

Legislative Update and Preview of the Uniform Fiduciary Income & Principal Act (UFIPA) in Colorado – Elder Law CLE, October 7, 2020

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INTRODUCTION

Elder Law is affected by legislation and regulations at the federal and state levels. Earlier this year in Colorado, the Trusts & Estates Section of the Colorado Bar Association (CBA) subcommittee completed its review of the Uniform Fiduciary Income & Principal Act (UFIPA), and is preparing to introduce UFIPA with Colorado-specific recommendations in the 2021 legislative session. Thus, each table below summarizes key developments at the federal and state of Colorado levels, respectively, and is followed by an overview of those developments.

Laws and regulations are subject to change. Always check for the latest information.

AT THE FEDERAL LEVEL

The SECURE (Setting Every Community Up for Retirement Enhancement) Act dominated the headlines pre-pandemic; however,

- Treasury Regulations were proposed and finalized to continue implementation of the TCJA (Tax Cuts and Jobs Act) of 2017;
- The HAVEN (Honoring American Veterans in Extreme Need) Act exempts certain benefits paid by the Departments of Veteran Affairs and of Defense from the calculation of monthly income;
- A definition of “representative payee” was added to regulations for the federal retirement plans (FERS and CSRS);
- The Supporting Older Americans Act of 2020 amended the Older Americans Act of 1965 to authorize appropriations for fiscal years 2020 through 2024; and
- COVID-19 relief under the CARES (Coronavirus Aid, Relief, and Economic Security Act) focused on granting taxpayers relief by giving access to their retirement funds and to increasing donations to charity.

AT THE STATE LEVEL

Remote notarization, in coordination with the secretary of state's office – both for Wills on an emergency basis in response to the pandemic, and for protection of information in any use of remote notarization – was a principal concern.

- Action was delayed and funding reduced regarding electronic preservation of abandoned estate planning documents; and
- An act for the protection of individuals subject to a fiduciary became law.
 - Attorney Letty Maxfield will present to the Elder Law Section on this act on November 4, 2020.

PREVIEW OF UFIPA

Information about the Uniform Fiduciary Income and Principal Act (UFIPA) is available on the Uniform Law Commission website at: <https://www.uniformlaws.org/committees/community-home?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c>

To date, Utah is the only state to have enacted UFIPA. Our (CBA) Trusts & Estates Section began its review of UFIPA in April 2018 and concluded in August 2020. Attorney Eugene Zuspann originally chaired the UFIPA subcommittee, and has co-chaired with Attorney Georgine Kryda since January 2019.

The subcommittee consisted of a broad range of practitioners from individual planners and advisors, to corporate trustees. Some attorneys concentrated on specific types of trust assets, such as mineral interests, that are prevalent in Colorado trusts; whereas other attorneys contributed their perspectives from decades of trust administration.

Overall, the subcommittee was favorably impressed by the wording and organization of the UFIPA text, and retained approximately 95% of UFIPA as proposed. The subcommittee believes that UFIPA will assist fiduciaries in logically and consistently accounting for receipts, while maintaining equity in making distributions to beneficiaries.

The T&E Council approved UFIPA with the subcommittee's recommended changes on September 2, 2020. Georgine then appeared before the Colorado Commission on Uniform State Laws (CCUSL) on September 18, 2020. CBA Legislative Affairs Director Andrew White is now coordinating with the CBA's Legislative Policy Committee regarding CBA support for UFIPA in the 2021 legislative session.

This outline and the materials cited are provided for general discussion and are neither legal advice nor a complete treatment of each issue.

Federal, June 19, 2019 – October 5, 2020

Bill/Public Law Number	Bill Title	Summary
H.R. 1/ Pub.L. 115-97, Enacted 12/22/2017	TCJA (Tax Cuts and Jobs Act)	<p>Implementation continues.</p> <ul style="list-style-type: none"> • TD 9884 (at 84 FR 64995, effective 11/26/2019) contains final regulations regarding the basic exclusion amount in the computation of federal gift and estate taxes. https://www.federalregister.gov/documents/2019/11/26/2019-25601/estate-and-gift-taxes-difference-in-the-basic-exclusion-amount • TD 9907 (at 85 FR 48467, effective 8/11/2020) contains final regulations regarding charitable contributions for which consideration <u>is</u> received. https://www.federalregister.gov/documents/2020/08/11/2020-17393/treatment-of-payments-to-charitable-entities-in-return-for-consideration • TD 9913 contains final regulations clarify the definition of “qualifying relative” https://www.irs.gov/pub/irs-drop/td-9913.pdf <ul style="list-style-type: none"> • The \$500 credit for a qualifying relative was added for 2018 – 2025 by the TCJA. • The IRS originally proposed regulations in 2017 (REG-137604-07) which referenced repealed IRC §§ 71 (alimony and separate maintenance payments) and 682 (income of an estate or trust in case of divorce, etc.). • The IRS then issued Notice 2018-70, “Guidance on Qualifying Relative and the Exemption Amount.” The new regulations are consistent with Notice 2018-70, eliminate the references to IRC §§ 71 and 682, and reference IRC §§ 151(d) and 152(d). Notice 2018-70 is available at: https://www.irs.gov/pub/irs-drop/n-18-70.pdf • TD 9918 contains final regulations to clarify the treatment of deductions under IRC §§67(e) and 642(h) after the TCJA suspended the deductibility of miscellaneous itemized deductions through 2025 under IRC §67(g). https://www.irs.gov/pub/irs-drop/td-9918.pdf

