

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

UFIPA Section	Section 101
Section Title	Short Title
Statutory Language	This [act] may be cited as the Uniform Fiduciary Income and Principal Act.
Uniform Law Commission Comment	<p><b>Name.</b> The change in the name of this Uniform Act has three purposes and effects.</p> <p>First, this name will distinguish the Act from its 1931, 1962, and 1997 predecessors and support an acronym that will not be confused with the Uniform Prudent Investor Act that was closely associated with its 1997 predecessor.</p> <p>Second, by using the word “Fiduciary,” the name emphasizes that the distinctions between income and principal are most likely to be relevant in the context of trusts and decedents’ estates, especially trusts that continue for a long time, perpetually in the case of some modern trusts, and therefore present a greater possibility of competing interests between those entitled to income currently and those who may be entitled to income and/or principal – that is, entitled to “what’s left” – after the current interests terminate by death or otherwise. The Act is intended to apply to arrangements other than just trusts and decedents’ estates, such as legal life estates, where those arrangements share the long-term character and need for balancing of successive interests that is most commonly associated with trusts. But the primary applications of the Act will generally be in contexts marked by the role of a fiduciary.</p> <p>Third, placing income first in the name emphasizes this fact that principal may be “what’s left” after income is paid out. After income is paid out it is gone and normally cannot be retrieved (although prior over-distributions can sometimes be taken into account in determining the amount of future distributions). This in turn highlights the bias toward principal that for practical reasons has appeared in previous version of the Act and is made even more explicit in this version.</p>

Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-401. Short title.</p> <p>Sub Parts 1 – 6 of this part 4 shall be known and may be cited as the “Uniform Principal and Income Act”.</p>
Colorado Subcommittee Comment	<p>The ULC promulgated the <i>Principal and Income Act</i> in 1931 [<i>1931 UPIA.</i>] Colorado enacted the <i>1931 UPIA</i> in 1955 [<i>1955 Act.</i>]</p> <p>The ULC promulgated a revised <i>Uniform and Principal Income Act</i> in 1962. Colorado did not adopt the <i>1962 UPIA.</i></p> <p>The ULC revised and reorganized (into six parts) the 1931 and 1962 <i>Acts</i> in 1997 [<i>1997 UPIA.</i>] Colorado enacted the <i>1997 UPIA</i> in 2000 [<i>2000 Act.</i>] At the same time, Colorado repealed the <i>1955 Act (The 1931 UPIA.)</i></p> <p>In 2009, Colorado reenacted the <i>1955 Act</i> as Part 7 of the <i>2000 Act.</i></p>
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (1)
Section Title	Definition – Accounting period
Statutory Language	“Accounting period” means a calendar year unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months which begins when an income interest begins or ends when an income interest ends.
Uniform Law Commission Comment	“ <b>Accounting period.</b> ” The change will clarify that a 52-53-week fiscal year, contemplated, for example, by section 441(f) of the Internal Revenue Code, or any other reasonable fiscal year, is not precluded.
Current Colorado Law	<i>Uniform Principal and Income Act:</i>  § 15-1-402(1):  "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve month period that begins when an income interest begins or ends when an income interest ends.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (2)
Section Title	Definition – Asset-backed security
Statutory Language	“Asset-backed security” means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which Section 401, 409, or 414 applies.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Uniform Principal and Income Act:</i>  § 15-1-425(1):  For purposes of this section, "asset-backed security" means 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.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (3)
Section Title	Definition - Beneficiary
Statutory Language	<p>“Beneficiary” includes:</p> <p style="padding-left: 40px;">(A) for a trust:</p> <p style="padding-left: 80px;">(i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;</p> <p style="padding-left: 80px;">(ii) a remainder beneficiary; and</p> <p style="padding-left: 80px;">(iii) any other successor beneficiary;</p> <p style="padding-left: 40px;">(B) for an estate, an heir [, legatee,] and devisee;</p> <p>and</p> <p style="padding-left: 40px;">(C) for a life estate or term interest, a person that holds a life estate, term interest, or remainder or other interest following a life estate or term interest.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(2):</p> <p>"Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.</p> <p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(5):</p> <p>"Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust,</p>

	<p>includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", includes a beneficiary of an insurance or annuity policy, of an account with payment on death (POD) designation, of a security registered in beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(4):</p> <p>"Beneficiary" means a person that:</p> <ul style="list-style-type: none"><li>(a) Has a present or future, vested or contingent, beneficial interest in a trust;</li><li>(b) Holds a power of appointment over trust property; or</li><li>(c) Is an identified charitable organization that will or may receive distributions under the terms of the trust.</li></ul> <p><i>Colorado Uniform Trust Code:</i> [Effective January 1, 2019]</p> <p>§ 15-5-103(4):</p> <ul style="list-style-type: none"><li>(a) "Beneficiary" means a person who:<ul style="list-style-type: none"><li>(I) Has a present or future beneficial interest in a trust, vested or contingent; or</li><li>(II) In a capacity other than that of trustee, holds a power of appointment over trust property.</li></ul></li><li>(b) "Beneficiary" does not include an appointee under a power of appointment unless and until the power is exercised and the trustee has knowledge of the exercise and the identity of the appointee.</li></ul>
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Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (4)
Section Title	Definition - Court
Statutory Language	“Court” means [the court in this state having jurisdiction relating to a trust, estate, or life estate or other term interest described in Section 103(2)].
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(10):</p> <p>"Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(8):</p> <p>"Court" means the court in this state having jurisdiction in matters relating to trusts.</p> <p><i>Revised Uniform Fiduciary Access To Digital Assets Act:</i></p> <p>§ 15-1-1502(7):</p> <p>"Court" means the district court, except in the city and county of Denver where it is the probate court.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (5)
Section Title	Definition – Current Income Beneficiary
Statutory Language	“Current income beneficiary” means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.
Uniform Law Commission Comment	<b>Income beneficiaries.</b> The definitions of current income beneficiary (Section 102(3)) [ <del>sic 4</del> ] [sic 5] and income interest (Section 102(8)) [ <del>sic 9</del> ] [sic 10] cover both mandatory and discretionary beneficiaries and interests. There are no definitions for “discretionary income beneficiary” or “discretionary income interest” because those terms are not used in the Act.
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402:</p> <p>(4) "Income beneficiary" means a person to whom net income of a trust is or may be payable.</p> <p>(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(9):</p> <p>"Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.</p>

