

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

**Minutes of August 16, 2018**

**Participants**

In person:	By phone:
• Gene Zuspann, Chair	• Susan Boothby
• Klaralee Charlton	• Russ Gamble
• Darla Daniel	• Jonathan Haskell
• Connie Eyster	• Georgine Kryda
• Peggy Gardner	
• Jeff Kadavy	
• Walter Kelly	
• Stan Kent	
• 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 and adjourned at 11:32 a.m.

**DISCUSSED PRIOR TO 8/16/2018**

We will be following the “Santa Fe” style.

- Proposed act
- Current Colorado law
- Refer to the 1955 Act (see discussion below)
- [Darla Daniel has thumb drive of old T&E records. Gene to ask her for a Word copy of the 2001 review by T&E of UPIA.]

Initial observations (Gene):

- 104 is now 203.
- UFIPA added a section on Unitrust.
- There may be an issue with old trusts not under UPIA of 2001 (e.g., trusts that could not adjust, marital trust with spouse as beneficiary, family trust using family members as adverse trustees, elect out provisions).

## Initial issue identification and notes

401: Trust income is usually reported on a K-1, which doesn't follow accounting income.

505 (&506) Example: Assume Taxable Income of \$100K from investments passed through to Trust, but the Trust receives only \$40K cash (usually an FLP without other assets).

- Under 501, \$40K is income and, if trust is required to distribute all income, then trust has no cash to pay tax.
- Adjust between income and principal by allocating the \$40K to principal, so have enough cash to pay taxes.
  - Effect is to reduce income by the tax.
  - Works unless no distribution from FLP.
- Problem: Trust has no cash to pay tax on income of \$100K
  - Alternative: Trustee could find a way to liquidate part of \$100K

Move to get trust officers (e.g., Darla D., Michelle M., Dan Rich) to meet with our subcommittee

Many Trust officers are unaware of 2009 changes to 2001 law with respect to mineral and natural resource interests.

Gene: 408 changed at suggestion of ACTEC retirement benefits committee.

- Internal income of the plan becomes income of the trust

Article 1 definitions do not appear to be pulled from Uniform Trust Code (ex. no "qualified beneficiary").

Put the 1955 Act into the analysis because:

- There was a belief that the 1997 Act did not sufficiently cover life estates.
  - Gene believes UFIPA addresses life estates.
- There are trusts still governed by 1955 Act because they didn't qualify for the 2001 Act.
- Initial preference was to get rid of 1955 Act, but we need to refer to both acts (1955 & current) as we review UFIPA.

This subcommittee's objective is to revamp Colorado's 2001 Act to be consistent with the proposed UFIPA.

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.

## **DISCUSSED ON 8/16/2018**

### **Section 102, para. 13: Person**

- Discussion of why Uniform Law Commission (ULC) insists on estate or trust being considered a “person” (versus a fiduciary relationship) continued. Key question is who can hold title to property.
- Move to approve with retention of both “trust” and “estate” in the definition.
- Unanimous vote to approve.

### **Section 102, para. 14: Personal Representative**

- Unanimous vote to approve.

### **Section 102, para. 15: Principal**

- Stan to remove “property” and cites to C.R.S. §§ 15-10-201 and 15-5-103 from final report.
- Unanimous vote to approve.

### **Section 102, para. 16: Record**

- This is a standard definition.
- Unanimous vote to approve.

### **Section 102, para. 17: Settlor**

- “Portion” used in decanting statute and in trust code, versus “part.”
- Wait to see how “part” is used in UFIPA, and revisit use of “portion.”
- WAIT to vote, but reserving approval.

### **Section 102, para. 18: Successor Beneficiary**

- Discussion of the use of “entitled” (also used by current law) versus “eligible.” For example, a beneficiary of a discretionary trust is not entitled to a distribution.
- Colorado subcommittee notes the word “entitled” and wonders whether the word should be “eligible.”
- Discussion of using “and/or” for income or principal.
- WAIT to vote, but reserving approval.

### **Section 102, para. 19: Terms of Trust START HERE ON 9/20/18**

- Stan to single-space final report.
- Discussion of desirability of following CUTC definition of “terms of trust” in (A) & (B).
- Colorado subcommittee recommends rewriting (A) and (B) to follow CUTC language.
- Clarification in Section 104 regarding when and how UFIPA applies to a trust.
  - What if a trust in Illinois is changed by a director, and the place of administration is in Colorado?
- Change A(ii) and B(iii); add B(iv) for arbitration.

**The next meeting** will be on September 20, 2018 at 10:30 a.m. in the Capitol Room and will continue review of Article 1 and begin review of Article 2.