Bill/Public Law Number	Bill Title	Summary
H.R. 2938/ Pub.L. 116-52, Enacted 8/23/2019	HAVEN Act (Honoring American Veterans in Extreme Need)	Exempts certain benefits paid by the Departments of Veteran Affairs and of Defense from the calculation of monthly income as defined under 11 U.S.C. § 101(10A).
H.R. 1865/ Pub.L. 116-94, Enacted 12/20/2019	Further Consolidated Appropriations Act, 2020	Division O – Setting Every Community Up for Retirement Enhancement (SECURE)
H.R. 5214/ Pub.L. 116-126, Enacted 3/18/2020	Representative Payee Fraud Prevention Act of 2019	Amends 5 U.S.C. §§ 8831, 8401, 8345, 8466, and 8348, by: <ul style="list-style-type: none"> • adding “representative payee” as “a person (including an organization) designated under section 8345(e)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability” under the Civil Service Retirement System (CSRS), and the Federal Employees’ Retirement System (FERS); • prohibiting embezzlement or conversion by a representative payee; and • limiting the appointment of representative payees.
H.R. 4334/ Pub.L. 116-131, Enacted 3/25/2020	Supporting Older Americans Act of 2020	Amends the Older Americans Act of 1965 to authorize appropriations for fiscal years 2020 through 2024, and for other purposes. <ul style="list-style-type: none"> • TITLE I - Modernizing definitions and programs under the Administration on Aging • TITLE II - Improving grants for State and community programs on aging • TITLE III—Modernizing Activities for Health, Independence, and Longevity • TITLE IV—Senior Community Service Employment Program • TITLE V—Enhancing grants for Native Americans • TITLE VI—Modernizing allotments for vulnerable elder rights protection activities and other programs • TITLE VII—Miscellaneous

Bill/Public Law Number	Bill Title	Summary
H.R. 748/ Pub.L. 116-136, Enacted 3/27/2020	Coronavirus Aid, Relief, and Economic Security (CARES) Act	Subtitle B – Rebates and other individual provisions <ul style="list-style-type: none"> • Sec. 2201. 2020 recovery rebates for individuals. • Sec. 2202. Special rules for use of retirement funds. • Sec. 2203. Temporary waiver of required minimum distribution rules for certain retirement plans and accounts. • Sec. 2204. Allowance of partial above the line deduction for charitable contributions. • Sec. 2205. Modification of limitations on charitable contributions during 2020. • Sec. 2206. Exclusion for certain employer payments of student loans.

TCJA - <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

The Internal Revenue Service (IRS) continues to propose and to finalize regulations to implement the TCJA.

- Treasury Decision (TD) 9884 addresses how the IRS will not “claw back” the gift tax on taxable gifts made from 2018 – 2025 that are sheltered by the temporarily elevated basic exclusion amount of \$10 million per person and adjusted annually for inflation, after the exclusion amount returns to \$5 million adjusted for inflation on January 1, 2026.
- TD 9907 contains final regulations regarding charitable contributions for which consideration is received and contains several safe harbors.
- TD 9913 clarifies the definition of “qualifying relative” for the new \$500 tax credit for 2018 - 2025.
- TD 9918 contains final regulations regarding the treatment of deductions for estates and non-grantor trusts after the TCJA suspended the deductibility of miscellaneous itemized deductions through 2025 under Internal Revenue Code (IRC) §67(g).
 - IRC §§67(e): Trusts and estates are allowed some deductions for costs incurred during administration in calculating adjusted gross income (AGI); however, there was confusion regarding whether the suspension of miscellaneous itemized deductions from January 1, 2018 through December 31, 2025 by IRC §67(g) also suspended deductions available to trusts and estates.
 - The final regulations state that IRC §67(e) deductions are allowed to arrive at AGI, are not itemized deductions as defined under IRC §67(b), and thus are not affected by the IRC §67(g) suspension.
 - IRC §642(h): Likewise, IRC §642(h) allows an estate or trust to distribute excess deductions in its final year to beneficiaries.
 - The final regulations allow those excess deductions to retain the same character in the hands of the beneficiary as they had in the estate: Itemized deductions under IRC §67(e) could be used to arrive at the beneficiary’s AGI, but only for the year of distribution.
- Remember that final regulations usually take effect prospectively for subsequent tax years, and that proposed regulations may be relied on for prior tax years for which the proposed regulations were in effect.

