

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

Minutes of August 5, 2020

Participants

In person:	By phone/Web:
	• William Carew
	• Darla Daniel
	• Russ Gamble
	• Bill Hubbard
	• Walter Kelly
	• Stan Kent
	• Georgine Kryda, Chair
	• Dan Rich
	• Connie Smith
	• Jacob Tonda
	• Eugene Zuspan

Initial Assignments

UFIPA Article	Lead Reviewer(s)
1 General Provisions	Stan K.
2 Fiduciary Duties and Judicial Review	Herb T. & Darla D.
3 Unitrust	Susan B.
4 Allocation of Receipts During Administration	Russ G. & Peggy G. & Walt. K.
5 Allocation of Disbursement During Administration	Jonathan H.
6 Death of Decedent	Georgine K. & Eugene Z.
7 Apportionment at Beginning and End of Income Interest	Klaralee C.
8 Miscellaneous Provisions	Kate K.

The meeting was held by teleconference coordinated by the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 10:35 a.m. by the Chair and adjourned at 12:00 p.m. Corrected minutes of May 6, 2020 were approved.

Whether to Include Life Tenant in UFIPA – Georgine K.

Georgine recapped the work of the sub-subcommittee (Darla Daniel, Susan Harris, Stan Kent, Gene Zuspan, and Georgine) from May - July, 2020.

- “Life tenant” is referenced only a handful of times in UFIPA, and some of those references are in the comments.
- Gene and Susan reviewed Colorado law and the use of life estates.

- Georgine and Stan noted that Utah, the only state which has enacted UFIPA thus far, did not include “life tenant” in the definition of “fiduciary”; however, Kansas and Tennessee did add “life tenant” to the definition of “fiduciary” in their proposed versions of UFIPA.
- The sub-subcommittee recommended against adding “life tenant” to the definition of “fiduciary” for the proposed Colorado version of UFIPA because, although life tenants have a duty not to commit waste, no one is aware of a life tenant having a fiduciary duty. Adding life tenant to the definition of fiduciary would be a significant change to Colorado law, and likely have unintended consequences.
- The sub-subcommittee recommended reserving any references to life estates and life tenants in UFIPA.

The subcommittee had no questions or discussion regarding the background material from the sub-subcommittee.

The subcommittee voted and approved the following changes unanimously:

- Change 102(3)(B) to:
 - ⊖ for an estate, an heir, legatee, and devisee. ~~and~~
- Change 102(3)(C) to:
 - Reserved. ~~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.~~
- Change 102(4) to:
 - “Court” means the court in this state having jurisdiction relating to a trust; ~~OR estate, or life estate or other term interest described in Section 103(2)}~~.
- Change 102(22)(C) to:
 - for an estate, a will. ~~or~~
- Change 102(22)(D) to:
 - Reserved. ~~for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.~~
- Change 103 to:
 - ⊖ Except as otherwise provided in the terms of a trust, A WILL or this [act], this [act] applies to: (1) a trust or estate. ~~;~~ and (2) RESERVED. ~~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.~~
- Change 104 to:
 - 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 to this state, the trustee submits to the application of this [act] to any matter within the scope of this [act] involving the trust.

New 204 – Notice of action – Gene Z.

Gene recapped how the committee reviewing the 1997 UPIA added C.R.S. § 15-1-405, a “notice of action” provision that Dennis Whitmer originally found in a California statute. At that time, trustees wanted a bright line rule regarding objections by beneficiaries to actions taken beyond the provision of the annual report.

The subcommittee reviewed Gene’s proposed language for a new §204 for UFIPA, which carries existing C.R.S. § 15-1-405 into UFIPA. The subcommittee will take a final review and vote by email on the following:

- (1) In this section, the following definitions apply:
 - (a) “Qualified beneficiary” has the meaning set forth in subsection 15-5-103(16).
 - (b) “Objection period” has the meaning set forth in Section 304(d)(5).
- (2) A fiduciary may give a notice of proposed action regarding a matter governed by subparts 1 through 8 of this part [4] as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.
- (3) The fiduciary shall mail notice of the proposed action to all qualified beneficiaries and the fiduciary may give notice to other beneficiaries. A beneficiary shall be bound under this section with respect to such proposed action if the beneficiary receives actual notice or if the beneficiary would be bound under the provisions of Title 15, Article 5, Part 3.
- (4) Notice of proposed action need not be given to any beneficiary who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.
- (5) The notice of proposed action shall state that it is given pursuant to this section and shall follow the procedures set out in Section 304 regarding notice.
- (6) A beneficiary may object to the proposed action by mailing a written objection to the fiduciary at the address stated in the notice of proposed action within the objection period.
- (7) A fiduciary is not liable to a beneficiary to whom notice is given for an action regarding a matter governed by this part if the fiduciary does not receive a written objection to the proposed action from the beneficiary within the objection period and the other requirements of this section are satisfied. If no beneficiary who receives

