

**January 5, 2018**

**TO: ULC Committee on Scope and Program  
Daniel Robbins, Chair**

**FR: Study Committee on Amendments to the Uniform Conservation Easement Act  
Stephen C. Cawood, Chair  
K. King Burnett, Vice-Chair**

**RE: Report and Recommendation**

The Study Committee, through its Chair and Vice Chair and with assistance from ULC Counsel Ben Orzeske and Executive Director Liza Karsai, first contacted numerous individuals and organizations to be named as Observers. We contacted individuals and organizations with expertise in the subject matter and to reflect the interests and perspectives of the various stakeholders, including easement donors, government and land trust holders of easements, funders, regulators, and practitioners who work with easement grantors and holders. The ABA named Liaisons from several ABA Sections in accord with ULC guidelines. A Reporter was requested to research and report on (i) the various changes made to the UCEA by the states adopting it and (ii) provisions added by some states to their enabling statutes that do not appear in the UCEA. Upon approval of the request, the Executive Director appointed Nancy A. McLaughlin, Robert W. Swenson Professor of Law at the University of Utah College of Law and nationally-known expert in the subject matter, as Reporter.

The Reporter obtained the easement-enabling statutes from all 50 states, reviewed those statutes against the UCEA, and prepared a Background Report for the Committee, Liaisons, and Observers. The very thorough and useful report of some 56 pages, which provides necessary background and then lays out the state statutory provisions that differ from the UCEA, is attached to this report.

A website was established to facilitate the sharing of the Background Report; the easement-enabling statutes from the 50 states; sample conservation easement deeds; comments from Liaisons, Observers, or other interested parties; plus other reference materials, agendas and memos. The website may be accessed at [this link](#).

The Committee then held three meetings by conference call to receive input from the Committee members, Liaisons, and Observers.

The UCEA was intentionally limited in its scope to removing long-standing common-law impediments to the creation and long-term enforcement of conservation easements, which typically are held by governmental or charitable entities “in gross” (meaning the benefit of the easements runs to the governmental or charitable holder and the general public rather than to the owner of some nearby property, as is the case with more traditional “appurtenant” easements). The UCEA also was intentionally designed to have broad application by facilitating the creation of conservation easements (i) in a variety of contexts (exaction, purchase, bargain-purchase, and charitable donation), (ii) for a variety of purposes (protection of natural, scenic, open space, agricultural, forest, recreational, natural, historic, architectural, archeological, or cultural values),

and (iii) with a variety of durations (perpetual, term of years, and terminable upon satisfaction of certain conditions, like profitable farming no longer being feasible).

Adoption of the UCEA coincided with Congress's enactment of a federal charitable income tax deduction for the donation of a conservation easement provided the easement is "granted in perpetuity" to a government or charitable entity and its conservation purpose is "protected in perpetuity." An express goal of the UCEA drafters was to enable parties to structure easement conveyances so as to be eligible for federal tax benefits, while also enabling the creation of easements in other contexts (e.g., purchase and exaction). Easement purchase and exaction programs often have requirements that differ from the federal deduction requirements, and the UCEA was designed to validate the creation of easements in these varied contexts.

The UCEA has been very successful. Just over half of the states and the District of Columbia have based their enabling statutes on the UCEA. The remaining states have enacted their own form of an enabling statute, in some cases well before the approval of the UCEA. All of the enabling statutes have the same basic purpose—to remove the common-law impediments to the creation and long-term enforcement of conservation easements, which typically are held "in gross."

The Committee received only a few suggestions regarding amendments or additions to the UCEA. In reviewing the possible benefits of such amendments or additions, the Committee considered their significance, their adoptability and appropriateness for the UCEA, and whether they would be best addressed in the easement documents themselves or in state law on another subject (e.g., statutes on adverse possession, condemnation, or property tax assessments). Issues relating to easement amendment or termination are often addressed in the easement document itself and require a statute that can encompass all manner of easements (as the UCEA currently does), as many states have easement-exaction and easement-purchase programs that have their own standards and conditions that differ from federal tax law. The Observers, Liaisons, and other commenters were not strong advocates of a need for the amendments or additions to the UCEA to address these or other matters.

It also was finally made clear that some land trusts strongly oppose a drafting project because of the present political atmosphere in many states. Conservation easements are reportedly controversial in some states and there is a fear that revisions to the UCEA might trigger undesirable (anti-conservation) changes in state law. While much of this fear was exacerbated by misstatements and misunderstandings in the communications from the Land Trust Alliance to its over 1,000 land trust members about the Study Committee project, it is clear that a drafting project would be very controversial and highly unlikely to result in meaningful changes to the UCEA or, if any changes were made, uniform adoption among the states. A final project might even increase differences in the laws of the states.

Ultimately, the Study Committee unanimously concluded that suitable non-uniform easement-enabling statutes already exist in jurisdictions that have not enacted the UCEA, that amendments or additions to the UCEA would not prove useful in an effort to expand the UCEA's enactment footprint, and that amendments or additions to the UCEA would not prove useful and could be counter-productive in the states that based their enabling statutes on the UCEA. Therefore, we recommend discharge of the study committee and no drafting project at this time.