HAVEN - <https://www.congress.gov/116/bills/hr2938/BILLS-116hr2938enr.pdf>

- The Honoring American Veterans in Extreme Need Act of 2019 (HAVEN) exempts certain benefits, primarily disability, paid by the Departments of Veteran Affairs and of Defense from the calculation of current monthly income under 11 U.S.C. § 101(10A).
- Current monthly income is used to determine eligibility for Chapter 7 bankruptcy under 11 U.S.C. § 707(b)(2).
- The principal implication of the HAVEN Act is to allow more veterans to file for bankruptcy under Chapter 7, liquidation, rather than under Chapter 13, reorganization.
- Chapter 7 bankruptcies tend to be shorter and less expensive processes (six months to one year) than Chapter 13 bankruptcies (three to five years).
- The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 reversed the presumption of the 1978 Bankruptcy Code, and returned to the original presumption that debtors bore the burden of proving they were not abusing the bankruptcy system. Thus, the HAVEN Act is meant to correct this part of BAPCPA with respect to veterans.

SECURE - <https://www.congress.gov/116/bills/hr1865/BILLS-116hr1865enr.pdf>

- The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 adds or amends provisions affecting individuals, estate planning, and businesses – as well as administration of existing plans for employees dying after December 31, 2019.
- For individuals:
 - Sec. 107(a) repeals the maximum age for contributions to traditional Individual Retirement Arrangements (IRAs) [para. 1 of IRC § 219(d)].
 - Required beginning date to take Required Minimum Distributions (RMDs) increases to 72 years under IRC § 401(a)(9)(C)(i)(I).
 - Taxpayers attaining 70 years of age on/after July 1, 2019 can wait until April 1, 2022 to take their RMD.
 - Sec. 107(b) retains the minimum age threshold of 70-1/2 years for making a qualified charitable distribution (QCD) from an IRA; whereas, Sec. 114 increases the starting age for RMDs to 72 years. Thus, there is a window where a QCD from an IRA would qualify as a charitable contribution, but not as an RMD because the RMDs would not have begun.
 - Sec. 113 amends IRC § 72(t)(2) to provide penalty-free withdrawals from an IRA, for up to \$5,000 total, for all qualified births and adoptions of children.
 - Sec. 302 amends IRC § 529(c) by expanding “qualified higher education expense” to:
 - Apply to registered and certified apprenticeship programs, and
 - Include up to \$10,000 total in qualified education loan repayments.
 - Sec. 106 amends para. 1 of IRC § 219(f) to expand the definition of “compensation” to include taxable non-tuition fellowships and stipends.
 - Sec. 501 strikes para. 4 of IRC § 1(j), also known as the “kiddie tax,” for its treatment of unearned income by minor children. The SECURE Act repeals the TCJA’s taxation of such income at the trust and estate rates, and returns to: (i) allowing the first \$1,100 of such income to be tax-free; (2) taxing the next \$1,100 of such income at the child’s rate; and (3) taxing additional such income at the parent’s rate.

