the CPUL, some former CPUL Commissioners who have achieved Life Member status of the ULC continue to provide valuable assistance to the CPUL.

The CPUL Commissioners meet regularly, at least twice a year, to discuss promoting uniform legislation in Hawaii. During each legislative session, the commissioners review all bills pertaining to uniform acts, prepare testimony and correspondence on those bills, testify in House and Senate committees, and make themselves available to legislators to answer any questions about uniform acts.

Those commissioners who attend the ULC annual meetings, meet with other ULC commissioners for several days to consider proposed uniform laws and vote on final drafts of those laws.

The CPUL commissioners during 2023-2024 were as follows:

- (1) Lani L. Ewart;
- (2) Peter Hamasaki;
- (3) Elizabeth Kent;
- (4) Blake Oshiro; and
- (5) Michael Tanoue.

The membership of the CPUL for 2024-2025 will change due to the retirement of Commissioner Elizabeth Kent. The remainder of her term, which expires on June 30, 2026, needs to be filled by an appointment of the Governor with the advice and consent of the Senate.

Former commissioners Ken Takayama and Robert S. Toyofuku continue to actively participate in ULC activities as ULC Life Members. 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. Elizabeth Kent, who is also a Life Member of the ULC, having been voted as such in 2023, intends to continue providing her assistance to the CPUL. Deputy Attorney General Jill T. Nagamine of the Legislative Division was assigned in November 2020 by the Attorney General to provide staff support for the commissioners. Other members of the Legislative Division provide additional support.

In addition to the CPUL Commissioners' participation in the ULC by reviewing and voting on proposed uniform acts, from time to time the CPUL Commissioners serve on various ULC committees. 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:

B. Activities of the CPUL Commissioners.

LANI L. EWART

In 2023-2024, Commissioner Ewart, who is also a Life Member of the ULC, served as the Chair of the CPUL. By means of interactive conference technology, she attended informal meetings of the drafting committees on uniform acts up for discussion and vote during the 2024 ULC annual meeting. She also represented the Hawaii commission at the 2024 ULC annual meeting in Boston, Massachusetts.

Chair Ewart reviewed the testimony of commissioners and life members submitted during the 2024 legislative session relating to the Uniform Probate Code (House Bill No. 1915), and the Uniform Unclaimed Property Act (Senate Bill No. 2130). In addition, she followed up with comments regarding the uniform laws and the questions raised during the legislative hearings and from interested persons.

PETER J. HAMASAKI

During the 2024 Hawaii legislative session, Commissioner Hamasaki provided testimony to the Senate Committee on Commerce and Consumer Protection regarding Senate Bill No. 2130, relating to unclaimed property, which proposed certain amendments to the Uniform Unclaimed Property Act.

In June 2023, Commissioner Hamasaki attended ULC informal listening sessions on the Uniform Antitrust Pre-Merger Notification Act, Uniform Mortgage Modifications Act and Uniform Assignment for Benefit of Creditors Act.

Commissioner Hamasaki was a presenter at a ULC webinar in February 2024, regarding the Uniform Faithful Presidential Electors Act, which was passed by the Hawaii Legislature in 2023.

During the 2024 Hawaii legislative regular session, Commissioner Hamasaki reviewed bills and prepared testimony and correspondence and testified before the Senate Committee on Commerce and Consumer Protection regarding Senate Bill No. 2130, relating to unclaimed property, which proposed certain amendments to the Uniform Unclaimed Property Act.

ELIZABETH KENT

In 2023-2024, Commissioner Kent served on the Committee to Monitor Developments in Civil Litigation and Dispute Resolution. That committee was recently changed by the ULC to a Joint Editorial Board, so the committee members were discharged, and Commissioner Kent will no longer need to serve on that committee.

She also was on the United Nations Convention on International Settlement Agreements Resulting from Mediation Committee and on the Gamete Owner Identity Disclosure Study Committee.

During 2023-2024, Commissioner Kent spent a significant amount of time on research and work related to two uniform laws that were introduced in the 2023 legislative session, including participating in a working group on guardianship that Representative David Tarnas organized.

Commissioner Kent also served as Vice-Chair of the CPUL through most of 2024, though she resigned from the CPUL toward the end of the year. She will continue to serve as a life member of the ULC.

BLAKE OSHIRO

In 2023-2024, Commissioner Oshiro continued his service on the Stakeholder Outreach Committee which provided him with participation on a handful of different committees to monitor the need for any outreach to additional stakeholders for input or review.

