



THE UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

- A Summary -

The Uniform Fiduciary Income and Principal Act (UFIPA), approved by the Uniform Law Commission 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.

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 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 is a modern, flexible statute that should be considered by every state. For further information about UFIPA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.