Colorado T&E Section Statutory Revisions Committee on the

Uniform Fiduciary Income and Principal Act

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UFIPA Section	Section 701
Section Title	WHEN RIGHT TO INCOME BEGINS AND ENDS
Statutory Language	SECTION 701. WHEN RIGHT TO INCOME BEGINS AND ENDS. (a) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to: (1) the trust for the current income beneficiary; or (2) a successive interest for a successor beneficiary. (b) An asset becomes subject to a trust under subsection (a)(1): (1) for an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred; (2) for an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or (3) for an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death. (c) An asset becomes subject to a successive interest under subsection (a)(2) on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest. (d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary may or must distribute income.
Uniform Law Commission Comments	Article 7 of the 2018 Act, Apportionment at Beginning and End of Income Interest, corresponds to Article 3 of the 1997 Act, with the same title. There is no substantive change in Section 701 (previously Section 301). Comment to 1997 Act Period during which there is no beneficiary. The purpose of the second part of subsection (d) is to provide that, at the end of a period during which there is no beneficiary to whom a trustee

	may distribute income, the trustee must apply the same apportionment rules that apply when a mandatory income interest ends. This provision would apply, for example, if a settlor creates a trust for grandchildren before any grandchildren are born. When the first grandchild is born, the period preceding the date of birth is treated as having ended, followed by a successive income interest, and the apportionment rules in Sections 302 and 303 [now 702 and 703] apply accordingly if the terms of the trust do not contain different provisions.
Current Colorado Law	*Uniform Principal and Income Act:* **§ 15-1-408. When right to income begins and ends** (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest. (2) An asset becomes subject to a trust: (a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life; (b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or (c) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death. (3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest. (4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.
Official Comments to Colorado Law C.R.S. § 15-1-408	Period during which there is no beneficiary. The purpose of the second part of subsection (4) is to provide that, at the end of a period during which there is no beneficiary to whom a trustee may distribute income, the trustee must apply the same apportionment rules that apply when a mandatory income interest ends. This provision would apply, for example, if a settlor creates a trust for grandchildren before any grandchildren are born. When

	the first grandchild is born, the period preceding the date of birth is treated as having ended, followed by a successive income interest, and the apportionment rules in Sections 15-1-409 and 15-1-410 apply accordingly if the terms of the trust do not contain different provisions.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

UFIPA Section	Section 702
Section Title	APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS.
Statutory Language	SECTION 702. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS. (a) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which Section 601(b) applies, to principal if its due date occurs before the date on which: (1) for an estate, the decedent died; or (2) for a trust or successive interest, an income interest begins. (b) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income. (c) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance. (d) A receipt or disbursement is periodic under subsections (b) and (c) if:

	(1) the receipt or disbursement must be paid at regular intervals under an obligation to make payments; or (2) the payor customarily makes payments at regular intervals. (e) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date. (f) Distributions to shareholders or other owners from an entity to which Section 401 applies are due: (1) on the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution; (2) if no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or (3) if no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.
Uniform Law Commission Comments	In Section 702(a) of the 2018 Act, the change from “before a decedent dies” and “before an income interest begins” in Section 302(a) of the 1997 Act to “before the date on which … the decedent died” and “before the date on which … an income interest begins” makes this provision consistent with the reference to “the date of a testator’s death” in Section 701(b)(2) and consistent with the reference to “on or after the date on which a decedent died” in Section 702(b). It means that the time of day at which the moment of death occurs is less relevant and therefore less important to determine. In effect, the decedent’s income interest ends with the day before the date of death, and the estate’s income interest begins with the date of death. This rule in a uniform act does not purport to address related income tax uncertainties. Section 302(b) of the 1997 Act used the term “periodic due date.” Section 702(b) of the 2018 Act changes the use of “periodic” to modify receipts or disbursements rather than due dates. Section 702(d) explains when a receipt or disbursement is “periodic.” With respect to distributions from an entity, Section 302(c) of the 1997 Act uses the term “declaration date for the distribution,” consistent with the action of a board of directors in a corporate context. In the 2018 Act, Section 702(f)(2) uses the more generic description “date of the decision by or on behalf of the entity to make the distribution.” The 2018 Act adds Section 702(f)(3) to authorize the fiduciary to use the date the fiduciary learns of the decision if the fiduciary doesn’t know the date the decision was made. If a date is fixed by or on behalf of the entity for