He attended by means of interactive conference technology a Hawaii Legislative Planning Session. He also helped testify and lobby for the bills identified by the CPUL as priority issues for the 2024 legislative session.

In 2024-2025, he will continue to serve on the ULC Stakeholder Outreach Committee and will continue to assist with lobbying efforts at the Hawaii State Legislature on bills that have been identified as priorities by the CPUL.

MICHAEL TANOUE

Commissioner Tanoue was unable to attend the ULC annual meeting in Boston, Massachusetts held in July 2024. However, he participated virtually in one session.

On August 24, 2024, Commissioner Tanoue attended and participated in the ULC Legislative Summit in Dallas, Texas, during which he met with ULC legislative staff and legislative liaisons from other states. Topics discussed at the Legislative Summit included leveraging ULC resources, use of working groups and task forces, deviations from uniform laws, and "pitching" the ULC to legislators and other stakeholders. He concluded his service on the ULC's Study Committee on Indian Child Welfare Act Issues but continues to serve on a Working Group organized by Rep. David Tarnas that is charged with reviewing the Guardianship, Conservatorship, and Other Protective Arrangements Act.

KEN H. TAKAYAMA

While he is no longer a voting member of the CPUL, Life Member Takayama actively supports the CPUL in a variety of ways. These include:

- (1) Attending all meetings of the CPUL;
- (2) Participating in other functions such as attending informal meetings on various uniform acts;
- (3) Supporting and assisting the CPUL in getting legislative bills prepared for introduction;
- (4) Submitting testimony and attending legislative hearings; and

- (5) Answering questions and providing information regarding uniform acts that the CPUL supports.

In 2023-2024, Life Member Takayama participated in efforts by the CPUL to pass the Uniform Parentage Act, including participating in meetings on the bill prior to the legislative session.

Life Member Ken Takayama continues to serve as the CPUL's liaison to the Hawaii State Legislature. He assists Chair Ewart in assigning bills among the commissioners for advocacy during the legislative session, and he tracks bills that relate to uniform laws.

ROBERT S. TOYOFUKU

While he is no longer a voting member of the CPUL, Life Member Toyofuku continues to be an active member of the ULC and supports the CPUL. For 2023-2024, Life Member Toyofuku served as a member of the ULC's Legislative Council and will continue to serve on the Legislative Council during 2024-2025. 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 Chair and the Legislative Council direct the activities of the Legislative Committee. Each state and the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands are grouped into regions and are represented by a commissioner designated as the liaison member for that jurisdiction who is responsible for the legislative programs in the states in that assigned region. The represented jurisdictions are grouped into thirteen regions. Life Member Toyofuku is responsible to oversee the legislative activities in the states in Region 5 (California, Hawaii, Nevada, and Arizona) and to work with the liaisons from each of those states.

In 2023-2024, Life Member Toyofuku attended several interactive meetings either by conference call or by a Zoom call and participated in Legislative Council calls almost monthly throughout the year. During September 2024, in coordination with the Chicago ULC office and a legislative staff member, he arranged, planned, and assisted in conducting several one-hour calls with the state delegations in the Western Region to discuss future issues and plans. During August 2024, the Legislative Council had a meeting in Dallas, Texas and Life Member Toyofuku participated in person at that meeting to discuss future approaches to enact uniform law acts in the several state legislatures. He attended the ULC annual meeting in Boston in 2024. During the ULC annual meeting, he met with the Legislative Council, assisted in moderating one of the legislative lunches attended by several state delegations, attended most discussions of proposed acts in the general meetings, and participated in Hawaii delegation meetings during the year. He also tracked the ULC legislation during the 2024 legislative session.

V. UNIFORM ACTS ENACTED IN HAWAII

The State of Hawaii has supported the ULC not only by encouraging its commissioners to actively participate in the ULC but also by enacting some of 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.

Each year the CPUL has many bills to review and monitor. As with other bills, usually only a small percentage of introduced bills pass, but while they are progressing, the CPUL must keep track of them and provide testimony or other information as appropriate.

