

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

**Minutes of March 6, 2019**

**Participants**

| In person:              | By phone:        |
|-------------------------|------------------|
| • Susan Boothby         | • Eugene Zuspann |
| • Jerome Borison        |                  |
| • William Carew         |                  |
| • Darla Daniel          |                  |
| • Connie Eyster         |                  |
| • Russ Gamble           |                  |
| • Peggy Gardner         |                  |
| • Janine Guillen        |                  |
| • Walter Kelly          |                  |
| • Stan Kent             |                  |
| • Georgine Kryda, Chair |                  |
| • Michelle Mieras       |                  |
| • 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 10:35 a.m. by the Chair and adjourned at noon

Minutes of 2/6/19 were approved.

**Susan asked a general question of when we might convert to a unitrust in practice.**

- Consensus: Where income under the trust has become insufficient.

## **PART 3, UNITRUSTS – SUSAN: See her 1/21/19 Santa Fe style handouts**

### **Section 301. Definitions.**

- Susan continued to read Section 301 Comments starting at top of page 5, noting:
  - Current Colorado statute requires 3-year average.
  - UFIPA allows choice of period of time for averaging the values of the trust.
  - There is a safe harbor of 3-5%, which one may also see in marital agreements.
- Susan then reviewed the definitions and noted that (7) “unitrust policy” differs from Colorado law.
- The committee reiterated that it is looking at replacing Colorado’s current unitrust statute with the uniform act.

### **SECTION 301 UNANIMOUSLY APPROVED.**

Discussion regarding Russ’s question whether the phrase “purpose of the trust” is used.

- The committee reviewed 201 and 201(e) and the October 2018 minutes, and noted that UFIPA omitted “purpose.”

### **Section 302. Application; Duties and Remedies.**

- Settlor has to expressly opt out of the unitrust statute.
  - Similar to Colorado law which also allows a settler to opt out.
- Susan observed that the current Colorado unitrust act is very dense and one has to review provisions that are “mixed and matched” to be able to comply.
- 302(b): This statute is not applicable to QPRTs, etc. (See statutory references.)
- 302(c): Inherently implies that can have discretionary distributions from income or invade principal.
  - Russ: Does this give more power to the trustee to convert on a periodic basis if, for example, income is low this year so the trustee converts for one year to give beneficiary more consistent distributions?
    - Susan: But, if the trustee needs to convert back, then one has to go through extensive notification provisions not yet discussed.
  - Stan: See comments for 302(c). “A unitrust conversion is available even when trustee can accumulate income.”
    - Discussion that 301(5) income IS a unitrust amount. Thus, where income is to be distributed, it will be the unitrust amount.
  - Peggy: Stuck on mandatory income interest distribution
    - Susan: What if trust provides only for distributions of income or principal to a group of beneficiaries. Can it still be converted to a unitrust. Why would a trustee do that?

- Darla: When one cannot be impartial simply by following terms of the trust. Address perception of partiality. Perhaps give a floor amount for distribution.
  - Connie: The trustee may also want to protect a from creditor.
- 302(d): Applies to estate only to the extent the trust is a beneficiary of an estate. Estate may be administered as a unitrust. There are similarities with Colorado law.
  - Current uniform act is more succinct in protecting the fiduciary.
  - Walter noted there are no affirmative duties to notify the settler under UFIPA or current Colorado statute; only to notify the beneficiaries.
  - Stan: We changed 203(i) from “expressly prohibits” to “specifically forbids” (due to the article in Herb’s research) with respect to a trustee’s power to adjust, which is similar to what is being discussed here.
    - Is there a difference?
    - Either go back to UFIPA for 203(i) or change 302(a)(1)’s use of “expressly prohibits”.
    - Agreement of need for same words in 203(i) and 303(a)(1).
    - Flagged the issue for the next meeting.

SECTION 302 UNANIMOUSLY APPROVED SUBJECT TO ISSUE OF 203(I) & 302(D).

**Decision to meet until noon.**

**Section 303. Authority of Fiduciary.**

- In 303(a), “without court approval” is key.
- Susan: This pretty much mirrors what Colorado has. The differences are set out on p. 5 of this subsection of the outline.
  - Differences are not substantial, except for, if a trustee is not an independent person, the trustee cannot do the unitrust conversion without court approval under current statute.
    - Susan believes the original statute had this for tax reasons.
  - Susan: We may want to address notice requirements.
    - C.R.S. §15-1-405.5(1)(c) allows the trustee to convert without court approval.
  - Discussion of three classes of qualified beneficiaries in the CUTC (distributees and permissible distributees, if a predecessor in interest dies, or if a trust terminates) and when one can properly give notice to a member of each class.
    - Is it possible to choose among beneficiaries regarding who receives notice? Do not want to give sham notice

- Is a trustee released from liability upon giving notice?
- Prepare to vote on 303 at April 6, 2019 meeting.

**For the April meeting:**

- Herb to conclude his presentation of 203 and we will revisit the issue of which language to use for both 203(i) and 302(d);
- Committee to vote on 303; and
- Susan to continue with Article 3, Section 304.

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