

## Comment

**Entities to which Section 401 applies.** Section 401 covers distributions from all types of entities. For example, the reference to partnerships in Section 401(a)(2)(A) includes all forms of partnerships, including limited partnerships, limited liability partnerships, and variants that have slightly different names and characteristics from state to state. And subsection (b) provides that the same is true of a chain or chains of entities, whether the entities are the same or different and no matter how many tiers the entities represent. This section does not apply, however, to receipts from an interest in property that a fiduciary owns as a tenant-in-common with one or more co-owners, nor would it apply to an interest in a joint venture if, under applicable law, the interest is regarded as that of a tenant-in-common.

Section 401(a)(2)(A) of the 2018 Act clarifies that Section 401 applies to an entity that meets these tests whether or not the entity is respected for federal income tax purposes. In Section 401(a)(2)(B) the 2018 Act retains the exceptions from the application of Section 401 in Section 401(a) of the 1997 Act, except that it clarifies that it does not exclude a business that might appear to be described in Section 403 if it is conducted in an entity that is subject to Section 401 under Section 401(a)(2)(A). This clarification and a similar clarification to Section 403(a)(2) prevent what might otherwise seem to be a circularity between Sections 401 and 403, with each of those sections excluding an entity described in the other section.

**Terms.** The 2018 Act introduces the term “entity distribution” to refer to distributions from entities to which Section 401 applies and the term “capital distribution” to refer to distributions of money, rather than other property, which nevertheless are treated as principal. “Capital distribution” replaces the former term “total or partial liquidation” and includes a “return of capital.”

**Reinvested dividends.** If a fiduciary elects (or continues an election made by a predecessor) to reinvest dividends in shares of stock of a distributing corporation or fund, whether evidenced by new certificates or entries on the books of the distributing entity, the new shares would be principal. Making or continuing such an election would be equivalent to making an adjustment from income to principal under Section 203. If the fiduciary makes or continues the election for a reason other than to comply with the standards of Section 203, such as making an investment without incurring brokerage commissions, the fiduciary has the option of considering a corresponding transfer of cash from principal to income.

**Distribution of property.** The 1962 Act described a number of types of property that would be principal if distributed by a corporation. This became unwieldy in a section (former Section 401) that applied to both corporations and all other entities. By stating that the distribution of any property other than money is generally allocated to principal, subsection (d)(1) embraces all of the items enumerated in Section 6 of the 1962 Act as well as any other form of nonmonetary distribution not specifically mentioned in that act. The new exception in subsections (c)(2) and (d)(1)(B) for “tangible personal property of nominal value” would cover, for example, an item of food sent to owners (and perhaps others such as customers, suppliers, and employees) at a holiday time. It is not necessarily given in proportion to ownership interests, and as a practical

matter it often needs to be allocated to income, in effect, so it can be conveniently distributed and enjoyed.

With respect to large distributions of cash, the 2018 Act is sensitive to the fact that the fiduciary might not have enough information to properly categorize the distribution. Subsection (d)(2) addresses the relatively easy case of a likely non-pro-rata distribution that reduces the fiduciary's proportionate interest in the entity – in effect, a redemption. Subsection (d)(4) retains

the special rule for capital gain dividends from a regulated investment company (RIC) or real estate investment trust (REIT) that was added in 1997, and adds a reference to other distributions that federal income tax law treats comparably.

Subsection (d)(2) retains the rule that a distribution in exchange for part of all of the fiduciary's interest in the entity is principal, but clarifies that this rule applies only to the extent the transaction reduces the fiduciary's proportional interest in the entity relative to other owners. It does not necessarily apply, for example, to a corporate reorganization in which shareholders exchange their stock for other stock. If all owners receive proportionate distributions, the distribution to the fiduciary is tested as described in the next paragraph.

With regard to receipts of money that could be what the act refers to as a “capital distribution” – a return of capital or a distribution in partial liquidation of the entity – subsections (d)(3), (e), and (f) provide some help with what the act acknowledges might be only an “estimate” by the fiduciary. For this purpose, subsection (e) provides that the fiduciary may first rely on how the entity describes the distribution, unless the fiduciary possesses information that casts doubt on that description or the fiduciary is a majority voting owner, in which case the fiduciary may have a duty to inquire or investigate further. Next, the fiduciary may be satisfied with treating the distribution as a capital distribution if information the entity provides, together with other information the fiduciary knows, indicates that the distribution exceeds 20 percent of the fair market value of the fiduciary's interest. This 20 percent test is retained from the 1997 Act, except that (i) it is a permissive safe harbor and not a presumption and (ii) the 1997 Act applied the 20 percent test to “the entity's gross assets” and the 2018 Act applies it to “the fair market value of the fiduciary's interest in the entity,” thus focusing the inquiry on the distribution to that fiduciary rather than all distributions made by the entity. For this purpose, what the available information indicates is or will be a series of distributions is aggregated. Finally, under subsection (e)(3), the fiduciary may make a determination or estimate based on factors in subsection (f), including but not limited to the entity's characterization of the distribution, that may help point the fiduciary to a distribution that is extraordinary enough under the circumstances to be treated as a capital distribution. But it is not possible to describe a “capital distribution” with reference to objective characteristics alone, and fiduciaries will have to exercise some judgment in making the necessary determinations and estimates.

Because estimates may be necessary and are expressly contemplated by the act, subsections (h) and (i) help the fiduciary know how to make distributions on the basis of incomplete information and, as a last resort, cite the power to adjust between income and principal in Section 203.

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	§401(a)(1)
Section Title	Character of Receipts from Entities
Statutory Language	<p>§401(a)(1) – “Capital distribution” means an entity distribution of money which is a:</p> <p style="padding-left: 40px;">(A) return of capital; or</p> <p style="padding-left: 40px;">(B) distribution in total or partial liquidation of the entity.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>A specific definition of Capital Distribution does not exist in Subpart 4</p> <p>§15-1-411(3)(b)+(c) – covers distributions received: (b) in exchange for part or all of a trust’s interest in the entity; (c) Money received in total or partial liquidation of the entity.</p> <p>§15-1-411(4) goes further to define when money is received in partial liquidation:</p> <p>(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or</p> <p>(b) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§§15-1-456(2) – All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, or property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds or property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this subpart 7. Any profit or loss</p>

	<p>resulting upon any change in form of principal shall inure to or fall upon principal.</p> <p>§15-1-458(3) – Where the assets of a corporation are wholly or partially liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal.</p> <p>§15-1-458(6) – All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division or corporate property shall be deemed principal.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

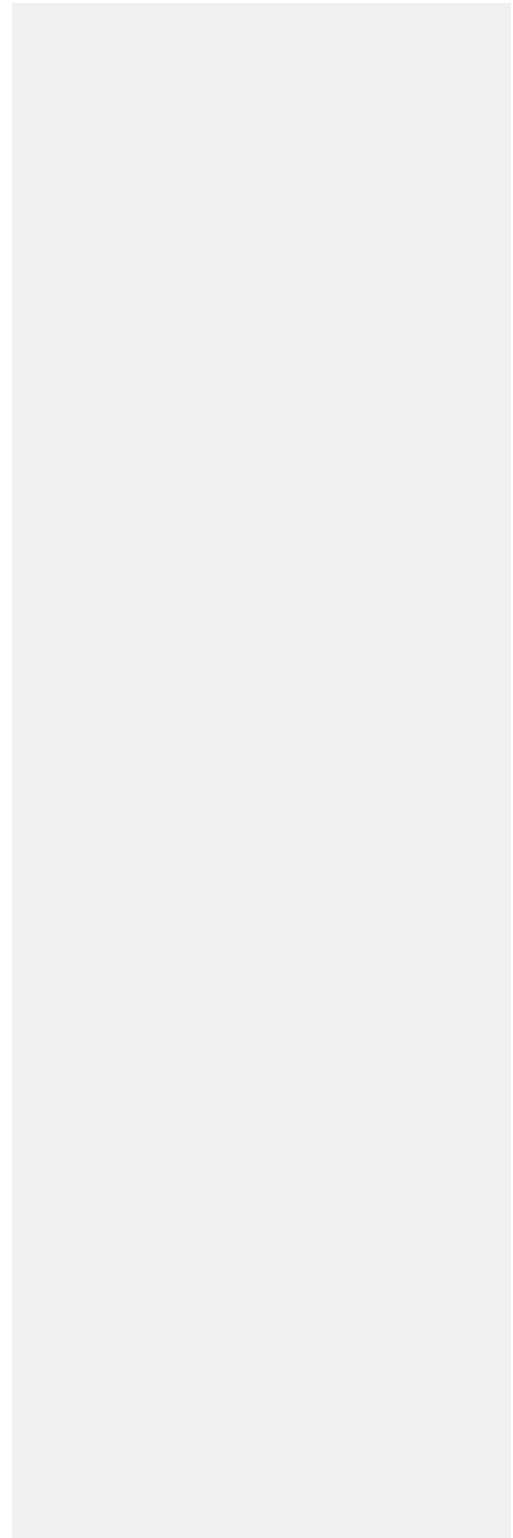
UFIPA Section	§401(a)(2)
Section Title	Character of Receipts from Entities
Statutory Language	<p>§401(a)(2) – “Entity”:</p> <p>(A) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, <del>whether or not</del> the entity is a taxpayer for federal income tax purposes; and</p> <p>(B) Does not include:</p> <p>(i) A trust or estate to which Sec 402 applies;</p> <p>(ii) A business or other activity to which Section 403 applies which is not conducted in an entity described in subparagraph (A);</p> <p>(iii) An asset-backed security; <del>or</del></p> <p>(iv) An investment or arrangement to which Section <del>416</del> applies.</p>
Uniform Law Commission Comment	<p>The definition of “entity” in Section 401(a)(2) was a single undivided paragraph in the previous draft. Here it is broken into subparagraphs and clauses, mainly to permit the addition of the phrase “that is not conducted in an entity described in subparagraph (A)” to subparagraph (B)(ii). Without this addition, there could be concern about circularity, because this definition carves out Section 403 and Section 403(a)(2) appears to carve out Section 401. All that appears to have been intended by carving Section 403 activities out of Section 401 is to prevent a “business or other activity” conducted <i>directly</i> by a trustee to be treated as an entity <i>merely on that ground alone</i>. This rewording should help. A Comment can elaborate.</p> <p>Section 401(a)(2) is divided into two sentence for clarity, and “The term does not include” replaces “other than.”</p>
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-411 – starts with “Entity” definition</p> <p>§15-1-411(1) For purposes of this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate governed by section 15-1-412, a business or activity governed by section 15-1-413, or an asset-backed security governed by section 15-1-425.</p>