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (6)
Section Title	Definition – Distribution
Statutory Language	“Distribution” means a payment or transfer by a fiduciary to a beneficiary in the beneficiary’s capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary’s right to receive the payment or transfer under the terms of the trust. “Distribute”, “distributed”, and “distributee” have corresponding meanings.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Colorado Probate Code:</i>  § 15-10-201(15):  "Distributee" means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (7)
Section Title	Definition – Estate
Statutory Language	“Estate” means a decedent’s estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Colorado Probate Code:</i>  § 15-10-201(17):  "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (8)
Section Title	Definition – Fiduciary
Statutory Language	“Fiduciary” includes a trustee, [ trust director determined under [Section 2(9) of the Uniform Directed Trust Act,]] personal representative, life tenant, holder of a term interest, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more co-fiduciaries, the term includes all co-fiduciaries acting under the terms of the trust and applicable law.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-1-103(2):</p> <p>"Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive, executor, administrator, personal representative, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.</p> <p>§ 15-10-201(19):</p> <p>"Fiduciary" includes a personal representative, guardian, conservator, and trustee.</p> <p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(3):</p> <p>"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal</p>

representative, special administrator, and a person performing substantially the same function.

*Colorado Uniform Trust Decanting Act:*

§ 15-10-501(3)

Application. The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

§ 15-10-601(2) [effective January 1, 2019]

"Fiduciary" means:

- (a) A personal representative, guardian, conservator, or trustee;
- (b) A custodian as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;
- (c) A custodial trustee as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;
- (d) An agent as defined in sections 15-10-201(1), 15-14-602(3), and 15-14-702(1); and
- (e) A public administrator as described in section 15-12-619.

§ 15-16-902(3):

"Authorized fiduciary" means:

- (a) A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;
- (b) A special fiduciary appointed under section 15-16-909 ; or
- (c) A special-needs fiduciary under section 15-16-913.

	<p><i>Revised Uniform Fiduciary Access to Digital Assets Act:</i></p> <p>§ 15-1-1502(14):</p> <p>"Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.</p> <p><i>Uniform Disclaimer of Property Interests Act:</i></p> <p>§ 15-11-1202(4):</p> <p>“Fiduciary” means a personal representative, Trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (9)
Section Title	Definition – Income
Statutory Language	“Income” means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in [Article] 4.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(4):</p> <p>"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subpart 4 of this part 4.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§ 15-1-453(1)(b):</p> <p>(1) As used in this subpart 7, unless the context otherwise requires:</p> <p style="padding-left: 40px;">(b) "Income" means the return derived from principal.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (10)
Section Title	Definition – Income Interest
Statutory Language	“Income interest” means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary’s discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.
Uniform Law Commission Comment	<b>Income beneficiaries.</b> The definitions of current income beneficiary (Section 102(3)) [ <del>sic 4</del> ] [sic 5] and income interest (Section 102(8)) [ <del>sic 9</del> ] [sic 10] cover both mandatory and discretionary beneficiaries and interests. There are no definitions for “discretionary income beneficiary” or “discretionary income interest” because those terms are not used in the Act.
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402:</p> <p>(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.</p> <p>(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.</p> <p>(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.</p> <p>(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this part 4 to or from income during the period.</p>

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (10)
Section Title	Definition – Income Interest
Statutory Language	“Income interest” means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary’s discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.
Uniform Law Commission Comment	<b>Income beneficiaries.</b> The definitions of current income beneficiary (Section 102 <del>(3)</del> ) [ <del>sic 4</del> ] [sic 5] and income interest (Section 102 <del>(8)</del> ) [ <del>sic 9</del> ] [sic 10] cover both mandatory and discretionary beneficiaries and interests. There are no definitions for “discretionary income beneficiary” or “discretionary income interest” because those terms are not used in the Act.
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402:</p> <p>(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.</p> <p>(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.</p> <p>(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.</p> <p>(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this part 4 to or from income during the period.</p>

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (11)
Section Title	Definition – Independent Person
Statutory Language	<p>“Independent person” means a person that is not:</p> <p style="padding-left: 40px;">(A) for a trust:</p> <p style="padding-left: 80px;">(i) [a qualified beneficiary determined under [Uniform Trust Code Section 103(13)]] [a beneficiary that is a distributee or permissible distributee of trust income or principal or would be a distributee or permissible distributee of trust income or principal if either the trust or the interests of the distributees or permissible distributees of trust income or principal were terminated, assuming no power of appointment is exercised];</p> <p style="padding-left: 80px;">(ii) a settlor of the trust; or</p> <p style="padding-left: 80px;">(iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;</p> <p style="padding-left: 40px;">(B) for an estate, a beneficiary;</p> <p style="padding-left: 40px;">(C) a spouse, parent, brother, sister, or issue of an individual described in subparagraph (A) or (B);</p> <p style="padding-left: 40px;">(D) a corporation, partnership, limited liability company, or other entity in which persons described in subparagraphs (A) through (C), in the aggregate, have voting control; or</p> <p style="padding-left: 40px;">(E) an employee of a person described in subparagraph (A), (B), (C), or (D).</p>
Uniform Law Commission Comment	None
Current Colorado Law	None