- For estate planning: Sec. 401 modifies the required distribution rules for beneficiaries of existing as well as future plans of presently living clients.
 - The definition of a “Designated Beneficiary” remains the same as prior to the SECURE Act. IRC § 401(a)(9)(E).
 - A Designated Beneficiary still has to be an individual named as beneficiary, or as the beneficiary of a “see-through” trust.
 - **Eligible Designated Beneficiary** is new terminology and a new category of beneficiary. It is defined in Sec. 401(a)(2)(E)(ii) of the Act, which will amend IRC § 401(a)(9)(E). An Eligible Designated Beneficiary is a designated beneficiary who is a/an:
 - Surviving spouse of an employee;
 - Minor child of an employee (the wording suggests only a child of the employee or plan participant; it is unclear whether a stepchild would be considered a minor child of an employee):
 - Once the minor child reaches the age of majority, any remaining interest shall be distributed within ten (10) years, and
 - Ages of minority and majority will presumably follow state law;
 - Disabled individual pursuant to IRC § 72(m)(7) – generally, if the individual qualifies for Social Security Disability Insurance (SSDI) benefits;
 - Chronically ill individual pursuant to IRC § 7702B(c)(2); or
 - Individual not more than ten (10) years younger than the employee.
 - Payout schedules for non-Eligible Designated Beneficiaries.
 - Designated Beneficiaries must take the entire payout of their interest by the end of the tenth year after the decedent’s death for decedents dying after 2019, regardless of whether the decedent had commenced taking RMDs.
 - Non-designated beneficiaries (such as estates) will still be subject to the five (5) year payout rule.
 - An Eligible Designated Beneficiary may still receive a life expectancy payout; however, there are some modifications with the SECURE Act.
 - Once the Eligible Designated Beneficiary dies, the requirement to payout the remaining interest over ten (10) years starts. No more “stretch” IRAs.
 - See Sec. 401(a)(1) and language for new IRC § 401(a)(9)(H)(iv):
 - For a disabled or chronically ill individual who is the sole beneficiary of the plan or of a conduit or of a see-through

accumulation trust, that individual will be able to use a life expectancy payout.

- However, if distributions are also permitted to non-Eligible Designated Beneficiaries, such as adult siblings, then “any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.”
- Sec. 401 will not apply to qualified annuities, per Sec. 401(b)(4)(A), if the qualified annuity was already in effect as of December 20, 2019.
- For businesses:
 - Sections 101 – 105 allow for multiple-employer plans and for pooled plans, and provide credits for small business employers.
 - Sec. 201 allows for a stock bonus, pension, profit-sharing, or annuity plan adopted by the filing deadline to be considered as having been in effect at the end of the tax year. For example, a plan adopted by the business’s tax filing deadline in 2020 could be considered as having been in place as of December 31, 2019.
 - See Sections 202 – 206 for other administrative provisions.
- Unresolved issues
 - What is the age of majority for states such as Colorado and Wisconsin that use 18 and 21 years for different thresholds?
 - Can 26 CFR § 1.401(a)(9)-6, Required minimum distributions for defined benefit plans and annuity contracts, Q&A-15 be used to extend the age of majority to age 26 for a child completing a “specified course of education”?
 - For existing, multi-beneficiary trusts, it is unclear whether the switch to the ten (10) year payout period will commence upon the first, last, or other beneficiary reaching the age of majority.
 - For existing trusts – especially those containing a mix of eligible designated beneficiaries and designated beneficiaries – and drafting of future trusts with respect to:
 - Modifying existing trusts such that eligible designated beneficiaries (EBDs) who are expected to receive a payout over the beneficiary’s life – especially permanently disabled, chronically ill, or individuals not less than 10 years younger than the settlor – may be readily identified and their status as an EBD may be more readily substantiated;
 - Having the IRA proceeds paid into a trust and the terms of the trust could enforce the spendthrift objectives (i.e., beyond 5- or 10-year payouts); and
 - Whether the law will generate a preference for ROTH IRAs.

Representative Payee - <https://www.congress.gov/116/plaws/publ126/PLAW-116publ126.pdf>

This law is meant to fight fraud by strengthening the requirements for someone to have more than a power of attorney or joint ownership of an account with a recipient who is a minor, mentally incompetent, or under other disability.

Court appointed representatives may serve as representative payees under the federal government retirement programs administered by the Office of Personnel Management: the Federal Employees Retirement System (FERS) and the Civil Service Retirement System (CSRS).

Supporting Older Americans Act of 2020 - <https://www.congress.gov/116/bills/hr4334/BILLS-116hr4334enr.pdf>

The Older Americans Act of 1965 (OAA) expired on September 30, 2019; however, services and programs under the act continued. The OAA allocates money to the states based on percentage of older adults in each state.

The Supporting Older Americans Act of 2020 (the “Act”) reauthorizes the OAA, and provides a seven (7) percent increase in the appropriation for 2020, and six (6) percent increase for 2021 through 2024. The Act emphasizes independence of older Americans.

Sections 217 and 218 of the Act address the National Family Caregiver Support program. Section 217 defines “caregiver assessment,” and requires the Assistant Secretary of Health and Human Services to provide a report of best practices [Sec. 217(c)].