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	<i>Uniform Principal and Income Act of 1955:</i> No specific definition of, "Entity."
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	



**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	401(a)(3)
Section Title	Character of Receipts from Entities
Statutory Language	§401(a)(3) –“Entity distribution” means a payment or transfer <del>by an</del> entity <del>made</del> to a person in the person’s capacity as an owner or holder of the interest in the entity.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Uniform Principal and Income Act</i> : Undefined  <i>Uniform Principal and Income Act of 1955</i> : Undefined
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

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**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	401(b) + (c)
Section Title	Character of Receipts from Entities
Statutory Language	<p>(b) In this section, an attribute or action <del>of</del> an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned <del>or held</del> indirectly through another entity.</p> <p>(c) Except as otherwise provided in <del>subsection (d)(2) through (4),</del> a fiduciary shall allocate to income:</p> <p>(1) money received in an entity distribution; and</p> <p>(2) tangible personal property of nominal value received from the entity.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p>§15-1-411 (2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.</p> <p>(3) A trustee shall allocate the following receipts from an entity to principal:</p> <p>(a) Property other than money;</p> <p>(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;</p> <p>(c) Money received in total or partial liquidation of the entity; and</p> <p>(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

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**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	401(d) + (e)
Section Title	Character of Receipts from Entities
Statutory Language	<p>§401(d) – A fiduciary shall allocate to principal:</p> <p>(1) property received in an entity distribution which is not:  (A) money; or  (B) tangible personal property of nominal value;</p> <p>(2) money received in an entity distribution in an exchange for part or all of the fiduciary’s interest in the entity, <del>to the extent the entity distribution,</del> reduces the fiduciary’s interest in the entity relative to the interests of other persons that own or hold interests in the entity;<sup>1</sup></p> <p>(3) money received in an entity distribution that the fiduciary determines <del>or estimates</del> is a capital distribution; and</p> <p>(4) money received in an entity distribution from an entity that is:  (A) a regulated investment company or a real estate investment trust if the money received <del>is</del> a capital gain dividend for federal income tax purposes; or  (B) <del>treated for federal income tax purposes comparably to the treatment described in subparagraph (A).</del></p> <p>§401(e) – A fiduciary may determine <del>or estimate</del> that money received in an entity distribution is a capital distribution:</p> <p>(1) by relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity <del>distribution provided by or on behalf of the entity,</del> unless the fiduciary:  (A) determines on the basis of information known to the fiduciary that the characterization <del>is</del> or may be incorrect; or  (B) owns more than 50 percent of the voting interest in the entity;</p> <p>(2) by determining <del>or estimating</del> on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received <del>by the fiduciary</del> in the entity distribution or a series of related entity distributions is or will be greater than 20 percent of the fair market value of the <del>fiduciary’s interest in the</del> entity; or</p>

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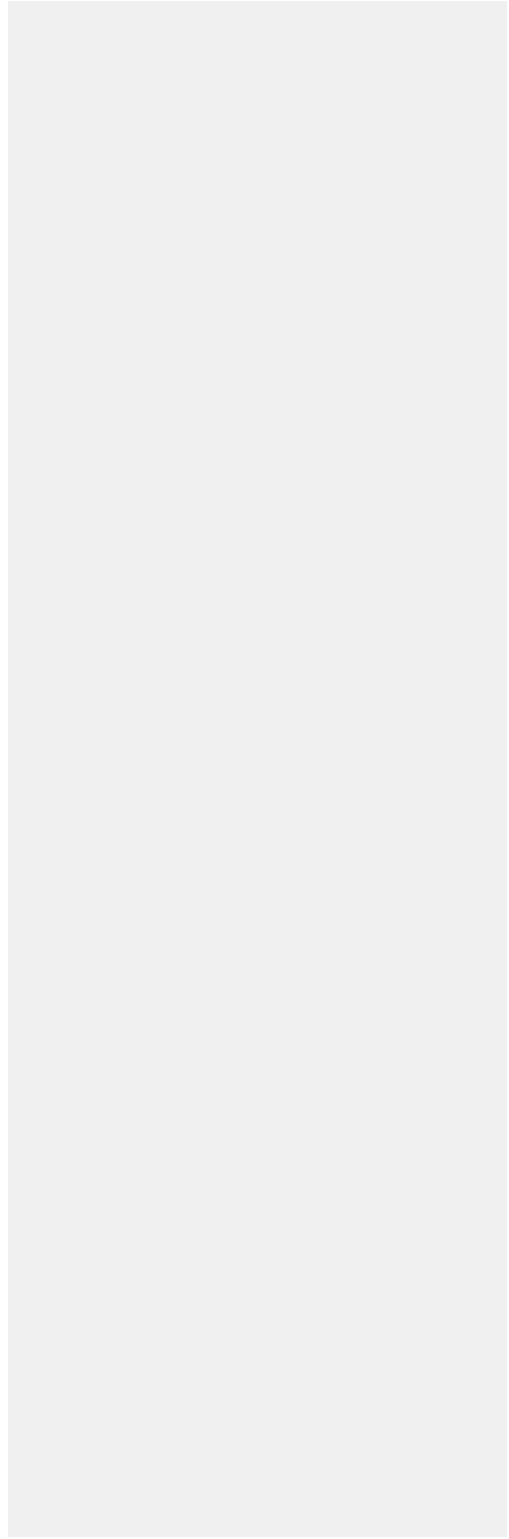
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	(3) if neither paragraph (1) nor (2) applies, by considering the factors in subsection (f) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.
Uniform Law Commission Comment	In reference to a series of related distributions in Section 401(e)(2) and (f)(1)(B), "is" is changed to "is or will be" because the anticipated series may not be completed at the time the test is applied or the factor is considered.  The precondition to Section 401(e)(3), "if neither paragraph (1) nor (2) applies," is added as the committee decided in Philadelphia.  In Section 401(e)(3), "using the factors in subsection (i): replaces "[in light of] factors [identified] in subsection
Current Colorado Law	§15-1-411 –  (4) Money is received in partial liquidation:  (a) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or (b) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.  (5) Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection (4) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.
Colorado Comment	<b>Partial Liquidations.</b> Under subsection (4)(a), any distribution designated by the entity as a partial liquidating distribution is principal regardless of the percentage of total assets that it represents. If a distribution exceeds 20% of the entity's gross assets, the entire distribution is a partial liquidation under subsection (4)(b) whether or not the entity describes it as a partial liquidation. In determining whether a distribution is greater than 20% of the gross assets, the portion of the distribution that does not exceed the amount of income tax that the trustee or a beneficiary must pay on the entity's taxable income is ignored.
Colorado Subcommittee Comment	

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Colorado Subcommittee Recommendation	
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**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	401(f)
Section Title	Character of Receipts from Entities
Statutory Language	<p>§401(f) – <del>In</del> making a determination or estimate under subsection (e)(3), <del>a fiduciary may consider;</del></p> <p>(1) <del>a</del> characterization of <del>an</del> entity distribution <del>provided by or on behalf of the entity;</del></p> <p>(2) the amount of money or property received in:  (A) <del>the</del> entity distribution; or  (B) what the fiduciary determines <del>is</del> or will be a series of related entity distributions;</p> <p>(3) <del>the amount described in paragraph (2) compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:</del>  (A) the entity’s operating income;  (B) the proceeds of the entity’s sale or other disposition of:  (i) all or part of the business or other activity conducted by the entity;  (ii) one or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or  (iii) one or more assets other than business assets, unless the entity’s primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;  (C) if the entity’s primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;  (D) the entity’s regular, periodic entity distributions;  (E) the amount of money the entity has accumulated;  (F) the amount of money the entity has borrowed;  (G) the amount of money the entity has received from the sources described in Sections 407, <del>410, 411, and 412;</del> and  (H) the amount of money the entity has received from a source not <del>otherwise</del> described in this paragraph; and</p> <p>(4) any other factors the fiduciary determines to be relevant.</p>

