

State of New Jersey

New Jersey Law Revision Commission

ANNUAL REPORT

2010



Report to the Legislature of the State of New Jersey
As provided by 1:12A-9.

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I. MEMBERS AND STAFF OF THE COMMISSION IN 2010

The members of the Commission are:

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

Albert Burstein, Attorney-at-Law

Andrew O. Bunn, Attorney-at-Law

Edward J. Kologi, Attorney-at-Law

Nicholas P. Scutari, Chairman, Senate Judiciary Committee, Ex officio

Patrick Barnes, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio

Represented by Professor **Ahmed I. Bulbulia**

John J. Farmer, Jr., Dean, Rutgers Law School – Newark, Ex officio

Represented by Professor **Bernard Bell**

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,

Represented by **Grace Bertone**, Attorney-at-Law

The Staff of the Commission is:

John M. Cannel, Executive Director

Laura C. Tharney, Deputy Director

Marna L. Brown, Counsel

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Jenene J. Hatchard, Administrative Assistant

Richard Angelo, Law Student Intern

Alexander Fineberg, Law Student Intern

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II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and produced the Revised Statutes of 1937. The Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, so the Law Revision Commission continued in operation until 1939. After that time, the functions of the Commission were transferred to a number of successor agencies, including the Legislative Counsel.¹

In 1985, the Legislature enacted 1:12A-1 *et seq.*, the effective date of which was January 21, 1986. Those sections of the statute transferred the functions of statutory revision and codification to a newly created New Jersey Law Revision Commission.² The Commission began work in 1987 and has, since that time, filed 85 Reports with the Legislature, 38 of which have been enacted into law.

The Commission's statutory mandate is to simplify, clarify and modernize New Jersey statutes. As a result, the Commission conducts an ongoing review of the statutes to identify areas of the law that require revision. The scope of the

¹ *N.J.S.* 52:11-61.

² The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

- (1) Remedy the defects,
- (2) Reconcile conflicting provisions found in the law, and
- (3) Clarify confusing and excise redundant provisions found in the law.

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

revision performed by the Commission varies by the project, and includes both modest changes like the correction or removal of inconsistent, obsolete or redundant language, as well as comprehensive modifications of select areas of the law.

Before choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. Once a project begins, the Commission extensively examines local law and practice, and, when appropriate, the law of other jurisdictions. The Commission also consults with experts in the field throughout the drafting process and seeks input from individuals and organizations familiar with the practical operation of the law and the impact of the existing statutes.

When the preliminary research and drafting is finished, the Commission issues a Tentative Report and makes it available to the public for comments. The Commission then reviews all the comments received, and incorporates them into the Tentative Report as necessary. When a revision is completed, a Final Report is prepared and submitted to the New Jersey Legislature for consideration.

The Commission's work has been published in law journals, cited by the New Jersey Courts, and used by law revision commissions in other jurisdictions.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its projects, which are widely distributed to interested persons and groups. Since 1996, the Commission has maintained a website for the purpose of making its projects and Reports readily available to the public, now at <http://www.njlrc.org>.

III. LEGISLATIVE SUMMARY

Since it began work in 1987, the New Jersey Legislature has enacted 38 bills³ based upon the Final Reports and Recommendations of the New Jersey Law Revision Commission:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- Civil Actions – Service of Process (L.1999, c.319)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Construction Lien Law (L.2010, c119)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- Evidence (L.1999 c.319)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995 c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999 c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 –Professions (L.1999, c.403)

³ A total of 38 bills were enacted, implementing 36 reports. The Repealers project was divided into three reports.