<p>Colorado Subcommittee Comment</p>	<p>Colorado has enacted the <i>UTC</i> so the first bracketed text in (A)(i) should be used in the Colorado Act.</p> <p>This section appears to track <i>IRC</i> §672 (c) and <i>Treas. Regs.</i> Note: Subparagraph (C) omits some individuals who would not be independent persons such as a child of a sibling.</p> <p>The Committee approves subparagraph (A) and (B) but recommends holding approval of (C), (D), and (E) until the substantive sections of the Act have been reviewed to see what powers an independent person under the Act.</p>
<p>Colorado Subcommittee Recommendation</p>	<p>WAIT to vote.</p> <ul style="list-style-type: none"> <li>• No issues with (A) or (B).</li> <li>• Need to see what an independent person can do under other UFIPA sections.</li> </ul>

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

UFIPA Section	Section 102 Paragraph (12)
Section Title	Definition – Mandatory Income Interest
Statutory Language	“Mandatory income interest” means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Uniform Principal and Income Act:</i>  § 15-1-402(7):  "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (13)
Section Title	Definition – Net Income
Statutory Language	<p>“Net income” means the total allocations during an accounting period to income under the terms of a trust and this [act] minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this [act]. To the extent the trust is a unitrust under [Article] 3, the term means the unitrust amount determined under [Article] 3. The term includes an adjustment from principal to income under Section 203. The term does not include an adjustment from income to principal under Section 203.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402 (8):</p> <p>"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this part 4 to or from income during the period.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§ 15-1-453(1)(c):</p> <p>(1) As used in this subpart 7, unless the context otherwise requires:</p> <p style="padding-left: 40px;">(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.</p>

Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote until after Articles 2 and 3: there appears to be no adjustment from income to principal.

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

UFIPA Section	Section 102 Paragraph (14)
Section Title	Definition – Person
Statutory Language	“Person” means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(38):</p> <p>"Person" means an individual or an organization.</p> <p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(9):</p> <p>"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.</p> <p><i>Uniform Powers of Appointment Act:</i></p> <p>§ 15-2.5-102(9):</p> <p>"Person" means an individual; estate; trust; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(16):</p> <p>"Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.</p>

	<p><i>Revised Uniform Fiduciary Access to Digital Assets Act:</i></p> <p>§ 15-1-1502(17):</p> <p>"Person" means an individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.</p> <p><i>Colorado Uniform Trust Code:</i></p> <p>§ 15-5-103(13):</p> <p>"Person" means an individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (15)
Section Title	Definition – Personal Representative
Statutory Language	“Personal representative” means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person’s status.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201:</p> <p>"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.</p> <p><i>Revised Uniform Fiduciary Access to Digital Assets Act:</i></p> <p>§ 15-1-1502:</p> <p>"Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this part 15.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (16)
Section Title	Definition – Principal
Statutory Language	“Principal” means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.
Uniform Law Commission Comment	None
Current Colorado Law	<i>Uniform Principal and Income Act:</i>  § 15-1-402(10):  "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (17)
Section Title	Definition – Record
Statutory Language	“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
Uniform Law Commission Comment	“Record.” This addition in the current Act is copied from Section 2(22) of the Uniform Trust Decanting Act.
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(44.5):</p> <p>"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p><i>Uniform Powers of Appointment Act:</i></p> <p>§ 15-2.5-102(16):</p> <p>"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(22):</p> <p>"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p><i>Revised Uniform Fiduciary Access to Digital Assets Act:</i></p> <p>§ 15-1-1502(22):</p> <p>"Record" means information that is inscribed on a tangible</p>

	medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (18)
Section Title	Definition – Settlor
Statutory Language	“Settlor” means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person’s contribution, except to the extent another person has the power to revoke or withdraw that portion.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Insurable Interest of Trustee:</i></p> <p>§ 15-16-501(1):</p> <p>In this part 5, “settlor” means a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(25):</p> <p>"Settlor", except as otherwise provided in section 15-16-925, means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.</p> <p><i>Colorado Uniform Trust Code:</i></p> <p>§ 15-5-103(18):</p> <p>"Settlor" means a person, including a testator, who creates, or contributes property to, a one person creates or contributes property to a trust, each person is a settlor of the portion of the</p>

	trust property attributable to that person's contribution except to the extent another person has the power to revoke or has a power of withdrawal over that portion.
Colorado Subcommittee Comment	The Committee observed that UFIPA uses the word “part” rather than “portion” which is used in other Uniform Acts such as UTDA. There was discussion about changing “part” to “portion” to be consistent with other Uniform Acts that Colorado has adopted. On the other hand, there may be a reason “part” is used in UFIPA. The Committee will reserve judgement on this until after review of the entire Act.
Colorado Subcommittee Recommendation	WAIT to vote, but reserving approval.