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Uniform Law Commission Comment	<p>This list of factors in subsection (f) is significantly tightened from the list reviewed by the committee in Philadelphia, which was “(1) The extent money received in an entity distribution [or series of related entity distributions] exceeds the amount the fiduciary determines or estimates is the entity’s operating income; (2) The extent the money represents the proceeds of the entity’s sale or other disposition of: (A) all or part of the business or other activity conducted by the entity; (B) one or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or (C) one or more assets other than business assets, unless the entity’s primary activity is to invest in assets to realize gain on the disposition of all or some of the assets; (3) If the entity’s primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the extent the proceeds of the entity’s sale or other disposition of one or more assets exceeds the gain realized on the sale or other disposition; (4) the amount of the entity distribution compared to the amount of the entity’s regular, periodic distributions, if any, during the current or prior accounting periods; (5) the amount of money the entity has accumulated during the current or prior accounting periods, to the extent that the governing body of the entity has decided the money is no longer needed for the business or investment needs of the entity; (6) the amount of money the entity has borrowed during the current or prior accounting periods, whether or not repayment of the loan is secured to any extent by one or more of the entity’s assets; (7) the amount of money the entity has received from the sources described in Sections 407 and 409 through 411 during the current and prior accounting periods; and (8) the amount of money the entity has received from a source not described in this subsection during the current or prior accounting periods.”</p> <p>Although “the entity’s characterization of the entity distribution” may generally be relied on without inquiry or investigation under Section 401(e)(1), under Section 401(e)(1)(A), for example, it may not be relied on if the fiduciary has information that produces doubt about it. Even in that case, however, it seems that the entity’s characterization should be given some weight. Thus, the entity’s characterization is retained as a “factor” in Section 401(f)(1).</p>
Current Colorado Law	Undefined
Colorado Comment	Undefined
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	401(g)(h)+(i)
Section Title	Character of Receipts from Entities
Statutory Language	<p>§401(g) – If, after applying subsections (c) through (f), a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.*</p> <p style="padding-left: 40px;">(h) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may** consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.</p> <p style="padding-left: 40px;">(i) If the fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information*** in determining whether to exercise the power to adjust under Section 203.</p>
Uniform Law Commission Comment	<p>*Subsections (g), (h), and (i) are moved to the end of Section 401. In the draft the committee reviewed in Philadelphia, they were subsections (f), (g), and (h), leaving the list of “factors” to the end in subsection (i). Placing these three subsections at the end creates a chronological order for identifying a “capital distribution” – the fiduciary first considers the characterization by the entity and the 20-percent-of-value safe harbor under subsection (e)(1) and (2), then considers the “factors” under subsections (e)(3) and (f), then, if still in doubt, applies subsection (g), then, if it subsequently receives more information, follows subsections (h) and (i). In addition, placing the references to receipt of additional information (subsections (h) and (i) at the end acknowledges that such additional information might apply to the application of the factors under subsections (e)(3) and (f), not just the entity characterization and the 20-percent test.</p> <p>**In Section 401(h), “shall consider” is changed to “may consider.”</p> <p>***In Section 401(i), “may take that information into account” is changed to “may consider that information.”</p>
Current Colorado Law	Undefined
Colorado Comment	Undefined

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	§402
Section Title	Distribution from trust or estate
Statutory Language	<p>§402 – A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under [Article] 3, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased <u>in a trust that is an investment entity</u>, and shall allocate to principal an amount received as a distribution of principal from <u>the trust</u> or estate. If a fiduciary purchases, <u>or receives from a settlor</u>, an interest in a trust that is an investment entity, Section 401, <u>415</u>, or <u>416</u>, applies to a receipt from the trust.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p>§15-1-412 – Distribution from trust or estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 15-1-411 or section 15-1-425 shall apply to a receipt from the trust.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§15-1-467(4) – A trustee who receives net probate income from an executor shall treat it as income of the trust for which he or she is acting.</p> <p>Additionally, §15-1-455(2) – If neither this subpart 7 nor the direction of the person establishing the principal states an applicable rule, income and principal shall be determined in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as those entitled to principal and in view of the manner in which persons of ordinary prudence, discretion, and judgment would determine such matters</p> <p align="center">▼ <b>Official Comment to §15-1-412</b></p> <p><b>Terms of the distributing trust or estate.</b> Under Section 15-1-403(1) a trustee is to allocate receipts in accordance with the</p>

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	<p>terms of the recipient trust or, if there is no provision, in accordance with this Act. However, in determining whether a distribution from another trust or an estate is income or principal, the trustee should also determine what the terms of the distributing trust or estate say about the distribution – for example, whether they direct that the distribution, even though made from the income of the distributing trust or estate, is to be added to principal of the recipient trust. Such a provision should override the terms of this Act, but if the terms of the recipient trust contain a provision requiring such a distribution to be allocated to income, the trustee may have to obtain a judicial resolution of the conflict between the terms of the two documents.</p> <p><b>Investment Trusts.</b> An investment entity to which the second sentence of the section applies includes a mutual fund, a common trust fund, a business trust or other entity organized as a trust for the purpose of receiving capital contributed by investors, investing that capital, and managing investment assets, including asset-backed security arrangements to which Section 15-1-425 applies.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

Notes: §15-1-453 specifically defines –

(1)(b) Income means the return derived from principal;

(1)(c) Net Probate Income means the income derived from property passing to the executor by will or by the execution of a power of appointment or from any substitute for such property acquired by purchase exchange, or otherwise, including income derived from property which is used to discharge liabilities of the testator or of the executor in his or her representative capacity, and legacies payable in money, less any income taxes paid by the executor which are attributable to such income and less that share of administration expenses properly chargeable to income.

(1)(f) Tenant means the person to whom income is presently or currently payable or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

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**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 403(a)+(b)
Section Title	Business and Other Activities Conducted by Fiduciary
Statutory Language	<p>(a) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:</p> <p style="padding-left: 40px;">(1) accounting for the business or other activity as part of the fiduciary’s general accounting records; or</p> <p style="padding-left: 40px;">(2) conducting the business or other activity through an entity described in Section 401(a)(2)(A).<sup>1</sup></p> <p>(b) A fiduciary may account separately <u>under this section</u> for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.<sup>2</sup></p>
Uniform Law Commission Comment	None relating to 403(a)+(b)

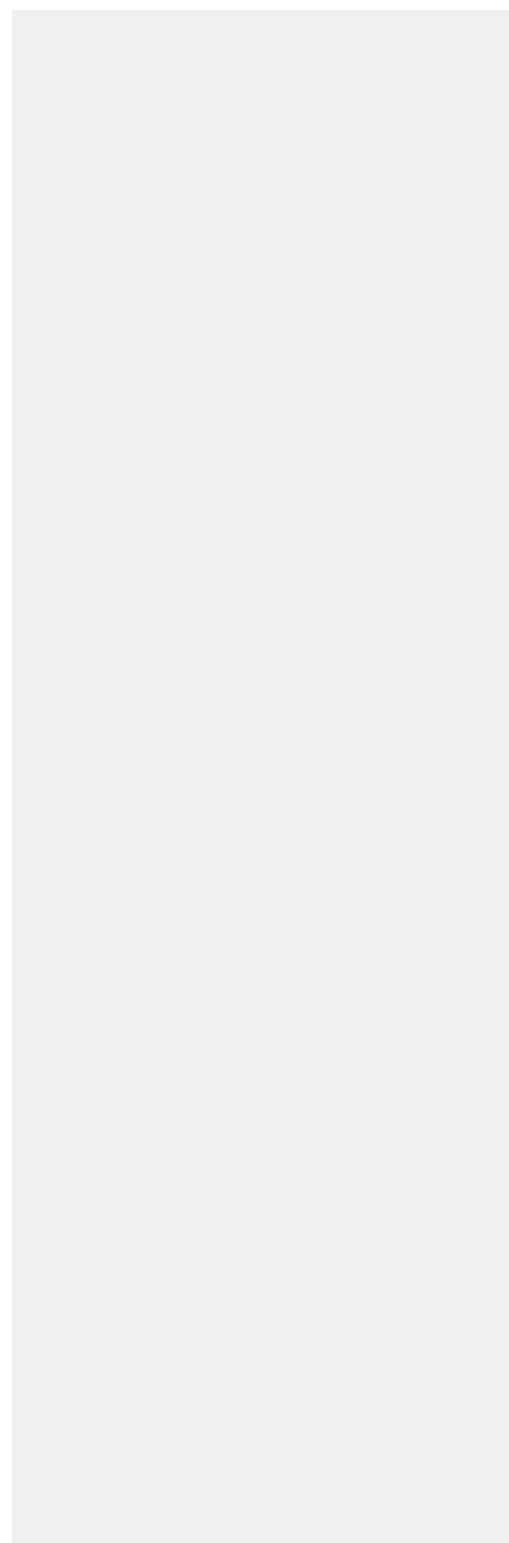
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<sup>1</sup> The phrase “whether or not the entity is a taxpayer for federal income tax purposes” is deleted from Section 403(a)(2) because it is already included in Section 401(a)(2)(A). But the former reference in Section 403(a)(2) to “Section 401” is elaborated as “Section 401(a)(2)(A)” to conform with the technical change made to Section 401(a)(2) in this draft.

<sup>2</sup> The first clause of Section 403(b) is a simplification of the previous draft, which stated: “A fiduciary that accounts separately for a business or other activity under this section shall maintain separate accounting records for the transactions of the business or other activity.” Among other things, this change eliminates the implication of the word “shall” that separate accounting is ever mandatory and the implication if “shall” were changed to “may” that there is a way to “account separately” other than by maintaining “separate accounting records.” Correspondingly, “maintain separate accounting records” in Section 403(d) is changed to “account separately.”