(1) CAREGIVER ASSESSMENT.—The term ‘caregiver assessment’ means a defined process of gathering information to identify the specific needs, barriers to carrying out caregiving responsibilities, and existing supports of a family caregiver or older relative caregiver, as identified by the caregiver involved, to appropriately target recommendations for support services described in section 373(b). Such assessment shall be administered through direct contact with the caregiver, which may include contact through a home visit, the Internet, telephone or teleconference, or in-person interaction.” Sec. 217(a)(2)(1).

Section 218 of the Act requires the Assistant Secretary of Health and Human Services to report on the elimination of the cap on funds for older relative caregivers within 18 months of the March 2020 enactment date – or September 2021. That report shall also contain:

(2) CONTENTS.—For purposes of reports required by paragraph (1), each State that receives an allotment under such National Family Caregiver Support Program for fiscal year 2020 or a subsequent fiscal year shall report to the Assistant Secretary for the fiscal year involved the amount of funds of the total Federal and non-Federal shares described in section 373(h)(2) of the Older Americans Act of 1965 (42 U.S.C. 3030s– 1(h)(2)) used by the State to provide support services for older relative caregivers and the amount of such funds so used for family caregivers.” Sec. 218(b)(2).

CARES – <https://www.congress.gov/116/bills/s3548/BILLS-116s3548is.pdf>

Section 2202: For taxpayers diagnosed with COVID-19, with a spouse or dependent diagnosed with COVID-19, or have adverse financial consequences (e.g., business closure, layoff, quarantine, lack of child care) due to COVID-19, the:

- ten percent early penalty under IRC §72(t) is waived,
- withdrawal is still subject to income tax, but the tax liability may be paid over three years, and
- withdrawn funds may be re-contributed regardless of the annual contribution limits.

For any qualified taxpayer, loans from retirement plans are temporarily increased in 2020 from \$50,000 to \$100,000. Note, though, that the SECURE Act eliminated loans from retirement plans that are linked to credit cards.

Section 2203: For taxpayers who attained 70 years of age prior to July 1, 2019, the required minimum distribution (RMD) for 2020 is temporarily waived, including the 2019 RMD that was due to be taken by April 1, 2020. No COVID-19 hardship is required.

Section 2204: Provides an above-the-line deduction in 2020 of up to \$300 for charitable gifts.

Section 2205: Removes the 60 percent of adjusted gross income (AGI) limit on cash gifts by individuals who itemize charitable deductions, and allows corporations to deduct up to 25 percent of their taxable income (versus 10 percent) for cash charitable contributions in 2020.

For Internal Revenue Service (IRS) guidance pertaining to the CARES Act:

1. IRS Notice 2020-50, “Guidance for Coronavirus-Related Distributions and Loans from Retirement Plans Under the CARES Act,” is available at: <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>
2. IRS Notice 2020-51, “Guidance on Waiver of 2020 Required Minimum Distributions,” is available at: <https://www.irs.gov/pub/irs-drop/n-20-51.pdf>
3. The IRS Website for “Coronavirus Tax Relief and Economic Impact Payments” is available at: <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>

State of Colorado, January 8, 2020 – October 5, 2020

Bill Number/Date Governor Signed	Bill Title	Summary
HB20-1368 Signed July 13, 2020 Effective Jan. 1, 2021	Delay Implementation Of House Bill 19-1229 [to January 1, 2023]	Concerning delaying the implementation of the “Colorado Electronic Preservation of Abandoned Estate Planning Documents Act,” and, in connection therewith, decreasing an appropriation.
SB20-129 Signed July 10, 2020 Effective Sept. 1, 2020	Protection Of Individuals Subject To A Fiduciary	<p>Concerning the protection of individuals subject to a fiduciary.</p> <ul style="list-style-type: none"> • Within the first 14 days of appointment of an emergency guardian or special conservator, who is a public administrator or a professional, a court visitor must interview the respondent and the respondent’s supportive community, evaluate the arrangements, and file a report with the court with recommendations for the arrangement – all at the respondent’s expense unless the court directs otherwise. • The court must then review the report and issue orders within seven days regarding whether any member of the respondent’s supportive community should be permitted to participate in proceedings, and other issues raised in/by the court visitor’s report.
SB20-96 Signed June 26, 2020 Effective upon passage, with §§1-6 taking effect on Dec. 31, 2020.	Remote Notaries Protect Privacy	<p>Concerning an authorization for notaries public to perform notarial acts – but excluding records pertaining to elections, or Wills or codicils – using audio-visual communication, and in connection therewith, making an appropriation.</p> <p>Affirms the secretary of state’s emergency rules of March 2020, which will extend through 2020 until permanent rules are in effect.</p> <ul style="list-style-type: none"> • Remote witnessing of Will executions allowed through Dec. 31, 2020. • Registration program for remote notaries.