A. Uniform Acts Introduced for Enactment in 2024 and Carried Over from 2023.

During the regular session of 2024, which included carry-over bills from the regular session of 2023, there were many bills that had possible connections to uniform acts, and the CPUL had to review those bills for possible issues and monitor their activity to determine if action was necessary. The following bills were among those they reviewed:

House Bills carried over from 2023:

House Bill No. 383, Relating to the Uniform Probate Code
House Bill No. 384, Relating to Parentage
House Bill No. 665, Relating to the Uniform Parentage Act
House Bill No. 1154, Relating to Guardianship
House Bill No. 1157, Relating to the Office of Information Practices (included an issue within the Uniform Information Practices Act)
House Bill No. 1158, Relating to Government Records (included an issue within the Uniform Information Practices Act)
House Bill No. 1440; Relating to the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act
House Bill No. 1467, Relating to the Office of Information Practices (included an issue within the Uniform Information Practices Act)

House Bills from 2024:

House Bill No. 1543, Relating to the Uniform Information Practices Act
House Bill No. 1597, Relating to Open Meetings (Passed, Act 160)
House Bill No. 1915, Relating to the Uniform Probate Code (Passed, Act 7)
House Bill No. 2079, Relating to Health (included issues under the Uniform Child Custody Jurisdiction and Enforcement Act)
House Bill No. 2320, Relating to the Disclosure of Personal Information of Certain Public Servants (concerned the Uniform Information Practices Act)

House Bill No. 2460, Relating to Homeland Security (included an issue within the Uniform Information Practices Act)

House Bill No. 2582, Relating to Critical Infrastructure Information (included an issue within the Uniform Information Practices Act)

Senate Bills carried over from 2023:

Senate Bill No. 130, Relating to the Uniform Child Custody Jurisdiction and Enforcement Act)

Senate Bill No. 352, Relating to the Uniform Commercial Code

Senate Bill No. 484, Relating to Parentage

Senate Bill No. 915, Relating to Guardianship

Senate Bill No. 1253, Relating to the Office of Information Practices (included an issue within the Uniform Information Practices Act)

Senate Bill No. 1595, Relating to the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act

Senate Bills from 2024:

Senate Bill No. 2130, Relating to Unclaimed Property

Senate Bill No. 2378, Relating to the Uniform Probate Code

Senate Bill No. 2639, Relating to Public Agency Meetings (included an issue within the Uniform Information Practices Act)

Senate Bill No. 2669, Relating to Gender Affirming Care (this related to the Uniform Telehealth Act)

Senate Bill No. 2686, Relating to the Disclosure of Personal Information of Certain Public Servants (concerned the Uniform Information Practices Act)

Senate Bill No. 2844, Relating to the Uniform Information Practices Act

Senate Bill No. 2848, Relating to Intoxicating Liquor (this related to the Alcohol Direct Shipping Compliance Act)

Senate Bill No. 2882, Relating to Health (this related to gender-affirming care under the Uniform Child Custody Jurisdiction and Enforcement Act)

Senate Bill No. 3149, Relating to Homeland Security (included an issue within the Uniform Information Practices Act)

Additionally, there were many bills that would have amended the Uniform Controlled Substances Act, and while the CPUL reviews those bills each year, those bills tend to be housekeeping bills to update Hawaii's laws consistent with federal laws, so the CPUL does not typically take an active role in those.

Of the many bills that the CPUL monitored during the 2024 session, two were passed by the Legislature and enacted by the Governor: House Bill No. 1597, Relating to Open Meetings (Act 160), and House Bill No. 1915, Relating to the Uniform Probate Code (Act 7). CPUL actively supported House Bill No. 1915, Relating to the Uniform Probate Code by providing testimony. That bill updated the Uniform Probate Code to reduce the number of required publications of a notice to creditors by a trustee and

make it consistent with other amendments made in Act 158, Session Laws of Hawaii 2023. The CPUL did not take a position on the issues in House Bill No. 1597, as those primarily addressed enforcement issues related to the Uniform Information Practices Act rather than the act itself.

B. Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the ninety original, amended, or revised uniform acts enacted in Hawaii, as a whole, in a substantially similar version, or in a modified version. The table also lists the references to the HRS 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 HRS by enactment of the superseding uniform acts.

VI. A SUMMARY OF NEW UNIFORM ACTS

During the 2024 ULC annual meeting, the ULC considered and adopted three new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC. A longer, more detailed summary is attached to this report as Appendix 2.

A. Uniform Antitrust Pre-Merger Notification Act

Companies proposing to engage in most significant mergers or acquisitions must comply with the federal Hart-Scott-Rodino Act (HSR). This federal law requires filing a notice of the proposed transaction with the Federal Trade Commission and Department of Justice at least 30 days prior to closing. The HSR filing includes both a basic form detailing information like the corporate structure of the parties, and additional documentary material, such as presentations about the merger to the company's board of directors. The HSR filing allows the federal antitrust agencies to scrutinize mergers before they are completed. State Attorneys General also have a legal right to challenge anticompetitive mergers, but AGs do not have access to HSR filings. This puts the AGs at a significant disadvantage in the process of merger review. It also creates additional costs and uncertainties for the merging parties. The Uniform Antitrust Pre-Merger Notification Act is intended to address the concerns of both the AG and business communities by creating a simple, non-burdensome mechanism for AGs to receive access to HSR filings at the same time as the federal agencies, and subject to the same confidentiality obligations.