Current Colorado Law	§15-1-413(1) – If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	



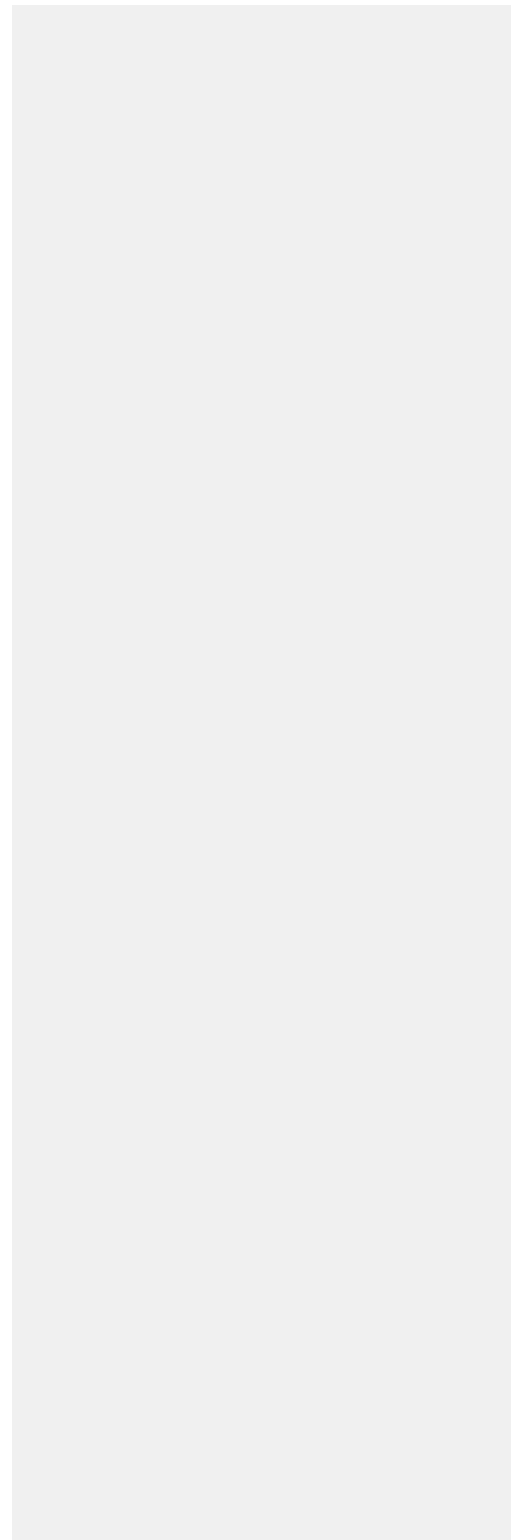
**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 403(c)
Section Title	Business and Other Activities Conducted by Fiduciary
Statutory Language	<p>403(c) A fiduciary that accounts separately <del>under this section</del> for a business or other activity;</p> <p>(1) may determine:</p> <p>(A) the extent to which the net cash receipts of the business <del>or other activity</del> must be retained for:</p> <p>(i) working capital;</p> <p>(ii) the acquisition or replacement of fixed assets; and</p> <p>(iii) other reasonably foreseeable needs of the business or other activity; and</p> <p>(B) the extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;*</p> <p>(2) may make a determination under paragraph (1) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and</p> <p>(3) shall account for the net amount received from the sale of <del>an</del> asset of the business or other activity, <del>other than a</del> sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.</p>
Uniform Law Commission Comment	* In Section 403(c)(1)(B) and (3), "trust's general accounting records" is changed to "fiduciary's general accounting records for the trust."
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-413(2): A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee</p>

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	<p>shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§ 15-1-460 –</p> <p>(1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business that the original owner of the property comprising the principal had carried on, the net profits of such business attributable to such principal shall be deemed income.</p> <p>(2) If such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting, from the gross returns during and the inventory value of the property at the end of such period, the expenses during the inventory value of the property at the beginning of such period.</p> <p>(3) If such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such a way as to decrease the principal.</p> <p>(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon the principal.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	



**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 403(d)
Section Title	Business and Other Activities Conducted by Fiduciary
Statutory Language	<p>403 (d) Activities for which a fiduciary may account separately <u>under this section</u> include:</p> <ul style="list-style-type: none"> <li>(1) retail, manufacturing, service, and other traditional business activities;</li> <li>(2) farming;</li> <li>(3) raising and selling livestock and other animals;</li> <li>(4) <u>managing</u>, rental properties;</li> <li>(5) extraction of minerals, water, and other natural resources;</li> <li>(6) <u>growing and cutting timber</u>;</li> <li>(7) <u>an activity</u>, to which Section <u>414, 415, or 416</u>, applies; and</li> <li>(8) <u>any</u> other business, conducted by the fiduciary.*</li> </ul>
Uniform Law Commission Comment	* “Other businesses conducted by the fiduciary” replaces “other operating businesses” in Section 403(d)(8).
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§15-1-413 (3) Activities for which a trustee may maintain separate accounting records include:</p> <ul style="list-style-type: none"> <li>(a) Retail, manufacturing, service, and other traditional business activities;</li> <li>(b) Farming;</li> <li>(c) Raising and selling livestock and other animals;</li> <li>(d) Management of rental properties;</li> <li>(e) Extraction of minerals and other natural resources;</li> <li>(f) Timber operations; and</li> <li>(g) Activities governed by section 15-1-424.</li> </ul> <p>§15-1-424 – Derivatives and Options</p> <p>Note: 1955 Act addresses specific allocations between P and I instead of maintaining separate accounting records.</p>

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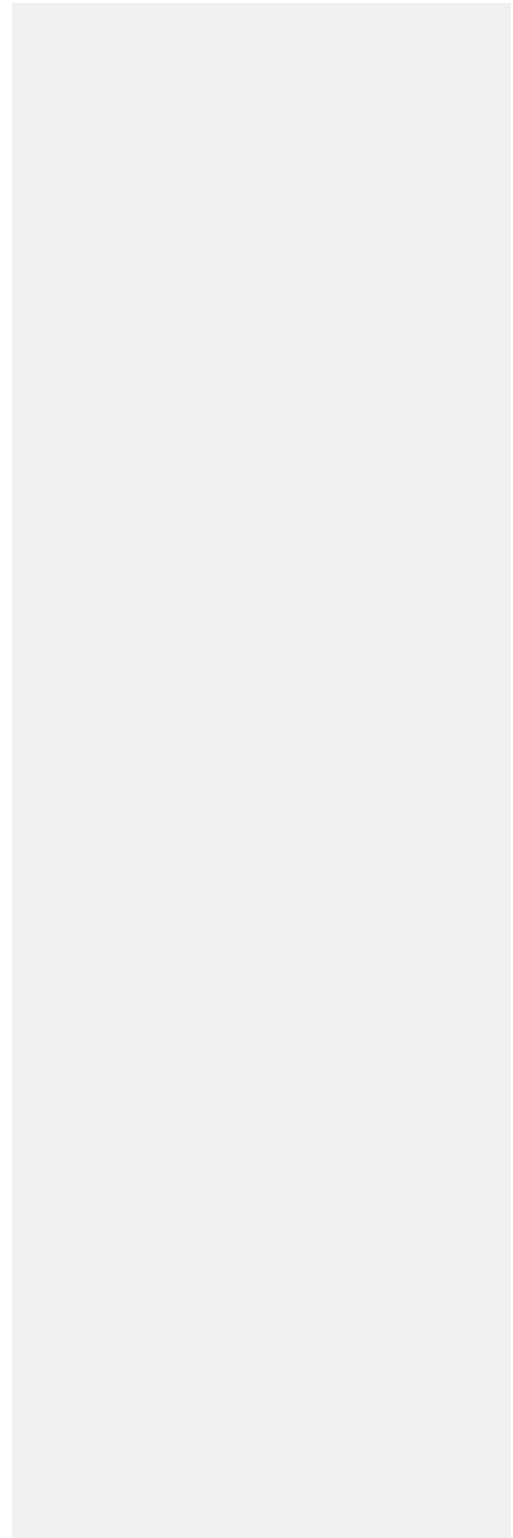
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Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	



<b>UFIPA SECTION</b>	Section 404
<b>SECTION TITLE</b>	<b>PART 2 RECEIPTS NOT NORMALLY APPORTIONED</b>
<b>STATUTORY LANGUAGE</b>	<p><b>SECTION 404. PRINCIPAL RECEIPTS.</b> A fiduciary shall allocate to principal:</p> <p>(1) to the extent not allocated to income under this [act], an asset received from:</p> <ul style="list-style-type: none"> <li>(A) an individual during the individual’s lifetime;</li> <li>(B) an estate;</li> <li>(C) a trust on termination of an income interest; or</li> <li>(D) a payor under a contract naming the fiduciary as beneficiary;</li> </ul> <p>(2) except as otherwise provided in this [article], money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;</p> <p>(3) an amount recovered from a third party to reimburse the fiduciary because of a disbursement described in Section 502(a) or for another reason to the extent not based on loss of income;</p> <p>(4) proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period;</p> <p>(5) net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and</p> <p>(6) other receipts as provided in [Part] 3</p>



<p><b>UNIFORM LAW COMMISSION COMMENT</b></p>	<p><b>Apportionment.</b> Part 2, Receipts Not Normally Apportioned, generally addresses receipts that are either income or income, while Part 3, Receipts Normally Apportioned, generally addresses receipts that are “apportioned” part to income and part to principal. The act generally uses the term “allocate” to refer to both.</p> <p><b>Reimbursements.</b> The 1997 Act limited the application of paragraph (3) to reimbursements related to environmental matters described in Section 502(a)(8)(A), perhaps because those are the disbursements listed in Section 502(a) that are most likely to be reimbursable. But they are not necessarily the only disbursements in Section 502(a) that could be reimbursed, and the 2018 Act cites only Section 502(a).</p> <p><b>Eminent domain awards.</b> Even though the award in an eminent domain proceeding may include an amount for the loss of future rent on a lease, if that amount is not separately stated the entire award is principal. This rule is the same in the 1931, 1962, and 1997 Acts.</p>
<p><b>CURRENT COLORADO LAW</b></p>	<p>15-1-414. Principal receipts. (1) A trustee shall allocate to principal: (a) To the extent not allocated to income under subparts 1 through 6 of this part 4, assets received from a transferor during the transferor’s lifetime, a decedent’s estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary; (b) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subpart 4; (c) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 15-1-427 (1)(g) or for other reasons to the extent not based on the loss of income; (d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income; (e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and (f) Other receipts as provided in sections 15-1-418 to 15-1-425. Source: L. 2000: Entire part R&amp;RE, p. 1139, § 1, effective July 1, 2001. L. 2009: (1)(a) amended, (HB 09-1241), ch. 169, p. 744, § 7, effective April 22. OFFICIAL COMMENT Eminent domain awards. Even though the award in an eminent domain proceeding may include an amount for the loss of future rent on a lease, if that amount is not separately stated the entire award is principal. The rule is the same in the 1931 and 1962 Uniform Acts</p>
<p><b>1955 ACT</b></p>	<p>15-1-456 Income and principal - disposition. (1) All receipts of money or other property paid or delivered as rent of realty or hire of</p>

personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this subpart 7. (2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this subpart 7. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal. (3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him or her if already in his or her possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; except that the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law. Source: L. 2009: Entire section added, (HB 09-1241), ch. 169, p. 751, § 14, effective April 22.

