

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

Minutes of March 4, 2020

Participants

In person:	By phone:
• Klaralee Charlton	N/A
• Darla Daniel	
• Russ Gamble	
• Peggy Gardner	
• Jonathan Haskell	
• Kate Keiser	
• Walter Kelly	
• 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. & Eugene Z.
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 February 5, 2020 were approved.

Part 6, Death of Decedent – Georgine K. and Gene Z.

601 - Determination and Distribution of Net Income

- As explained in the Legislative Note and in the ULC Comments, the 2018 UFIPA offers two optional subsections (d) and (e) for states without a provision for interest to be paid on a pecuniary distribution from a trust.
 - Subsection (d) allows interest to be paid from income, to the extent income is sufficient.
 - Subsection (e) requires interest be paid in the same manner interest would be paid on a pecuniary bequest under a Will.

- C.R.S. § 15-12-904 in Colorado’s Probate Code provides for interest on a general pecuniary devise, and states in its entirety:

“General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.”

2/4/20: Discussion

- 601(d) is okay and is similar to 15-1-406(1)(c).
 - The purpose here is to provide an ordering rule for distribution of pecuniary amount(s) from income.
- 601(e) - The subcommittee is inclined to delete 601(e) because it is not clear how this would work in practice.
 - There is a preference for letting the trust instrument determine if interest is to be paid, the starting date/event for the payment of interest, and other conditions.
- 602:
 - There was a question of what happens if one of two beneficiaries takes the distribution immediately. Does that first beneficiary still get interest until the second beneficiary takes his/her share?
 - There was a concern regarding the “immediately before the distribution date” language.

3/5/20: Discussion

- Georgine had examined UFIPA as enacted by Utah and its introduction by Kansas and Tennessee, and reported that all three versions are consistent with UFIPA as proposed.
- Georgine read Stan Kent’s email, and the following points were supported by the subcommittee:
 - UFIPA 601(d) seems to be an “ordering” provision for determining the source for payment of interest on a devise if the terms of a will, trust, or statute, provides for interest.
 - If 601(e) is an attempt to provide the same [ordering provision] for a late payment of a pecuniary amount after an income interest ends, then this section would benefit from a revision.
 - The problem is there is no counterpart to 15-12-904 for wills in our trust statutes. It appears that 601(e) as drafted is an attempt to do this: i.e., create an award for late payment of the pecuniary distribution after the termination of an income interest. The subcommittee is not certain that UFIPA is the place to do this.
 - The subcommittee continues to support not enacting 601(e) if its wording cannot be fixed.
- Darla and Lisa had redlined UFIPA § 601 and C.R.S. § 15-1-406.
 - The subcommittee again asked “what is the triggering event” for 601(e)? The following hypothetical was discussed, especially in conjunction with 15-1-406(c).

- What if there is a limited power of appointment for a trust that consists of an apartment complex and general securities?
 - Do we sell these low basis assets, especially if the real property might be eligible for opportunity zones?
 - Is it prudent to sell these assets and buy something else?
 - “because of an income beneficiary’s death” is new language (i.e., not in C.R.S. § 15-1-406).
 - But, an income interest may be for a term of years, so an income beneficiary’s death is not the sole possible triggering event.
 - This language seems to narrow the class of beneficiaries to whom interest would be paid.
 - Discussion of how often this situation occurs, especially with marital trusts.
 - Specific gifts are usually paid “off the top” at the death of the second spouse.
 - QTIPs usually require specific and charitable gifts to be paid first.
 - Return to the issue of trusts with little/no liquidity or assets.
 - Georgine noted that Gene Zuspahn had indicated he has ideas to improve the wording of UFIPA § 602.
 - Darla had redlined UFIPA § 602 and C.R.S. § 15-1-407.
 - Note: If 601(d), but not 601(e), is enacted, then 601(f) in 602(a) should be changed to “601(e)”.
 - Discussion concluded with Georgine to talk with Stan and Gene to finalize a proposal for §§ 601 and 602 for the April 1, 2020 meeting.

Part 7, Apportionment at Beginning and End of Income Interest – Klaralee

Klaralee’s general comments: Some differences with our current law, but straightforward.