B. Uniform Mortgage Modification Act

The parties to a mortgage often agree to modify the terms of the mortgage loan or other obligation secured by the mortgage after the initial transaction is completed. However, the common law is not clear on the issue of whether the modification of a

mortgage loan or other obligation secured by a mortgage affects the priority of the mortgage against junior interest holders. This lack of clarity in the law causes delay and unnecessary expense for borrowers and in some cases may mean that a loan is foreclosed rather than modified. The Uniform Mortgage Modification Act is meant to resolve problems and reduce uncertainty by establishing several categories of safe harbor modifications that can be made to recorded mortgages and secured obligations and outlines the implications of each type of modification.

C. 2024 Amendments to Unincorporated Organization Acts

The 2024 updates to the Uniform Unincorporated Organization Acts make comprehensive amendments to nine existing Unincorporated Organization Acts, including the Uniform Partnership Act, the Uniform Limited Partnership Act and the Uniform Limited Liability Company Act. These modifications address issues raised by the Joint Editorial Board for Uniform Unincorporated Organization Acts, as well as similar issues arising from the consideration of evolving case law, disparate judicial interpretations, and other concerns raised in connection with the various states' consideration of the Unincorporated Organization Acts.

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/>.

VII. **RECOMMENDATIONS FOR ENACTMENT IN 2025**

The Hawaii CPUL annually selects uniform acts that have not yet been enacted in Hawaii and recommends the enactment of those selected uniform acts. However, the CPUL'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. As it does every year, the CPUL stands ready to provide information and support on any uniform act that the Legislature may have before it for consideration.

At its November 2024 meeting, the CPUL discussed the possibility that the following may be introduced during the regular session of 2025, in whole or in part:

- The Uniform Antitrust Pre-Merger Notification Act;
- The Uniform Consumer Debt Default Judgments Act;
- The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act;
- The Uniform Health Care Decision Act; and
- The Uniform Parentage Act.

The CPUL is not planning the introduction of any other uniform acts in the 2025 regular session but will monitor any legislation that is based on uniform acts.

VIII. CONCLUSION

The Hawaii CPUL 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 CPUL wishes to express its appreciation for the interest in and support of the CPUL'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
Chair

APPENDIX 1

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 (Repealed 2019)
5. Uniform Athlete Agents Act (Revised)	Chapter 481Z
6. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
7. Uniform Certificate of Title for Vessels Act	Chapter 200A
8. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
9. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
10. Uniform Collaborative Law Act	Chapter 658G
11. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
12. Uniform Commercial Code Article 1 – General Provisions (2001)(2022)	Article 1, Chapter 490
13. Uniform Commercial Code Article 2A -- Leases (1987)(1990)(2022)	Article 2A, Chapter 490
14. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(2022)	Article 3, Chapter 490

15.	Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
16.	Uniform Commercial Code Article 4A -- Funds Transfer (1989)(2012)(2022)	Article 4A, Chapter 490
17.	Uniform Commercial Code Article 5 -- Letters of Credit (1995)(2022)	Article 5, Chapter 490
18.	Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
19.	Uniform Commercial Code Article 7 -- Documents of Title (2003)(2022)	Article 7, Chapter 490
20.	Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)(2022)	Article 8, Chapter 490
21.	Uniform Commercial Code Article 9 -- Secured Transactions (1972)(1999) (2010)(2022)	Article 9, Chapter 490
22.	Uniform Commercial Code Article 12 -- Controllable Electronic Records (2022)	Article 12, Chapter 490
23.	Uniform Commercial Code Article 13 -- Transitional Provisions for Uniform Commercial Code Amendments (2022)	Article 13, Chapter 490
24.	Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
25.	Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
26.	Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
27.	Uniform Custodial Trust Act (1987)	Chapter 554B
28.	Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
29.	Uniform Determination of Death Act (1978)(1980)	Section 327C-1 (Substantially similar definition)