15-1-457. Apportionment of income. (1) Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, the tenant or his or her personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his or her right is of the total period during which such income would normally accrue. (2) The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. (3) The provisions of this section shall apply regardless of whether an ultimate remainderman is specifically named. Likewise, when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he or she shall only receive that

	portion of such income which amounts to the same percentage thereof as the time during which he or she has been so entitled is of the total period during which such income would normally accrue. The balance shall be a part of the principal.
<b>RECOMMENDATION</b>	

<b>UFIPA SECTION</b>	Section 405
<b>SECTION TITLE</b>	<b>PART 2 RECEIPTS NOT NORMALLY APPORTIONED</b>
<b>STATUTORY LANGUAGE</b>	<p><b>SECTION 405. RENTAL PROPERTY.</b> To the extent a fiduciary does not account for the management of rental property as a business under Section 403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:</p> <p>(1) must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this [act]; and</p> <p>(2) is not allocated to income or available for distribution to a beneficiary until the fiduciary’s contractual obligations have been satisfied with respect to that amount.</p>
<b>UNIFORM LAW COMMISSION COMMENT</b>	<p><b>Receipts that are capital in nature.</b> A portion of the payment under a lease may be a reimbursement of principal expenditures for improvements to the leased property that is characterized as rent for purposes of invoking contractual or statutory remedies for nonpayment. If the trustee is accounting for rental income under Section 405, a transfer from income to reimburse principal may be appropriate under Section 505 to the extent that some of the “rent” is really a reimbursement for improvements. This set of facts could also be a relevant factor for a trustee to consider under Section 203 in deciding whether and to what extent to make an adjustment between principal and income under Section 203.</p> <p><b>Available for distribution.</b> The term “available for distribution to a beneficiary” in paragraph (2), which the 2018 Act carries over from the 1997 Act, does not mean “allocated to income.” That would be inconsistent with the requirement earlier in the sentence, also carried over from the 1997 Act, that the receipt “must be added to principal.” To make that clear, the words “allocated to income or” are added in the 2018 Act before “available for distribution.” The concept is that deposits are held in the trust</p>

	<p>corpus, but will be allocated to income if and when the tenant has the right to ask, and does ask, for those funds to be applied to future rent. In any event, the applicable precondition – whether for application of the deposit to rent payments, return of the deposit to the tenant, or allocation to income upon the tenant’s forfeiture – <i>is</i> the satisfaction of the fiduciary’s contractual obligations with respect to that deposit, namely to hold it until an objectively determined event or time.</p>
<b>CURRENT COLORADO LAW</b>	<p>15-1-415. Rental property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee’s contractual obligations have been satisfied with respect to that amount.</p>
<b>1955 ACT</b>	<p>15-1-456 Income and principal - disposition. (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this subpart 7.</p>
<b>RECOMMENDATION</b>	

<b>UFIPA SECTION</b>	Section 406
<b>SECTION TITLE</b>	<b>PART 2 RECEIPTS NOT NORMALLY APPORTIONED</b>
<b>STATUTORY LANGUAGE</b>	<p><b>SECTION 406. RECEIPT ON OBLIGATION TO BE PAID IN MONEY.</b></p> <p>(a) This section does not apply to an obligation to which Section 409, 410, 411, 412, 414, 415, or 416 applies.</p> <p>(b) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.</p> <p>(c) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.</p>
<b>UNIFORM LAW COMMISSION COMMENT</b>	Section 406 in the 2018 Act is largely similar to Section 406 in the 1997 Act, except that Section 406(c) is reworded to follow New York’s statute (EPTL §11-A-4.6).
<b>CURRENT COLORADO LAW</b>	15-1-416. Obligation to pay money. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium. (2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income. (3)

	<p>This section shall not apply to an obligation to which the provisions of section 15-1-419, 15-1-420, 15-1-421, 15-1-422, 15-1-424, or 15-1-425 applies.</p>
<p><b>1955 ACT</b></p>	<p>15-1-456 Income and principal - disposition. (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this subpart 7. (2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this subpart 7. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal. (3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him or her if already in his or her possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; except that the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law. Source: L. 2009: Entire section added, (HB 09-1241), ch. 169, p. 751, § 14, effective April 22.</p>
<p><b>RECOMMENDATION</b></p>	

<b>UFIPA SECTION</b>	Section 407
<b>SECTION TITLE</b>	<b>PART 2 RECEIPTS NOT NORMALLY APPORTIONED</b>
<b>STATUTORY LANGUAGE</b>	<p style="text-align: center;"><b>SECTION 407. INSURANCE POLICY OR CONTRACT.</b></p> <p>(a) This section does not apply to a contract to which Section 409 applies.</p> <p>(b) Except as otherwise provided in subsection (c), a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.</p> <p>(c) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:</p> <ul style="list-style-type: none"> <li>(1) occupancy or other use by a current income beneficiary;</li> <li>(2) income; or</li> <li>(3) subject to Section 403, profits from a business.</li> </ul>
<b>UNIFORM LAW COMMISSION COMMENT</b>	
<b>CURRENT COLORADO LAW</b>	15-1-417. Insurance policies and similar contracts. (1) Except as otherwise provided in subsection (2) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal. (2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or,



	<p>subject to section 15-1-413, loss of profits from a business. (3) This section shall not apply to a contract governed by the provisions of section 15-1-419.</p>
<p><b>1955 ACT</b></p>	<p>15-1-456 Income and principal - disposition. ....</p> <p>(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this subpart 7. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.</p>
<p><b>RECOMMENDATION</b></p>	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 408
Section Title	<b>Insubstantial Allocations Not Required.</b>
Statutory Language	<p>SECTION 408</p> <p>(a) If a fiduciary determines that an allocation between income and principal required by Section 409, 410, 411, 412, or 415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless Section 203(e) applies to the allocation.</p> <p>(b) A fiduciary may presume an allocation is insubstantial under subsection (a) if:</p> <p style="padding-left: 40px;">(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and</p> <p style="padding-left: 40px;">(2) the asset producing the receipt to be allocated has a fair market value less than 10 percent of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.</p> <p>(c) The power to make a determination under subsection (a) may be:</p> <p style="padding-left: 40px;">(1) exercised by a co-fiduciary in the manner described in Section 203(f); or</p> <p style="padding-left: 40px;">(2) released or delegated for a reason described in Section 203(g) and in the manner described in Section 203(h).</p>
Uniform Law Commission Comments	<p>The 2018 Act retains Section 408 from the 1997 Act, excusing a fiduciary from the burden of determining the portion of a receipt that should be allocated to income if the allocation would be “insubstantial.” A fiduciary might determine that an allocation would be “insubstantial,” for example, if the cost of determining the amount of the allocation would be greater than the economic effect of the allocation, or if such an allocation each year would create a variability or unpredictability of the income stream that would offset any apparent precision that the allocation might achieve.</p>

	<p>Section 408(b) creates a safe harbor, within which a fiduciary may presume an allocation to be insubstantial. In the 1997 Act, paragraphs (1) and (2) of subsection (b) were joined by the conjunction “or.” The 2018 Act tightens up the resulting test, making it somewhat less generous by changing the conjunction to “and.” As a practical matter, a fiduciary will have to estimate such things and in a close case is not likely to know with certainty the parameters of subsection (b) until after the end of the accounting period. But if the upper limits escape precision, or are not even viewed as very important because most allocations viewed as insubstantial are well within the limits, a fiduciary that simply does not bother with a small amount here and there is protected.</p> <p>The reference to Section 203(e) in Section 408(a) and the reference to Section 408 in Section 203(e) mean that allocations cannot be overlooked under Section 408 if to do so would create a tax issue or achieve another result listed in Section 203(e) or if the fiduciary is not an independent person defined in Section 102(11).</p> <p>Subsection (c) is drawn from the 1997 Act, except that delegation is added to release as an option under paragraph (2).</p>
Current Colorado Law	<p><u>Uniform Principal and Income Act:</u></p> <p><b>§ 15-1-418. Insubstantial allocations not required</b></p> <p>(1) If a trustee determines that an allocation between principal and income required by the provisions of sections 15-1-419 to 15-1-422 or section 15-1-425 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 15-1-404(3) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 15-1-404(4) and may be released for the reasons and in the manner described in section 15-1-404(5). An allocation is presumed to be insubstantial if:</p> <p>(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or</p> <p>(b) The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.</p>

	<p><b>Cite as C.R.S. § 15-1-418</b>  <b>History.</b> L. 2000: Entire part R&amp;RE, p. 1141, § 1, effective July 1, 2001.  <u>Colorado Uniform Trust Code:</u></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 409
Section Title	<b>Deferred Compensation, Annuities, And Similar Payment.</b>
Statutory Language	<p>SECTION 409</p> <p>(a) In this section:</p> <p style="padding-left: 40px;">(1) “Internal income of a separate fund” means the amount determined under subsection (b).</p> <p style="padding-left: 40px;">(2) “Marital trust” means a trust:</p> <p style="padding-left: 80px;">(A) of which the settlor’s surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and</p> <p style="padding-left: 80px;">(B) that qualifies for a marital deduction with respect to the settlor’s estate under Section 2056 of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2056[, as amended,] because:</p> <p style="padding-left: 120px;">(i) an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2056(b)(7)[, as amended,] has been made; or</p> <p style="padding-left: 120px;">(ii) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2056(b)(5)[, as amended].</p> <p style="padding-left: 40px;">(3) “Payment” means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor’s general assets or from a separate fund created by the payor.</p> <p style="padding-left: 40px;">(4) “Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.</p> <p>(b) For each accounting period, the following rules apply to</p>

a separate fund:

(1) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this [act].