- Uniform Child Custody Jurisdiction and Enforcement Act (L.2004 c.147)
- Uniform Commercial Code 2A –Leases (L.1994, c.114)
- Uniform Commercial Code 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code 9 – Secured Transactions (L.2001, c.117)
- Uniform Electronic Transactions Act (L.2001, c.116)
- Uniform Mediation Act (L.2004 c.157)
- Uniform Prudent Management of Institutional Funds Act (L.2009, c.64)

IV. FINAL REPORTS AND RECOMMENDATIONS

A Final Report contains the decision of the Commission on a particular area of the law and includes an analysis of the subject, proposed statutory language and commentary. A Final Report is approved and adopted after the public has had an opportunity to comment on drafts of the Report, and is filed with the Legislature. After filing, the Commission and its Staff work with the Legislature to draft the Report in bill form and to facilitate its enactment.

In 2010, the New Jersey Law Revision Commission published seven Final Reports and Recommendations to the Legislature.

A. Custody (Title 9)

The Commission released its Final Report on Custody in June of 2010. The Report recommends revision of the statutory chapter that provides the standard for decisions as to custody of a child when there is a dispute among parties. The most common application is in cases of divorce. This Report is closely based on existing law but with simplified and clarified language. The basic standard, “best interests of the child” remains unchanged. However, the revision also incorporates decisional law limiting the use of the “best interests” standard when the custody dispute is between a parent and a non-parent or when the dispute concerns the acceptance of an arbitration award of custody.

B. Durable Power of Attorney

With the recent introduction of amendments to New York’s durable power of attorney law, the Commission determined that New Jersey’s current durable power of attorney laws might need revision. New Jersey’s *Revised Durable Power of Attorney Act* (RDPA) was enacted in 2000, replacing Sections 46:2B-8 and 46:2B-9, which had been enacted in 1971 as an Act concerning the effect of death, disability or incapacity of a principal upon a power of attorney.

Although only one modification had been made to the RDPA since its

enactment, pertaining to gratuitous transfers and gifts, the Commission learned that commenters believed some revisions to current law would be useful. New Jersey's statute relating to banking transactions under a power of attorney, Title 46:2B-10 et seq., which was not intended to be superseded by the RDPAA, also needed at the very least to be integrated and made consistent with the RDPAA.

The Commission's Final Report revising the RDPAA was released in September of 2010. It adopts concepts derived from the Uniform Power of Attorney Act, promulgated in 2006 by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and follows suggestions advanced by members of the State Bar Association.

C. Motor Vehicles and Traffic Regulations (Title 39)

The Commission worked on this substantial project for several years. It was released as a Tentative Report at the end of 2007 and, in mid-2010, was released as a Final Report.

After initially considering sections of Title 39 in response to requests, the Commission determined that the entire Title was an appropriate candidate for a comprehensive revision. The basic statutory provisions concerning motor vehicles were drafted in the 1920's and there are statutory sections currently in effect that were enacted in every decade beginning in the 1920's. Periodic modifications and accretions over time resulted in a collection of layered statutes containing overlapping, contradictory and obsolete provisions.

The scope of Title 39 is very broad. It includes registration and licensing requirements, motor vehicle equipment requirements, and numerous provisions regarding the regulation of traffic, including requirements pertaining to bicycles, roller skates, horses and horse-drawn vehicles, snowmobiles, all terrain vehicles, machinery and equipment of unusual size or weight, pedestrians, the law of the road and right-of-way, traffic signals, accidents and reports, parking, highway and traffic signs, and the powers of municipal, county and state officials. Title 39 also includes provisions regarding automobile insurance, vehicle inspections, the

purchase, sale and transfer of vehicles, abandoned and unclaimed vehicles, junk yards, driving schools and auto body repair facilities.

As a result of its scope, Title 39 has a significant impact on a large number of residents of the State of New Jersey, and on those who drive on the many roadways in this State. The Commission focused its efforts on improving the language, the structure and the accessibility of Title 39 so that those who are impacted by various provisions of the law can more readily locate and understand the requirements, responsibilities and restrictions imposed upon them.