30.	Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
31.	Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
32.	Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
33.	Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
34.	Uniform Electronic Legal Material Act	Chapter 98
35.	Uniform Electronic Transactions Act (1999)	Chapter 489E
36.	Uniform Employee and Student Online Privacy Protection Act (2016)	Chapter 487G
37.	Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
38.	Uniform Environmental Covenants Act	Chapter 508C
39.	Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
40.	Uniform Faithful Presidential Electors Act (2010)	Chapter 14
41.	Uniform Family Law Arbitration Act	Chapter 658J
42.	Uniform Fiduciaries Act (1922)	Chapter 556
43.	Uniform Fiduciary Access to Digital Assets Act	Chapter 556A
44.	Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
45.	Uniform Foreign-Money Claims (1989)	Chapter 658B
46.	Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C (Repealed 2009)

47.	Uniform Fraudulent Transfer Act (1984)	Chapter 651C
48.	Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
49.	Uniform Health-Care Decisions Act (Modified)	Chapter 327E
50.	Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
51.	Uniform Interstate Depositions and Discovery Act	Chapter 624D
52.	Uniform Interstate Family Support Act (1992)(1996)(2015)	Chapter 576B
53.	Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
54.	Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
55.	Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed, effective July 1, 2004)
56.	Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
57.	Uniform Management of Institutional Funds Act (1972)	Chapter 517D
58.	Uniform Mediation Act (2013) (2014)	Chapter 658H
59.	Uniform Military and Overseas Voters Act	Chapter 15D
60.	Uniform Notarial Acts Act (2010)(2018)	Chapter 456
61.	Uniform Parentage Act (1973)	Chapter 584
62.	Uniform Partition of Heirs Property Act	Chapter 668A

63.	Uniform Partnership Act (1914)(1997)	Part IV, Chapter 425
64.	Uniform Photographic Copies as Evidence Act (1949)	Section 626-1, Rules 1001 to 1008
65.	Uniform Power of Attorney Act (2014)	Chapter 551E
66.	Uniform Premarital Agreement Act (1983)	Chapter 572D
67.	Uniform Principal and Income Act (1997)(2000)	Chapter 557A
68.	Uniform Probate Code (1969)(1975)(1982)(1989)(1990)(1991) (1997)(1998)(2003)(2008)(2010)(2019)	Chapter 560
69.	Model Protection of Charitable Assets Act (2014)	Chapter 28
70.	Uniform Prudent Investor Act (1994)	Chapter 554C
71.	Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E
72.	Uniform Public Expression Protection Act (2020)	Chapter 634G
73.	Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
74.	Uniform Real Property Transfer on Death Act (2009)	Chapter 527
75.	Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
76.	Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act	Chapter 586C
77.	Model Registered Agents Act (2006)	Chapter 425R

78.	Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
79.	Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
80.	Uniform Securities Act (1956)(1958)(Superseded 1985)	Chapter 485
81.	Uniform Status of Convicted Persons Act (1964)	Chapter 831
82.	Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
83.	Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	Chapter 560:2-511
84.	Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
85.	Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
86.	Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A
87.	Uniform Trustees' Powers Act (1964)	Chapter 554A
88.	Uniform Trust Code (2000)	Chapter 554D
89.	Uniform Unclaimed Property Act (1981)(1995)	Part I, Chapter 523A
90.	Uniform Unincorporated Nonprofit Association Act (1992)(1996)	Chapter 429

APPENDIX 2

UNIFORM LAW COMMISSION New Acts 2024: Summaries

UNIFORM ANTITRUST PRE-MERGER NOTIFICATION ACT

The Uniform Antitrust Pre-Merger Notification Act improves the efficiency of the state merger review process for all parties and enhances certainty for businesses. The Act creates a process for state attorneys general to receive Hart-Scott-Rodino (HSR) forms and the additional documentary material filed with them. HSR forms, and the additional documentary material filed with them, contain information about proposed transactions and are used to review the potential anticompetitive effects of the proposed transaction. While state AGs have the authority to enforce federal and state merger law, they do not currently have access to HSR forms and additional documentary materials absent costly and time-consuming subpoenas. This delay reduces certainty for parties seeking to close their deals.

Section 3 of the Uniform Act requires a person filing a pre-merger notification with the federal government to submit contemporaneously the same materials to the state AG if:

- The person has a principal place of business in the state; or
- The person or a person it controls directly or indirectly had annual net sales in the state of goods or services involved in the transaction of at least 20% of the filing threshold.

An AG may not charge a person a filing fee for filing the form or additional documentary material with the AG.

