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Protection of Charitable Assets Act: What the New Uniform Law Would Mean for Nonprofits

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The committee tasked with drafting a new uniform law that regulates charities and charitable assets has released the newest version of the proposed law, renamed the *Protection of Charitable Assets Act*, which is currently under consideration by the drafting committee. If ultimately approved, the uniform act could become law in many states.

What is a uniform law? The Uniform Law Commission (“ULC”)—the same body that recently drafted and ushered through the *Uniform Prudent Management of Institutional Funds Act*—is an organization 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. Once the ULC determines that a specific area of law should be uniform, it appoints a committee to draft the model legislation. The final uniform law is then submitted to a vote by the entire Commission. Once the ULC approves a proposed Model Act, the states then vote. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act.

At that point, a Uniform or Model Act is officially promulgated for consideration by the states. The state legislatures are urged to adopt Uniform Acts exactly as written, to “promote uniformity in the law among the states.”

What would the *Protection of Charitable Assets Act* do? The proposed act would do four main things: (1) define the authority of the state Attorney General over the protection of charitable assets in that state; (2) impose a registration requirement; (3) oblige charities with assets above a minimum amount to file an annual report; and (4) require a charity to notify the state in advance of certain specified “life events.”

1. Authority of the State Attorney General. The model act authorizes the Attorney General of each state:

- to enforce the use of charitable assets by a charity for the purposes for which the asset was given;
- to “act to prevent or remedy” a breach of a legal duty by the charity; and
- to seek declaratory or injunctive relief to determine that an asset is a charitable asset.

In addition, the law would give the state Attorney General the power to commence or intervene in an action filed by another party to prevent or obtain damages for a violation of the law. The state Attorneys General would have the ability to initiate investigations and issue administrative subpoenas to charities in order to determine whether charitable assets are being used for the purposes for which the asset was given. While many state Attorneys General already exercise significant regulatory oversight over nonprofit organizations operating in their states, other state Attorneys General take a less active role. The proposed model law, if adopted by the states, would establish uniform standards in this area.

2. Registration and Reporting Requirements. The Model Act, as currently drafted, would require each charity that holds or administers charitable assets above \$5,000 and that meets one of the following five criteria to register with the state: is organized (e.g., incorporated) under the state’s law, has its principal place of business in the state, holds charitable assets in the state other than assets held for investment purposes, conducts activities in the state, or holds assets that are given for the benefit of a person in the state. The registration provision includes limited exemptions for governmental, political, religious and financial entities and certain individuals holding charitable assets.

3. Annual Reports. Charities with assets above \$5,000 also would be required to file an annual report with the state Attorney General. The report would require basic accounting and financial information and require the charity to attach its IRS filing (e.g., Form 990).

4. Notice to State Attorney General of Reportable Events. Charities required to register under the proposed statute also would be required to notify the state Attorney General if any of the following events occur:

- dissolution or termination of the charity;
- disposition of all or substantially all of its charitable assets;
- a merger, conversion or domestication; or
- removal of the charity or of a significant charitable asset from the state.

This proposed uniform law would impose significant registration and reporting requirements on many charitable organizations across the country, especially on those that operate in multiple states. We will continue to monitor the status of the proposed model statute. A final draft of the statute is expected to be introduced and voted on at the annual meeting of the Uniform Law Commission commissioners in July 2011.

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