

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

Minutes of September 4, 2019

Participants

In person:	By phone:
• Susan Boothby	• Aaron Azari
• Russ Gamble	• Tracy Tirey
• Mimi Goodman	
• Jonathan Haskell	
• Kate Keiser	
• Walter Kelly	
• Stan Kent	
• Georgine Kryda, Chair	
• 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	Kate K.

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 August 7, 2019 were approved with three changes.

Part 3 Follow-up

- Susan to provide a final version of Section 304 (exclusive of brackets) for Oct. 2, 2019.
- Susan to circulate her draft ordering rule for Section 309(a)(2) – based on present Colorado unitrust statute, default to IRS rule, permit opt out, and include “subject to terms of the trust” language – among Darla, Aaron, Michelle, Dan, and other corporate trustees for review and initial comment, and then present to the entire subcommittee on Oct. 2, 2019.

Part 4, Allocation of Receipts During Administration – Russ, Peggy, Walter

Section 408 – Insubstantial Allocations Not Required - Walter

- Basic rule is that a trustee may allocate insubstantial amounts to principal where “insubstantial” is defined as income less than 10% of gross income, or, less than 10% of the value of the underlying assets.
- Discussion:
 - Should this apply to unitrust?
 - Not relevant because only paying out a percentage, so not looking at allocation.
- **408 UNANIMOUS APPROVAL**

Section 409 - Deferred Compensation, Annuities, And Similar Payments - Walter

- Annuities, retirement accounts, and allocation when marital trust involved. Old rule allocated 90% to principal + 10% to income.
- Comments: References to “IRC” vs. “26 U.S.C.” and whether state law convention accepts or mandates a specific format.
 - Consensus: Strike proposed language in (b)(3) citing mix of “Internal Revenue Code” and “U.S.C.,” and use “**26 U.S.C. Section 7520 as amended**” throughout.
- 409(b)(2): What to put for the number between 3 and 5? Leave it at 3-5%, let it float, or set it at 4%? Apply a unitrust provision (Part 3 of UFIPA) here? Do we need to consider different rates for marital and for non-marital trusts?
 - Aaron: This is default rule and would probably be applied rarely.
 - Retirement assets are treated as QTIPs here.
 - Motion to **set at 4 percent**, second, and vote.
- 409(d)(1)&(2): Why does the beneficiary have to request? Provides surviving spouse opportunity to request additional support up to total amount of internal income.
 - QTIP trust is not a grantor trust because the settler is deceased.
 - If surviving spouse declines distribution, then put into a new account.
- **409 UNANIMOUS APPROVAL**

410 – Liquidating Assets - Walter

- Need percentage for 410(c)(1)(A): Motion to **set at 4 percent**, second, and vote.
- **410 UNANIMOUS APPROVAL**

411 – Waiting until October 2, 2019 meeting – Russ to present

412 – Timber - Walter

- See Comments: The 2018 UFIPA is substantially the same as 1997 Act.
- **412 UNANIMOUS APPROVAL**

413 – Marital Deduction Property Not Productive of Income - Walter

- See Comments: The 2018 UFIPA makes little change to the 1997 Act.
- Discussion as to why 413 is necessary.
 - Perhaps because the power to adjust is additional to IRC § 2056.

For the October 2, 2019 meeting:

- Susan to provide a final version of Section 304 (exclusive of brackets);
- Susan to circulate her draft ordering rule for Section 309(a)(2) – based on present Colorado unitrust statute, default to IRS rule, permit opt out, and include “subject to terms of the trust” language – among Darla, Aaron, Michelle, Dan, and other corporate trustees for review and initial comment, and present to distributing to the entire subcommittee;
- Walter to finish Section 413, and to present 414, 415, and 416;
- Russ to present Section 411, and he has requested input from Aaron, Darla, Dan, & others with experience with mineral interests; and
- Start Article 5 – Jonathan H.

The next meeting will be on October 2, 2019 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.