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

UFIPA Section	Section 102 Paragraph (19)
Section Title	Definition – Special Tax Benefit
Statutory Language	<p>“Special tax benefit” means:</p> <p style="padding-left: 40px;">(A) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2503(b)[, as amended,] because of the qualification of an income interest in the trust as a present interest in property;</p> <p style="padding-left: 40px;">(B) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 1361(d)(3)[, as amended,] at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 1361(a)(1)[, as amended];</p> <p style="padding-left: 40px;">(C) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2056 or 2523[, as amended,] which depends or depended in whole or in part on the right of the settlor’s spouse to receive the net income of the trust;</p> <p style="padding-left: 40px;">(D) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2601[, as amended,] because the trust was irrevocable on September 25, 1985, if there is any possibility that:</p> <p style="padding-left: 80px;">(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2612(b)[, as amended,] could be made from the trust; or</p> <p style="padding-left: 80px;">(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2612(a)[, as amended,] could occur</p>

	<p>with respect to the trust; or</p> <p>(E) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2642(a)[, as amended], of the trust which is less than one, if there is any possibility that:</p> <p>(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2612(b)[, as amended], could be made from the trust; or</p> <p>(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986[, as amended,] 26 U.S.C. Section 2612(a)[, as amended], could occur with respect to the trust.</p>
<p>Uniform Law Commission Comment</p>	
<p>Current Colorado Law</p>	<p><i>Uniform Trust Decanting Act:</i></p> <p>§ 15-16-919(1):</p> <p>(1) As used in this section, unless the context otherwise requires:</p> <p>(a) "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. secs. 671-677, as amended, or 26 U.S.C. sec. 679, as amended.</p> <p>(b) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.</p> <p>(c) "Nongrantor trust" means a trust that is not a grantor trust.</p> <p>(d) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. sec. 401 (a)(9), as amended, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. sec. 401 (a)(9) or the regulations.</p> <p>(2) An exercise of the decanting power is subject to the following limitations:</p> <p>(a) If a first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this</p>

	<p>section, for a marital deduction for purposes of the gift or estate tax under the internal revenue code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the internal revenue code or state law under which the transfer qualified.</p> <p>(b) If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the internal revenue code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the internal revenue code or state law under which the transfer qualified.</p> <p>(c) If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for the exclusion from the gift tax described in 26 U.S.C. sec. 2503 (b), as amended, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503 (b), as amended. If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for the exclusion from the gift tax described in 26 U.S.C. sec. 2503 (b), as amended, by application of 26 U.S.C. sec. 2503 (c), as amended, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503 (c), as amended.</p> <p>(d) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. sec. 1361, as</p>
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	<p>amended, and the first trust is, or but for provisions of this part 9 other than this section would be, a permitted shareholder under any provision of 26 U.S.C. sec. 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. sec. 1361 (c)(2), as amended. If the</p> <p>property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this part 9 other than this section would be, a qualified subchapter S trust within the meaning of 26 U.S.C. sec. 1361 (d), as amended, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.</p> <p>(e) If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. sec. 2642 (c), as amended, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. sec. 2642 (c), as amended.</p> <p>(f) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. sec. 401 (a)(9), as amended, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. sec. 401 (a)(9), as amended or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and section 15-16-922 applies to the separate share.</p> <p>(g) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. sec. 672 (f)(2)(A), as amended, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented</p>
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the first trust from qualifying under 26 U.S.C. sec. 672 (f)(2)(A), as amended.

(h) As used in this paragraph (h), unless the context requires otherwise, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to paragraph (i) of this subsection (2), a second-trust instrument may not include or omit a term that, if included in or

omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(I) The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(II) The transfer of property held by the first trust or the first trust qualified, or but for provisions of this part 9 other than this section, would have qualified for the tax benefit.

(i) Subject to paragraph (d) of this subsection (2):

(I) Except as otherwise provided in paragraph (g) of this subsection (2), the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(II) Except as otherwise provided in paragraph (j) of this subsection (2), the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(j) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(I) The first trust and a second trust are both grantor trusts, in whole or in part,

(A) The settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(B) The first-trust instrument contains a provision granting the settlor or another person a power that would cause

	the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	WAIT to vote.

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

UFIPA Section	Section 102 Paragraph (20)
Section Title	Definition – Successive Interest
Statutory Language	“Successive interest” means the interest of a successor beneficiary.
Uniform Law Commission Comment	
Current Colorado Law	<i>Uniform Principal and Income Act:</i>  § 15-1-408(3):  (3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (21)
Section Title	Definition – Successor Beneficiary
Statutory Language	“Successor beneficiary” means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
Uniform Law Commission Comment	“Successor beneficiary.” This term is used in the current Act rather than “remainder beneficiary,” the term in the 1997 Act, in recognition of the fact that modern trusts often last longer than the life of a single income beneficiary, and therefore the beneficiaries whose future interests are most often in need of balance and protection are beneficiaries who continue as income beneficiaries, not who succeed to the “remainder” interest as if the trust terminates. The term “successor beneficiary” includes “remainder beneficiaries.”
Current Colorado Law	<p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(11):</p> <p>"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§ 15-1-453(1)(e):</p> <p>(1) As used in this subpart 7, unless the context otherwise requires:</p> <p style="padding-left: 40px;">(e) "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.</p>
Colorado Subcommittee Comment	The Committee noticed that UFIPA uses the word “entitled” as in “... entitled to receive income or principal...” rather than the term “eligible.” The issue is whether “eligible” would be a

	better word. I.e.: a beneficiary with a discretionary interest is not necessarily “entitled” to a distribution. The Committee will reserve judgement on this until full review of UFIPA.
Colorado Subcommittee Recommendation	WAIT to vote, but reserving approval.