(2) If the fiduciary cannot determine the internal income of the separate fund under paragraph (1), the internal income of the separate fund is deemed to equal [insert a number at least three and not more than five] percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(3) If the fiduciary cannot determine the value of the separate fund under paragraph (2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 7520[, as amended], for the month preceding the beginning of the accounting period for which the computation is made.

(c) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal.

(d) The fiduciary of a marital trust shall:

(1) withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(2) transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of paragraph (1); and

(3) distribute to the current income beneficiary as income:

(A) the amount of the internal income of the separate fund received or withdrawn during the period; and

	<p>(B) the amount transferred from principal to income under paragraph (2).</p> <p>(e) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.</p>
<p>Uniform Law Commission Comments</p>	<p><b>Legislative Note:</b> <i>A United States Code citation (U.S.C.) follows a reference to the federal Internal Revenue Code in subsections (a)(2)(B) and (b)(3). The United States Code citation is included as an aid to the reader. If the state’s convention is to omit the United States Code citation, simply delete the United States Code citation. In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be omitted.</i></p> <p><i>The bracketed words in subsection (b)(2) should be replaced with a percentage that fiduciaries may rely on as a “safe harbor”. The 2008 revision to the Uniform Principal and Income Act used the range of three to five percent because the Internal Revenue Service approved the use of that range in the context of unitrusts. See Treasury Reg. Section 1.643(b)-1.</i></p> <p style="text-align: center;"><b>Comment</b></p> <p>Section 409 of the 1997 Act was substantially amended in 2008 in response to concerns expressed by the Internal Revenue Service about the eligibility of a transfer of an individual retirement account (IRA) or other qualified retirement benefit to a marital trust intended to qualify for an estate tax marital deduction. See Revenue Procedure 2006-26, 2006-22 Internal Revenue Bulletin 939.</p> <p>The 2018 Act further revises and simplifies Section 409. Former general subsections (b) and (c) are omitted, leaving marital trusts as the focus. The 2018 Act treats marital trusts and other trusts the same, except as provided in subsection (e).</p> <p>Current subsection (b)(1) is similar to the first sentence of former subsection (f) relating to the determination of the internal income of what is called in both acts a “separate fund” (such as an IRA), and current subsection (b)(2) and (3) is similar to</p>

	<p>former subsection (g) relating to the determination of data to use if the fiduciary cannot determine the internal income or the value of the separate fund.</p> <p>Former subsection (f) provided in full:</p> <p>(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this [act]. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.</p> <p>Subsection (d) of the 2018 Act reaches the same result to satisfy the concerns of Revenue Procedure 2006-26, but clarifies the ordering and interrelationships of the respective provisions. Subsection (d) prescribes what the fiduciary is required to do if the settlor's surviving spouse requests. It does not limit the fiduciary's discretion to make withdrawals from the separate fund in excess of what the spouse requests or in excess of the internal income of the fund.</p> <p>For a trust that is not a marital trust but is required to distribute current income, subsection (e) requires the fiduciary to transfer principal to income to make up for the amount of the internal income of an IRA or similar fund that is not withdrawn. But it is silent on whether the fiduciary should withdraw greater amounts from the fund, leaving that to the fiduciary's discretion guided by general fiduciary standards such as the standards set forth in Section 201(a).</p>
Current Colorado Law	<p><u>Uniform Principal and Income Act:</u></p> <p><b>§ 15-1-419. Deferred compensation, annuities, and similar payments</b></p> <p>(1) For purposes of this section:</p> <p>(a)</p>



	<p>"Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4) to (7) of this section, "payment" also includes any payment from any separate fund, regardless of the reason for the payment.</p> <p>(b)</p> <p>"Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.</p> <p>(2)</p> <p>To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.</p> <p>(3)</p> <p>If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection (3), a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.</p> <p>(4)</p> <p>Except as otherwise provided in subsection (5) of this section, subsections (6) and (7) of this section apply, and subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to:</p> <p>(a)</p> <p>A trust to which an election to qualify for a marital deduction under 26 U.S.C. sec. 2056 (b)(7), as amended, has been made; or</p> <p>(b)</p> <p>A trust that qualifies for the marital deduction under 26 U.S.C. sec. 2056 (b)(5), as amended.</p> <p>(5)</p> <p>Subsections (4), (6), and (7) of this section do not apply if and to the extent that the series of payments would, without application of said subsection (4), qualify for the marital deduction under 26 U.S.C. sec. 2056 (b)(7)(C), as amended.</p>
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	<p>(6)  A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this part 4. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.</p> <p>(7)  If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. sec. 7520, as amended, for the month preceding the accounting period for which the computation is made.</p> <p>(8)  This section does not apply to a payment governed by the provisions of section 15-1-420.</p> <p><i>Colorado Uniform Trust Code:</i></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 410
Section Title	<b>Liquidating Asset.</b>
Statutory Language	<p>SECTION 410</p> <p>(a) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.</p> <p>(b) This section does not apply to a receipt subject to Section 401, 409, 411, 412, 414, 415, 416, or 503.</p> <p>(c) A fiduciary shall allocate:</p> <p style="padding-left: 40px;">(1) to income:</p> <p style="padding-left: 80px;">(A) a receipt produced by a liquidating asset, to the extent the receipt does not exceed [insert a number at least three and not more than five] percent of the value of the asset; or</p> <p style="padding-left: 80px;">(B) if the fiduciary cannot determine the value of the asset, 10 percent of the receipt; and</p> <p style="padding-left: 40px;">(2) to principal, the balance of the receipt.</p>
Uniform Law Commission Comments	<p><b>Legislative Note:</b> <i>The bracketed words in subsection (b)(1)(A) should be replaced with a percentage that fiduciaries may rely on as a “safe harbor.” The 2008 revision to the Uniform Principal and Income Act used the range of three to five percent because the Internal Revenue Service approved the use of that range in the context of unitrusts. See Treasury Reg. Section 1.643(b)-1.</i></p> <p style="text-align: center;"><b>Comment</b></p> <p><b>Prior Acts.</b> As stated in a Comment to the 1997 Act, Section 11 of the 1962 Act allocates receipts from “property subject to depletion” to income in an amount “not in excess of 5%” of the</p>

	<p>asset's inventory value. The 1931 Act has a similar 5% rule that applies when the trustee is under a duty to change the form of the investment. The 5% rule imposes on a trust the obligation to pay a fixed annuity to the current income beneficiary until the asset is exhausted. Under both the 1931 and 1962 Acts the balance of each year's receipts is added to principal. A fixed payment can produce unfair results. The remainder beneficiary receives all of the receipts from unexpected growth in the asset, e.g., if royalties on a patent or copyright increase significantly. Conversely, if the receipts diminish more rapidly than expected, most of the amount received by the trust will be allocated to income and little to principal. Moreover, if the annual payments remain the same for the life of the asset, the amount allocated to principal will usually be less than the original inventory value. For these reasons, Section 810 of the 1997 Act abandoned the annuity approach under the 5% rule, but required that 10% of the receipts from a "liquidating asset" be allocated to income and the balance to principal.</p>
<p>Current Colorado Law</p>	<p><i>Uniform Principal and Income Act:</i>  <b>§ 15-1-420. Liquidating asset</b></p> <p>(1) For purposes of this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 15-1-419, resources subject to section 15-1-421, timber subject to section 15-1-422, an activity subject to section 15-1-424, an asset subject to section 15-1-425, or any asset for which the trustee establishes a reserve for depreciation under section 15-1-428.</p> <p>(2) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.</p> <p><b>Cite as C.R.S. § 15-1-420</b>  <b>History.</b> L. 2000: Entire part R&amp;RE, p. 1142, § 1, effective July 1, 2001.</p>