The general goal of this revision was not to modify the substance of the law significantly, but to consolidate and, where appropriate, restructure the law, so that it is consistent, organized and accessible. There were, however, sections of the law where the substance was revised, including outdated and inconsistent penalty provisions. The modifications to the substance of the Report were the result of input from the Motor Vehicle Commission, municipal court judges, attorneys who regularly practice in municipal court, police officers, and others whose work with Title 39 has afforded them the opportunity to identify the instances in which the current law does not adequately address the problems posed by its day-to-day application.

After the project was released in 2007, the Commission was fortunate to receive additional commentary including comments from attorneys with the Motor Vehicle Commission who conducted a line-by-line review of the project. As a result of competing demands for attorney time and resources, the MVC was able to submit the vast majority of its comments to Staff before the end of 2009 but did not have the opportunity to provide all of them.

The last of the MVC comments were received by Staff in early 2010. The Commission released the project as a Final Report in mid-2010, with the expectation that Staff would complete the process of updating the more than 500 pages of material for distribution. Ongoing modifications to this area of the law, and Staff's desire to insure that those modifications and the comments received

are reflected accurately in the report, resulted in a slow process of finalizing the lengthy document. In addition, the Commission has since undertaken two separate projects dealing with portions of Title 39. As a result, the complete document has not been distributed yet. Distribution of the report in its entirety is expected after the *Title 39 – State v. Moran* project and the *Title 39 - DWI* project are completed and incorporated.

D. Parentage (Title 9)

The Commission released its Final Report on Parentage in April of 2010. The Report recommends revision of the substance of what is now Chapter 17 of Title 9. The current statutes were written before the development of modern genetic tests that can almost always determine whether a particular person is a genetic parent of a particular child with a level of accuracy that makes them practically irrefutable. As a result, current law is written in terms of factual presumptions that are not now relevant. This chapter gives a central role to genetic testing in litigated cases of disputed genetic parentage.

However, the majority of parentage cases that arise around the time of birth do not involve a court determination. Most often, a man agrees that he is the father and signs a certificate of paternity. Federal statutes and regulations essentially require that states establish a system of voluntary acknowledgements of paternity that is as binding as a court determination. See, e.g. 42 *USC* §668 and 45 *C.F.R.* §303.5. Section 4 establishes such a system in the form of certificates of parentage.

A small number of disputes over paternity do not follow the ordinary pattern of a known question around the time of birth. These disputes may arise when the relationship terminates between the persons who thought themselves to be father and mother, or in the context of divorce, or in the distribution of estates or trusts. There are not many of these cases, but they engender a great deal of heat. Whenever an issue of genetic parentage arises, the revision requires genetic testing. The revision also limits challenges to parentage by

barring challenges to parentage when the questioned parent has lived with the child for five years. The only provision concerning non-genetic parentage is one on sperm or egg donation, tracking a current provision on sperm donation.

E. Powers of Commissioners

A Final Report on the Powers of the Commissioner of the Department of Community Affairs (“DCA”) was released in July 2010. The revision dealt with Title 55 of the New Jersey statutes pertaining to Tenement houses and public housing. Chapter 13A of that title deals with hotels and multiple dwellings.

The DCA brought to the Commission’s attention that subsection d. of *N.J.S. 55:13A-6* contained a typographical error that erroneously raised the penalty for failure to comply with a subpoena issued by the Commissioner from \$100 to \$100,000. The section was first enacted in 1967 and amended by L.1970, c. 138. In 1970, the penalty amount was \$100. The section was amended further by L. 1987, c. 30 and was enacted with the penalty amount misstated as \$100,000. The statutory amount of \$100,000 was also inconsistent with the Commissioner’s interpretation of the statute. Moreover, a review of the section’s legislative history indicated that the \$100,000 amount was never intended.

In some cases, similar minor errors can be corrected clerically by the Office of Legislative Services. However, with more than twenty years since the statute’s most recent revision (at which time the error was made), a corrective bill is now required. Accordingly, the Commission approved a Final Report revising the penalty amount down to \$100 to comport with the previous versions of the statute.