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

UFIPA Section	Section 102 Paragraph (23)
Section Title	Definition – Trust
Statutory Language	<p>“Trust”:</p> <p style="text-align: center;">(A) includes:</p> <p style="text-align: center;">(i) an express trust, private or charitable, with additions to the trust, wherever and however created; and</p> <p style="text-align: center;">(ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and</p> <p style="text-align: center;">(B) does not include:</p> <p style="text-align: center;">(i) a constructive trust;</p> <p style="text-align: center;">(ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or</p> <p style="text-align: center;">(iii) an arrangement under which a person is a nominee, escrowee, or agent for another.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(56):</p> <p>(a) Except as provided in paragraph (b) of this subsection (56):</p> <p style="text-align: center;">(I) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created and any amendments to such trusts.</p>

	<p>(II) "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.</p> <p>(b)</p> <p>(I) "Trust" excludes constructive trusts unless a court, in determining such a trust, provides that the trust is to be administered as an express trust.</p> <p>(II) "Trust" also excludes resulting trusts; conservatorships; personal representatives; accounts as defined in section 15-15-201(1) ; custodial arrangements pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; security arrangements; business trusts, as defined in subsection (6.5) of this section; and any arrangement under which a person is nominee or escrowee for another.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (24)
Section Title	Definition –Trustee
Statutory Language	“Trustee” means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(57):</p> <p>"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.</p> <p><i>Uniform Principal and Income Act:</i></p> <p>§ 15-1-402(13):</p> <p>"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.</p> <p><i>Uniform Principal and Income Act of 1955:</i></p> <p>§ 15-1-453(1)(g):</p> <p>(1) As used in this subpart 7, unless the context otherwise requires:</p> <p style="padding-left: 40px;">(g) "Trustee" includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.</p> <p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-902(3):</p> <p>"Authorized fiduciary" means:</p>

	<p>(a) A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;</p> <p>(b) A special fiduciary appointed under section 15-16-909 ; or</p> <p>(c) A special-needs fiduciary under section 15-16-913.</p> <p><i>Revised Uniform Fiduciary Access to Digital Assets Act:</i></p> <p>§ 15-1-1502(25):</p> <p>"Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.</p> <p><i>Colorado Uniform Trust Code:</i></p> <p>§ 15-5-103(23):</p> <p>"Trustee" includes an original, an additional, and a successor trustee or a cotrustee.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 102 Paragraph (25)
Section Title	Definition – Will
Statutory Language	“Will” means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual’s property, effective at the individual’s death. The term includes a codicil or other amendment to a testamentary instrument.
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Colorado Probate Code:</i></p> <p>§ 15-10-201(59):</p> <p>"Will" includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. "Will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.</p> <p><i>Revised Uniform Fiduciary Access to Digital assets Act:</i></p> <p>§ 15-1-1502 (27):</p> <p>"Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 103
Section Title	Scope
Statutory Language	<p>Except as otherwise provided in the terms of a trust or this [act], this [act] applies to:</p> <p style="padding-left: 40px;">(1) a trust or estate; and</p> <p style="padding-left: 40px;">(2) a life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons.</p>
Uniform Law Commission Comment	None
Current Colorado Law	<p><i>Uniform Principal and Income Act (1997 UPIA):</i></p> <p>§ 15-1-434:</p> <p>(1) Subparts 1 through 6 of this part 4 shall take effect July 1, 2001.</p> <p>(2) Subparts 1 through 6 of this part 4 shall apply to every trust or decedent's estate existing on and after July 1, 2001, except as otherwise expressly provided in the will or terms of the trust or in subparts 1 through 6 of this part 4. For each trust established under a will or trust agreement existing and irrevocable on July 1, 2001, the trustee may elect to apply the "Uniform Principal and Income Act" of this state in effect on June 30, 2001. The trustee shall make such election by July 1, 2002.</p> <p>(3) Notwithstanding the provisions of subsection (2) of this section, subparts 1 through 6 of this part 4 shall not apply to any trust or decedent's estate existing on July 1, 2001, in which no trustee has the authority to act under section 15-1-404 unless the trustees elect to apply subparts 1 through 6 of this part 4. The trustees may make this election at any time.</p> <p>(4) Once an election is made pursuant to this section, the election shall be irrevocable. The trustee shall give notice of such an election to the beneficiaries of the trust in accordance</p>

with section 15-1-405. If such notice complies with section 15-1-405, the provisions of said section shall apply to such election.

*Uniform Principal and Income Act of 1955 (1931 UPIA):*

§ 15-1-454:

(1) Except as specifically provided by the person establishing the principal, this subpart 7 shall apply:

(a) To life estates, estates for a term, remainders, reversions, and other legal estates created before July 1, 2001, or after July 1, 2010;

(b) Except as provided in paragraph (b) of subsection (2) of this section, to trusts in existence before July 1, 2001, that have elected:

(I) Not to have subparts 1 through 6 of this part 4 apply to such trust, in accordance with section 15-1-434(2); or

(II) To have the prior laws apply in accordance with section 15-1-434(3); and

(c) To trusts in existence before July 1, 2001, that are subject to section 15-1-434(3) and that have not elected to have subparts 1 through 6 of this part 4 apply to the trust, in accordance with section 15-1-434(3).

(2) (a) This subpart 7 shall apply retroactively to a life estate or estate for term in principal, which estate was created during the period beginning on July 1, 2001, and before July 1, 2010, and also to the remainder or reversion that commences in possession upon the termination of such life estate or estate for a term unless a tenant or a remainderman of such principal, or any part of such principal, elects to apply and complies with the provisions of subsection (3) of this section.

(b) This subpart 7 shall apply retroactively to trusts described in paragraphs (b) and (c) of subsection (1) of this section beginning on July 1, 2001, unless the qualified beneficiaries of the trust elect to apply and comply with the provisions of section 15-1-405.

(3) (a) A tenant or a remainderman of principal, or any part of such principal, may make and deliver and, if required, record a

notice of election as provided in this subsection (3) on or before July 1, 2009.

