

**MAINE PROBATE AND TRUST LAW ADVISORY COMMISSION**  
**Report to Maine Legislature**  
**Joint Standing Committee on Judiciary**  
**Re: Resolve 2013, chapter 5**

**“Resolve, Directing the Probate and Trust Law Advisory Commission To Review  
Maine's Probate Code and the Uniform Probate Code”**

Introduction

The Probate and Trust Law Advisory Commission (“PATLAC”) hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on Resolve 2013, chapter 5, entitled, “Resolve, Directing the Probate and Trust Law Advisory Commission To Review Maine's Probate Code and the Uniform Probate Code.”

By Resolve 2013, Chapter 5, the Joint Standing Committee on Judiciary directed PATLAC to conduct a review of the current Maine Probate Code and the most recent version of the Uniform Probate Code, to invite the participation of interested parties in the review, and to submit its report with recommendations to the Joint Standing Committee on Judiciary no later than December 1, 2013, together with any necessary implementing legislation. PATLAC submitted its interim report before the original December 1, 2013 reporting deadline, and by L.D. 1741, the Legislature amended Resolve 2013, chapter 5 to extend the date for PATLAC to issue its final report to December 15, 2014.

Discussion

The Uniform Probate Code (UPC) was originally approved by the National Conference of Commissioners on Uniform State Laws, now the Uniform Law Commission, in 1969. The original version of the UPC was adopted by 16 states, including Maine. Many other states have adopted various portions of the UPC in a piecemeal fashion. Maine adopted the Maine Probate Code, based on the 1969 version of the UPC, in 1979, with an effective date of January 1, 1981. Since the 1969 approval of the original version of the UPC, the Uniform Law Commission updated the UPC in 1975, 1982, 1987, 1989, 1991, 1997, 1998, 2002, 2003, and 2008, with major revisions in 1990 and 2010.

Although Maine has adopted a number of changes to the Maine Probate Code since the original 1981 effective date, Maine has never undertaken a comprehensive review of the Maine Probate Code to compare its provisions to the revised and updated UPC. With the frequency with which people move from one state to another, there is a benefit to providing a uniform body of law on matters as important as wills, inheritance and probate. One of the benefits of Maine’s adoption of the UPC is that Maine’s citizens, lawyers and judges may look to court decisions in other states for guidance in interpreting provisions of the Maine Probate Code. The more Maine maintains uniformity with the UPC as enacted in other states, the greater the opportunity to look to court decisions in other states for guidance in interpreting provisions of the Maine Probate Code.

The UPC, with Comments, as most recently updated by the Uniform Law Commission, is roughly 800 pages in length. To assist it in its review of the UPC, PATLAC created six subcommittees and invited Maine lawyers and judges to review various portions of the existing Maine Probate Code, compare the existing Maine Probate Code provisions with the counterpart provisions of the updated UPC, and provide recommendations for changes. Twenty-one lawyers and judges accepted PATLAC's invitation to join the review process. The six subcommittees each prepared reports to PATLAC summarizing their review of assigned sections of the UPC and the Maine Probate Code, and PATLAC met repeatedly with the subcommittees to review the subcommittees' reports and recommendations.

After completing its meetings with the six subcommittees to review recommendations for changes, PATLAC then met several times to again review and debate the recommendations of the subcommittees. As PATLAC considered and compared competing provisions of the new UPC with existing provisions of the Maine Probate Code, PATLAC approached the review with a preference toward maintaining uniformity with the UPC unless there was a logical reason to deviate from the uniform language. PATLAC's approach, with a bias toward maintaining uniformity, is consistent with the approach taken when Maine adopted the current Maine Probate Code in 1979. As indicated above, adopting uniform language provides the significant benefit of an opportunity to look to court decisions in other states for guidance in interpreting provisions of the Maine Probate Code.

Maine lawyers and judges will be pleased to see that the most recent version of the UPC follows the same general format of the Maine Probate Code with which practitioners and judges have become familiar over the past 34 years. Most section numbers are unchanged, and the organization of the Probate Code, in its Articles and Parts, is unchanged and will be completely familiar.

