

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

**Minutes of October 2, 2019**

**Participants**

In person:	By phone:
• Klaralee Charlton	• Tracy Tirey
• Darla Daniel	
• Russ Gamble	
• Peggy Gardner	
• Mimi Goodman	
• Jonathan Haskell	
• Mike Holder	
• Kate Keiser	
• Stan Kent	
• Georgine Kryda, Chair	
• Dan Rich	
• 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.& Steve B.
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 10:38 a.m. by the Chair and adjourned at 11:55 a.m.

Minutes of September 4, 2019 were approved.

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

**411 – Minerals, Water, and other Natural Resources – Russ**

- See Georgine’s email of 10/1/19 for Mimi G.’s spreadsheet regarding Colorado law.
- See Russ G.’s two emails of 10/1/19 regarding additional information for this section.
- Russ read Section 411, ULC Comments, and C.R.S. § 15-1-421 and its official comment.

- Klaralee: Do we stay with “equitably” in UFIPA 411(a)(3) or go with bright line rule?
  - Russ: UFIPA Section 411 cleans up parts of Colorado statutes.
  - Mimi: Do we want to bring in miscellaneous provisions that provide tools for the trustee to define “equitably,” “purpose,” “days to object,” and other terms? Documents and communication provisions are not included in Section 411.
    - 411(d) allows safe harbor for old interests, but issue is what happens if a new interest is acquired. (See change of color in Mimi’s spreadsheet.)
  - Dan R.: Problem is when one has a huge trust with a lot of deplete-able assets. Thus, support for “equitably” to attempt to avoid excess tax payments, which can detrimentally impact beneficiaries.
    - Mimi: The 2001 Act had a deadline, but the 2009 Act did not. Support for not having a deadline because one does not know when a trustee will become aware of this issue. Support for “equitably” and presumption for what is equitable, and for a comment – in a subsection of the statute, in Orange Book forms, in Estate Planning Handbook – regarding what we are trying to do and why. Consider extracting from the official comment to existing C.R.S. § 15-1-421:
      - “Allocating a larger portion of the receipts to principal enables the trustee to acquire other income producing assets that will continue to produce income when the mineral reserves are exhausted.”
    - Russ & Jonathan: What about QTIPs?
      - Darla: If the trust is already in existence, 411(d) says one can continue. For new trusts, the drafting attorney needs to address what is equitable, which current law does not.
      - Dan R.: Will the IRS follow this allocation of what is equitable?
- Stan K.: What are the equitable factors to take into account, and where to place them?
  - Discussion of possible use of “facts and circumstances of the beneficiaries ...”
  - Discussion of UFIPA § 203(d) and power to adjust, “The fiduciary may consider all factors relevant ...”
    - Committee supports use of 203(d) language rather than a beneficiary’s specific facts and circumstances.
    - Consensus to leave language as close to UFIPA as possible.
- Kate K.: Timber is also a natural resource, but there is no opt out for it in Section 411.
  - 411(a): add “other natural resources” – what about gravel, moss, timber?
    - What if have to reclaim property from which take gravel or minerals? Can one take depletion if there is a duty to reclaim the surface?
    - Dan R.: If depleted as mined, but then reclaim the property, would one have to take the reclamation into income? Are resources replaced?

- UFIPA 403 (resources as businesses) references timber.
- Timber is carved out in C.R.S. § 15-1-421.5.
- Use UFIPA 412 language to define minerals and natural resources?
- Kate K. 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?
- If comments are not going to be published, consider information dissemination via CLE on UFIPA, Colorado Lawyer article, Estate Planning Handbook, testimony at Colorado state legislature which would create actual legislative history.
  - Consider how language in UFIPA 411 is discussed in Texas law journals, given that UFIPA 411 is based on Texas law.

**Subject to discussion of Kate’s findings, committee is ready to approve Section 411.**

**Section 413, Marital Deduction Property Not Productive of Income – Russ for Walter**

- Russ read UFIPA language, ULC Comments, and C.R.S. § 15-1-423.
- C.R.S. § 15-1-423(2) has default rule of “proceeds from the sale or other disposition of an asset are principal,” but this is already addressed in UFIPA.
- This is a savings provision if a marital deduction trust is improperly drafted.

**VOTE – UNANIMOUS APPROVAL of 413**

**For the November 6, 2019 meeting:**

- Susan to provide a final version of Section 304 (exclusive of brackets);
- Susan to circulate her draft ordering rule for Section 309(a)(2) – based on present Colorado unitrust statute, default to IRS rule, permit opt out, and include “subject to terms of the trust” language – among Darla, Aaron, Michelle, Dan, and other corporate trustees for review and initial comment, and present to distributing to the entire subcommittee;
- For Section 411, Kate to follow up with water expert, and committee to vote on 411;
- Walter to present Sections 414 – 416; and
- Start Article 5 – Jonathan H.

**The next meeting** will be on November 6, 2019 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.