(b) The notice of election shall be a written statement of the election by such tenant or remainderman, against the retroactive application of this subpart 7 to such estates in such principal. The notice of election shall include a reference to this subsection (3); the dates of the instruments creating the present and future legal estates in such principal; the names of the persons creating such estates; a description of the principal, including the location of such principal; a description of such estates and the names or descriptions of the persons who are tenants and remaindermen of such principal; identification of which such persons are tenants and which are remaindermen; and the name and address of the person making the election. The notice of election shall be signed and acknowledged by the person making the election.

(c) (I) In the case of an election made by a tenant, notice shall be delivered to the other tenants and to the remaindermen of the principal. In the case of an election made by a remainderman, notice shall be delivered to the other remaindermen and to the tenants of the principal.

(II) If the estate of the remainderman is unvested, notice may be made by or delivered to the persons then living or in existence who would, if then living or in existence, succeed to the principal upon the termination of the life estate or estate for a term in the principal.

(III) In the case of a child under the age of eighteen years, such notice may be made by or delivered to a conservator, guardian, or parent of such child. In the case of a person who is not competent to manage his or her affairs, such notice may be made by or delivered to the conservator, guardian, or person acting under a general power of attorney with respect to the business or financial affairs of such individual.

(IV) The notice of election shall be considered delivered to the person to whom delivery is required to be made when the notice of election or a copy thereof is delivered in person or when mailed by registered or certified mail, return receipt requested, to such person.

(V) The recording of notice as provided in paragraph (d) of this subsection (3) shall fulfill the requirement of delivery of such notice in the case of any unborn, unascertained, or unknown person and in the case of a child who is under the age of eighteen years or an individual who is not competent to manage his or her affairs and for whom there is no person authorized by subparagraph (III) of this paragraph (c) to receive such notice.

(d) (I) In the case that the principal is realty, a copy of the notice of election with an additional statement made as required by this subparagraph (I) shall be recorded with the recorder of the county where such realty is located. The additional statement shall state to whom, when, and by what means the notice was mailed or otherwise delivered and be signed by the person making the election.

(II) In the case that the principal is not realty, a copy of the notice with such additional statement may be recorded with the recorder of the county where the principal is located or, if the principal is intangible personalty, where the address of the tenant in possession of such principal is located. If such location is not within this state, then such copy and statement shall be recorded with the recorder of the city and county of Denver.

(III) Such copy of the notice and additional statement when recorded as provided in this paragraph (d) are prima facie evidence of the facts therein stated.

(e) No fiduciary for any trust, estate, individual, or other person with an interest, right, or power affected by the retroactive application of such amendments shall be required to make such election, nor shall such fiduciary be held responsible for not making such election.

§ 15-1-455:

(1) This subpart 7 shall govern the ascertainment of income and principal and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established with or, unless otherwise stated in this subpart 7, without the interposition of a trust; except that, in the establishment of the principal, provision may be made touching all matters covered by this subpart 7, and the person establishing

the principal may himself or herself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this subpart 7.

(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. If the person establishing the principal grants the trustee or other person discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee or other person has made an allocation contrary to the provisions of this subpart 7.

*Colorado Uniform Trust Decanting Act:*

§ 15-16-903:

(1) Except as otherwise provided in subsections (2) and (3) of this section, this part 9 applies to an express trust that is:

(a) Irrevocable; or

(b) Revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(2) This part 9 does not apply to a trust held solely for charitable purposes.

(3) Subject to section 15-16-915, a trust instrument may restrict or prohibit exercise of the decanting power.

(4) This part 9 does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this part 9, common law, a court order, or a nonjudicial settlement agreement.

(5) This part 9 does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for

modification of the trust instrument.

(6) (a) Neither this part 9 nor an exercise of the decanting power described in this part 9 affects:

(I) The determination whether a beneficial interest in a first trust or second trust is property or an asset of a spouse for purposes of distribution of property under section 14-10-113, C.R.S.; or

(II) The power of a divorce court to fashion remedies between the parties in an action under title 14, C.R.S.

(b) Nothing in this subsection (6) expands or limits the power of a divorce court in law or equity over a first trust or a second trust or any trustee thereof.

(c) As used in this subsection (6), unless the context requires otherwise, "divorce court" means a court in this state having jurisdiction over matters brought pursuant to title 14, C.R.S.

**ULC COMMENT:**

The Uniform Trust Decanting Act applies to all express trusts that are irrevocable or that are revocable by the settlor only with the consent of the trustee or a person holding an adverse interest. The act does not apply to a trust revocable by the settlor without the consent of the trustee or a person holding an adverse interest, even if the settlor is incapacitated and thus unable to exercise the power to amend or revoke. Thus the act does not apply to a revocable trust as that term is defined in Section 103(14) of the Uniform Trust Code.

Section 5-411(a)(4) of the Uniform Guardianship and Protective Proceedings Act allows a conservator to amend (and revoke) the terms of a protected person's revocable trust. Section 201(a)(1) of the Uniform Power of Attorney Act allows a settlor to grant a power to amend or revoke to an agent. Accordingly, while the settlor is alive, there are uniform rules for modifying a revocable trust. States that have not adopted these uniform rules may have other provisions for modification of a revocable trust when the settlor is incapacitated.

The act does not permit decanting a trust held solely for charitable purposes (a "wholly charitable trust"). Section 15-16-

903(2). A private foundation structured as a trust would be a wholly charitable trust that could not be decanted pursuant to the act.

A wholly charitable trust is subject to different public policy concerns than a private trust. Private trusts have identifiable beneficiaries who may enforce their interests in the trust. Charitable trusts have as beneficiaries the community as a whole or charitable organizations, and enforcement may be left to the state's Attorney General or another official. Further, charitable trusts often have particular charitable purposes, and conditions or restrictions on the use of the trust assets. Settlers of wholly charitable trusts often have particularly strong interests in seeing that these purposes, conditions and restrictions are not changed. Special legal doctrines, such as *cy pres*, are available when it becomes unlawful, impossible, or impracticable to carry out the purposes of a wholly charitable trust.

