

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Uniform Fiduciary Income and Principal Act

1. UFIPA SECTION	601
2. SUBJECT	Determination and Distribution of Net Income
3. UFIPA STATUTE	<p>(a) This section applies when:</p> <p style="padding-left: 40px;">(1) the death of an individual results in the creation of an estate or trust; or</p> <p style="padding-left: 40px;">(2) an income interest in a trust terminates, whether the trust continues or is distributed.</p> <p>(b) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection [(g)][(e)] and [Articles] 4, 5, and 7, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.</p> <p>(c) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (b), under [Articles] 4, 5, and 7 and by:</p> <p style="padding-left: 40px;">(1) including in net income all income from property used or sold to discharge liabilities;</p> <p style="padding-left: 40px;">(2) paying from income or principal, in the fiduciary’s discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent’s death, but the fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:</p> <p style="padding-left: 80px;">(A) the payment of the expenses from income will not cause the reduction or loss of the deduction; or</p> <p style="padding-left: 80px;">(B) the fiduciary makes an adjustment under Section 507(b); and</p> <p style="padding-left: 40px;">(3) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:</p> <p style="padding-left: 80px;">(A) to the extent authorized by the decedent’s will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent’s death; and</p> <p style="padding-left: 80px;">(B) related penalties that are apportioned, by the decedent’s will, the terms of the trust, or applicable law, to the estate or income interest that terminates.</p>

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	<p>[(d) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (c) or from principal to the extent net income is insufficient.</p> <p>(e) RESERVED. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.]</p> <p>[(f)][(d)] A fiduciary shall distribute net income [remaining after payments required by subsections (d) and (e)] in the manner described in Section 602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.</p> <p>[(g)][(e)] A fiduciary may not reduce principal or income receipts from property described in subsection (b) because of a payment described in Section 501 or 502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.</p> <p><i>Legislative Note: If state law already provides for interest on payments from a trust on the death of an income beneficiary, delete or modify subsections (d) and (e). If subsections (d) and (e) are not deleted, use the subsection reference in the first set of brackets in subsections (b), (f), and (g). If subsections (d) and (e) are deleted, use the subsection reference in the second set of brackets in subsection (b) and redesignated subsections (d) and (e), and delete the words in brackets in redesignated subsection (d).</i></p>
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<p>4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>Article 6 of the 2018 Act, Death of Decedent or Termination of Income Interest, is not greatly changed from Article 2 of the 1997 Act, Decedent’s Estate or Terminating Income Interest. Paragraph (3) of Section 201 of the 1997 Act, addressing the payment of interest on pecuniary bequests or pecuniary amounts payable by a trust (explained below in the paragraph captioned “Interest on pecuniary amounts”), is divided into two optional subsections (d) and (e) of Section 601 in the 2018 Act. As explained in the Legislative Note, a state may use these subsections if it has no other provision for payment of interest on pecuniary amounts received from a trust. In that case, subsection (e) will provide that interest is payable on pecuniary amounts received from a trust in the same manner as state law otherwise provides in the case of pecuniary bequests under a will, and subsection (d) will provide that all such interest payments are made from income to the extent income is sufficient. If state law already provides for the payment of interest on pecuniary amounts received from a trust, subsections (d) and (e) may be modified or omitted.</p> <p>The Treasury Regulations contemplated by the Comment to the 1997 Act to respond to the Supreme Court’s decision in <i>Commissioner v. Estate of Hubert</i>, 520 U.S. 93 (1997), were added in 1999 as Treasury Regs. §§20.2056(b)-4(d), 20.2055-3(b), and 20.2013-4(b)(3).</p> <p style="text-align: center;">Comment to 1997 Act</p> <p>Terminating income interests and successive income interests. A trust that provides for a single income beneficiary and an outright distribution of the remainder ends when the income interest ends. A more complex trust may have a number of income interests, either concurrent or successive, and the trust will not necessarily end when one of the income interests ends. For that reason, the Act speaks in terms of income interests ending and beginning rather than trusts ending and beginning. When an income interest in a trust ends, the trustee’s powers continue during the winding up period required to complete its administration. A terminating income interest is one that has ended but whose administration is not complete.</p> <p>If two or more people are given the right to receive specified percentages or fractions of the income from a trust concurrently and one of the concurrent interests ends, e.g., when a beneficiary dies, the beneficiary’s income interest ends but the trust does not. Similarly, when a trust with only one income beneficiary ends upon the beneficiary’s death, the trust instrument may provide that part or all of the trust assets shall continue in trust for another income beneficiary. While it is common to think and speak of this (and even</p>
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	<p>to characterize it in a trust instrument) as a “new” trust, it is a continuation of the original trust for a remainder beneficiary who has an income interest in the trust assets instead of the right to receive them outright. For purposes of this Act, this is a successive income interest in the same trust. The fact that a trust may or may not end when an income interest ends is not significant for purposes of this Act.</p> <p>If the assets that are subject to a terminating income interest pass to another trust because the income beneficiary exercises a general power of appointment over the trust assets, the recipient trust would be a new trust; and if they pass to another trust because the beneficiary exercises a nongeneral power of appointment over the trust assets, the recipient trust might be a new trust in some States (see 5A Austin W. Scott & William F. Fratcher, <i>The Law of Trusts</i> § 640, at 483 (4th ed. 1989)); but for purposes of this Act a new trust created in these circumstances is also a successive income interest.</p> <p>Gift of a pecuniary amount. Section 201(3) and (4) [now 601(d) through (f)] provide different rules for an outright gift of a pecuniary amount and a gift in trust of a pecuniary amount; this is the same approach used in Section 5(b)(2) of the 1962 Act.</p> <p>Interest on pecuniary amounts. Section 201(3) [now 601(d) and (e)] provides that the beneficiary of an outright pecuniary amount is to receive the interest or other amount provided by applicable law if there is no provision in the will or the terms of the trust. Many States have no applicable law that provides for interest or some other amount to be paid on an outright pecuniary gift under an inter vivos trust; this section provides that in such a case the interest or other amount to be paid shall be the same as the interest or other amount required to be paid on testamentary pecuniary gifts. This provision is intended to accord gifts under inter vivos instruments the same treatment as testamentary gifts. The various state authorities that provide for the amount that a beneficiary of an outright pecuniary amount is entitled to receive are collected in Richard B. Covey, <i>Marital Deduction and Credit Shelter Dispositions and the Use of Formula Provisions</i>, App. B (4th ed. 1997).</p> <p>Administration expenses and interest on death taxes. Under Section 201(2)(B) [now 601(c)(2)] a fiduciary may pay administration expenses and interest on death taxes from either income or principal. An advantage of permitting the fiduciary to choose the source of the payment is that, if the fiduciary’s decision is consistent with the decision to deduct these expenses for income tax purposes or estate tax purposes, it eliminates the need to adjust between principal and</p>
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	<p>income that may arise when, for example, an expense that is paid from principal is deducted for income tax purposes or an expense that is paid from income is deducted for estate tax purposes.</p> <p>The United States Supreme Court has considered the question of whether an estate tax marital deduction or charitable deduction should be reduced when administration expenses are paid from income produced by property passing in trust for a surviving spouse or for charity and deducted for income tax purposes. The Court rejected the IRS position that administration expenses properly paid from income under the terms of the trust or state law must reduce the amount of a marital or charitable transfer, and held that the value of the transferred property is not reduced for estate tax purposes unless the administration expenses are material in light of the income the trust corpus could have been expected to generate. Commissioner v. Estate of Otis C. Hubert, 117 S. Ct. 1124 (1997). The provision in Section 201(2)(B) [now 601(c)(2)] permits a fiduciary to pay and deduct administration expenses from income only to the extent that it will not cause the reduction or loss of an estate tax marital or charitable deduction, which means that the limit on the amount payable from income will be established eventually by Treasury Regulations.</p>
5. COLORADO COMMITTEE COMMENTS	
6. COLORADO LAW	
7. RECOMMENDATION	