F. Title 39 – State v. Moran

In *State v. Moran*, 202 N.J. 311 (2010), the New Jersey Supreme Court considered a case in which the defendant was found guilty in municipal court of

reckless driving. The municipal court imposed penalties pursuant to the reckless driving section of the statute (*N.J.S. 39:4-96*) and, in addition, suspended the defendant's license for a period of 45 days pursuant to *N.J.S. 39:5-31*. That section of the statute provides for the revocation of a driver's license, without reference to a specific violation of Title 39, as follows:

The director or any magistrate before whom any hearing under this subtitle is had may revoke the license of any person to drive a motor vehicle, when such person shall have been guilty of such willful violation of any of the provisions of this subtitle as shall, in the discretion of the magistrate, justify such revocation.

The *Moran* Court defined the term "willful violation", so that license suspensions would be imposed in a "reasonably fair and uniform manner" and that similarly situated defendants would be treated similarly. *State v. Moran*, 202 *N.J.* at 316. The Court also enunciated "sentencing standards to guide municipal court and Law Division judges" pursuant to its supervising authority over the court system "for the purpose of achieving just ends". *Id.* Those standards were provided in the form of a list of factors that judges are to consider "in determining whether to impose a suspension for a willful violation of a motor vehicle statute and, if so, the appropriate length of the suspension". *Id.* at 328.

The approach of the Supreme Court in the *Moran* case appeared to be a sensible one, well-supported by the available case law and designed to clarify the application of the statute. As a result, the Commission drafted proposed statutory language that incorporated the Court's determination in a streamlined fashion and added new language to encourage uniformity in both judicial and administrative decisions.

A Final Report was issued in December 2010.

V. TENTATIVE REPORTS

A Tentative Report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A Tentative Report is distributed to the general public for comment. The Commission considers these comments and amends its Report.

In 2010, the Commission published six Tentative Reports.

A. Causes of Action (Title 2A)

As part of the broader revision of Title 2A, Staff undertook a revision of Subtitle 6 of Title 2A, which contains the civil causes of action established by the Legislature. Subtitle 6 is a collection of widely varying causes of action, some of which were drafted relatively recently, while others were drafted over a century ago. This goal of this revision is to modernize the statutes by eliminating language that is no longer viable and updating the remaining language.

The language pertaining to alcohol servers' liability was not recommended for change but the Commission brought to the attention of the Legislature the fact that this statute does not cover a number of situations in which coverage may be appropriate. Significantly, the statute is not readily applicable to the service of alcohol at mass gatherings, like sporting events or concerts at stadiums. Since the statute specifically states that it is the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages, the Commission noted that Legislature may wish to revisit this area in light of the case law developments subsequent to its enactment.

The Commission likewise recommended no change to the section pertaining to liability for damage to a fire alarm system.

The seven sections of the law known as the "heart balm" statutes were eliminated with the exception of a single sentence. The section pertaining to a change of name application was likewise proposed for elimination except for a

single sentence that refers to the procedures for a name change set forth in the Rules of Court.

The two sections pertaining to injury or losses resulting from mob violence or riots were recommended for repeal in their entirety as were the sections pertaining to the recovery of money or property from a municipality or school district and the four sections pertaining to naturalization.

The language pertaining to debts or obligations fraudulently incurred was modified in a conservative manner after a detailed review of the case law in an effort to clarify its provisions.

The section pertaining to the arrest or detention of mentally incapacitated persons was modified to make it clear that its provisions did not apply to a commitment proceeding and the statutory language pertaining to proof of lost or destroyed instruments was modified slightly for clarity and to include the applicable standard of proof.

A Tentative Report was release in the spring of 2010.

