

MEMORANDUM

TO: Uniform Law Commission, Drafting Committee, Tort Law Relating to Drones Act
FROM: Paul Kurtz, Chair, Mark Glaser, Vice-Chair, and Robert Heverly, Reporter
DATE: May 13, 2019
RE: Tort Law Relating to Drones, May 16, 2019 Committee Phone Meeting

We intended for the materials we distributed on May 3 to be the ones we would be focused on in our upcoming phone conference on Thursday. However, since that distribution several things have transpired necessitating this memo and the attached drafts. First, at the request of the leadership of the Joint Editorial Board for Uniform Real Property Acts, a phone conference was held with the leadership of the Conference, the leadership of the JEB and the three of us. At that meeting the JEB presented several concerns it had with our most recent draft. It was clear that the JEB (along with a couple of members of the ABA Section on Real Property) had problems, with both substance and language used in Section 5 of our Draft, as opposed to the per se rule which appeared in our Committee's draft presented last summer at the Louisville Annual Meeting. Almost simultaneously with that session, we received a markup of our Act from our Style Committee. We then got some feedback from Commissioner Dyke, a member of our Committee reacting to the May 3 draft.

Rather than presenting you with all of the changes for the first time at on Thursday, we offer a new draft to be considered at our conference call. This new draft has incorporated language designed to deal with the events recited in the preceding paragraph. The vast majority of the changes (which are identified in the redline version of the May 3 draft being distributed along with this memo) are stylistic ones which are not intended to change any of the substance which has been agreed upon by the Committee. There are a small number of substantive changes, the most notable of which is the new Section 5(f) which responds to a JEB proposal for a presumption of substantial interference with the use and enjoyment of property when drones are operated below the top of the highest structure on the plaintiff's property. You will also note that we have added to 5 (e)'s presumption in favor of activities protected by the First Amendment and law enforcement activities, a presumption in favor of activities designed to protect public health. In Section 2 on definitions we have combined landowners and land possessors under the term "land possessors". The Style Committee suggested using only one term. Section 6(d) now gives drone owners the same rights to recover their property as others whose chattels wind up on the property of another person. You will also notice that Section 9 of the prior draft was deleted. The Style Committee had eliminated all but subsection (a) of the previous draft and we felt that the latter was already covered by the language of Section 4.

You will find attached both a redline of the differences between the May 3 and the May 16 drafts, along with a clean version of the latter.

It is our intention to address the changes noted earlier in this memo, as well to ensure that any tension between Subsections 7(b) and 7(c) suggested by some Committee members in our earlier discussions has now been resolved.

Of course, if other matters need consideration we'll take them up on the 16th, as well. As we prepare for our Act's consideration at the Anchorage Annual Meeting in July, it is important that we put continued effort into ensuring that our Act is ready for discussion and final approval at that meeting. We are coming up against the deadline for the submission of our materials to Chicago for the Annual Meeting. I hope you will be able to prepare for and also to be a part of Thursday's meeting

Thanks in advance.