	<u>Colorado Uniform Trust Code:</u>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 411
Section Title	Minerals, Water, and other Natural Resources
Statutory Language	<p>(a) To the extent a fiduciary does not account for a receipt from an interest in minerals, water, or other natural resources as a business under Section 403, the fiduciary shall allocated the receipt:</p> <p>(1) to income, to the extent received:</p> <p style="padding-left: 40px;">(A) as delay rental or annual rent on a lease;</p> <p style="padding-left: 40px;">(B) as a factor for interest or the equivalent of interest under an agreement creating a production payment; or</p> <p style="padding-left: 40px;">(C) on account of an interest in renewable water;</p> <p>(2) to principal, if received from a production payment, to the extent paragraph (1)(B) does not apply; or</p> <p>(3) between income and principal equitably, to the extent received:</p> <p style="padding-left: 40px;">(A) on account of an interest in non-renewable water;</p> <p style="padding-left: 40px;">(B) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or</p> <p style="padding-left: 40px;">(C) from a working interest or any other interest not provided for in paragraph (1) or (2) or subparagraph (A) or (B).</p> <p>(b) This section applies to an interest owned or held by a fiduciary whether or not a settlor was extracting minerals, water, or other natural resources before the fiduciary owned or held the interest.</p> <p>(c) An allocation of a receipt under subsection (a)(3) is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code of 1986[,as amended,] 26 U.S.C.[,as amended,] as a deduction for depletion of the interest.</p> <p>(d) If a fiduciary owns or holds an interest in minerals, water, or other natural resources before [the effective date of this[act]], the fiduciary may allocate receipts from the interest as provided in this section or in the manner used by the fiduciary before [the effective date of this [act]].</p>

	<p>If the fiduciary acquires an interest in minerals, water, or other natural resources on or after [the effective date of this [act]], the fiduciary shall allocate receipts from the interest as provided in this section.</p>
<p>Uniform Law Commission Comment</p>	<p>The 2018 Act adapts Section 411 from the Texas statute (Texas Trust Code Sec. 116.174). It is similar to Section 411 of the 1997 Act, except that it does not provide for a default 10-percent allocation to income, but provides that the allocation should be made “equitably,” and then provides, in subsection (c), that an allocation to principal of the amount allowed by the Internal Revenue Code as a depletion deduction is presumed to be equitable. For oil and gas percentage depletion, that percentage has most recently been set at 15 percent. Cost depletion for federal income tax purposes is also available as a safe harbor. Subsection (d) will protect a fiduciary that is currently relying on the 10-percent rule.</p> <p>In contrast to the 1997 Act, the 2018 Act changes the reference to “on the effective date of this act” at the beginning of the first sentence of Section 411(d) to “before the effective date of this act” to conform to that reference in the last part of that sentence. Similarly, the 2018 Act changes the reference to “after the effective date of this act” in the second sentence of Section 411 (d) to “on or after the effective date of this act” to make the two sentences complementary.</p>
<p>Current Colorado Law</p>	<p>CRS §15-1-421</p> <p>(1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:</p> <ul style="list-style-type: none"> <li>(a) If received as a nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.</li> <li>(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.</li> <li>(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.</li> <li>(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a),</li> </ul>

(b), or (c) of this subsection (1), ninety percent of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(3) Subparts 1 through 6 of this part 4 apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2001, the trustee may allocate receipts from the interest as provided in subparts 1 through 6 of this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in minerals, water, or other natural resources after July 1, 2001, the trustee shall allocate receipts from the interest as provided in subparts 1 through 6 of this part 4.

**Official Comment –**

Prior Acts. The 1962 Uniform Act allocates to principal as a depletion allowance, 27 ½ percent of the gross receipts, but not more than 50 percent of the net receipts after paying expenses. The Internal Revenue Code no longer provides for a 27 ½ percent depletion allowance, although the major oil-producing States have retained the 27 ½ percent provision in their principal and income acts (Texas amended its Act in 1993, but did not change the depletion provision). Section 9 of the 1931 Uniform Act allocates all of the net proceeds received as consideration for the “permanent severance of natural resources from the lands” to principal.

§15-1-421 allocates 90 percent of the net receipts to principal and 10 percent to income. A depletion provision that is tied to past or present Code provisions is undesirable because it causes a large portion of the oil and gas receipts to be paid out as income. As wells are depleted, the amount received by the income beneficiary falls drastically. Allocating a larger portion of the receipts to principal enables the trustee to acquire other income producing assets that will continue to produce income when the mineral reserves are exhausted.



CRS §15-1-421.5 Disposition of natural resources.

- (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:
  - (a) If received as rent on a lease or extension payments on a lease, the receipts are income;
  - (b) If received from a production payment the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts that the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.
  - (c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in paragraph (a) or (b) of this subsection (1) shall be apportioned on a yearly basis in accordance with this paragraph (c) regardless of whether any natural resource was being taken from the land at the time the trust was established. Fifteen percent of the gross receipts, but not to exceed fifty percent of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts after payment therefrom of all expenses, direct and indirect, is income.
- (2) If a trustee, on April 22, 2009, held an item of depletable property of a type specified in this section, he or she shall allocate receipts from the property in the manner used before April 22, 2009, but as to all depletable property acquired after April 22, 2009, by an existing or new trust, the method of allocation provided herein shall be used.
- (3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 412
Section Title	<b>Timber.</b>
Statutory Language	<p>SECTION 412</p> <p>(a) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under Section 403, the fiduciary shall allocate the net receipts:</p> <p style="padding-left: 40px;">(1) to income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;</p> <p style="padding-left: 40px;">(2) to principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;</p> <p style="padding-left: 40px;">(3) between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or</p> <p style="padding-left: 40px;">(4) to principal, to the extent advance payments, bonuses, and other payments are not allocated under paragraph (1), (2), or (3).</p> <p>(b) In determining net receipts to be allocated under subsection (a), a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.</p> <p>(c) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.</p> <p>(d) If a fiduciary owns or holds an interest in land used for growing and cutting timber before [the effective date of this [act]], the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before [the effective date of this [act]]. If the fiduciary acquires an interest in land used for growing and cutting timber on or after [the effective date of this [act]], the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.</p>

<p>Uniform Law Commission Comments</p>	<p style="text-align: center;"><b>Comment</b></p> <p>Section 412 is substantially the same in the 2018 Act as in the 1997 Act, except for changes in wording to conform to wording used through the act. In addition, in contrast to the 1997 Act, as in Section 411(d), the 2018 Act changes the reference to “on the effective date of this act” at the beginning of the first sentence of Section 412(d) to “before the effective date of this act” to conform to that reference in the last part of that sentence, and changes the reference to “after the effective date of this act” in the second sentence of Section 412(d) to “on or after the effective date of this act” to make the two sentences complementary.</p> <p>Although the previous acts do not have sections addressing every context where things are grown – for example, agriculture, orchards, and cattle and poultry raising – in the way they address timber, a fiduciary may be able to adapt the principles applicable to timber to those other contexts, including the contexts of activities accounted for separately as businesses, as specified in Section 403(d)(2) and (3).</p> <p style="text-align: center;"><b>Comment to 1997 Act</b></p> <p><b>Scope of section.</b> The rules in Section 412 apply to net receipts from the sale of trees and by-products from harvesting and processing trees without regard to the kind of trees that are cut or whether the trees are cut before or after a particular number of years of growth. The rules apply to the sale of trees that are expected to produce lumber for building purposes, trees sold as pulpwood, and Christmas and other ornamental trees. Subsection (a) applies to net receipts from property owned by the trustee and property leased by the trustee. The act is not intended to prevent a tenant in possession of the property from using wood that he cuts on the property for personal, noncommercial purposes, such as a Christmas tree, firewood, mending old fences or building new fences, or making repairs to structures on the property.</p> <p>Under subsection (a), the amount of net receipts allocated to income depends upon whether the amount of timber removed is more or less than the rate of growth. The method of determining the amount of timber removed and the rate of growth is up to the trustee, based on methods customarily used for the kind of timber involved.</p>
<p>Current Colorado Law</p>	<p><i>Uniform Principal and Income Act:</i></p>

**§ 15-1-422. Timber**

(1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (a) and (b) of this subsection (1); or

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a), (b), or (c) of this subsection (1).

(2) In determining net receipts to be allocated pursuant to subsection (1) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) Subparts 1 through 6 of this part 4 apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on July 1, 2001, the trustee may allocate net receipts from the sale of timber and related products as provided in subparts 1 through 6 of this part 4 or in the manner used by the trustee before July 1, 2001. If the trust acquires an interest in timberland after July 1, 2001, the trustee shall allocate net receipts from the sale of timber and related products as provided in subparts 1 through 6 of this part 4.

**Cite as C.R.S. § 15-1-422**

	<p><b>History.</b> L. 2000: Entire part R&amp;RE, p. 1143, § 1, effective July 1, 2001. L. 2009: (3) and (4) amended, (HB09-1241), ch. 169, p. 746, §10, effective April 22.</p> <p><i>Colorado Uniform Trust Code:</i></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 413
Section Title	<b>Marital Deduction Property Not Productive of Income.</b>
Statutory Language	<p>SECTION 413</p> <p>(a) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:</p> <p style="padding-left: 40px;">(1) make property productive of income;</p> <p style="padding-left: 40px;">(2) convert property to property productive of income within a reasonable time; or</p> <p style="padding-left: 40px;">(3) exercise the power to adjust under Section 203.</p> <p>(b) The trustee may decide which action or combination of actions in subsection (a) to take.</p>
Uniform Law Commission Comments	<p style="text-align: center;"><b>Comment</b></p> <p>In Section 413 the 2018 Act makes little substantive change from the 1997 Act. It omits Section 413(b) of the 1997 Act, which had provided:</p> <p style="padding-left: 40px;">In a case not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.</p> <p>Section 404(2) of the 2018 Act provides that proceeds from a sale or exchange of a principal asset remain principal, which renders former Section 413(b) duplicative.</p>
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p><b>§ 15-1-423. Property not productive of income</b></p>

	<p>(1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 15-1-404 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 15-1-404(1). The trustee may decide which action or combination of actions to take.</p> <p>(2) In cases not governed by the provisions of subsection (1) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.</p> <p><b>Cite as C.R.S. § 15-1-423</b>  <b>History.</b> L. 2000: Entire part R&amp;RE, p. 1144, § 1, effective July 1, 2001.</p> <p><i>Colorado Uniform Trust Code:</i></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	



