Welcome everyone. We are under the gun with the new deadline for bill introduction so I asked to get a quick meeting scheduled so we can get a couple of more items ready for submission. The first item we’ll consider is the report to accompany our Uniform Real Property Transfer on Death Act bill. Wendy, do you want to run us through this?

You have LC 2202 along with a report. LC 2202 tracks the Uniform Real Property Transfer on Death Act from NCCUSL, adding some uniquely Oregon
amendments. Professor Susan Gary was the Reporter for our Real Property Work Group and it was chaired by Commissioner Mark Comstock. Prof. Gary was also an advisor for NCCUSL when they dealt with this issue, so she is familiar with it on the national level as well. For those of you who may not be familiar with the Real Property Transfer on Death Act, it’s a different property transfer tool that Oregon doesn’t have yet. It’s a way to transfer property without going through probate and without a trust.

I’ll go through where our proposed legislation departs from the Uniform Act.

<table>
<thead>
<tr>
<th>Symeonides</th>
<th>I didn’t see in the Act whether this applies only to property situated in Oregon or does it also apply to property elsewhere? What happens if someone living in Oregon dies and they own property in another state? What if the other state doesn’t also have or recognize the Uniform Act?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gary</td>
<td>This does apply only to property in Oregon. If someone from Oregon dies and they have property in another state, it would only apply if that other state also recognized the Uniform Act.</td>
</tr>
<tr>
<td>Johnson</td>
<td>Also, on page two of the bill, property is defined as real property located in Oregon. The second section of the bill is the definition section and there are slight changes there. In section 4 of the bill, we asked for the word “otherwise” to be put in the bill. We want to be clear that we don’t affect other methods.</td>
</tr>
<tr>
<td>Shetterly</td>
<td>Dave Heynderickx?</td>
</tr>
<tr>
<td>Heynderickx</td>
<td>I asked the drafter about section 3 and the bill was made applicable to transfer on death deeds made before the effective date of the Act. It basically validates a transfer that was invalid under pre-existing law.</td>
</tr>
<tr>
<td>Symeonides</td>
<td>Is it possible that if we validate these deeds we adversely affect some other parties who may have a constitutional argument?</td>
</tr>
<tr>
<td>Heynderickx</td>
<td>I’m not sure, but Harrison (the drafter) said that it is already like this in the Uniform Act.</td>
</tr>
<tr>
<td>Johnson</td>
<td>It’s the same language that was also in the Securities Act. Sections 5, 6 and 7 just make it clear that you can revoke a TODD at anytime. Section 8 is the</td>
</tr>
</tbody>
</table>
capacity section. We followed the Uniform Act capacity requirements, but we added some claims that you could contest the deed for fraud, duress and undue influence. All of these claims must be made within 18 months of the death of the transferor. Section 9 has the content requirements and we followed the Act except that we omitted a consideration statement and a land use statement. We also required that you name the beneficiary. Sec. 10 is from the Uniform Act. Section 11 provides for how you can revoke by instrument. We added a non-uniform instrument allowing an agent to revoke. But, they cannot create a Transfer on Death Deed. They can only revoke.

Comstock

Provides the agent has to be an agent in the deed to be able to revoke.

Johnson

Section 12 lists the various things the Trust Deed does not affect. We stuck with the Uniform Act there.

Walters

Can we go back a minute? Under section 11 about granting authority to an agent, it says that if authority is expressly granted by the Transfer on Death Deed that an agent may revoke. Can you put in there that “an agent may revoke” or do you need to nominate the agent? Is it an agent or the agent? I think it should be “the named agent” may revoke.

Johnson

I’m not sure.

Shetterly

I think you have to name the agent.

(Confusion about the bill draft distributed to the Commissioners. Subsections 2, 3 and 4 of Section 11 were missing from the draft. Those subsections were reviewed verbally with the Commission.)

Comstock

So, to address Justice Walters’ suggestion, B(2) should say the designated agent instead of an agent.

Walters

Conceptually, I think it should read - If authority is expressly granted to an agent by the Transfer on Death Deed, the designated agent may revoke the Transfer on Death Deed as provided in this section.

Johnson

So we need to make sure we restore lines 11 through 20 of the Jan. 19th draft, with this change, and restore subsections 4, 5, 6 and 7.
Section 13 basically says that whatever the deed says are the provisions that will control the disposition unless there is a default exception that would apply. This section outlines those default exceptions. The first one deals with dissolution of marriage or annulment. Those provisions that designate the ex-spouse would be revoked. The next is the slayer and abuser provision. We mimic ORS Chapter 112 and that would kick in if the transferee were a slayer or an abuser. Next we went along with the Simultaneous Death Act. We also adopted the same policy as Oregon regarding child neglect. There is also a policy for Elective Share in the Uniform Act, but we were ahead of that in Oregon, with our own Elective Share legislation. The Work Group decided to reject the ademption and anti-lapse references. The other change in this section is we had to use the word claim to catch public assistance reimbursement, so we added the word claim to the list at the request of the DHS and DOJ attorneys. (Also reviews various typographical errors that will need to be cleaned up.)

