



ALASKA TRUST & ESTATE PROFESSIONALS (ATEP)

An Alaska Non-Profit Corporation

Keeping Alaska the #1 Planning Jurisdiction

Executive Summary: Alaska Fiduciary Income and Principal Act

Why the Alaska Fiduciary Income and Principal Act (AFIPA) Should be Passed in Alaska

Purpose

The AFIPA modernizes a vitally important aspect of Alaska's trust and estate laws; specifically, how investment returns and growth are treated in fiduciary relationships. The Act will enhance trust and estate administration in Alaska by allowing modern options and solutions to react to today's complex financial landscape. While based on the Uniform Fiduciary Income and Principal Act (UFIPA), it includes key adjustments tailored to Alaska's unique trust laws; ensuring compatibility with the state's competitive trust reputation.

Key Features

1. **Alignment with Modern Trust Practices:** Reflects Alaska's leadership in trust administration, ensuring it remains competitive in the national and global trust markets.
2. **Total-Return Investing:** Allows fiduciaries to adopt Modern Portfolio Investment Theory strategies, focusing on overall growth, instead of outdated interest income and fixed income investing.
3. **Enhanced Unitrust Flexibility:** Introduces updated unitrust conversion rules, ensuring ease of trust administration and maximizing investment returns, while adhering to federal tax laws.
4. **Alaska-Specific Adjustments:** Customizes the Uniform Law Commission template with Alaska-focused provisions to align with Alaska's specific trust industry needs, preserving Alaska's reputation as being an advantageous state to move one's trust.

Why This Act Matters

- **Economic Growth:** Reinforces Alaska's reputation as a top-tier trust jurisdiction, attracting new clients and fiduciary assets to the state.
- **Alaska Fiduciary Empowerment:** Provides Alaska fiduciaries with modern, flexible tools to manage assets effectively and equitably for beneficiaries of Alaska trusts, many of whom are Alaskan citizens.
- **Legal Clarity and Uniformity:** Updates Alaska's trust statutes with modern and current trust laws, appropriate for the 21st century trust industry.

This bill provides a clear and consistent legal framework for how income and principal are allocated, ensuring fairness for beneficiaries of Alaskan trusts and estates and enhancing the efficiency of trust and estate administration in Alaska.



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.



WHY YOUR STATE SHOULD ADOPT THE UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

The Uniform Fiduciary Income and Principal Act (UFIPA) provides enhanced, more flexible accounting rules for modern trusts. Current trends in estate planning allow for very long-term trusts that give trustees broad discretion to adapt to future events. UFIPA recognizes these trends and updates the law accordingly.

- ***UFIPA allows total-return investing.*** Modern portfolio theory advocates investing for the greatest possible total return, regardless of whether the return is in the form of income or growth of principal. Outdated laws make this more difficult because of historic legal distinctions between income and principal. UFIPA updates the law and allows trustees to invest for the greatest possible return.
- ***UFIPA contains flexible and innovative unitrust rules.*** The development of modern portfolio theory popularized the use of unitrusts—an easy-to-administer form of trust that helps maximize investment returns and minimize administrative expenses. UFIPA provides the first uniform rules for converting older trusts into unitrusts, with more flexibility than any current state statute but still in accordance with federal tax regulations.
- ***UFIPA allows for individualized estate planning.*** Under UFIPA's flexible rules for trust administration, creative estate planners can tailor the terms of a trust to fit each client's current needs and allow adaptation for unforeseen future events.
- ***UFIPA clarifies which state's law applies.*** UFIPA includes a default rule stating the law governing a trust is the law of the state where the trustee has its principal place of administration. This rule conforms to current practice and will help ensure courts apply the correct law and prevent multi-state jurisdictional disputes.
- ***UFIPA modernizes the law of trusts.*** Nearly every state has adopted a version of the Uniform Principal and Income Act, parts of which date to 1931. UFIPA is an updated version of this uniform law with a new name to differentiate it from its predecessors. Each state should replace its existing law with this latest version appropriate for the twenty-first century.

For further information about UFIPA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.