

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

Minutes of December 20, 2018

Participants

In person:	By phone:
• Klaralee Charlton	Darla Daniel
• Russ Gamble	
• Stan Kent	
• Georgine Kryda, Chair	
• Herb Tucker	

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 called to order at 10:35 a.m. by the Chair and adjourned at 11:35 a.m. Minutes of 11/15/18 were approved.

Section 202(c): Fiduciary Duties and Judicial Review - Darla

- The proposed added language, referring to the judicial tool box in the same way as referred in the Colorado Uniform Trust Code (CUTC), was approved.

Section 203: Fiduciary's Power of Adjust – Herb

- Herb's presentation of Section 203 references his three handouts from 11/15/18:
 - UFIPA Section 203 in Santa Fe style
 - Summary of Section 203 Fiduciary's Power to Adjust
 - Summary of Comments to Section 203 Fiduciary's Power to Adjust
- Herb's presentation today of Section 203(i) references Herb's additional research involving the Uniform Principal and Income Act (UPIA) § 104, comments, and an article by Joel C. Dobris.

203(i): Discussion from 11/15/18 continued regarding whether an express denial or limitation of the power to adjust is required by the terms of the trust; whether 203(a) requires an explicit reference to statute.

- Consensus: Express denial or limitation of the power to adjust required by the terms of the trust.
- Herb researched comments in 1997 UPIA, which are not referenced in current Colorado UPIA.
 - Comments to UPIA 104(f) under old act (p. 12 of handout) is similar to UFIPA 203(i)
 - See highlighted text on p. 16 of the handout, “Trust terms that limit a power to adjust.”
 - There is a specific reference to the power to adjust.
 - UPIA made flexible the power to adjust.
 - Consensus: Reference to UFIPA 203(a) must be expressed in the governing document, else UPIA will allow for liberal adjustment.
- Subsequent discussion:
 - Like the word “forbid” from comments of Herb’s research.
 - Approval of proposed changes: The 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 SPECIFICALLY FORBID or limit the FIDUCIARY’S power to adjust ~~under subsection (a)~~.

203(j): Accounting periods

- C.R.S. § 15-1-404 has no reference to accounting periods.
- Provides flexibility to hang on to non-productive assets (for example, based on precatory language in the Trust instrument).

203(k): Inclusion in Report OR Communication to Beneficiaries

- Herb to add C.R.S. § 15-5-813(3) which defines report contents – for Feb. 2019 meeting.
- 203(k)(2): must be communicated at least annually
 - Also, insert definition of “qualified beneficiaries” from CUTC 103(16), not (13).
- Discussion of the requirements of a trustee:
 - Darla: CUTC 813(2)(c) is a mandatory duty of a trustee upon assuming a trusteeship; whereas CUTC 813(3)(a), the requirement for an annual report, may be overwritten by the terms of the trust instrument.
 - What does 203(k)(1) add? What constitutes a report depends upon the trust instrument. Should our committee use default or mandatory language?
 - The current statute is a mandatory requirement for a trustee to tell beneficiaries if the trustee is going to exercise the power to adjust.
 - Consensus: Agree with notice requirements of what the trustee is going to do if the trustee is actually going to adjust, but concerns with respect to “report,” which appears to have specific meaning w/in CUTC.

- Darla: The comment at bottom of p. 6 of UFIPA Section 203 in Santa Fe style is better than the wording of 203(k) because a letter may be more effective than a report to beneficiaries.
- Stan: We dealt with the question in the Uniform Trust Decanting Act of, if a trustee is going to rely on no action by beneficiaries as providing ratification, then a trustee needs to tell the beneficiaries what the trustee is going to do and to provide an opportunity for objection.
- Klaralee: Is there a possibility of a change in investment strategy somehow being considered an exercise of the power to adjust, if, for example, there are long-term effects?
 - Consensus: The power to adjust is a very specific thing, and it is only the power to adjust between principal and income.
- Stan: Let's look at the "or" between 203(k)(1) and (k)(2). A trustee will have a report that can say "the trustee is going to exercise the power to adjust," or, if there is no report, then the explanation of the adjustment must be put in statements to the beneficiaries.
- CUTC 813(2)(c) contains rights of beneficiaries upon a trust becoming irrevocable.
- C.R.S. § 15-16-303(1) is the same as CUTC 813(1).
- Consensus: The committee likes the "or" language. Approved changes to
 - 203(k)(1) from "UTC Section 813(c)" to "CUTC 813(1)"; and
 - 203(k)(2) to: "Communicated at least annually to the qualified beneficiaries determined under CUTC Section 103(16), including the Attorney General when applicable."

Article 4 – Russ Reviewed the “401 Comments” Handout

Administrative

For February Meeting:

- Herb to add C.R.S. § 15-5-813(3) which defines report contents to UFIPA 203(k)(1).
- Susan to begin presentation of Article 3, OR.
- Walt, Peggy, and Russ to begin presentation of Article 401.

The next meeting will be on February 6, 2018 at 10:30 a.m. in the CBA's new offices as 1290 Broadway, Suite 1700, Denver.