notice objects under this section, the fiduciary is not liable to the beneficiaries receiving notice with respect to the proposed action.

- (8) If the fiduciary receives a written objection within the objection period, either the fiduciary or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the fiduciary's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the fiduciary decides not to implement the proposed action, the fiduciary shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the fiduciary's decision not to implement the proposed action does not itself give rise to liability to any beneficiary. A beneficiary may petition the court to have the action performed, and has the burden of proving that it should be performed.

Part 8, Miscellaneous Provisions – Gene Z.

The subcommittee **voted unanimously to approve §§ 803, 805, and 806** as follows.

803, Application to Trust or Estate

- ~~This [act] applies to a trust or estate existing or created on or after [the effective date of this [act]], except as otherwise expressly provided in the terms of the trust or this [act].~~
- EXCEPT AS PROVIDED IN THE TERMS OF THE TRUST AND THIS SECTION 803, THIS ACT SHALL TAKE EFFECT ON THE EFFECTIVE DATE.
 - (1) THIS [ACT] SHALL NOT APPLY TO A TRUST ESTABLISHED UNDER A WILL OR TRUST AGREEMENT EXISTING AND IRREVOCABLE ON JULY 1, 2001, IF A TRUSTEE OF THE TRUST HAS ELECTED TO APPLY THE "UNIFORM PRINCIPAL AND INCOME ACT" OF THIS STATE IN EFFECT ON JUNE 30, 2001.
 - (2) THIS [ACT] SHALL NOT APPLY TO A TRUST EXISTING ON JULY 1, 2001, IN WHICH NO TRUSTEE HAD THE AUTHORITY TO ACT UNDER SECTION 15-1-404 OF THE UNIFORM PRINCIPAL AND INCOME ACT EFFECTIVE JULY 1, 2001, UNLESS A TRUSTEE OF THE TRUST ELECTED TO APPLY THE UNIFORM PRINCIPAL AND INCOME ACT AS IT EXISTED AFTER JULY 1, 2001, AS AMENDED.
 - (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THIS [ACT] SUBPARTS 1 THROUGH 6 OF THIS PART 4 SHALL NOT APPLY TO ANY TRUST OR DECEDENT'S ESTATE EXISTING ON THE EFFECTIVE DATE, IN WHICH NO FIDUCIARY HAS THE AUTHORITY TO ACT UNDER SECTION 203 SECTION 15-1-404 UNLESS A FIDUCIARY ELECTS TO APPLY SUBPARTS 1 THROUGH 7 OF THIS PART 4. THE LAW IN EFFECT IN COLORADO AS OF JUNE 30, 2001 WILL APPLY TO THIS THE TRUST OR ESTATE UNLESS A FIDUCIARY MAKES SUCH ELECTION. THE FIDUCIARY MAY MAKE THIS ELECTION AT ANY TIME.

(4) ONCE AN ELECTION IS MADE PURSUANT TO THIS SECTION, THE ELECTION SHALL BE IRREVOCABLE. THE FIDUCIARY SHALL GIVE NOTICE OF SUCH AN ELECTION TO THE BENEFICIARIES OF THE TRUST IN ACCORDANCE WITH SECTION 204. IF SUCH NOTICE COMPLIES WITH SECTION 204, THE PROVISIONS OF SAID SECTION SHALL APPLY TO SUCH ELECTION.

805. Repeals; Conforming Amendments

(a) This [act] repeals §§ 15-1-401 through 15-1-467, C.R.S.

806. Effective date

This [act] takes effect July 1, 2021.

By noon on August 14, 2020, the subcommittee should email to Georgine each member's vote on Section 204 (above) and on UFIPA overall to Georgine.

The next meeting is presentation of UFIPA to SRC on September 2, 2020 via teleconference coordinated by the CBA.