

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

Minutes of December 4, 2019

Participants

In person:	By phone:
• Susan Boothby	• Walter Kelly
• Darla Daniel	• Georgine Kryda, Chair
• Jonathan Haskell	• Shelby Martin
• Mike Holder	
• Kate Keiser	
• Stan Kent	
• 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.
7 Apportionment at Beginning and End of Income Interest	Klaralee C.
8 Miscellaneous Provisions	Kate K.

The meeting was held at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 10:40 a.m. by the Chair and adjourned at noon.

Minutes of November 6, 2019 were approved.

Part 5, Allocation of Disbursements – Jonathan H.

Jonathan reiterated his general impression of part 5 as providing more flexibility to trustees.

502 - Disbursement from Principal

- The “balance of” instead of 50/50 from ULC comments is most important.

VOTE – UNANIMOUS APPROVAL of 502

503 - Transfer from Income to Principal for Depreciation

- This proposed version changes “fixed” to “tangible” in definition of “depreciation.”
- Discussion regarding vacation home example and depreciable asset. Is the depreciable asset held personally, used personally, or used in a business?
 - What is subject to discretion?
 - What if trustee has leased the asset to the beneficiary at a fair market value? How should the trustee treat the income? Who pays maintenance?
 - Jonathan: definition of “entity” is very broad.
 - Consensus: a gun trust, though, would likely not be considered in a business sense

VOTE – UNANIMOUS APPROVAL of 503

504 - Reimbursement of Income from Principal

- Mirror image of 505, so read and discussed in conjunction with 505.

505 - Transfer Income

- New UFIPA language is broader than current Colorado Law.
 - See C.R.S. § 15-1-429(2)(a) as an example.
- Looking back at 501 and 502, and connection with 504.

VOTE – UNANIMOUS APPROVAL of 504 and 505

506 – Income Taxes

- See most recent version of UFIPA (1/25/19) language (below).

SECTION 506. INCOME TAXES.

(a) A tax required to be paid by a fiduciary which is based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a fiduciary which is based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) Subject to subsection (d) and Sections 504, 505, and 507, a tax required to be paid by a fiduciary on a share of an entity’s taxable income in an accounting period must be paid from:

(1) income and principal proportionately to the allocation between income and principal of receipts from the entity in the period; and

(2) principal to the extent the tax exceeds the receipts from the entity in the period.

(d) After applying subsections (a) through (c), a fiduciary shall adjust income or principal receipts, to the extent the taxes the fiduciary pays are reduced because of a deduction for a payment made to a beneficiary.

- Discussion of ULC Comments: paragraph immediately preceding example 1.

VOTE – UNANIMOUS APPROVAL of 506

507 - Adjustment Between Income and Principal Because of Taxes

- See most recent version of UFIPA (1/25/19) language (below).

SECTION 507. ADJUSTMENT BETWEEN INCOME AND PRINCIPAL BECAUSE OF TAXES.

(a) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

- (1) an election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (b) applies;
- (2) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or
- (3) ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(b) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(c) A fiduciary that charges a beneficiary under subsection (b) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

- Discussion:
 - Subsection (b) is mandatory; whereas, (c) is discretionary.
 - Subsection (c): good to have option of withholding an amount.

VOTE – UNANIMOUS APPROVAL of 507

Part 6, Death of Decedent – Georgine K. and Gene Z.

601 - Determination and Distribution of Net Income

- As explained in the Legislative Note and in the ULC Comments, the 2018 UFIPA offers two optional subsections (d) and (e) for states without a provision for interest to be paid on a pecuniary distribution from a trust.
 - Subsection (d) allows interest to be paid from income, to the extent income is sufficient.
 - Subsection (e) requires interest be paid in the same manner interest would be paid on a pecuniary bequest under a Will.

- C.R.S. § 15-12-904 in Colorado’s Probate Code provides for interest on a general pecuniary devise, and states in its entirety:

“General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.”
- Recognizing that a trustee is not the same as a personal representative, and that the Probate Code applies only to estates, the subcommittee’s discussion raised the following questions:
 - Should the subcommittee recommend subsection (d) or (e), or neither, in 601?
 - Should there be a C.R.S. § 15-12-904 provision using general “fiduciary” language instead of C.R.S. § 15-12-904 for estates and 601 for trusts?
 - Should 601 reference C.R.S. § 15-12-904?
 - Should the subcommittee propose a conforming amendment to SRC?
 - What happens if there is a trust and no estate – and thus no PR appointed?
 - Should we consider language such as, the “later of” the appointment of a PR or a trustee?
 - Trustees normally cannot wait one year to distribute.
 - Might beneficiaries be incentivized to impede distributions when the statutory rate of interest exceeds the market rate of return?
 - Is there a reasonable length of time shorter than one year, that would not be an undue burden for trustees of basic or of testamentary trusts, to complete trust administration without having to compute interest from the decedent’s date of death?
 - Does the subcommittee need to bring any policy decisions to SRC?
- The subcommittee decided to look more closely at 601 and 602, and to consider the questions listed above, over the next two months, and to reconvene in February 2020.

For the February 5, 2020 meeting:

- Continue with part 6 – Georgine K. & Eugene Z.
- Part 7 – Klaralee C.
- Part 8 – Kate K.
- Discussion of possible conforming amendments, issues for SRC, and other final steps.

The next meeting will be on February 5, 2020 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.