The work product of PATLAC's review of the subcommittees' recommendations was a report that covered Articles I, II, III, IV, V, and VI of the Maine Probate Code. PATLAC's review did not include Article V, Part 6 (Public Guardian and Conservator – a non-uniform portion of the Maine Probate Code); Article V, Part 5-A (the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which was recently adopted in Maine with an effective date of July 1, 2013); Article V, Part 8 (the Uniform Health Care Decisions Act); Article V, Part 9 (the Maine Uniform Power of Attorney Act); Article VII (which includes the Uniform Principal and Income Act); or Article VIII (Miscellaneous Provisions).

PATLAC's preliminary report presented its recommendations for changes to the Maine Probate Code, organized by Article, with each Article presented by section, with each section containing five separate subparts: (i) The language of the UPC section, with PATLAC's recommended changes (if any) shown by underlined (for added) and strikeout (for deleted) text; (ii) the language of the existing counterpart Maine Probate Code section(s), if any; (iii) a brief summary of the differences between the UPC and the existing Maine Probate Code; (iv) PATLAC's recommendation; and (v) the language of a proposed Maine Comment (if any) to accompany the new statute.

In March 2014, PATLAC sent its preliminary report, to the following groups that PATLAC identified as interested or stakeholder groups, and requested comments on PATLAC's proposed changes to the Maine Probate Code:

- Maine Probate Judges Assembly
- Family Law Advisory Commission
- Maine Bankers Association
- Maine State Bar Association Elder Law Section
- Maine State Bar Association Litigation Section
- Maine State Bar Association Real Estate and Title Section
- Maine State Bar Association Trusts and Estates Section
- Equality Maine
- Gay & Lesbian Advocates & Defenders (GLAD)
- Maine Legal Services for the Elderly
- Maine Association of Area Agencies on Aging
- Disability Rights Center
- NAMI Maine (National Alliance on Mental Illness)

PATLAC received comments, with recommendations for changes, from many sources, including Legal Services for the Elderly; Disability Rights Center; Maine Equal Justice Partners; Cumberland Legal Aid Clinic; American Civil Liberties Union of Maine; AARP Maine; Maine Council On Aging; Gay & Lesbian Advocates & Defenders; Equality Maine; Legal Services for the Elderly; Maine Association of Area Agencies on Aging; Maine Equal Justice Partners; Service & Advocacy for GLBT Elders ME; Maine Women's Lobby; Immigrant Legal Advocacy Project; Cumberland Legal Aid Clinic; Maine State Bar Association, Elder Law Section; Maine State Bar Association, Real Estate and Title Section; Maine Credit Union League; and the Family Law Advisory Commission.

Several of the groups listed above provided extensive feedback. PATLAC then met to review and discuss all comments received from interested and stakeholder groups, had personal conversations with representatives of several of the groups, and made many revisions to its draft report to incorporate comments and suggestions received from the various groups.

The recommended legislative changes that accompany this report reflect the combined thoughtful and cogent input from many individuals and groups. PATLAC presents the recommended changes with confidence that the changes represent improvements to the Maine Probate Code.

As background reference for PATLAC's recommended legislative changes, PATLAC has updated its report in the format as distributed to interested and stakeholder groups with the same five subparts described above for each section of the UPC. The UPC contains extensive Comments that are not included in PATLAC's background reference report. Including the complete text of the Comments would add several hundred pages to PATLAC's background reference report. For many of the UPC sections, reading the section's accompanying Comment from the Uniform Law Commission is essential to a complete understanding of the nuances of, and the policy considerations underlying, the statutory language.

The entire Uniform Probate Code, with all Comments of the Uniform Law Commission, is available at <http://www.law.cornell.edu/uniform/probate>.

### Conclusion

The Probate and Trust Law Advisory Commission recommends adoption of the legislative changes to the Maine Probate Code in the form as submitted with this report.

Dated: December 6, 2014

Respectfully submitted,

Probate and Trust Law Advisory Commission

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