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TO: Senate Judiciary Committee
FROM: Kansas Judicial Council – Mark Knackendoffel
DATE: February 8, 2021
RE: 2021 SB 107 enacting the Uniform Fiduciary Income and Principal Act

The Kansas Judicial Council and its Probate Law Advisory Committee (PLAC) recommend 2021 SB 107, which contains the 2018 Uniform Fiduciary Income and Principal Act (UFIPA). The Act was recently approved by the Uniform Law Commission. The Council is recommending that the UFIPA be adopted in Kansas with only a few minor changes.

Kansas enacted an earlier version of this Act in 2000 (the Uniform Principal and Income Act, K.S.A. 58-9-101, *et seq.*) and added a unitrust conversion provision in 2009 (K.S.A. 58-9-105). The Committee believes the 2018 UFIPA is a useful update. Its main purpose is to provide greater flexibility to trustees in the power to adjust between principal and income. It also contains more detailed unitrust conversion provisions, and it clarifies which state's law applies.

The attached summary from the Uniform Law Commission, "Why Your State Should Adopt the UFIPA," provides a helpful overview of the UFIPA's provisions. If you are interested in reviewing the explanatory comments to the Uniform Act drafted by the Uniform Law Commission, you can find those on the Uniform Law Commission's website at www.uniformlaws.org.

The members of the Judicial Council Probate Law Advisory Committee
are:

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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 Outdated laws make this more difficult because of historic legal distinctions between income and principal.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.