Delayed Implementation of the Colorado Electronic Preservation of Abandoned Estate Planning Documents Act – https://leg.colorado.gov/sites/default/files/2020a_1368_signed.pdf

- Amends C.R.S. §15-23-104 regarding original estate planning documents created before, on, or after January 1, 2023.
- A Trusts & Estates Section subcommittee has been looking at how to handle abandoned original estate planning documents, such as Wills held by attorneys who have died, are retiring, or have been unable to reach former clients.
- With the defunding of the initiative in this bill, the issues remain as to who will store the documents and what will happen to the original paper documents.

Protection of Individuals Subject to a Fiduciary – https://leg.colorado.gov/sites/default/files/2020a_129_signed.pdf

- Within the first 14 days of appointment of an emergency guardian or special conservator, who is a public administrator or a professional, a court visitor must:
 - interview the respondent and the respondent's supportive community,
 - evaluate the arrangements, and
 - file a report with the court with recommendations for the arrangement – all at the respondent's expense unless the court directs otherwise.
- The court must review the report and issue orders within seven days:
 - regarding whether any member of the respondent's supportive community should be permitted to participate in proceedings, and
 - addressing other issues raised in or by the court visitor's report.

Remote Notaries Protect Privacy - https://leg.colorado.gov/sites/default/files/2020a_096_signed.pdf

- See Colorado secretary of state Web site for the June 26, 2020 Notice of Temporary Adoption of Notary Program Rule 5 at: https://www.sos.state.co.us/pubs/rule_making/files/2020/20200626NotaryNoticeTempAdopt.pdf
- As of December 31, 2020, C.R.S. §24-21-514.5(2)(b) [Section 4 of the Act] will state that, “A notary public shall not use a remote notarization system to notarize: (I) A record relating to the electoral process; or (II) A Will, codicil, document purporting to be a Will or codicil, or any acknowledgment required under Section 15-11-502 or 15-11-504.”
- Section 7 of the Act affirms the secretary of state's temporary rule 5 of March 30, 2020, which was readopted on June 26, 2020 on the secretary of state's Web site.

The Act and the secretary of state's temporary rule compare as follows.

Notarization Element	The Act	Secretary of State Temporary Rule 5
Sale of data	Section 1: States importance of data privacy	5.4: May not sell or offer to sell data
Definitions	Section 2: Definitions including audio-visual, real-time, remote notarization system, and tamper-evident	5.1: Definitions include audio-visual, real-time, and remote notarization system
Personal Appearance	Section 3: Interact by means of real-time audio-video communication	5.2.4: Interact by means of real-time audio-video communication
Identification	Section 4: Credential analysis and authentication assessment	5.2.4: Verify identity
Will/codicils	Shall not be notarized using a remote notarization system as of Dec. 31, 2020.	5.2.2(B) Must not use a remote notarization to notarize a Will except as per 5.2.9(c), which requires: <ul style="list-style-type: none"> • Original Will be sent to notary within 15 days of remote notarization • Notarization within 3 days of receipt
Notary's location	Section 4, C.R.S. §24-21-514.5(4)(a) : The notary must be located in Colorado at the time the notarial act is performed.	5.2.1: A notary public may perform a remote notarization only for a remotely located individual who is located in the state of Colorado.
Information required for audio-visual recording	Section 4: Specifies the authentication process	5.2.8: The signing must be recorded using audio-visual equipment and kept for 10 years.
Certificate of notarial act	Section 5, C.R.S. §24-21-514.5(8): The certificate must indicate that the notarization was performed with audio-visual technology.	5.2.7 Notary block must indicate the notarization was performed remotely and using audio-visual technology
Journal	Section 6: May be tangible or electronic.	5.3: A remote notarization must be recorded in a notary journal.
Secretary of state	Section 7: Affirms temporary rule	Rule 5 readopted on June 26, 2020
Title commitments	Section 8: May remotely notarize real estate deeds	N/A

PREVIEW OF THE UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT (UFIPA)

UFIPA introduces a more comprehensive set of default rules for fiduciary accounting based on the equitable allocation of total return than currently exists in Colorado law. UFIPA also provides more guidance for how a fiduciary should account for returns for a variety of asset classes, such as business assets and natural resources, than does UPIA under current law. Thus, UFIPA assists fiduciaries in logically and consistently accounting for receipts, while maintaining equity in making distributions to beneficiaries.

