RESOLVED, That the American Bar Association approves the Uniform Fiduciary Income and Principal Act (UFIPA), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
REPORT

Uniform Fiduciary Income and Principal Act

Summary

The Uniform Fiduciary Income and Principal Act (UFIPA), approved by the Uniform Law Commission (ULC) in 2018, is an updated version of the Uniform Principal and Income Act (UPIA). For this latest revision, the title was changed to differentiate the act from its predecessors, and also to avoid confusion with the closely related Uniform Prudent Investor Act, which shared the UPIA acronym. The Uniform Principal and Income Act was originally approved by the ULC in 1931 and revised twice in 1962 and 1997. Nearly every state has adopted a version.

UFIPA provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially, unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

Traditionally, beneficiaries of many trusts were either entitled to receive income earned by the trust investments, or to inherit a share of the trust principal. In this scenario, the trustee’s allocation of receipts and expenditures to income or principal had a direct effect on the beneficial interests. The UPIA provided a set of accounting rules to guide trustees in making these allocations.

In the last few decades, the historical distinction between income and principal has become less important for two reasons. First, the development of modern portfolio theory allows trustees to invest for the maximum total return, whether the return is in the form of income or growth of principal. Second, modern trusts are often drafted with more flexible terms giving trustees discretion to accumulate income or invade principal when advantageous to further the purposes of the trust. UFIPA recognizes these developments and gives trustees additional flexibility to administer discretionary trusts.

The 1997 UPIA did not include provisions for converting a traditional trust into a “unitrust” to allow for total-return investing. At the time the tax treatment of unitrusts was uncertain, so the drafters instead added a section allowing a trustee to adjust between income and principal as necessary. This created an administrative burden for trustees that could be avoided with a unitrust. Then in 2003 the Internal Revenue Service published regulations respecting unitrust conversions under certain conditions if authorized under state law. Once federally sanctioned, over thirty states amended their UPIA statutes to allow unitrust conversions in some form, but these statutes are not uniform and are often overly restrictive.
Article 3 of UFIPA contains flexible and innovative unitrust provisions that improve upon current state laws. Trustees can establish a unitrust policy with a variable or adjustable rate of return based on market conditions or on the needs of individual beneficiaries. A proposed unitrust policy must be disclosed in advance to beneficiaries who may consent or object. Restrictions apply when the trust qualifies for certain tax benefits to ensure compliance with federal regulations.

UFIPA Section 104 provides a new default rule on governing law. The law of the situs of the trust will apply, unless the terms of the trust specify a different jurisdiction. This rule is consistent with other uniform trust and estate acts and will help prevent multi-state disputes.

The Uniform Fiduciary Income and Principal Act and the work of the drafting committee is available at www.uniformlaws.org, the website of the Conference.

Respectfully submitted,

Anita Ramasastry, President
National Conference of Commissioners
on Uniform State Laws
January 2019
1. **Summary of Resolution.**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) requests approval of the Uniform Fiduciary Income and Principal Act by the American Bar Association (ABA) House of Delegates.

2. **Approval by Submitting Entity.**

The National Conference of Commissioners on Uniform State Laws granted final approval to the Act at its July 2018 Annual Meeting.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

Yes. ABA Policy 98M101A approved a prior version of the act, which was then called the Uniform Principal and Income Act.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

This will replace the Revised Uniform Principal and Income Act (1997), which was subsequently amended in 2000 and 2008. That Act was approved by Resolution 98M101A. This resolution would replace that prior resolution.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

Not applicable.

6. **Status of Legislation. (If applicable)**

The Uniform Fiduciary Income and Principal Act has not yet been enacted in any jurisdiction.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

NCCUSL will present the act to state legislatures for consideration and enactment.

8. **Cost to the Association. (Both direct and indirect costs)**
None.

9. Disclosure of Interest. (If applicable)

None.

10. Referrals.

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project, and those that expressed interest were provided with tentative drafts. The drafting committee’s work can be found at uniformlaws.org, the website of the Conference.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Steven Willborn, Interim Executive Director
Uniform Law Commission
111 North Wabash Ave., Suite 1010
Chicago, IL 60602
(312) 450-6622 (office)
(402) 617-4815 (cell)
swillborn@uniformlaws.org

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

Anita Ramasastry, President
Uniform Law Commission
C/O University of Washington School of Law
William H. Gates Hall, Box 353020
Seattle, WA 98195-3020
(206) 616-8441 (office)
(206) 419-5489 (cell)
aramasasty@uniformlaws.org
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Fiduciary Income and Principal Act, promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Fiduciary Income and Principal Act provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially, unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Fiduciary Income and Principal Act by the ABA House of Delegates would help demonstrate to state legislatures that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None Known.