

From: Turney P. Berry, Chair

Date: March 3, 2017

To: Members and Observers, Revised Uniform Principal and Income Act Drafting Committee

Subject: March 24-25, 2017 Meeting

We look forward to seeing you at the Watergate Hotel in just a few weeks. With this Memorandum we circulate a draft of the Principal and Income Act. You will see that we have noted a tentative name change to, Uniform Trust Income and Principal Act (UTIPA), and comments explain that suggestion. If we like the name change then the committee will recommend that change to the Conference leadership which will consider it prior to the annual meeting in July.

To help with your review, we also circulate a black-line version comparing this new Act to the 1997 version of the Principal and Income Act. That comparison is particularly helpful when reviewing Articles 6 – 9.

I think you will find the comments to the UTIPA especially helpful. Do not be put off by the length of the draft; old comments have been retained for reference. After the Washington meeting those old comments will be either dropped or incorporated into the working comments.

As you know, in our first two meetings we discussed extensively the theory of the act as well as the structure. The Prefatory Note discusses the reasons for the name change.

Article 1 sets forth definitions (required) and general fiduciary duties. Some of the discussion in the 1997 comments may be helpful to incorporate into the comments to our act.

Section 201 functions as a road-map to the entire act for the trustee. I think it is self-explanatory and I hope you find the comment helpful as I do. This road map is a bit unusual so we ought discuss how you think it functions.

Section 301 contains the authority to allocate receipts and disbursements and incorporates the concept of a trustee establishing a policy governing allocations for a particular trust, including factors to be considered in creating such a policy. We will want to review this section carefully both as to principle and practice.

Section 401 contains the power to adjust, in the act since 1997.

Section 501 contains the new unitrust provision. You will note that is complicated with lots of options; this version gives unitrust options that the IRS may not respect for various purposes but which in certain circumstances could be appropriate for a trust. Is that degree of flexibility desirable or ought we constrain trustees from making tax mistakes? The ULC has taken each approach in various acts. The comment attempts to summarize the state of the law today, including federal tax law. We believe two thirds of the states have unitrust provisions already; for ours to be useful, we need to provide advantages that other unitrust statutes do not, such as

flexibility and comprehensiveness. We can discuss whether we have done that. We are not circulating copies of all the existing unitrust statutes but if someone wants to take a look at those please let us know.

Articles 6 and 7 deal with terminating interests. Should they be moved to the end of the act? In our previous meetings, there was some thought they interrupt the flow of the act.

Articles 8 and 9 recapitulate the default rules contained in the 1997 act, with a few changes, and, we hope, clearer language.

Our plan of work will be to discuss generally the organization of the act. Then we will read, line by line, sections 103 – 401, followed by Articles 8 and 9. Then we will go back and discuss the unitrust provision specifically, and finally Articles 6 and 7, then the definitions. I could argue that we ought to start with the unitrust provision but my concern is that we will spend too long on it and not read the rest of the act which seems undesirable. (As always, I am a servant of the people so if you feel I am making a mistake please send me a note).

Finally, comment on comments is welcome and desirable. Oftentimes our drafting committees give short-shrift to comments, sometimes with problematic results. To save time during the Washington meeting, however, we will not be discussing the language of the comments except to the extent that the language directly bears on the language of the draft (“we say we are doing X in the comment, but the draft does Y” – we want to see if the draft is correct, then we will work on the comment).

If in our review we come upon thickets we will try to thrash our way through but failing that will set aside time on a future conference call to resolve issues after further work in expectation of our first reading this summer. Most of you know that first readings provide at best inconsistent review of conference products, largely as a result of when the reading occurs during the conference and during the day. That’s good because it is low pressure, but bad because unexpected controversy can arise during the final reading. To that end, it is helpful if we try to spot areas of potential controversy and highlight those for the conference during the first reading. Please consider what we ought to highlight as we go through the draft in this Washington meeting.

A couple of procedural items. The Watergate Hotel is newly renovated and is almost adjacent to The Kennedy Center to the extent has any attraction for you. Kendra and I spent a week nearby last May and enjoyed the area. I can speak favorably about the GW emergency room’s ability to remove debris from your eye (a narrow point but a positive one). On Friday night we will have dinner (separate checks) and certainly hope that you, and any guests you might wish to include, will join us. You will receive a separate email about that. I expect that we will take all of our allotted time, 9 to 5 on both Friday and Saturday; if your travel plans require you to miss part of the meeting please let me know because that might affect how we try to do our reading.

Naturally, you need not wait for the meeting to send along questions, suggestions, and comments. Thanks to each of you in advance for your participation.