The UFIPA subcommittee's Website at <https://www.cobar.org/For-Members/CBA-Sections/Trust-Estate/Committees/UFIPA> contains the following materials:

1. Final version of the UFIPA by the Uniform Law Commission as of January 2019;
2. Minutes of all subcommittee meetings from April 2018 through August 2020;
3. Approved sections of UFIPA by the subcommittee in "Santa Fe" style;
4. The entire UFIPA as proposed for enactment in Colorado, and as red-lined, by the subcommittee; and
5. Table summarizing review of UFIPA and noting changes proposed by the subcommittee.

The UFIPA subcommittee benefitted greatly from the history provided by Gene Zuspann and Stan Kent of Colorado's earlier adoptions of the Uniform Principal and Income Acts ("UPIAs"), which had also been proposed by the Uniform Law Commission ("ULC").

- The ULC promulgated the *Principal and Income Act* in 1931 ("*1931 UPIA*").
 - Colorado enacted the *1931 UPIA* in 1955 ("*1955 Act*").
- The ULC promulgated a revised *Uniform and Principal Income Act* in 1962 ("*1962 UPIA*").
 - Colorado did not adopt the *1962 UPIA*.
- The ULC revised and reorganized (into six parts) the 1931 and 1962 *UPIAs* in 1997 ("*1997 UPIA*").
 - Colorado enacted the *1997 UPIA* in 2000 (the "*2000 Act*").
 - At the same time, Colorado repealed the *1955 Act* (the *1931 UPIA*).
- In 2009, Colorado reenacted the *1955 Act* as Part 7 of the *2000 Act*.
- Presently, UPIA is codified at C.R.S. §§ 15-1-401, *et seq.*

The subcommittee did not want to inadvertently and adversely affect existing trust instruments which may be based on UPIA; thus, proposed section 803 of UFIPA would:

1. apply to all trusts and estates established on/after the date of enactment;
2. not apply to trusts for which trustees already elected to follow the 1955 UPIA; and
3. allow a fiduciary to make the irrevocable election follow the 1955 UPIA if a fiduciary has authority under the governing instrument to do so.

The subcommittee recommended retaining the Notice of Action provision in the existing UPIA and added it as section 204 of UFIPA.

- The Notice of Action provision authorizes a fiduciary to provide notice to beneficiaries of an estate or trust prior to taking an action, and binds those beneficiaries who do not make a timely objection.
- The advantages of this provision are that:
 - administration can proceed, and
 - beneficiaries are not restricted to only reading about administrative actions in the annual report.

204 NOTICE OF ACTION

(1) IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) “QUALIFIED BENEFICIARY” HAS THE MEANING SET FORTH IN SUBSECTION 15-5-103(16).

(B) “OBJECTION PERIOD” HAS THE MEANING SET FORTH IN SECTION 304(D)(5).

(2) A FIDUCIARY MAY GIVE A NOTICE OF PROPOSED ACTION REGARDING A MATTER GOVERNED BY SUBPARTS 1 THROUGH 8 OF THIS PART [4] AS PROVIDED IN THIS SECTION. FOR THE PURPOSE OF THIS SECTION, A PROPOSED ACTION INCLUDES A COURSE OF ACTION AND A DECISION NOT TO TAKE ACTION.

(3) THE FIDUCIARY SHALL MAIL NOTICE OF THE PROPOSED ACTION TO ALL QUALIFIED BENEFICIARIES AND THE FIDUCIARY MAY GIVE NOTICE TO OTHER BENEFICIARIES. A BENEFICIARY SHALL BE BOUND UNDER THIS SECTION WITH RESPECT TO SUCH PROPOSED ACTION IF THE BENEFICIARY RECEIVES ACTUAL NOTICE OR IF THE BENEFICIARY WOULD BE BOUND UNDER THE PROVISIONS OF TITLE 15, ARTICLE 5, PART 3.

(4) NOTICE OF PROPOSED ACTION NEED NOT BE GIVEN TO ANY BENEFICIARY WHO CONSENTS IN WRITING TO THE PROPOSED ACTION. THE CONSENT MAY BE EXECUTED AT ANY TIME BEFORE OR AFTER THE PROPOSED ACTION IS TAKEN.

(5) THE NOTICE OF PROPOSED ACTION SHALL STATE THAT IT IS GIVEN PURSUANT TO THIS SECTION AND SHALL FOLLOW THE PROCEDURES SET OUT IN SECTION 304 REGARDING NOTICE.

(6) A BENEFICIARY MAY OBJECT TO THE PROPOSED ACTION BY MAILING A WRITTEN OBJECTION TO THE FIDUCIARY AT THE ADDRESS STATED IN THE NOTICE OF PROPOSED ACTION WITHIN THE OBJECTION PERIOD.