B. Door to Door Sales

A Tentative Report on Door-to-Door Retail Installment Sales Act (DDRISA) was released in December 2010. The project originated with an Appellate Division case noting a disagreement between New Jersey law and federal regulations regarding a “cooling-off period” after an agreement to purchase in the door-to-door sales context. The court’s opinion in *United Consumer Financial Services v. Carbo*, 410 N.J. Super. 280 (App. Div. 2009), concluded that federal regulations preempted New Jersey law as to the duration of the “cooling-off period” afforded consumers.

New Jersey’s DDRISA was enacted with the express purpose of protecting consumers from the “often unethical persuasion of certain door-to-door sellers.” One aspect of the law’s protective efforts is a mandated “cooling-off period” during which a consumer may rescind the agreement with proper notice to the seller. Found at N.J.S. 17:16C-61.5 a.(1), the period during which a

consumer may rescind is allowable “not later than 5 p.m. of the third business day” following the sale. The form that notice to the seller must take is limited to certified mail. *Id.*

Federal Trade Commission (FTC) regulations, however, provide for a slightly longer “cooling-off period” and a somewhat less restrictive form of notice to the seller. The federal rule, 16 *C.F.R.* § 429.1(b) allows a consumer to rescind up to midnight of the third business day and allows for notice via mail, delivery, or telegram. The federal regulations include a preemption provision expressly declaring state law that does not “accord the buyer . . . substantially the same or greater” protections than federal rules to be “directly inconsistent.” 16 *C.F.R.* § 429.2(b). Indeed, the *Carbo* court found the federal rules more favorable to the consumer than current New Jersey law. Accordingly, the court held portions of the DDRISA preempted by federal regulation because of the New Jersey law’s shorter “cooling-off period” and more burdensome method of notice.

The Commission recommends revision to the DDRISA in order to avoid federal preemption. The revisions to two sections of the statute are identical. For both 17:16C-61.5 a.(1) (right to rescind, duration of cooling-off, and notice requirement) and 17:16C-61.6 b. (form language for receipt provided to consumer informing of right to rescind and cooling-off period) the Commission recommends that the “cooling-off period” be extended to midnight of the third business day following the sale and that the form notice may take be expanded to include regular mail and electronic communication. The Commission’s report also requires more seller information to be provided to the consumer and it makes minor changes to make pronouns gender neutral.

C. Effect of Abstentions

In December of 2010, the Commission released a Tentative Report of the effect of an abstention by a member of a public body. The complicated current law on the effect of an abstention by a member of a public body is found in case law. The basic common law rule is that if a member abstains from voting he is

counted as voting “yes” unless he has expressed opposition, in which case he is counted as voting “no.” However, there are a number of important exceptions to this rule. As a result of these exceptions, the basic rule that an abstention is counted as an affirmative vote applies in a minority of cases: only where a member is entitled to vote, does not recuse himself and the statute does not provide that a particular number or percentage is necessary for approval of the matter. In addition, it may be particularly hard to determine whether a member fully recused himself or whether he merely abstained. In the first case, his vote would not count; in the second, he would be counted as affirmative.

While the complication of the rule is a serious defect, the greater problem is that the rule probably does not reflect the expectations of a person who chooses to abstain. A person who abstains does not intend to cast any vote, affirmative or negative. As a result, the Commission proposes statutes that would clarify the effect of abstentions and establish that an abstention is neither an affirmative nor negative vote.

The Commission’s proposal is in the form of three separate statutes dealing separately with state, local and school government bodies. Each of these three statutes can be compiled in a place where it will be easily accessible to the people who need to know about it. If one general statute were enacted, it is likely that it would not come to the attention of people whose focus was municipal or school law.

D. Landlord Tenant

In 2009, the Commission began a major project to compile and revise all of the landlord-tenant law. The statutes pertaining to the landlord-tenant relationship, some of which date back to the 1870’s, have not evolved in a coherent manner.

