

Uniform Unsworn Foreign Declarations Act

According to the Uniform Law Commissioners, prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in an official report, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the Act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The Act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal procedure in U.S. court proceedings.

Submitted as:

Utah

SB122

Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the "Uniform Unsworn Foreign
2 Declarations Act."
3

4 Section 2. [*Definitions.*] As used in this Act:

5 (1) "Boundaries of the United States" means the geographic boundaries of the United
6 States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession
7 subject to the jurisdiction of the United States.

8 (2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial
9 decision or order, a rule of court, an executive order, and an administrative rule, regulation, or
10 order.

11 (3) "Record" means information that is inscribed on a tangible medium or that is stored in
12 an electronic or other medium and is retrievable in perceivable form.

13 (4) "Sign" means, with present intent to authenticate or adopt a record:

14 (a) to execute or adopt a tangible symbol; or

15 (b) to attach to or logically associate with the record an electronic symbol, sound,
16 or process.

17 (5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
18 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
19 the United States.

20 (6) "Sworn declaration" means a declaration in a signed record given under oath. The
21 term includes a sworn statement, verification, certificate, and affidavit.

22 (7) "Unsworn declaration" means a declaration in a signed record that is not given under
23 oath, but is given under penalty of perjury.
24

25 Section 3. [*Applicability.*]

26 (1) This chapter applies to an unsworn declaration by a declarant who at the time of
27 making the declaration is physically located outside the boundaries of the United States whether
28 or not the location is subject to the jurisdiction of the United States.

29 (2) This chapter does not apply to a declaration by a declarant who is physically located
30 on property that is within the boundaries of the United States and subject to the jurisdiction of
31 another country or a federally recognized Indian tribe.
32

33 Section 4. [*Validity of Unsworn Declaration.*]

34 (1) Except as otherwise provided in Subsection (2), if a law of this state requires or
35 permits use of a sworn declaration, an unsworn declaration meeting the requirements of this
36 chapter has the same effect as a sworn declaration.

37 (2) This chapter does not apply to:

38 (a) depositions;

39 (b) oaths of office;

40 (c) oaths required to be given before a specified official other than a notary public;

41 (d) declarations to be recorded pursuant to [insert citation (real estate)]; or

42 (e) oaths required by [insert citation].
43

44 Section 5. [*Required Medium.*] If a law of this state requires that a sworn declaration be
45 presented in a particular medium, an unsworn declaration must be presented in that medium.
46

47 Section 6. [*Form of Unsworn Declaration.*] An unsworn declaration under this chapter
48 must be in substantially the following form:

49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74

I declare under penalty of perjury under the law of [insert state] that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ___ day of _____, _____, at _____, _____.

(date) (month) (year) (city or other location, and state) (country)

(printed name)

(signature)

Section 7. [*Uniformity of Application and Construction.*] In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 8. [*Relation to Electronic Signatures in Global and National Commerce Act.*] This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).