

**Colorado Bar Association Trusts & Estates Section  
Uniform Fiduciary Income & Principal Act Subcommittee  
of the Statutory Revisions Committee**

**Minutes of November 6, 2019**

**Participants**

In person:	By phone:
• Susan Boothby	• Linda Beversluis
• Darla Daniel	• Shelby Martin
• Russ Gamble	• Dan Rich
• Jonathan Haskell	• Eugene Zuspahn
• Kate Keiser	
• Walter Kelly	
• Stan Kent	
• Georgine Kryda, Chair	
• Lisa Willcox	

**Initial Assignments**

UFIPA Article	Lead Reviewer(s)
1 General Provisions	Stan K.
2 Fiduciary Duties and Judicial Review	Herb T. & Darla D.
3 Unitrust	Susan B.
4 Allocation of Receipts During Administration	Russ G. & Peggy G. & Walt. K.
5 Allocation of Disbursement During Administration	Jonathan H.
6 Death of Decedent	Georgine K.
7 Apportionment at Beginning and End of Income Interest	Klaralee C.
8 Miscellaneous Provisions	Kate K.

The meeting was held at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 10:40 a.m. by the Chair and adjourned at noon.

Minutes of October 2, 2019 were approved.

**Part 3 - Susan**

**304** – Cleaned up without brackets; retain references to “[Article]” for now, and consider use of “article,” “part,” and “section” as we prepare to finalize the proposed law.

**309** – Adds an ordering rule taken from old Colorado statute, but allows the drafter to select a different ordering rule. Several trust officers reviewed the proposed wording and had no objection.

**VOTE – UNANIMOUS APPROVAL of 309.**

## **Part 4, Allocation of Receipts During Administration – Russ, Peggy, Walter**

### **411 – Minerals, Water, and other Natural Resources – Kate’s Follow-up**

- Kate had offered to follow up with a water expert regarding:
  - What would be a non-renewable resource?
  - Do percentage differences under current law vs. UFIPA’s safe harbor make sense?
  - How does one convert ownership interest into income? Royalty? Dividend?
- Kate spoke with two water law attorneys.
- This section, 411, is based primarily on Texas law.
- Colorado is a headwater state; whereas Texas relies primarily on aquifers (non-renewable).
  - Depletion will not work the same way as oil and gas (land owner, not mineral tenant, usually entitled to the depletion deduction).
  - Rents make sense, but royalties do not.
- Darla: Colorado’s existing language regarding water has been longstanding. Section 411 is a default rule.
- Stan: Are there any improvements in UFIPA versus current Colorado law?
- Darla: We may want discretion to make an equitable allocation between interest and principal rather than being required to allocate 90% to principal.
  - Trustee may have difficulty knowing whether resource is (non-)renewable.

**VOTE – UNANIMOUS APPROVAL of 411.**

### **414 – Derivative or Option – Walter**

- Common theme for 414 and 415 is that, historically, whatever one received from an asset-backed security was allocated to principal (see ULC Comments in Walter’s Santa Fe handout).
  - Here, the significant change is that 90% would be allocated to principal and the remaining 10% to income.
  - Think of a derivative or option as similar to a futures contract, but you lock in future price as a hedge against variability in pricing.
- Darla: Corporate fiduciaries usually buy a mutual fund which contains options.

**VOTE – UNANIMOUS APPROVAL of 414.**

#### **415 – Asset-Backed Security – Walter**

- The best example of an asset-backed security is a mortgage or deed of trust on underlying property.
- Discussion: Is the security the note (which could be sold) or the underlying property? Consensus is that it would be the note.
- Review and discussion of the definition of “asset-backed security” in at UFIPA § 102(2).

**VOTE – UNANIMOUS APPROVAL of 415.**

#### **416 – Other Financial Instrument or Arrangement – Walter**

- Walter read the section. No questions or issues arose.

**VOTE – UNANIMOUS APPROVAL of 416.**

#### **Part 5, Allocation of Disbursements – Jonathan**

##### **501 - Disbursement from Income**

- Similar to old provision; favorable reaction to the language in 1(B) of “to extent income is sufficient” as it provides flexibility.
- Discussion of “would be in the interests of the beneficiaries” in (2), and examples of what a trustee would need to do.

**VOTE – UNANIMOUS APPROVAL of 501**

#### **For the December 4, 2019 meeting:**

- Continue with Part 5 starting with Section 502 – Jonathan H.
- Possibly start Part 6 – Georgine K.
- Possibly start Part 7 – Klaralee C.

**The next meeting** will be on December 4, 2019 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.