**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 414
Section Title	<b>Derivative or Option.</b>
Statutory Language	<p>SECTION 414</p> <p>(a) In this section, “derivative” means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events.</p> <p>(b) To the extent a fiduciary does not account for a transaction in derivatives as a business under Section 403, the fiduciary shall allocate 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income and the balance to principal.</p> <p>(c) Subsection (d) applies if:</p> <p style="padding-left: 40px;">(1) a fiduciary:</p> <p style="padding-left: 80px;">(A) grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;</p> <p style="padding-left: 80px;">(B) grants an option that permits another person to sell property to the trust; or</p> <p style="padding-left: 80px;">(C) acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and</p> <p style="padding-left: 40px;">(2) the fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.</p> <p>(d) If this subsection applies, the fiduciary shall allocate 10 percent to income and the balance to principal of the following amounts:</p>

	<p>(1) an amount received for granting the option;</p> <p>(2) an amount paid to acquire the option; and</p> <p>(3) gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.</p>
<p>Uniform Law Commission Comments</p>	<p style="text-align: center;"><b>Comment</b></p> <p>Section 414 in the 1997 Act provided that all receipts and disbursements from a derivative and option must be allocated to principal.</p> <p>In the 2018 Act, the definition of “derivative” includes some of the most common current derivatives, including: (1) options, which provide one party the right but not the obligation to buy or sell the underlying asset at a set price, (2) forwards and futures contracts, which obligate one party to buy or sell the underlying asset at a set price in the future, and (3) swaps (sometimes referred to as “notional principal contracts”), which obligate both parties to the arrangement to make payments to the other party based on the change in value of an underlying asset or the occurrence of an event. The definition is broad enough to include less common derivatives like exchange-traded notes (financial instruments traded on an exchange, the values of which are linked to the returns of hypothetical investments in specified market indices or strategies), structured or principal-protected notes (financial instruments typically issued by a financial organization that provide the holder some principal protection along with a return based on the return of an underlying asset like a stock index), and derivatives that could be created in the future. The definition does not make a distinction between derivatives that are privately negotiated between a party and counterparty and those that are traded on an exchange or in the over-the-counter market. Although options technically fall within the definition of derivative, as in the 1997 Act a specific subsection makes clear that any amounts paid to or received by the fiduciary in the granting of an option and any gain or loss upon any realization or expiration event will be allocated to income and principal in the same manner.</p> <p>The 2018 Act does not include a suggested provision that would have asked the fiduciary, in allocating receipts or disbursements under a derivative contract to income or principal,</p>

to consider how they would be allocated if the fiduciary had invested directly in the underlying asset that is the subject of the derivative. For example, if a fiduciary entered into a total return equity swap on shares of ABC stock, pursuant to which the fiduciary would receive payments from the counterparty due to any dividends and appreciation on ABC stock, then the fiduciary would have been asked to allocate to income that portion of the return that is due to dividends and to principal that portion of the return that is due to appreciation of ABC stock. That sort of determination, however, would work only for the simplest of derivative arrangements. Derivatives allow parties to take positions in assets that would not be possible under an established market and to make highly leveraged investments in assets that would not be permitted under current margin regulations. Furthermore, derivatives are sometimes combined in such a way that looking through to the underlying asset is difficult or impossible. For example, a “swaption” is an option that provides the owner the right to enter into a swap. Because of these complications, the 2018 Act provides a default rule that provides that all receipts and disbursements in relation to a derivative transaction should be allocated 10 percent to income and 90 percent to principal. No distinction is made if the fiduciary establishes a long position (generally seeking to profit from an increase in value of the underlying asset) or short position (seeking to profit from a decrease in value of the underlying asset) with the derivative.

This default allocation for derivatives can be adjusted pursuant to the fiduciary’s power to adjust between income and principal under Section 203. In making that determination, the fiduciary can consider whether the default rule would not be fair and reasonable, especially in light of the fact that derivatives can be used to create the equivalent return as another investment, whose allocation under the act might be different from the default rule. For example, in a traditional total return equity swap, one party (Party S, for Short) agrees to make annual payments over the next 5 years in an amount equal to the sum of the total appreciation in value of 100 shares of XYZ stock during the year, and dividends paid on 100 shares of XYZ stock during the year. The counterparty (Party L, for Long) agrees to make five annual payments (at the same time) in an amount equal to the total depreciation in value of 100 shares of XYZ stock during the year, and a fixed rate of interest multiplied by the value of 100 shares of XYZ stock at the beginning of each year. The amounts are netted against each other. From an economic standpoint, Party L is in the same situation it would have been in

	<p>if Party L had borrowed funds from Party S and used those proceeds to buy 100 shares of XYZ shares from Party S, with an agreement to sell the shares back to Party S at the end of the 5 year period (100-percent- leveraged investment in 100 shares of XYZ shares).</p> <p>Furthermore, the fiduciary should consider whether the derivative is being used as a way to hedge or manage risk on another investment, and, as such, any receipts or disbursements on the derivative should be combined with the hedged investment. For example, an investor may have an investment (ABC stock) and use a derivative to hedge against a decrease in the investment’s value (buy a put option on ABC stock). The fiduciary should consider whether the cost or return on the put option is properly combined with the cost or return on ABC stock in applying the default rule or making any adjustments to income or principal as to ABC stock.</p> <p>As another example, the most common swap arrangement is an interest rate swap, pursuant to which parties help manage the impact of changes in interest rates on investments in the portfolio and liabilities associated with loans. In a common interest rate swap (floating-to- fixed rate), one party agrees to make payments based on a fixed interest rate (for example, 5 percent) applied to a notional amount (for example, \$1 million) at regular intervals (for example, quarterly for two years). The counterparty agrees to make interest payments based on a floating or variable rate of interest (for example, 3 percent above the London Interbank Offered Rate [LIBOR]) applied to the same notional amount. An interest rate swap like this can reflect one party’s expectation that the payments of a floating interest rate will exceed a specified fixed interest rate (or vice versa). Importantly, to the extent such party has a loan or other liability tied to a floating interest rate, the party might be seeking to hedge against the risk of an interest rate increase by essentially converting the liability to a fixed rate liability. In deciding whether to use the default rule or exercise the power to adjust, the fiduciary may decide, if appropriate, based on the facts and circumstances, to apply the default rule as to the interest rate swap in isolation or as part of a larger transaction where the swap should be considered in conjunction with a larger transaction, liability, or investment.</p>
Current Colorado Law	<p><u>Uniform Principal and Income Act:</u></p> <p><b>§ 15-1-424. Derivatives and options</b></p>

	<p>(1) For purposes of this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.</p> <p>(2) To the extent that a trustee does not account under section 15-1-413 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.</p> <p>(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.</p> <p><b>Cite as C.R.S. § 15-1-424</b>  <b>History.</b> L. 2000: Entire part R&amp;RE, p. 1144, § 1, effective July 1, 2001.</p> <p><i>Colorado Uniform Trust Code:</i></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 415
Section Title	<b>Asset-Backed Security.</b>
Statutory Language	<p>SECTION 415</p> <p>(a) Except as otherwise provided in subsection (b), a fiduciary shall allocate to income a receipt from or related to an asset-backed security, to the extent the payor identifies the payment as being from interest or other current return, and to principal the balance of the receipt.</p> <p>(b) If a fiduciary receives one or more payments in exchange for part or all of the fiduciary's interest in an asset-backed security, including a liquidation or redemption of the fiduciary's interest in the security, the fiduciary shall allocate to income 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction, and to principal the balance of the receipts and disbursements.</p>
Uniform Law Commission Comments	<p style="text-align: center;"><b>Comment</b></p> <p>The primary changes to Section 415 in the 2018 Act include a more inclusive definition of an asset-backed security that is in line with the definition used by the Securities and Exchange Commission. The allocation retains the distinction between payments of interest and principal, for example on a mortgage. Subsection (b) is simply a blanket rule of a 10-percent allocation for any sales of a portion or all of the interest in the asset-backed security (consistently with Section 414). This rule applies to sales of the asset-backed security on an exchange or a redemption/liquidation of the interest.</p>
Current Colorado Law	<p><u>Uniform Principal and Income Act:</u></p> <p><b>§ 15-1-425. Asset-backed securities</b></p> <p>(1) For purposes of this section, "asset-backed security" means</p>

	<p>an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset governed by the provisions of section 15-1-411 or 15-1-419.</p> <p>(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.</p> <p>(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.</p> <p><b>Cite as C.R.S. § 15-1-425</b>  <b>History.</b> L. 2000: Entire part R&amp;RE, p. 1144, § 1, effective July 1, 2001.</p> <p><i>Colorado Uniform Trust Code:</i></p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

**Colorado T&E Section Statutory Revisions Committee Subcommittee on the  
Uniform Fiduciary Income and Principal Act**

UFIPA Section	Section 416
Section Title	<b>Other Financial Instrument or Arrangement.</b>
Statutory Language	SECTION 416  A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this [act]. The allocation must be consistent with Sections 414 and 415.
Uniform Law Commission Comments	<b>Comment</b>  The 2018 Act adds Section 416 to provide guidance for financial instruments and arrangements designed in the future, which could not be anticipated in advance. References to Section 416, as appropriate, are added throughout the 2018 Act where there are references to Sections 414 and 415.
Current Colorado Law	<u>Uniform Principal and Income Act:</u>  No corresponding section in existing UPIA  <u>Colorado Uniform Trust Code:</u>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	