Section 4 of the Act imposes confidentiality restrictions on the AG who receives the HSR materials. Under the Act, the AG may not make public or disclose the HSR form, the additional documentary material, the proposed merger, or even the fact that the documents were provided. The AG may, however, share HSR materials with the federal agencies conducting antitrust investigations and any other AG whose state has also adopted the uniform act and its confidentiality restrictions.

A person that fails to comply with the filing requirements of the Act may face a civil penalty of not more than \$[10,000] per day of noncompliance.

UNIFORM MORTGAGE MODIFICATION ACT

The Uniform Mortgage Modification Act modernizes the law surrounding modifications of mortgages. Mortgage modifications are not uncommon: residential or commercial borrowers may avoid foreclosure by modifying their loans, construction loans may be converted to permanent loans, or credit facilities may be updated periodically to reflect changing market conditions or to substitute portions of debt.

Existing state law creates questions about the effect of a modification on the priority of the mortgage. Priority dictates the order in which creditors are paid in case of a foreclosure. Lenders want their mortgage priority to stay the same in case of a modification, so they can still recover as much as possible if the mortgage is foreclosed.

At best, this uncertainty leads to delays and higher transaction costs, which are ultimately passed on to the borrower. At worst, this uncertainty may discourage lenders from considering a reasonable request for a modification. Alternatively, a lender may request consent to the modification from a junior lender (one with lower priority), but the junior lender can demand a ransom payment from the borrower in exchange for its consent.

Even if a state has its own law addressing mortgage modifications and their priority, many local borrowers depend on financing from out of state, where the law is different. Out-of-state lenders, being unfamiliar with the local law, may refuse to rely on it and proceed as if the state had no statute at all.

For these reasons, there is a need for a widely enacted uniform law to govern mortgage modifications.

The Uniform Mortgage Modification Act creates safe harbors for specific, common modifications. For a modification within a safe harbor, the Act clearly provides that: (1) the mortgage continues to secure the obligation as modified, (2) the modification does not affect the priority of the mortgage, (3) the mortgage retains its priority regardless of whether a modification agreement is recorded, and (4) the modification is not a novation. (Novation is a technical legal doctrine that may result in the loss of priority of the entire loan.)

The following common modifications are safe harbor modifications under the Act: (1) extending the maturity date; (2) decreasing the interest rate; (3) modifying the method of calculating interest rates in certain ways; (4) capitalizing unpaid interest or another unpaid obligation; (5) forgiveness, forbearance, or other reduction of principal, accrued interest, or other monetary obligation; (6) modifying escrow or reserve requirements; (7) modifying insurance requirements; (8) modifying existing conditions to advance funds; (9) modifying a financial covenant; or (10) modifying the payment amount or schedule as a result of one of the other safe harbor modifications.

These safe harbors generally would not be considered materially prejudicial to a junior creditor. They are also generally consistent with the common law, which is the law in the absence of a statute. The advantage of a uniform law on this subject is that a statute provides certainty, reduces the need for litigation, and reduces transaction costs.

A uniform law is also useful for interstate and multistate transactions. A lender in one state will not have to become familiar with the mortgage modification laws of other states and can rely with confidence on the same uniform law in another state. A borrower in one state can rely with confidence on the same uniform law of a lender in

another state.

The Act defers to other state law for modifications outside of the safe harbors, such as increases in the principal or the interest rate.

Other modifications are explicitly excluded from the Act, such as additions to or releases of collateral, transfers of a loan, and changes in the borrower or guarantor. The Act also defers to other state law governing the priority of tax or other governmental liens, future advances (except as specifically provided in the Act), the statute of frauds, and recording acts.

Although the Act does not require the recording of the mortgage modification to preserve priority, nothing prohibits a party from recording the document, and the Act defers to other state laws that may require recording for a purpose other than priority, such as the statute of limitations or a state law that governs the required content of a mortgage.

The Uniform Mortgage Modification Act is a game changer. It benefits borrowers and lenders, large and small, commercial and residential. It facilitates loan modifications to avoid foreclosure. The Act makes the law more certain and protects the priority of mortgage modifications within the safe harbors. It adopts an appropriate balance between the right of the parties to a mortgage to modify their loan and the right of parties who have junior priority to avoid material prejudice to their position.