Many, but not all, of the landlord-tenant provisions are contained in Title 2A, but even those are not within the same chapter or even in sequence, and

different aspects of the same topic are discussed in more than one statutory provision. The result is a scattered morass of overlapping, contradictory and inaccessible provisions. Another large part of the law is now found in chapter 8 of Title 46. This chapter contains provisions pertaining to Leasehold Estates, the Truth-in-Renting Act, and the New Jersey Safe Housing Act. The remaining provisions of the landlord-tenant law are scattered throughout Titles 20, 38, 40, 52, 54 and 55.

The lack of organization makes the law difficult to find. The conflicts, inconsistencies and anachronisms make it difficult to determine what the law is. In this area of the law, where parties frequently represent themselves, it is especially important that the statutes be consistent, understandable and easy to locate.

Accordingly, the Commission undertook a landlord-tenant revision project that, while preserving current legal concepts and causes of action, seeks to:

(1) consolidate in a single place all statutes pertaining to the legal relationship between the landlord and tenant;

(2) update all statutory language and remove anachronistic provisions;
and

(3) make consistent the various statutory provisions, and cross reference them, as appropriate.

After more than a year of revision and the participation of focus groups and commenters, including both landlord and tenant representatives, the Commission issued a tentative report on landlord tenant revision in October of 2010. In accordance with the Commission's objectives, the report puts all of the relevant law in one place and eliminates or replaces archaic terms (such as the term "removal", which is replaced with the term "eviction" in every instance where the term refers to the removal of a tenant from rental premises). The report further eliminates inconsistencies and confusing provisions. For example, in some cases, current provisions are inconsistent because they pre-date the Anti-

Eviction Act and the Summary Dispossess Act but these provisions have not been repealed nor have they been modified to reflect the changes made as a result of those acts.

In addition, where appropriate, the report updates the law by incorporating the holdings of key New Jersey State court determinations. This has only been done where the Commission concluded that the cases clarified an ambiguous issue, made a reasonable determination of legislative intent or encouraged further legislative clarification.

Because, in the view of many tenants and tenant representatives, the Anti-Eviction Act is the most comprehensive and progressive law regulating eviction in the nation, the Commission made every effort to update and consolidate the Anti-Eviction Act and the Summary Dispossess Act while preserving their significance.

E. Uniform Adult Guardianship and Protective Proceeding Act

As part of its legislative mandate to review all uniform laws, in September of 2010, the Commission commenced review of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), approved by NCCUSL in 2007.

The UAGPPJA provides a uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families. It has been adopted in 20 states and the District of Columbia, and endorsed by the Alzheimer's Association, the National Association of Elder Law Attorneys (NAELA), the National College of Probate Judges, the Conference of Chief Justices, the Conference of State Court Administrators and the National Guardianship Association.

The UAGPPJA – modeled after the Uniform Child Custody Jurisdiction Act, and its successor, the Uniform Child Custody Jurisdiction and Enforcement

Act, both of which address similar multi-jurisdictional issues that are in connection with child custody determinations -- seeks to resolve disputes over court authority to make decisions about guardianship by first ensuring that only one state exercises jurisdiction over an alleged incapacitated person at any time. Thus, the UAGPPJA sets out a mechanism by which a court can determine the state with primary jurisdiction over the allegedly incapacitated person. In addition, the UAGPPJA addresses whether a guardianship proceeding in one state will be recognized in another state and provides a registration procedure to facilitate recognition of out-of-state orders. The act further empowers courts in differing jurisdictions to communicate with each other and to allow the parties to participate in the communication.

As the Commission's work on this project progressed, the Commission received the cooperation and comment of and members of the Elder Law Section of the State bar, who wished the model law to reflect the nuances of New Jersey practice. The tentative report, issued by the Commission in December of 2010, adopts the uniform law with the revisions suggested by those attorneys who participated in the drafting process.

