

**RPTE Spring Symposia  
Hot Topics in Uniform Laws  
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**Uniform Oversight of Charitable Assets Act**  
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The Uniform Oversight of Charitable Assets Act is a uniform law project of the National Conference of Commissioners of Uniform State Laws (NCCUSL, also known as the Uniform Law Commission).

The Drafting Committee began work on this project in the fall of 2008, with Laura Chisholm as the reporter. Susan Gary was added as a co-reporter in April 2010.

The Drafting Committee has met three times, most recently in February 2010. The committee discussed the February draft at that meeting and made significant modifications. Thus, although the draft may be of interest, be aware that changes will be made to it. An annual meeting draft should be posted to the NCCUSL website soon. This draft will be discussed at NCCUSL's annual meeting in July 2010. The Committee will then meet during 2010-11 with the hope of having a final version ready for consideration at the annual meeting in the summer of 2011.

The members of the Drafting Committee are Uniform Law Commissioners, but this committee has had a lot of participation from advisors and observers. The ABA has appointed four advisors to the project. Susan Gary served as advisor from the RPTE Section before she was asked to become the co-reporter. The committee encourages input from anyone interested in the project, and hopes that the members of the RPTE Section will provide comments.

The February draft was posted with the materials for this meeting, but there may be an updated draft by the time we meet. To find the current draft, plus memos distributed to the committee, go to [www.nccusl.org](http://www.nccusl.org), click on "NCCUSL Committees," then click on "Drafting Committees" and choose "Charitable Assets." The page for the committee also lists the committee members and ABA advisors. Observers are not listed on the page, but many observers are participating in this project.

***Goals of the Project***

The project has three main goals:

1. Articulate and confirm the role of the state attorney general in protecting charitable assets.

The attorney general's oversight function exists in most states in the common law or by statute, but in a few states courts have found no common law authority and in a few other states the scope of the authority is unclear. This act will clarify that the power of the Attorney General's authority is to:

- Correct abuses, but not to substitute the judgment of the Attorney general for that of the charity's directors or trustees;
- Protect the interests of the indefinite beneficiaries of a charity, but not to treat the charitable assets as quasi-public assets; and
- Protect the donor's expressed intent, but not to impose subjective ideas about a donor's intent.

2. Make sure the attorney general has the information needed to perform the oversight function, without overburdening the charities or the attorney general with excessive reporting requirements.

3. Create one place in a state's statutes where all this information can be located.

### ***From the Perspective of the Attorney General***

This document uses the term "attorney general" to mean the charity regulator in a state. In many states, the Office of the Attorney General has a division called the Charity Section or something similar. A lawyer in that section typically has the title Assistant Attorney General, but the person in that role may have a different title.

It is useful to remember that the attorney general has an educational role and a facilitative role as well as a regulative role. The attorney general wants to educate charities and work with charities to help them become more efficient and more effective.

### ***What the Act Does***

#### ***Which Charities Does the Statute Cover?***

The Act will have a relatively broad definition of "covered charity" but then will apply certain sections of the Act (registration and reporting) more narrowly. The Drafting Committee continues to discuss who should be covered by the statute, who should be required to register, and who should file additional reports.

"Covered charity" is an entity that holds property for charitable purposes, but that term excludes governmental entities and businesses.

Under discussion are the following:

- How much contact with the state is sufficient to require registration and reporting? Language under discussion would apply the registration and reporting requirements to charities that are “organized under the laws of this state or hold substantial charitable assets explicitly for the benefit of people in the state.”
- Should there be a de minimis amount for registration and reporting? A concern with this issue is that smaller charities tend to be the ones that may need the assistance of the attorney general.

### ***General Authority of the Attorney General***

The Act states the broad duty of the attorney general to represent the public interest in the protection of charitable assets.

The Act states that the attorney general may conduct an investigation or bring an action to:

- Prevent or correct the diversion of charitable assets;
- Remedy a departure from the purposes for which a charity was established or for which assets were given to the charity;
- Prevent or correct a breach of fiduciary duty in the administration of the charity; or
- Enforce the provisions of the Act.

### ***Registration***

Every charity [covered by this section – not yet determined] must register with the attorney general within a specified period of time after the charity is established or receives property. [30 days, 2 months, 3 months, 6 months]

The registration must include:

- The name, address, and statutory agent of the charity;
- A short statement of the charity’s purpose;
- The charity’s articles of incorporation or trust instrument (or other instrument creating the charity); and
- The charity’s bylaws (if it has bylaws)

### ***Public Records***

Registration information and periodic reports are public records and are available for public inspection, unless the attorney general is required by law to keep the information confidential.

## ***Annual Reports***

The Drafting Committee continues to discuss what form of annual report to require. The annual report could request a copy of the Form 990, for organizations required to file that form. The Drafting Committee considered the annual report form from California and developed questions to ask on a form of that sort, but the committee needs to continue discussion of an annual report.

## ***Notice of “Life Events”***

A charity registered with the attorney general must file with the attorney general notice of the following, a specified number of days [20, 30 or 60 days] before the event occurs:

- Any amendment to its organizational document, if the amendment changes the purposes or results in a material change in the structure, governance, or activities of the charity.
- The intent to dissolve, with a copy of the charity’s plan of dissolution. The charity cannot transfer assets until the earlier of receiving written consent from the attorney general, written notice that the attorney general will take no action, or the passage of time (current draft has twenty days). After dissolution, the charity must file with the attorney general a description of the assets transferred and a list of the names and addresses of those who received the assets, other than creditors.
- The intent to sell, lease, exchange, or otherwise dispose of all or substantially all of its property, unless the transaction is in the regular course of the charity’s activities or the attorney general waives this requirement.
- The intent to merge with any other entity. The notice must include a copy of the proposed plan of merger.
- The intent to terminate if it is a charitable trust.

In addition, notice must be provided to the attorney general as follows:

- Whenever an estate or private trust involves the distribution of property to a charity, the personal representative or the trustee must send the attorney general a copy of the will or trust.
- If a charity loses a federal, state, or local tax exemption, the charity must notify the attorney general.

Any person who asserts a claim in any of the following proceedings must give written notice to the attorney general and must include a copy of the pleading:

- An action against or on behalf of a charity or a charitable fiduciary;
- A proceeding seeking instructions relating to the administration, use, or distribution of the charitable assets;
- A proceeding seeking construction of an instrument under which charitable assets are held;
- A proceeding seeking modification of the terms under which charitable assets are held;
- Any proceeding involving a trust or probate estate in which matters affecting charitable assets may be decided; or
- Any proceeding to contest or set aside the probate of a will under which property worth at least \$25,000 is given for charitable purposes.

#### ***Cooperation with Other Officials***

The attorney general may cooperate with any official of the state, of another state, or of the United States, and

- May provide notice of the commencement, status, or resolution of an investigation or proceeding;
- May make documents or information available to the other official; or
- May acquire of the other official documents or information relevant to the investigation or proceeding.