

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

Minutes of October 18, 2018

Participants

In person:	By phone:
• Gene Zuspann, Chair	
• Susan Boothby	
• Klaralee Charlton	
• Darla Daniel	
• Connie Eyster	
• Russ Gamble	
• Peggy Gardner	
• Jonathan Haskell	
• Walter Kelly	
• Stan Kent	
• Georgine Kryda	
• Michelle Mieras	
• Herb Tucker	
• LisaWillcox	

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.
5 Allocation of Disbursement During Administration	Jonathan H.
6 Death of Decedent	Georgine K. & Steve B.
7 Apportionment at Beginning and End of Income Interest	Klaralee C.
8 Miscellaneous Provisions	Unassigned

The meeting was called to order at 10:35 a.m. by the Chair and adjourned at 11:30 a.m.
Minutes of 9/20/18 approved.

Stan's review of final version of UFIPA and Stan's previous reports

- Most changes are stylistic, not substantive
 - Stan updated footer for sections where there were style changes
- Section 102(2): Asset backed security; HOLD
- Section 102(19) is new, similar to Uniform Decanting Act (also Section 19)
 - Relates to tax benefits
 - Suggest wait to vote until get to substantive sections; HOLD

- Section 102(20) is new, Succession of interest
 - APPROVED
- Section 102(19) Terms of Trust
 - We already modified so definition agrees with our CUTC.
 - Style changes in (c) and (d). Simply makes language clearer and more concise.
 - APPROVED.
- Section 103: All style changes.
 - (3) of scope struck by UTC Style, so consistent with our earlier vote.
 - Still APPROVED.

Section 201: Fiduciary Duties & General Principles – Darla

Generally consistent with C.R.S. § 15-1-403

- 201(a)(1): Act in good faith,
 - UTC Style removed “reasonable” and “good faith” presumably for redundancy
- 201(a)(2): Consistent with C.R.S. § 15-1-403 although CO uses “clearly manifest”
 - Typo: “one or more”
- 201(a)(3): Consistent with “terms of trust” defined in Part 1.
- 201(a)(4): Generally consistent with C.R.S. § 15-1-403(1)
 - CO does not have imperative.
- 201(b):
 - First part used to say simply fiduciary’s determination
 - Final UFIPA still consistent with C.R.S. § 15-1-403(2) but CO
 - C.R.S. § 15-1-403 does not have counterpart for latter part of UFIPA 201(b).
 - Discussion: UFIPA has exoneration language.
- 201(c): Similar to CO law.
- 201(d): No change from prior version of UFIPA
- 201(e) is a new subsection to provide specific factors a fiduciary must consider
 - ULC removed “purpose”
 - Discussion: UFIPA contains the default rules for allocating income and principal
 - UFIPA does not change fundamental fiduciary standards of conduct
 - This applies only to application of prior paragraph (d) regarding changes.
 - Are there issues if purpose is not specified in the trust instrument?
 - “Must” is mandatory, but “must consider” does not require action.
 - Does “purpose” go beyond “terms of trust”?
 - Adding “purpose” appears to go beyond terms of the trust, but what would be required beyond the terms of the trust?
 - C.R.S. § 15-1-403 does not have a list of factors.
 - Connie moves to adopt UFIPA 201(e)(2) as written, Jonathan seconds.
Discussion continued.
 - If trust document is silent as to purpose, can heighten the standard of care of trustee.
 - If MUST consider, then may have to look at overall estate plan.
 - We will not have ability to add CO comments, and UTC official comments will also not be published.
- 201 UNANIMOUSLY APPROVED.

Section 202: Fiduciary Duties and Judicial Review - Darla

- Reading of the UFIPA final text.
- Darla's handout brought in parts of current CO UPIA, which appear to be consolidated by UFIPA in this Section 202.

The next meeting will be on November 15, 2018 at 10:30 a.m. in the Capitol Room.