F. Payment of Tax Pending Appeal

A Tentative Report clarifying the requirements for appealing a tax assessment was released in September 2010. The Commission undertook the project to codify the holding in *Trebour v. Randolph*, 25 N.J. Tax 227 (N.J. Tax Ct. 2009), which identified an ambiguity in N.J.S. 54:3-27. The revision states that, to sustain an appeal, a taxpayer must be current on taxes assessed against any property which is the subject of that appeal. The taxpayer need not have paid taxes on all of the taxpayer's properties in order to appeal an assessment on a single parcel.

VI. WORK IN PROGRESS

A. Elective Spousal Share

In July 2010, the Commission began working on a limited revision to the State's divorce laws and probate code, in response to the Judiciary's invitation to revisit the statutory scheme in *Kay v. Kay*, 200 N.J. 551, 554 (2010). The Commission sought to address the "black hole"—a gap between the statutes governing the elective spousal share and those governing equitable distribution of marital property. The current system prevents certain spouses from recovering any marital assets after the death of a partner.

Thus far, Staff has consulted with various matrimonial law practitioners and prepared a draft revision to the relevant statutes. It is anticipated that a Tentative Report will be issued in 2011.

B. Extension of Service Facilities

This project began in response to an Appellate Division decision in *In re Centex Homes, LLC*, 411 N.J. Super. 244 (App. Div. 2009). In *Centex*, the Court brought attention to a discrepancy between the language of N.J.S. 48:2-27 and the manner in which courts have read and applied the statute. The statute says that the Board of Public Utilities "may" order a utility to extend service. The courts, however, have customarily read the language as mandatory if the preconditions of the statute have been met.

Commission Staff proposed the project to clarify any confusion about the BPU's scope of authority. Staff recommended a single word revision to the statute from "may" to "shall" to make the language of the statute consistent with the outcome of the cases. Despite the word "may" having a common construction indicating discretion, the courts have interpreted a statutory mandate in N.J.S.A. 48:2-27 where the extension proposed (1) is reasonable and practicable, (2) would furnish sufficient business to justify the extension, and (3) if the financial

condition of the utility reasonably warrants the expenditure. After debate and discussion, the Commission ultimately decided to take no action on the issue and did not recommend any revisions to the statutory language.

C. Property (Title 46)

The Commission began a project to revise Chapters 1 through 11 of Title 46. These chapters contain the basic law regarding real property. However, as the result of additions made over the years, they follow no particular order and have become a mixture of a variety of subjects. Some of the chapters are recent and stand alone and will require little in the way of revision. Others are anachronistic because they cover matters no longer relevant (see, Chapter 3A on proprietary surveys) and some of the chapters concern subjects of continuing importance but would be improved by modernization of language and approach (see Chapters 4 and 5 on the form of deeds).

Work on this project continues and a Tentative Report is expected by the end of 2011.

D. Uniform Debt Management Services Act

The Uniform Debt-Management Services Act (“UDMSA”) was approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 2005, and was revised and amended by NCCUSL in 2008 (and again in early 2011). It provides the states with a comprehensive Act governing these services with the goal of national administration of debt counseling and management in a fair and effective way. The purpose of the Act is to “rein in the excesses while permitting credit-counseling agencies and debt-settlement companies to continue providing services that benefit consumers.”

Prior to 2005, the issue of whether to resort to debt counseling and management services was generally a voluntary decision on the part of an

individual with credit problems. After the federal Bankruptcy Reform Act of 2005, in order to file for a Chapter 7 bankruptcy, an individual is, in most cases, required to show that consumer debt counseling/ management has been sought and attempted. Greater transparency and accountability are needed to prevent excesses and abuses of the new powers of debt management services.

One of the most significant changes to New Jersey's statutes if the DMSA project is enacted is the participation of for-profit entities in the State. Currently, they are precluded from engaging in debt-settlement activities. One of the other outstanding issues on which the Commission is seeking comment is whether the Act should be applicable to attorneys engaging in "high-volume" debt-management practices.