2024 AMENDMENTS TO UNINCORPORATED ORGANIZATION ACTS

The 2024 Amendments to the Uniform Unincorporated Organization Acts ("2024 UUOA Amendments") tackle thirty-three issues across all of the Uniform Unincorporated Organization Acts and the Uniform Business Organization Code. Some of the amendments arise from evolving case law regarding the subject matter while others stem from language inconsistencies among the Uniform Law Commission's ("ULC") various Uniform Unincorporated Organization Acts ("UUOA") as well as from non-uniform enactments and concerns expressed by some of the jurisdictions that enacted or considered one or more of the UUOA. The Unincorporated Organization Acts include: the Uniform Partnership Act ("UPA"), the Uniform Limited Partnership Act ("ULPA"), the Uniform Limited Liability Company Act ("ULLCA"), the Uniform Limited Cooperative Association Act ("ULCAA"), the Uniform Statutory Trust Entity Act ("USTEA"), the Uniform Protected Series Act ("UPSA"), the Uniform Unincorporated Nonprofit Association Act ("UUNAA"), the Model Entity Transactions Act ("META"), and the Model Registered Agents Act ("MORAA") as well as the Uniform Business Organizations Code ("UBOC"), which is a conglomeration of all of the ULC's unincorporated entity acts as well as the American Bar Association's Model Business Corporation Act ("MBCA"). While some of the amendments are unique to a particular Act, conforming changes were made throughout the unincorporated entity acts where appropriate.

Below are some of the key issues identified and addressed by the amendments:

- 1. Clarification of the Definition of "Partnership".** A partnership is the basic form of a for-profit business organization, often thought of as the "default" form. It is formed when two or more persons associate for the purpose of engaging in a business for profit and no other form of business organization is chosen by the associates. However, a partnership is an entity rather than the amalgamation of individual rights that a partnership was considered to be when the ULC first adopted the Uniform Partnership Act in 1914. In a few circumstances, a partnership may continue in its existence with only one partner or even no partners. In order to address this peculiarity, the 2024 Amendments modify the definition of partnership. Under the new definition, a partnership is, "an entity formed under this act or whose internal affairs become governed by this act." UPA § 102(11) (2024). The 2024 Amendments move the iconic language of "an association of *two or more* persons as co-owners of a business for profit" from the UPA's definitions to the Act's rule on how a partnership is formed. UPA § 202(a) (2024). This change continues the fundamental concept that the general partnership is the residual form of business association of at least two persons.
- 2. Dissolution of a Partnership When It Has Fewer Than Two, or No, Partners.** A partnership is not immediately dissolved because it has fewer than two partners. Rather, it continues for 90 consecutive days following that development. See Unif. P'ship. Act § 801 (2013). The 2024 Amendments create a mechanism in the UPA for a partnership to continue in a situation when the partnership has no remaining partners. If the partnership were another type of business, such as a limited liability company, the majority of owners of transferable (economic) interests could vote or consent to the admission of more members. ULLCA § 701(a)(3) (2024). The 2024 Amendments to the UPA more closely mirror other areas of entity law. Holders of a transferable interest will not be required to wind up an otherwise valuable business. Rather, interest holders may vote or consent to admit new partners, thereby continuing the partnership. UPA § 801(6) – (7) (2024).
- 3. Distinguishing between "Domestic" and "Foreign" Entities.** The 2024 Amendments distinguish between entities formed under the law of an enacting state or whose internal affairs become governed by the law of an enacting state (a domestic entity) and entities formed under the law of another jurisdiction (a foreign entity) in certain spots. The issue was elucidated in *Fannie Mae v. Heather Apartments, Ltd. P'Ship.*, A-30562C, 2013 WL 6223564 (Minn. Ct. App. Dec. 2, 2013), a case in which the Minnesota Court of Appeals considered whether a creditor's remedy known as a charging order was available to a creditor of a member located in Minnesota of a *foreign limited liability company* under Minnesota's version of the Uniform Limited Liability Company Act. A charging order is a lien that allows a creditor to recoup money owed by a business owner by capturing distributions from the entity owned by the member. The Minnesota Court of Appeals stated that because the definition of "limited

liability company" meant a company formed **under** the laws of Minnesota, the court had no power to reach the transferable interest of a member of a foreign company.

The 2024 Amendments take a different approach than the Minnesota Court of Appeals. Under the 2024 Amendments, where a court has subject matter and personal jurisdiction, a court may enter a charging order against the transferable interest of a member located in the enacting state of a foreign partnership or limited liability company as well as a domestic entity. The Amendments, however, limit the availability of foreclosure on the charging order to LLCs and partnerships organized in states whose statutes authorize foreclosure.

