

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

Minutes of May 1, 2019

Participants

In person:	By phone:
• Susan Boothby	• Peggy Gardner
• Klaralee Charlton	• Michelle Mieras
• Darla Daniel	
• Russ Gamble	
• Mimi Goodman	
• Jonathan Haskill	
• Jeff Kadavey	
• Walter Kelly	
• Stan Kent	
• Georgine Kryda, Chair	
• Malea McKeown	
• Herb Tucker	
• 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	Unassigned

The meeting was held at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.
The meeting was called to order at 10:30 a.m. by the Chair and adjourned at noon
Minutes of April 3, 2019 were approved with one change.

Versions of UFIPA

- Stan explained that the October 22, 2018 version of UFIPA on the Uniform Law Commission Web site at <https://www.uniformlaws.org/search?executeSearch=true&SearchTerm=UFIPA&l=1> contains the black letter law approved by the Uniform Law Commissioners.
- Georgine noted that Stan had alerted the committee to this change in his email of November 9, 2018.

- Per Stan, the file “UFIPA_Final Act_2019jan25.pdf” should contain only style edits to the comments to the 10/22/2018 version of UFIPA and no changes to the black letter law.
- Subcommittees for Articles 5, 6, 7, and 8 are aware of the issue and will check their Santa Fe style handouts.
- The Article 4 subcommittee had updated its files for the paper handouts, but needs to email Georgine with updates of any files.
- Georgine will review Articles 1, 2, and 3 for consistency between the committee’s files (which are also on the SRC Website) and the Uniform Law Commission site.

Section 203(i) – Herb

The committee reviewed the latest version of UFIPA Section 203(i):

203(i) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (a).

The consensus favored the flexibility of using “deny or limit” versus the stark “expressly prohibit” language that is still present in UFIPA Section 302(a)(1).

UNANIMOUS VOTE TO APPROVE 203(i) AS APPEARS ABOVE.

Section 304 – Susan

Susan noted there are a few more brackets to remove from the final approved version of Section 304, and will provide a final copy for the August meeting.

Susan reiterated that notice will be given to anyone acting as a trust director and to any person who has the power to remove a trustee.

Sections 305 – 309 -- Susan

Susan recapped the April meeting, specifically that, while discussing Section 305, we realized we needed to look at Sections 306 – 309; hence the decision to consider these sections together.

Susan finds UFIPA Article 3 to be helpful and straightforward.

Darla asked whether the lack of a default ordering rule, as we have in our current statute, is of concern.

Discussion that bank trustees will have an ordering rule and will already have income coded to flow through to the tax worksheet; however, concern was expressed regarding independent trustees and whether non-corporate fiduciaries will know what they are doing. The committee did not recall seeing ordering rules in any other section of UFIPA, only the power to adjust between income and principal.

Suggestions were made to:

- address the issue in the Green Book or in the Orange Book,
- advise trustees to send notice regarding what the default rule will be, and
- make the current statute a default ordering rule, most likely under Section 309(a)(2) – in part to address past reliance on the existing statute.

Darla will discuss the issue with Aaron Azari at CSBT and others.

UNANIMOUS VOTE TO APPROVE ARTICLE 3 SUBJECT TO THE COMMITTEE'S DECISION IN AUGUST 2019 REGARDING WHETHER TO HAVE AN ORDERING RULE.

Part 4 – Russ, Peggy, Walter

Russ emphasized that UFIPA Article 4 leans toward giving trustees significant flexibility.

- The 2001 Act gave states one year to opt out and go with 1955 Act.
- Here, having flexibility cleans up and removes reliance on 1955 Act.

401 addresses only entities making distributions to trust.

401(a)(1)

- Note that the 20% rule is incorporated in UFIPA 401(e)(2).
- UFIPA is more concise than the present statute

401(a)(2)

- Strike-throughs in handout are updates from final (10/22/2018) UFIPA.
- The present equivalent of UFIPA 401 is C.R.S. §15-1-411.

401(a)(3): No comment or discussion

401(b)&(c): No comment or discussion

401(d)&(e): No comment or discussion

401(f):

- Fiduciary has a lot of discretion with respect to what is a return of capital.
- Discussion regarding what happens when an entity labels a distribution?
 - When must a trustee rely on what an entity says, for example, when the entity issues a 1099 and a K-1 and reports to the IRS?
 - What if fiduciary does not agree with entity's characterization? Consensus: Fiduciary may ask the entity to change the characterization.
 - Jeff pointed out that a change in the capital account on a K-1 may signal an issue.
 - Remember that an entity reports to a trust, and the trust defines as return of capital or dividend and how to report distribution out to beneficiaries.
 - This section addresses receipts, that is, the K-1 reports taxable income.

401(g),(h),&(i): January 2019 comments address content not in the emailed files of 12/10/18

Darla likes UFIPA Section 401 because it provides more detail than does C.R.S. §15-1-411.

Discussion based on the example of if a Trust is a partial owner of an LLC, then the LLC reports to Trust what the Trust's interest, income, distributions are and the character of that distribution. If there is no communication from the LLC to the Trust, then the Trust's fiduciary has the authority to make a reasonable allocation of income (and return of principal).

UNANIMOUS VOTE TO APPROVE SECTION 401.

For the August meeting:

- Susan to provide a final version of Section 304 (exclusive of brackets);
- Darla to report on her discussion of the ordering rule for Section 309(a)(2) with Aaron Azari and others; and
- Continue with Section 402 and Article 4.

The next meeting will be on August 7, 2019 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.