

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

Minutes of May 17, 2018

Participants

In person:	By phone:
• Gene Zuspann, Chair	• Dan Rich
• Susan Boothby	
• Steve Brainerd	
• Klaralee Charlton	
• Darla Daniel	
• Russ Gamble	To add:
• Peggy Gardner	• Michellemieras1@gmail.com
• Jeff Kadavy	• mzwerdinger@m-s-lawyers.com
• Walt Kelly	
• Stan Kent	
• Georgine Kryda	
• Herb Tucker	
• Leia Ursery	
• Molly Zwerdinger	

Initial Assignments

UFIPA Article	Lead Reviewer(s)
1 General Provisions	Stan K.
2 Fiduciary Duties and Judicial Review	Herb T.
3 Unitrust	Susan B.
4 Allocation of Receipts During Administration	Russ G. & Peggy G.
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 10:30 a.m. by the Chair.

Minutes approved.

Administrative:

- Gene asked the committee to carefully consider any proposed changes to UFIPA.
- Committee members agreed to contact the lead reviewer(s) for each article based on members' interests and on the fact that some articles contain more sections than others.
- Stan's 25 handouts and analysis of Article 1 were cited as examples for how to proceed.
- Stan cautioned to wait to see how definitions are employed in black letter of UFIPA.

Section 101

- The title of UFIPA was changed to avoid confusion with UPIA (Uniform Prudent Investor Act) and to emphasize “Fiduciary” (broader scope of applicability).
 - Read Uniform Law comment.
 - See Colorado subcommittee comment re: statutory history.
 - Part 7 of Colorado’s Uniform Principal & Income Act is the entire 2000 Act.
- Section title corrected to: “Uniform Fiduciary Income and Principal Act”
- Unanimous vote to approve.

Section 102, para. 1: Accounting period

- Discussion of “approximately”
 - Used due to prevalence of a 52- or 53-week year, and
 - Potential scenario with mid-month date of death and selection of fiscal (versus calendar) year
 - See Current Colorado Law box.
- Unanimous vote to approve.

Section 102, para. 2: Beneficiary

- Definition differs from that in the Uniform Principal and Income Act, Uniform Probate Code, and Uniform Trust Decanting Code.
- Discussion of whether to retain “legatee.”
 - Favor retention because other states may have “legatee” in their statutes.
- Remember that UFIPA applies to more than Wills and trusts (e.g., life estates).
- WAIT to vote.

Section 102, para. 3: Court

- We have definitions of “court” throughout Colorado Title 15.
- Do we need to define “court” in UFIPA?
 - Yes, because UFIPA will not be in the Probate Code (ex. life estate).
 - Discussion of appropriate jurisdiction for life estate.
- WAIT to vote.

Section 102, para. 4: Current Income Beneficiary

- Discussion re: “qualified beneficiary”
 - Note that Colorado added the definition to the Uniform Trust Code (UTC) by drawing from UPIA.
- WAIT to vote.

Section 102, para. 5: Distribution

- “Distribution” not defined in UTC.
- Definition of “distribution” in Colorado Probate Code refers to testamentary trust.
- WAIT to vote.

Section 102, para. 6: Estate

- WAIT to vote.

Section 102, para. 7: Fiduciary

- Discussion re: whether a life tenant is traditionally a fiduciary?
 - Possibly, because intent of UFIPA is broad application to be able to allocate between income and principal.
 - Perhaps cabin the definition of “fiduciary” to UFIPA?
 - Appears to be consistent with C.R.S. 15-10-501 judicial toolbox to determine standing for fiduciary oversight.
 - Possible definitions too in C.R.S. 15-10-601, C.R.S. 15-1-103(2).
 - Possible relationship with UFIPA Section 102, para. 2, (D).
- WAIT to vote.

Section 102, para. 8: Income

- “Current return” includes proceeds from sale of something; may include mineral rights.
- WAIT to vote.

Section 102, para. 9: Income Interest

- Broad definition. Stan to correct typos in subsection cites.
- Discussion of whether there a right if trustee may make purely discretionary distributions.
 - There is a right to have a court review possible abuse of discretion.
- UFIPA extends principal and income accounting to life estates.
- WAIT to vote.

Section 102, para. 10: Independent Person

- Colorado will have the UTC, so use language in the first bracket.
- Still have IRC § 672 (and regs) problem in (C) as leave out some persons who may be appropriate (e.g., child of sibling).
- Regarding (E), would an attorney/law firm acting as an independent person in transactions be considered as an employee?
- WAIT to vote.
 - No issues with (A) or (B).
 - Need to see what an independent person can do under other UFIPA sections.

Section 102, para. 11: Mandatory Income Interest

- Para. 9, Income Interest, is broad; whereas para. 11 carves out narrow mandatory interest.
- WAIT to vote.

Section 102, para. 12: Net Income

- WAIT to vote until after Articles 2 and 3 reviewed because there appears to be no adjustment from income to principal.
 - Thus far, we have seen only a possible adjustment from principal to income.

Section 102, para. 13: Person

- Discussion of why Uniform Law Commission (ULC) insists on estate or trust being considered a “person”?
- Resume here on August 16, 2018 at 10:30 a.m. in the Capitol Room.