If an irrevocable trust that has noncharitable beneficiaries will in the future be used to fund a wholly charitable trust, the decanting power may be exercised over the irrevocable trust, subject to Section 15-16-914, but the decanting may action under title 14, C.R.S. not change the terms of the wholly charitable trust.

To the extent a conservation easement or other restricted gift is considered to be an express trust, such an interest would be a wholly charitable trust that could not be decanted pursuant to the act.

While a split interest trust such as a charitable remainder trust or charitable lead trust would not be a wholly charitable trust, in almost all cases the trustee of such a trust would not have discretion to distribute principal to a current beneficiary and therefore there would not be an authorized fiduciary (see Section 15-16-902(3)) who would have authority to exercise the decanting power under Section 15-16-911 or Section 15-16-912.

If an authorized fiduciary has discretion to distribute principal of a trust that is not a wholly charitable trust but that contains a charitable interest (see Section 15-16-902(5)), the charitable interest may not be diminished, the charitable purpose set forth in the first trust may not be changed and any conditions or restrictions on the charitable interest may not be changed. See Section 15-16-914(3).

	<p>The Uniform Trust Decanting Act is not the exclusive way to decant a trust and is not the exclusive way to modify a trust. The terms of the trust instrument may grant a fiduciary or other person the power to modify the trust. This act does not supplant any authority granted under such a trust provision. Any such authority granted under the trust instrument does not affect the application of this act unless the trust instrument imposes an express restriction on the exercise of the decanting power under this act or other state statute authorizing a fiduciary to decant. See Section 15-16-915(2).</p> <p>A decanting statute of another state may apply to a trust and, even if this act could also apply to the trust, this act does not supplant the right of a trustee to decant under the statute of such other state. Thus in some situations a fiduciary may have the option of decanting under this act or the decanting statute of another state.</p> <p>Common law in some states may permit a trustee to decant. This act does not supplant any right to decant under common law. Thus in some cases a fiduciary may have the option of decanting under this act or under common law.</p> <p>Section 111 of the Uniform Trust Code and statutes in many states permit certain matters regarding a trust to be resolved by a nonjudicial settlement agreement among the interested persons. Those statutes generally permit certain beneficiaries of a trust to approve an exercise of a power by a trustee and thus would permit certain beneficiaries to approve an exercise of the decanting power. In some cases the modification made by an exercise of the decanting power could also have been made by a virtual representation agreement, and in those cases an exercise of the decanting power sometimes might be combined with a nonjudicial settlement agreement. Generally, the nonjudicial settlement agreement would prevent any subsequent challenges to the decanting. The tax consequences of having the beneficiaries consent to the nonjudicial settlement agreement should be considered.</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

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

UFIPA Section	Section 104
Section Title	Governing Law
Statutory Language	<p>Except as otherwise provided in the terms of a trust or this [act], this [act] applies when this state is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in Section 103(2). By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this [act] to any matter within the scope of this [act] involving the trust.</p>
Uniform Law Commission Comment	<p>ULC PREFATORY NOTE</p> <p>..., new Section 104 provides an important clarification that the income and principal rules of the state that is the principal place of administration of the trust from time to time will be the governing law.</p> <p>ULC Section Comment</p> <p>A “rule of construction” is typically governed by the law of the place where the trust was created or deemed created. A “rule of administration” is typically governed by the law of the situs of the trust from time to time, often with appropriate savings provisions for tax benefits, etc. if the situs is changed. Authorities seem to be divided, however, on which historical category includes an income and principal act. <i>See</i> RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 268, Comment h (1971):</p> <p style="padding-left: 40px;">The question of the allocation of receipts and expenditures to principal or income presents a different problem. See Restatement of Trusts (Second), §§ 232-241. If a testator creates a trust to be administered in a state other than that of his domicile, the question is whether the allocation, as for instance of extraordinary dividends, is to be determined by the local law of his domicile or the local law of the place of administration. This could conceivably be treated as a question of administration and governed by the local law of the place</p>

	<p>of administration. On the other hand, it can be treated as a question of the distribution of the trust property and governed by the local law of the testator’s domicile. For the purposes of the choice of the applicable law, it is generally held that it is a question of construction and that the local law of the testator’s domicile is applicable.</p> <p>Despite the fact that income and principal allocations often do determine who gets what and therefore have the effect of rules of construction, treating those allocations as governed by the place of current administration seems to be the most workable approach and seems to be contemplated, for example, by the change-of-situs examples in the 2003 amendments to the GST tax regulations (Treasury Reg. § 26.2601-1(b)(4)(i)(E), Examples 11 &amp; 12). Perhaps the biggest burden of a rule of construction is determining the governing law not only <i>where</i> the trust was originally created but also <i>when</i> the trust was originally created, a burden that gets greater as longer-term trusts become more common and existing trusts therefore become older. Section 104 clarifies that the Uniform Fiduciary Income and Principal Act, like a rule of administration, is governed by the law of the situs, or principal place of administration, of the trust, which is not necessarily the place where all or most or any of the trust assets are located.</p>
Current Colorado Law	<p><i>Colorado Uniform Trust Decanting Act:</i></p> <p>§ 15-16-905:</p> <p>(1) This part 9 applies to a trust created before, on, or after August 10, 2016, which:</p> <p>(a) Has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or</p> <p>(b) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:</p> <p>(I) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;</p> <p>(II) Construction of terms of the trust; or</p>

(III) Determining the meaning or effect of terms of the trust.