(7) A FIDUCIARY IS NOT LIABLE TO A BENEFICIARY TO WHOM NOTICE IS GIVEN FOR AN ACTION REGARDING A MATTER GOVERNED BY THIS PART IF THE FIDUCIARY DOES NOT RECEIVE A WRITTEN OBJECTION TO THE PROPOSED ACTION FROM THE BENEFICIARY WITHIN THE OBJECTION PERIOD AND THE OTHER REQUIREMENTS OF THIS SECTION ARE SATISFIED. IF NO BENEFICIARY WHO RECEIVES NOTICE OBJECTS UNDER THIS SECTION, THE FIDUCIARY IS NOT LIABLE TO THE BENEFICIARIES RECEIVING NOTICE WITH RESPECT TO THE PROPOSED ACTION.

(8) IF THE FIDUCIARY RECEIVES A WRITTEN OBJECTION WITHIN THE OBJECTION PERIOD, EITHER THE FIDUCIARY OR A BENEFICIARY MAY PETITION THE COURT TO HAVE THE PROPOSED ACTION PERFORMED AS PROPOSED, PERFORMED WITH MODIFICATIONS, OR DENIED. IN THE PROCEEDING, A BENEFICIARY OBJECTING TO THE PROPOSED ACTION HAS THE BURDEN OF PROVING THAT THE FIDUCIARY'S PROPOSED ACTION SHOULD NOT BE PERFORMED. A BENEFICIARY WHO HAS NOT OBJECTED IS NOT ESTOPPED FROM OPPOSING THE PROPOSED ACTION IN THE PROCEEDING. IF THE FIDUCIARY DECIDES NOT TO IMPLEMENT THE PROPOSED ACTION, THE FIDUCIARY SHALL NOTIFY THE BENEFICIARIES OF THE DECISION NOT TO TAKE THE ACTION AND THE REASONS FOR THE DECISION, AND THE FIDUCIARY'S DECISION NOT TO IMPLEMENT THE PROPOSED ACTION DOES NOT ITSELF GIVE RISE TO LIABILITY TO ANY BENEFICIARY. A BENEFICIARY MAY PETITION THE COURT TO HAVE THE ACTION PERFORMED, AND HAS THE BURDEN OF PROVING THAT IT SHOULD BE PERFORMED.

Finally, the subcommittee also recommended adding Section 309(c) of UFIPA to give an ordering rule for unitrusts so that the fiduciary, and beneficiaries, know that, absent an instruction in a trust or Will, distributions are deemed to come from:

1. current income,
2. other ordinary income,
3. short term capital gains,
4. long term capital gains,
5. trust principal that is readily marketable, and
6. other trust corpus.

These are the principal examples of how UFIPA can improve upon the existing UPIA, and add more guidance for fiduciary accounting in Colorado law.

QUESTIONS AND DISCUSSION

***About the Presenter**

- Georgine M. Kryda is the founder of Georgine M. Kryda, Ph.D., Esq., LLC in 2008, and of Georgine M. Kryda, C.P.A., LLC in 2015.
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- As an attorney, Georgine practices in the areas of Trusts & Estates (T&E) planning, litigation, and administration, and Tax planning and controversy resolution for individuals and fiduciaries. She is a mediator, and she arbitrates for the Better Business Bureau for which she has trained arbitrators on how to write their decisions.
- As a CPA, Georgine prepares income tax returns for individuals and for fiduciaries.
- As a CPA and as a Certified Fraud Examiner (CFE), Georgine provides litigation support and forensic accounting.
- Georgine is presently chair of the CBA's Taxation Section. She is also a member of the Trusts & Estates Section's Executive Council, and of the Legal Fee Arbitration Committee. She authors the quarterly T&E federal tax update for the newsletter, and the IRA Beneficiary Designation chapter in the Colorado Estate Planning Handbook.
 - She has been published in the Colorado Lawyer, has presented other CLEs to the CBA, and has written for the U. of Illinois' Federal Tax Workbook.
 - She has been recognized as a Super Lawyer "Rising Star" from 2016 – 2018, and as a Super Lawyer from 2019 onward.
- Georgine earned her J.D. from the George Washington University Law School, and her LL.M. in Taxation from the University of Denver.
 - She also holds a Ph.D. in Business Administration – major field of International Business, minor fields in Political Science and Economic Policy – from the University of Illinois at Urbana-Champaign; an MBA with an emphasis in Finance; a Master of International Management; and a B.A. in Economics & Business Administration.