	determining who is to receive a distribution, that date continues to govern, under Section 702(f)(1).
Current Colorado Law	*Uniform Principal and Income Act:* **§ 15-1-409. Apportionment of receipts and disbursements when decedent dies or income interest begins** (1) A trustee shall allocate an income receipt or disbursement, other than one to which section 15-1-406 (1)(a) applies, to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest. (2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income. (3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of subparts 1 through 6 of this part 4. Distributions to shareholders or other owners from an entity to which section 15-1-411 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.
Official Comments to Colorado Law C.R.S. § 15-1-409	Prior Acts. Professor Bogert stated that "Section 4 of the [1962] Act makes a change with respect to the apportionment of the income of trust property not due until after the trust began but which accrued in part before the commencement of the trust. It treats such income as to be credited entirely to the income account in the case of a living trust, but to be apportioned between capital and income in the case of a testamentary trust. The [1931] Act apportions such income in the case of both types of trusts, except in the case of corporate dividends." George G.

	Bogert, The Revised Uniform Principal and Income Act, 38 Notre Dame Law. 50, 52 (1962). The 1962 Uniform Act also provides that an asset passing to an inter vivos trust by a bequest in the settlor's will is governed by the rule that applies to a testamentary trust, so that different rules apply to assets passing to an inter vivos trust depending upon whether they were transferred to the trust during the settlor's life or by his will. Having several different rules that apply to similar transactions is confusing. In order to simplify administration, Section 15-1-409 applies the same rule to inter vivos trusts (revocable and irrevocable), testamentary trusts, and assets that become subject to an inter vivos trust by a testamentary bequest. Periodic payments. Under Section 15-1-402, a periodic payment is principal if it is due but unpaid before a decedent dies or before an asset becomes subject to a trust, but the next payment is allocated entirely to income and is not apportioned. Thus, periodic receipts such as rents, dividends, interest, and annuities, and disbursements such as the interest portion of a mortgage payment, are not apportioned. This is the original common law rule. Edwin A. Howes, Jr., The American Law Relating to Income and Principal 70 (1905). In trusts in which a surviving spouse is dependent upon a regular flow of cash from the decedent's securities portfolio, this rule will help to maintain payments to the spouse at the same level as before the settlor's death. Under the 1962 Uniform Act, the pre-death portion of the first periodic payment due after death is apportioned to principal in the case of a testamentary trust or securities bequeathed by will to an inter vivos trust. Nonperiodic payments. Under the second sentence of Section 15-1-409 (2), interest on an obligation that does not provide a due date for the interest payment, such as interest on an income tax refund, would be apportioned to principal to the extent it accrues before a person dies or an income interest begins unless the obligation is specifically given to a devisee or remainder beneficiary, in which case all of the accrued interest passes under Section 15-1-406 (1)(a) to the person who receives the obligation. The same rule applies to interest on an obligation that has a due date but does not provide for periodic payments. If there is no stated interest on the obligation, such as a zero coupon bond, and the proceeds from the obligation are received more than one year after it is purchased or acquired by the trustee, the entire amount received is principal under Section 15-1-416.