Section 14 we followed the Uniform Act.

Section 15 of the Uniform Act gave us two options and we used alternative B.

Section 16 is a form, which we put in since this is new.

Section 17 is also a form.

Section 18 deals with the federal electronic signature law.

Sections 19, 20 and 21 are all conforming amendments.

In section 22 we added a notice to a beneficiary during foreclosure.

Sections 23, 24, 25, 26 and 27 are all conforming amendments.

Section 28 deals with conservator’s powers, where you have not designated an agent but you later have a conservator appointed. This is only if the conservator asks for court approval.

In section 29 we added that we tried to follow the captions of the Uniform Act.

Section 30 is the effective date and there is no emergency clause.

Thanks to Professor Gary and all of the practitioners with title companies, and the practitioners in elder law, estate planning and real estate. Invaluable resources.

We have also routed this to the Bar’s Estate Planning and Real Estate sections,
as well as having their participation in the group.

Moves that the bill and report, as amended, be forwarded to the 2011 Oregon Legislature.

**Heynderickx**

Liked how the Choice of Law legislation was drafted to include the report as a help for practitioners and suggests that we do the same thing with this.

**Symeonides**

I move that we amend Mark’s motion to include the report as its own section in the legislation.

**Johnson**

I want to make sure we review the agreed upon amendments. One in Section 11 to change the agent requirement, Section 4 amended to go back to the Uniform language to make sure we’re not messing with any of the other ways of changing property. We need to add the missing sections of Section 11 and we need to add a new section that references the Commission’s report.

Professor Gary would you like to add anything?

**Gary**

I just want to thank everyone for their hard work on this project.

**Shetterly**

Any more discussion? Any objections? None. Passed as amended.

**Johnson**

Just to mention that the State wanted a provision concerning public benefits. It would have required that you get a certification that there are no claims.

**Comstock**

There is a mechanism currently that the Department can use. DHS already has the capacity to record a notice that requires that they be notified on death.

**Shetterly**

Let’s move on to LC 117.

**Dobbins**

The Uniform Environmental Covenants Act uses very different language than Oregon law, therefore at our last meeting we asked that the Commission modify the task of the Work Group to look at the existing Oregon language and incorporating parts of UECA into it. Since then we have had sub-work group discussions with DEQ and they are open to some changes to existing law and are also open to submitting changes this legislative session. But, we have not had time to come back to the full group with this and we are facing the tight deadline for bill submission. We think it makes sense to go ahead and submit a
placeholder bill incorporating DEQs’s proposed language and then bring it back to the Work Group

| Shetterly | So the LC we see won’t be what we bring before the legislature. We could also use another bill with a similar relating clause and do a gut and stuff, but we would rather have a Commission bill. |
| Heynderickx | Do you have a member who will drop the bill? |
| Johnson | We are hoping that Judiciary will introduce it. |
| Heynderickx | Will the Committee have time to consider it? Deadline to make drafting changes is Monday at 5:00. |
| Garrett | Judiciary should have room on the agenda to introduce the bill. |
| Symeonides | Moves that LC 117, as conceptually amended to conform to DEQs proposed language, be submitted to the Legislative Assembly by the Law Commission with the understanding that it is a placeholder for legislation to be further addressed by the UECA Work Group and the Law Commission later on in the session and the staff of the Commission will not advance any legislation until it has been agreed to by the UECA Group and the Law Commission. |
| Shetterly | Any discussion? All those in favor? Opposed? Motion is carried. This is going to have to happen fast. |
| Johnson | Reviews different bill numbers for everyone to track. We still need to approve HB 2541, Inheritance Tax, and we will set another meeting in March to do that. |
| Shetterly | We are now adjourned. |

Submitted By, Lisa Ehlers  
Reviewed By, Wendy Johnson  
Legal Assistant  
Deputy Director and General Counsel

**EXHIBIT SUMMARY**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker’s exact words. For complete contents, please refer to the recording.
Copy of Email from Prof. Dom Vetri, dated 2/7/11

Real Property Transfer on Death Act Work Group Report

Uniform Real Property Transfer on Death Act

LC 2202 Draft

LC 117 Draft