

MEMORANDUM

TO: Lauren Da Cunha and Dylan Metzner, Chair and Vice Chair of the Statutory Revisions Committee of the Trusts & Estates Section of the Colorado Bar Association

FROM: Georgine Kryda and Eugene Zuspann, Chairs of the Subcommittee Reviewing the Uniform Fiduciary Income and Principal Act

DATE: August 19, 2020

RE: UFIPA Subcommittee Recommendations

Introduction and Recommendation

In April 2018, a subcommittee of the Statutory Revisions Committee (“SRC”) of the Trusts & Estates (“T&E”) Section of the Colorado Bar Association (“CBA”) began reviewing the Uniform Fiduciary Income and Principal Act (“UFIPA”). That subcommittee has completed its review, and now recommends that the SRC, T&E, and CBA support the UFIPA with the modifications discussed below.

Materials Available on the UFIPA Website

The UFIPA subcommittee’s Website at <https://www.cobar.org/For-Members/CBA-Sections/Trust-Estate/Committees/UFIPA> contains the following materials:

1. Final version of the UFIPA by the Uniform Law Commission as of January 2019;
2. Minutes of all subcommittee meetings from April 2018 through August 2020;
3. Approved sections of UFIPA by the subcommittee in “Santa Fe” style;
4. The entire UFIPA as proposed for enactment in Colorado, and as red-lined, by the subcommittee; and
5. Table summarizing review of UFIPA and noting changes proposed by the subcommittee.

Composition of the Subcommittee

As reflected in the minutes, the subcommittee consisted of a broad range of practitioners from individual planners and advisors, to corporate trustees. Some attorneys concentrated on specific types of trust assets, such as mineral interests, that are prevalent in Colorado trusts; whereas other attorneys contributed their perspectives from decades of trust administration.

The Subcommittee’s Overall Impression of UFIPA

Overall, the subcommittee was favorably impressed by the wording and organization of the UFIPA text, which clarifies and complements Colorado’s existing Uniform Principal and Income Act (“UPIA”), which is codified at C.R.S. §§ 15-1-401, *et seq.*

The Purpose of UFIPA

UFIPA introduces a more comprehensive set of default rules for trust accounting based on the equitable allocation of total return than currently exists in Colorado law. UFIPA also provides more guidance for how a fiduciary should account for returns for a variety of asset classes, such as business assets and natural resources, than does UPIA under current law. Thus, UFIPA assists fiduciaries in logically and consistently accounting for receipts, while maintaining equity in making distributions to beneficiaries.

UFIPA's Predecessors in Colorado

The subcommittee benefited greatly from the history provided by Gene Zuspann and Stan Kent of Colorado's earlier adoptions of the Uniform Principal and Income Acts ("UPIAs"), which had also been proposed by the Uniform Law Commission ("ULC").

- The ULC promulgated the *Principal and Income Act* in 1931 ("1931 UPIA").
 - Colorado enacted the *1931 UPIA* in 1955 ("1955 Act").
- The ULC promulgated a revised *Uniform and Principal Income Act* in 1962 ("1962 UPIA").
 - Colorado did not adopt the *1962 UPIA*.
- The ULC revised and reorganized (into six parts) the 1931 and 1962 UPIAs in 1997 ("1997 UPIA").
 - Colorado enacted the *1997 UPIA* in 2000 (the "2000 Act").
 - At the same time, Colorado repealed the *1955 Act* (the *1931 UPIA*).
- In 2009, Colorado reenacted the *1955 Act* as Part 7 of the *2000 Act*.

The subcommittee did not want to inadvertently and adversely affect existing trust instruments which may be based on UPIA.

The Subcommittee's Specific Recommended Changes to the ULC's UFIPA Text

The subcommittee makes the following specific recommended changes to the ULC's final version of UFIPA:

1. Removal/reservation of references to "life estate," "life tenant," and "term interest":
 - a. 102(3)(B) changed to "for an estate, an heir, legatee, and devisee."
 - b. 102(3)(C) changed to "Reserved."
 - c. 102(4) changed to "'Court' means the court in this state having jurisdiction relating to a trust, OR estate."
 - d. 102(8) removed "life tenant" from the definition of "fiduciary."
 - e. 102(22)(B)(iii) adds "section 15-5-111, C.R.S." as the reference to the CUTC.
 - f. 102(22)(B)(iv) adds "by alternative dispute resolution under section 15-5-113, C.R.S."
 - g. 102(22)(C) is changed to "for an estate, or a will".
 - h. 103 adds "a will and changes (2) to Reserved.
 - i. 104 removes references to life estate and to term interest.

2. Article 2, Fiduciary Duties and Judicial Review, and Section 302 change references from the “UTC” to the “CUTC.”
3. New Section 204 adds a Notice of Action [by a fiduciary].
 - a. This new section was added in the 2001 UPIA because trustees wanted to be able to give notice before taking an action, and to have the matter settled before the proposed action was initiated
4. Section 304 required selection from several alternatives for each subsection; thus, a “clean” version of the approved text is on page 9 of the table summarizing review.
5. Section 309 adds a default ordering rule under Section 309(c) for unitrusts.
6. For Section 409, Deferred Compensation, Annuity, or Similar Payment, the subcommittee favors using “26 U.S.C. Section 7520 as amended” throughout, and selected four (4) percent as the rate of interest for Section 409(b)(2).
7. For Article 6, Death of Individual or Termination of Income Interest, the subcommittee:
 - a. declined to recommend enactment of Section 601(e) whereby the fiduciary would be required to pay the same rate of interest on a pecuniary amount outright from a trust after an income interest ended as the beneficiary would receive if the pecuniary amount were paid under a Will; and
 - b. adopted Section 602 with the UTC language, but added new Section 204 as a notice of action by a fiduciary.
8. For Article 8, Miscellaneous Provisions, the subcommittee expanded Section 803 to address trusts that may still be administered under the 1955 Act.

Conclusion

For the foregoing reasons, the UFIPA subcommittee recommends that the SRC, T&E, and CBA support the UFIPA with the modifications as indicated in the red-lined version of UFIPA and explained above.