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

UFIPA Section	Section 703
Section Title	APPORTIONMENT WHEN INCOME INTEREST ENDS.
Statutory Language	SECTION 703. APPORTIONMENT WHEN INCOME INTEREST ENDS. (a) In this section, "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust. (b) Except as otherwise provided in subsection (c), when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate. (c) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends: (1) the fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and (2) subsection (b) applies only to the balance of the undistributed income. (d) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit.
Uniform Law Commission Comments	In Section 703(a) of the 2018 Act, a change from "before the date on which an income interest ends" in Section 303(a) of the 1997 Act to "on or before the date on which an income interest ends" makes this provision consistent with the corresponding references in Sections 701

	and 702 (former Sections 301 and 302). Applying the rules of Section 701, that means that income received precisely on the date of a decedent's death is allocated to the estate, estate beneficiaries, or successive beneficiaries of a trust, not to the decedent. As with Section 702, this rule in a uniform act does not purport to address related income tax uncertainties. There are no other substantive changes from the 1997 Act in Section 703. In subsection (c), a beneficiary's right to "revoke" is changed to the right to "withdraw." In subsection (d), the subjective "accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements" is changed to the more objective "preserve an income tax, gift tax, estate tax, or other tax benefit." In Section 703(b), it remains the general rule that the income accrued between the last payment date and the date of a mandatory income beneficiary's death (often called "stub income") is payable to that income beneficiary's estate. As with other provisions of this act, under Section 201(a)(3) the terms of the trust may provide a different disposition of stub income.
Current Colorado Law	*Uniform Principal and Income Act:* **§ 15-1-410. Apportionment when income interest ends** (1) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust. (2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal. (3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Official Comments to Colorado Law C.R.S. § 15-1-410	Prior Acts. Both the 1931 Uniform Act (Section 4) and the 1962 Uniform Act (Section 4(d)) provide that a deceased income beneficiary's estate is entitled to the undistributed income. The Drafting Committee concluded that this is probably not what most settlors would want, and that, with respect to undistributed income, most settlors would favor the income beneficiary first, the remainder beneficiaries second, and the income beneficiary's heirs last, if at all. However, it decided not to eliminate this provision to avoid causing disputes about whether the trustee should have distributed collected cash before the income beneficiary died. Accrued periodic payments. Under the prior Uniform Acts, an income beneficiary or his estate is entitled to receive a portion of any payments, other than dividends, that are due or that have accrued when the income interest terminates. The last sentence of subsection (1) changes that rule by providing that such items are not included in undistributed income. The items affected include periodic payments of interest, rent, and dividends, as well as items of income that accrue over a longer period of time; the rule also applies to expenses that are due or accrued. Example -- accrued periodic payments. The rules in Section 15-1-409 and Section 15-1-410 work in the following manner: Assume that a periodic payment of rent that is due on July 20 has not been paid when an income interest ends on July 30; the successive income interest begins on July 31, and the rent payment that was due on July 20 is paid on August 3. Under Section 15-1-409 (1), the July 20 payment is added to the principal of the successive income interest when received. Under Section 15-1-409 (2), the entire periodic payment of rent that is due on August 20 is income when received by the successive income interest. Under Section 15-1-410, neither the income beneficiary of the terminated income interest nor the beneficiary's estate is entitled to any part of either the July 20 or the August 20 payments because neither one was received before the income interest ended on July 30. The same principles apply to expenses of the trust. Beneficiary with an unqualified power to revoke. The requirement in subsection (2) to pay undistributed income to a mandatory income beneficiary or her estate does not apply to the extent the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. Without this exception, subsection (2) would apply to a revocable living trust whose settlor is the mandatory income

	beneficiary during her lifetime, even if her will provides that all of the assets in the probate estate are to be distributed to the trust. If a trust permits the beneficiary to withdraw all or a part of the trust principal after attaining a specified age and the beneficiary attains that age but fails to withdraw all of the principal that she is permitted to withdraw, a trustee is not required to pay her or her estate the undistributed income attributable to the portion of the principal that she left in the trust. The assumption underlying this rule is that the beneficiary has either provided for the disposition of the trust assets (including the undistributed income) by exercising a power of appointment that she has been given or has not withdrawn the assets because she is willing to have the principal and undistributed income be distributed under the terms of the trust. If the beneficiary has the power to withdraw 25% of the trust principal, the trustee must pay to her or her estate the undistributed income from the 75% that she cannot withdraw.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	