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1. UFIPA SECTION	602
2. SUBJECT	Distribution to Successor Beneficiary
3. UFIPA STATUTE	<p>(a) Except to the extent [Article] 3 applies for a beneficiary that is a trust, each beneficiary described in Section [601(f)][601(d)] is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.</p> <p>(b) In determining a beneficiary's share of net income under subsection (a), the following rules apply:</p> <p>(1) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.</p> <p>(2) The beneficiary's fractional interest under paragraph (1) must be calculated:</p> <p>(A) on the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and</p> <p>(B) without regard to:</p> <p>(i) property specifically given to a beneficiary under the decedent's will or the terms of the trust; and</p> <p>(ii) property required to pay pecuniary amounts not in trust.</p> <p>(3) The distribution date under paragraph (1) may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.</p> <p>(c) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.</p> <p>(d) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary.</p>

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	<p><i>Legislative Note: If subsections (d) and (e) of Section 601 are deleted, use the subsection reference in the second set of brackets in subsection (a).</i></p>
<p>4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>Section 202(a) of the 1997 Act ended with a reference to “the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.” The 2018 Act changes this, in Section 602(a), to “a share of the net income the fiduciary received after the decedent’s death, an income interest’s other terminating event, or the preceding distribution by the fiduciary.” “The preceding distribution by the fiduciary” will prevent the possible misunderstanding that “earlier distribution date,” in context, refers to a distribution date earlier than “the date of death or terminating event.” So-called “stub income” between the last distribution date and the date of death is addressed in Section 703(b). The former words “but has not distributed as of the current distribution date” are not needed because Section 602(c) makes it clear that the fiduciary must account for all undistributed income.</p> <p>Section 602(b)(2)(B) excludes specific bequests in kind and pecuniary bequests (and comparable distributions from a trust) from the calculation of a beneficiary’s fractional interest of undistributed principal assets for purposes of allocating income to that beneficiary. If the beneficiary is entitled to statutory interest on any such bequest, that interest is not income subject to allocation under this section, and that bequest does not share in the income earned by the other assets.</p> <p>Section 602(a) includes an exception for the portion of an estate or trust that is treated as a unitrust under new Article 3.</p> <p align="center">Comment to 1997 Act</p> <p>Relationship to prior Acts. Section 202 [now 602] retains the concept in Section 5(b)(2) of the 1962 Act that the residuary legatees of estates are to receive net income earned during the period of administration on the basis of their proportionate interests in the undistributed assets when distributions are made. It changes the basis for determining their proportionate interests by using asset values as of a date reasonably near the time of distribution instead of inventory values; it extends the application of these rules to distributions from terminating trusts; and it extends these rules to gain or loss realized from the disposition of assets during administration.</p>
<p>5. COLORADO COMMITTEE COMMENTS</p>	

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6. COLORADO LAW	
7. RECOMMENDATION	