**ULC COMMENT**

Because the authorized fiduciary by decanting is exercising a power over the first trust, the requirements in Section 15-16-905 apply to the first trust. It is irrelevant whether the second trust is governed by the law of the state or administered in the state.

The laws of different states may govern a trust for purposes of determining its validity, for purposes of construing the trust and for purposes of administration of the trust. The determination of the state law that governs for these purposes is also dependent upon whether the trust property consists of movables or land and whether the trust was created by a will or by an inter vivos instrument. *See* Restatement Second of Conflict of Laws §§ 267-279; Uniform Trust Code § 107; *see also* Uniform Probate Code § 2-703.

To provide greater certainty about whether the act applies to a trust, Section 15-16- 905(2) provides that the act applies to a trust that by its terms provides that it is governed by the law of the enacting state, without further inquiry as to whether the law of the enacting state actually applies. The act also applies where the law of the enacting state in fact governs administration of the trust, construction of the terms of the trust, or determination of the meaning or effect of terms of the trust, whether or not the trust instrument expressly so states.

Decanting is considered an administrative power because it deals with the powers of the trustee. *See* Comment a to the Restatement Second Conflict of Laws § 271 (testamentary trusts) and Comment a to § 272 (inter vivos trusts). Decanting, however, can alter the beneficial interests of a trust. In order to avoid having different rules for the application of the act depending upon whether the exercise of the decanting power changes administrative provision or beneficial interests, and the difficulty of drawing a distinct line between modifications that are administrative in nature and modifications that change beneficial interests, the act is intended to have broad application.

	<p>This act applies if the law of the state governs for purposes of any one or more of administration, meaning or effect. "Meaning and effect" are the terms used in the Uniform Trust Code (see Section 107). "Construction" is the term used in the Restatement Second of Conflicts.</p> <p>This act also applies if the trust instrument states that the law of the state governs for purposes of any one or more of administration, meaning or effect without the necessity of establishing that the law of the state in fact governs for such purpose.</p> <p>Alternatively, it is sufficient if the trust has its principal place of administration in the state. See Section 108 of the Uniform Trust Code with respect to the principal place of administration of a trust. While a change of principal place of administration will usually change the law governing the administration of the trust, that is not the result under all circumstances. To avoid the difficulties of determining whether the law governing administration has changed when the principal place of administration has changed, the act applies to any trust with a principal place of administration in the state, regardless of what state law governs its administration and meaning and effect.</p> <p><i>Uniform Directed Trust Act: [Tentative Act]</i></p> <p>Section 3:</p> <p>(a) This [act] applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:</p> <p>(1) If the trust was created before [the effective date of this [act]], this [act] applies only to a decision or action occurring on or after [the effective date of this [act]].</p> <p>(2) If the principal place of administration of the trust is changed to this state on or after [the effective date of this [act]], this [act] applies only to a decision or action</p>
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occurring on or after the date of the change.

(b) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction;

(3) all or part of the administration occurs in the designated jurisdiction.; or

(4) the trust is duly registered with a court in the designated jurisdiction.

*The ULC Comments to Section 3 of the UDTA provide:*

*Subsection (a).* Subsection (a) addresses two matters. First, because powers and duties in a directed trust are matters of trust administration, see Restatement (Second) of Conflict of Laws § 271 cmt. a (1971), this subsection follows the prevailing conflict of laws rule by linking application of this act to the trust's principal place of administration. As with other matters of administration, the parties are protected against inconsistent court orders by the common law principle of "primary supervision." *See id.* § 267 cmt. e.

Second, this subsection applies this act to all trusts administered in an enacting state regardless of whether the trust was in existence on the effective date of this act. However, under subsections (a)(1) and (2), this act applies only with respect to a decision or action occurring on or after the effective date or, if the trust's principal place of administration was changed to the

	<p>enacting state after the effective date, only with respect to a decision or action occurring on or after that change. Because some of the standards of conduct prescribed by this act depart from Uniform Trust Code § 808 (2000) and Restatement (Third) of Trusts § 75 (2007), the drafting committee reasoned that the act should apply prospectively, following the model of Uniform Prudent Investor Act § 11 (1994).</p> <p><i>Subsection (b).</i> Subsection (b), which derives from Uniform Trust Code § 108(a) (2000), establishes a safe harbor for a settlor’s designation of the principal place of administration for a directed trust. Such a designation is valid if (1) a trustee is located in the designated jurisdiction, (2) a trust director is located in the designated jurisdiction, or (3) at least some of the trust administration occurs in the designated jurisdiction. Subsections (b)(1) and (b)(3) reproduce without change the safe harbor prescribed by Uniform Trust Code § 108(a) (2000). Subsection (b)(2) expands the safe harbor of Section 108(a) to add the presence of a trust director as a sufficient connection with the designated jurisdiction.</p> <p>Other than the expansion in subsection (b)(2) of the Uniform Trust Code’s safe harbor for a settlor’s designation of a trust’s principal place of administration, the drafting committee did not undertake to prescribe rules for ascertaining a trust’s principal place of administration. In this respect, the drafting committee followed the Uniform Trust Code in “not attempt[ing] to further define principal place of administration.” Uniform Trust Code § 108 cmt. Accordingly, for a directed trust in an enacting state, just as for all trusts in a Uniform Trust Code state, if the safe harbor of subsection (b) does not apply, the question of a trust’s principal place of administration will be governed by the state’s then-existing law on principal place of administration. <i>See, e.g.,</i> Restatement (Second) of Conflict of Laws §§ 271-72, 279 (1971).</p>
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Approved.

