

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

Minutes of February 5, 2020

Participants

In person:	By phone:
• Klaralee Charlton	• Dan Rich
• Darla Daniel	
• Peggy Gardner	
• 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. & Eugene Z.
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 10:45 a.m. by the Chair and adjourned at noon.

Minutes of December 4, 2019 were approved.

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 on December 4, 2019 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?
- On December 4, 2019, 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.

Discussion on February 5, 2020

The relatively high statutory interest rate in the Colorado Probate Code could provide an incentive for beneficiaries to delay distributions.

601(d) is okay because it is similar to C.R.S. § 15-1-406(1)(c).

The purpose here is the distribution of a pecuniary amount from income, and is not about interest. See IRC §§ 661 Deduction For Estates And Trusts Accumulating Income Or Distributing Corpus, 662 Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus, and 663 Special rules applicable to sections 661 and 662 (giving no distribution deduction on Form 1041, which means no Schedule K-1).

Consensus:

- The subcommittee should compare UFIPA Section 601 with C.R.S. § 15-1-406.
- The subcommittee is inclined to **delete 601(e)** because it is not clear how this would work in practice. There is a preference for letting the trust instrument determine if interest is to be paid, the starting date/event for the payment of interest, and other conditions.

601(f) pulls in 602 and C.R.S. §§ 15-1-406 & -407

- Lisa W. volunteered to redline between 601 and 406, and
- Georgine will look at how other states have addressed their versions of 601.

Georgine read **602** aloud.

Consensus: It appears that the ULC wants to keep/delete BOTH 601(d)&(e).

- Klaralee stated she is not fond of 602 because what if one of two beneficiaries takes a distribution immediately? Would the first-to-take still get interest until the second beneficiary took his/her share?
 - Consensus: When something like a distribution of a share or beneficial interest is done, it should be considered complete.
- Katie K. noted that “Immediately before the distribution date” language seems to muddy the waters.
- The subcommittee should compare UFIPA Section 602 with C.R.S. § 15-1-407.
- Walter K. asked whether this discussion did not provide a reason to revisit the Colorado Probate Code so that interest would not be mandatory after a year in those circumstances where one cannot distribute for reasons beyond the PR’s control.
 - Darla confirmed that the issue raised by Walter is not in the 2019 UPC revisions being reviewed by another T&E subcommittee.

Klaralee will present **Part 7** on March 4, 2020.

Part 8 – Kate K.

This part is a moving target because it is reserved for conforming amendments, but the subcommittee took an initial look as the formal review of the Act is coming to a close.

801. Uniformity of Application and Construction: The subcommittee likes the CUTC wording, which is slightly different from that in the UFIPA, because the CUTC language is clear that this Act is not verbatim uniform (ULC) language.

- CUTC Language: “In applying and construing *the language of this article 5 that is consistent with uniform law*, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.”

802. Relation to Electronic Signatures in Global and National Commerce Act: The UFIPA language is consistent with the CUTC and with the present Uniform Powers of Appointment Act.

- UFIPA will supersede UPIA, except the portion authorizing electronic delivery.
- Discussion: Why is this necessary? How does UFIPA supersede/pre-empt the federal act? Likely most applicable to institutions and consumers opting for electronic delivery.

803. Application to Trust or Estate: This was also an issue for CUTC.

- Darla: CUTC addressed this at the conclusion. We need Gene to weigh in on it. For example, do we need a mineral interests opting-in period (Mimi's spreadsheet). **Tabled.**

804. Severability: See the Legislative Note. Colorado has a severability statute, so we want to follow the CUTC language.

- For Gene: If we are going to drop the severability clause in UPIA (which is more specific), do we want to preserve any older UPIA acts OR use "all in Article 4" language like the CUTC has?

805. Repeals; Conforming Amendments: See legislative note.

- The subcommittee does not want to repeal the present UPIA.
- Perhaps we can add an opt-out. See 803 regarding to which trusts it applies.
- Need a decision re: 803 and 805 jointly.
- Need provisions re: older trusts, and prior UPIAs.
- We can use UFIPA as a gap filler for something not addressed by a prior UPIA.
 - Most of UFIPA is consistent with the prior UPIA.
 - If there is a gap or inconsistency, it is likely one would go to court with a petition for instruction.

806. Effective Date: CUTC does not have an effective date. UPIA bifurcates based on which part is applicable. Ask Gene. How is 806 different from 803?

Consensus re: 801, 802, 804, and 806, but wait to vote. Also, the subcommittee needs to check definitions, and to get a look at all sections and what changes have been approved. Georgine to supply this information.

For the March 4, 2020 meeting:

- Finish Part 6 – Georgine K., Eugene Z., & Lisa W.
- Part 7 – Klaralee C.
- Revisit Part 8 – Kate K.; Definitions, and list of changes to the Uniform language that had been approved - Georgine
- Discussion of possible conforming amendments, issues for SRC, and other final steps.

The next meeting will be on March 4, 2020 at 10:30 a.m. to noon at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.