701 -- When Right to Income Begins and Ends

- There is a correlation between C.R.S. § 15-1-408(2)(a)-(c) and UFIPA § 701(b)(1)-(3).
- Discussion of the change of the termination date (e.g., because an estate starts on the date of death, more consistency and cleaner regarding valuation and other accounting).
- Consensus of preference for UFIPA’s wording and break out into subsections.
- Kate moved, Jonathan seconded, and no further discussion.
- **VOTE UNANIMOUS APPROVAL**

702 -- Apportionment of Receipts and Disbursements When Decedent Dies or Income Interest Begins

- Consensus of preference for UFIPA’s wording and break out into subsections.
- Darla asked how the last sentence of C.R.S. § 15-1-409(3) is covered in UFIPA § 702 “due date is periodic under a lease”
 - See in UFIPA § 702(d).
 - Note also that “declaration date” is changed to “date of decision” in UFIPA.
 - And, UFIPA § 702(a) uses “fiduciary” instead of “trustee” (see ULC notes).
- Discussion of income tax accounting vs. fiduciary accounting using example of interest paid prior to settlor’s death versus post-death.
- Lisa moved, Darla seconded, and no further discussion.
- **VOTE UNANIMOUS APPROVAL**

703 – Apportionment When Income Interest Ends

- Discussion of essentially using accrual accounting pre-death and cash post-death.
- Darla moved, Lisa seconded, and no further discussion.
- **VOTE UNANIMOUS APPROVAL**

Part 8, Miscellaneous Provisions – Kate

Georgine reiterated that:

- the subcommittee had reached consensus in support of §§ 801, 802, 804, and 806, but were waiting to vote;
- Darla and Georgine have asked Gene Zuspann regarding §§ 803, 805, and 806:
 - 803, Application to Trust or Estate: Do we want to preserve any older UPIA acts?
 - 805, Repeals & Conforming Amendments: Do we need provisions for older trusts?
 - Prior discussion: Preference not to repeal present UPIA; perhaps add an opt-out?
 - Need to make decisions re: 803 and 805 jointly.
 - 806, Effective Date: How does this section differ from 803?

Part 1, Section 102 Definitions which had been tabled pending completion of UFIPA review

- 102(2) Asset-backed securities: Definition reviewed and **APPROVED**.
- 102(4) Court: Definition reviewed and **APPROVED**.

Definitions to be reviewed and voted on at April 1, 2020 meeting:

- 102(3) Beneficiary
- 102(5) Current Income Beneficiary
- 102(6) Distribution
- 102(7) Estate
- 102(8) Fiduciary

- 102(9) Income
- 102(10) Income Interest
- 102(11) Independent Person
- 102(12) Mandatory Income Interest
- 102(13) Net Income
- 102(18) Settlor
- 102(19) Special Tax Benefit
- 102(21) Successor Beneficiary

Consensus: Use CUTC definitions where available.

Final Administrative Steps

Georgine to draft for the subcommittee's review a:

- memo for transmitting the UFIPA review to the SRC, and
- proposed summary for presentation to the legislature

For the April 1, 2020 meeting:

- Look at Gene's proposed wording for (§ 601 and) § 602 and vote.
- Review Gene's thoughts regarding Part 8, specifically:
 - § 803, Application to Trust or Estate: Do we want to preserve older UPIA acts?
 - § 805, Repeals & Conforming Amendments: Provisions for older trusts?
 - Prior discussion: Preference not to repeal present UPIA, perhaps add an opt-out?
 - Need to make decisions re: 803 and 805 jointly.
 - § 806, Effective Date: How does this section differ from 803?
- Stan's input regarding definitions in § 102 for which voting was deferred until we had completed the UFIPA review:
 - Specifically, "Beneficiary," "Current Income Beneficiary," "Successor Beneficiary" and several other terms, and
 - the subcommittee expressed a strong consensus to use CUTC definitions where available.
- Review Georgine's initial draft memo for transmitting the UFIPA review to the SRC and the proposed summary for presentation to the legislature.
 - Discussion of possible conforming amendments, issues for SRC, and other final steps.

The next meeting will be on April 1, 2020 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.