While the DMSA project is largely based on NCCUSL's draft, it was tailored to reflect New Jersey practices, such as licensing, rather than registration. It was also modified to reflect changes to the federal law pertaining to certain debt-management activities which occurred after the NCCUSL document was released in 2008. The NCCUSL document was further modified by the Commission to incorporate additional statutory language intended to provide more protection to New Jersey consumers than the language found in the uniform act. This additional language was based on statutes adopted in other states and concerns things like the prerequisites to entering into a contract with a New Jersey consumer, advertising and marketing restrictions, the powers of the administrator and the administrative remedies provided by the Act.

The project has not yet been released as a Tentative Report since Staff is awaiting additional feedback regarding issues like fee limitations and is also reviewing the recently-released 2011 NCCUSL update that addresses the FTC Rule changes and supplies revised language.

E. NJEVHPA – New Jersey Emergency Volunteer Health Practitioners Act

UEVHPA was drafted by the National Conference of Commissioners on Uniform State Laws in an expedited manner after hurricanes Katrina and Rita

which struck within weeks of each other in 2005. Prior to that time, a number of states had enacted emergency management laws that permitted the waiver or modification, in emergencies, of licensure standards for health practitioners. The vast majority of the states had also enacted the Emergency Management Assistance Compact (“EMAC”). EMAC allows for the deployment of licensed health practitioners employed by state and local governments to jurisdictions in which they are not licensed and allows them to provide emergency services there.

The federal government supplemented state law provisions with language allowing licensed health practitioners that it employed on either a permanent or temporary basis to respond to disasters and emergencies without complying with the state professional licensing requirements in the locations where their services are utilized. In addition, federal law established two systems to facilitate the use of private sector health practitioners in response to emergencies, particularly those mobilized by charitable non-governmental organizations that are active in disasters. Unfortunately, neither of those federal programs necessarily results in interstate recognition of licenses issued to volunteer health practitioners.

The response efforts associated with hurricanes Katrina and Rita demonstrated that, in the absence of national standards, the federal and state systems available were inadequate and complicated that use of volunteer health practitioners for both the receiving and the deploying states.

The goal of the Commission is a law that facilitates the use of out-of-state health practitioners in New Jersey when they are needed here while providing appropriate protection to all parties. The Commission was fortunate to receive helpful comments from various individuals on an informal basis. A Tentative Report was released in November 2009 and a Final Report is expected to be released in 2011.

F. Uniform Real Property Transfer on Death Act

In July of 2009, NCCUSL approved and recommended for enactment in all states the Uniform Real Property Transfer on Death Act (URPTODA), which

provides a mechanism for the nonprobate transfer of real property and is derived from the Uniform Probate Code, which allows for nonprobate transfer on death provisions in various instruments, including an insurance policy and a marital property agreement.

The URPTODA provides for a form of transfer on death deed that is non-testamentary, meaning that the transfer contemplated by the deed occurs by operation of law and outside the probate process. Basically the deed must contain the same elements and formalities as are required for a properly recordable inter vivos deed under state law, except for the present intention to convey.

Although Staff found merit to the uniform law, it questioned whether a transfer on death deed was necessary considering the ability in New Jersey to convey real property in a number of ways. For example, an owner of property may provide in the real property owner's will for the conveyance of the property at the time of the owner's death. The property may be transferred to a real estate trust or a living trust. And if an owner holds real property with a spouse as a tenant by the entirety or with a co-owner as a joint tenant with a right of survivorship, the property will be transferred by operation of law to the named survivor at the time of the death of the owner. Staff also expressed concerns with some of the current language of the URPTODA, especially in light of other state statutes that contain clearer and in some cases, more comprehensive language.

Ultimately, the Commission elected to take no position on this matter.

VII. Completed Projects

Completed projects are those on which the Commission has concluded its work without issuing a Final report. The Commission worked on several projects this year 2010 all are current projects.