



Modernizing Florida Trust Law: Key Takeaways from UFIPA

Florida's adoption of the Uniform Fiduciary Income and Principal Act (UFIPA) represents one of the most significant updates to the state's trust administration framework in decades. UFIPA's core contribution is that it reframes how fiduciaries balance the competing interests of income and remainder beneficiaries, provides a modernized unitrust framework, and explicitly authorizes total-return investing under modern portfolio theory.

This article highlights these three major concepts and explains how they equip fiduciaries—and the lawyers who advise them—with greater flexibility, clearer guidance, and expanded authority to administer trusts fairly and efficiently.

Fiduciary Duty: Expanded Scope and Reinforced Accountability

UFIPA codifies and expands the traditional duties of loyalty, good faith, and impartiality, applying them broadly to all fiduciaries, not just trustees. This expansion recognizes the reality that modern trust administration often involves a team of professionals, including financial advisors, trust companies, accountants, and family members serving as co-fiduciaries.

The statute emphasizes that fiduciaries must:

- Act in good faith,
- Administer the trust impartially, and
- Remain loyal to all classes of beneficiaries.

It also reinforces beneficiaries' rights to seek remedies for breaches of trust, aligning fiduciary behavior with the express terms of the trust, which UFIPA recognizes as the governing charter of fiduciary powers and responsibilities.

See Florida Statutes § 738.103 for fiduciary duties under UFIPA.

The Reengineered Unitrust Framework: Flexibility Within a Safe Harbor

One of the most practical updates in UFIPA is the repeal of Florida's prior static unitrust provision, replaced by a flexible, rules-based framework.

Key features:

- Retaining the IRS safe harbor of 3% to 5% annual unitrust distributions.
- Allowing trustees to convert income trusts to total return unitrusts without court approval, subject to procedural safeguards like notice to beneficiaries.
- Providing clear procedural steps for unitrust conversions, enabling fiduciaries to better manage non-income-producing assets—such as real estate or growth stock portfolios—without penalizing income beneficiaries.

This flexibility allows practitioners to guide fiduciaries toward consistent, predictable distributions that reflect current market realities, balancing short-term income needs with long-term principal preservation.

See Florida Statutes § 738.1041 for conversion to unitrust provisions.

Modern Portfolio Theory: Enabling Total-Return Investing

UFIPA goes beyond distribution mechanics by explicitly authorizing fiduciaries to apply modern portfolio theory (MPT). This strategy shifts the focus from maximizing traditional income (like interest or rent) to maximizing total return, which includes both income and capital appreciation.

Key takeaways:

- Fiduciaries may adjust between income and principal to ensure impartial treatment of both current and future beneficiaries.
- The outdated “impossibility” standard is replaced by a more flexible standard of reasonable assistance, enabling adjustments when circumstances warrant.
- Fiduciaries can better align investment strategies with the trust’s long-term objectives, even when those strategies produce little or no traditional income.

See Florida Statutes § 738.104 for fiduciary adjustment powers under UFIPA.

UFIPA In A Real-World Application

Consider a common scenario: a trust holds a \$3 million non-income-producing asset, like a beach house. The income beneficiary (the settlor’s widow) struggles with carrying costs, while remainder beneficiaries (the settlor’s children from a prior marriage) resist selling the asset.

Under UFIPA, the fiduciary could:

Convert the trust to a unitrust, providing the widow with a predictable annual payout based on the house's value.

Lease or partially monetize the property in cooperation with remainder beneficiaries, balancing use and income.

Leverage the equity through financing, using loan proceeds to fund life insurance that repays the debt upon the widow's death, preserving the asset debt-free for the children.

These options demonstrate UFIPA's power to transform seemingly locked-in dilemmas into practical, equitable outcomes.

Conclusion: Planning Still Comes First

While UFIPA improves post-death trust administration, it does not replace the need for proactive estate planning. The best outcomes arise when clients and their advisors anticipate these issues while the settlor is still living, crafting solutions that avoid unnecessary conflict and maximize family harmony.

By leveraging UFIPA's expanded fiduciary powers, unitrust flexibility, and total-return investment principles, Florida practitioners can help clients design, implement, and administer trusts that serve both today's and tomorrow's beneficiaries—as the settlor intended.

Disclaimer

The materials provided by LifeCounsel® are offered for informational purposes only and do not constitute legal advice. LifeCounsel® and its representatives are providing these resources in a non-attorney capacity, and no attorney-client relationship is created by your use or access to this content. Even if the author or presenter is an attorney, your use of the material does not establish an attorney-client relationship. The provided content should be utilized solely at your own risk. LifeCounsel® strongly advises consulting with a licensed attorney in your jurisdiction who specializes in estate planning, elder law, or related fields to obtain personalized legal advice suitable to your specific circumstances.