- 4. A Partner's or Member's Competition with the Entity after Dissolution but Before Termination.** Both the Uniform Partnership Act and Uniform Limited Liability Company Act state that a partner's or LLC member's fiduciary duty of loyalty includes the duty "to account to the [partnership/ LLC] and hold as trustee for it any property, profit, or benefit derived by the [partner/the member]: . . . from the appropriation of a [partnership/LLC] opportunity." UPA § 409(b)(1) (2013), ULLCA § 409(b)(1) (2013). These sections then provide that the duty of loyalty includes the duty "to refrain from competing with the [partnership/the LLC] in the conduct of the [partnership's/the LLC's] business before the dissolution of the [partnership/the LLC]," *i.e.*, without waiting for winding up to be undertaken or completed.

The entity continues after dissolution and until winding up has been completed, however, and because, in many cases, a partner or member may be an optimal candidate to continue or acquire an opportunity that otherwise was within the entity's line of business but as to which the entity would not continue, the prohibition on competition during and after dissolution might not be in the best interest of the dissolving entity. The 2024 Amendments to the Partnership, Limited Partnership, and Limited Liability Company Acts now make it clear that competition is allowed *after* dissolution and appropriation of a partnership or company opportunity is prohibited only *before* dissolution.

- 5. Dissolution and Winding Up: Known Claims and Other Claims against a Dissolved Limited Liability Partnership—What Claims May Be Barred?** Provisions of the Uniform Partnership Act, like provisions in other Uniform Unincorporated Organizations Acts and the Model Business Corporation Act, provide a procedure for giving notice to known and unknown creditors of an entity during dissolution and winding up of the business. However, under the prior version of the Partnership Act, there was a possibility that partners in a general partnership could retroactively elect limited liability partnership status to avoid liability and discharge obligations. Accordingly, the 2024 Act confines the notice-and-discharge provisions to partnership obligations incurred when the dissolved partnership was a limited liability partnership. Obligations incurred when the

partnership was not an LLP are not discharged and must otherwise have been or be addressed.

6. **The Construct of a "Series".** A number of states allow for the use of a structure called "series" in which parts of the assets, liabilities, and interest holders of an entity are associated together and kept separate from similar associations of the entity. A state that authorizes such a structure provides separate liability shields that protect one series and the interest holders that own an interest in that series from the liabilities of other series and the parent entity.

The 2024 Amendments address how to recognize, articulate, and provide for the term or concept of "series" limited liability company in the different Uniform Unincorporated Organization Acts. Except as explicitly provided otherwise in the Uniform Protected Series Act ("UPSA"), the 2024 Acts recommend that the law of the jurisdiction of formation of the entity governs the liability of a series.

Notwithstanding the general rule, since the promulgation of the Uniform Protected Series Act, there has been much discussion and disagreement among the states as to whether one state could be required to accept the limitations of liability of a foreign entity created by the protected series construct when a foreign entity registers to engage in business in the enacting state. The 2024 UUAO Amendments provide enacting states with alternatives that are designed to accord the various states the ability to select an option that is most in line with its legislative objectives.

7. **Charitable Assets.** Language in prior versions of the Model Entity Transactions Act on protection of charitable assets was not consistent with the evolution of nonprofit organization language and use. The 2024 UUAO Amendments conform to the recently completed revision of the ABA's Model Nonprofit Corporation Act and have been included in all of the unincorporated Organization acts.
8. **Clarifying the Standards of Conduct following Administrative Dissolution in UBOC for governors and interest holders.** Prior versions of the Uniform Business Organization Code were unclear as to the standard of conduct for a director, manager, member, or partner of a business in the period during which an entity was administratively dissolved. An administrative dissolution is where a government agency dissolves a business. The prohibition against appropriating a company opportunity applies only prior to dissolution of the company. However, administrative dissolution is not quite analogous – in many cases, an administratively dissolved organization will resolve its issues and become active again. As a result, the pre-dissolution standards, as opposed to those applicable following dissolution, apply.
9. **Is an LLP or an LLLP a new entity?** The Corporate Transparency Act (the "CTA"), enacted on January 1, 2021, is part of federal efforts to combat financial

crime by increasing transparency around the beneficial ownership or controlling parties of legal entities. Many companies in the United States must report information about their beneficial owners—the individuals who ultimately own or control the company. The changes to Section 901 of the UPA clarify the position taken by existing law – there is no new entity created for CTA purposes when a partnership elects to create a liability shield for its general partner.

In addition to the changes above, the 2024 Amendments to the Uniform Unincorporated Organization Act synthesize terminology and make conforming changes throughout the Uniform Unincorporated Entity Acts and Uniform Business Organization Code where applicable.